The Effects of Termination of Trust in Private Trust

Yoshihiro Ido (Nippon Trust Bank Limited)

It is intended that Trust Act protect the right of the beneficiaries and the person in whom it is to vest until the trust property is transferred, as the trust shall be deemed to continue to exist when there are residuals of property upon termination of trust.

However, it is noted that there are differences of priorities in the timing of right and claim toward the trust property between beneficiaries and the person in whom it is to vest. The beneficiaries exercise their rights before the termination of trust, on the other hand, the persons in whom it is to vest exercise their rights after the termination of trust. In addition, trust property for beneficiaries is determined first and if there are residuals of the property, they are deemed to the person in whom it is to vest.

As there are differences in rights of the beneficiaries and the persons in whom it is to vest, Trust Act is considered to treat their rights differently.

1) The nature of trust by act of law

Under the trust by act of law that is to protect the right of beneficiaries, the trust is deemed to continue after the termination of original trust.

On the other hand, under the trust by act of law that is to protect the right of persons in whom it is to vest, the trust exists between persons who are not in trust relation.

2) Compulsory execution by third parties or trustees

The trustees who own the rights against the trust property can exercise their rights after the trust property is transferred to beneficiaries and persons in whom it is to vest upon terminaiton of original trust.

If the trustees can exercise their rights at their will against both beneficiaries and persons in whom it is to vest, beneficiaries can be disadvantageous to persons in whom it is to vest. Yet, the persons in whom it is to vest cannot obtain the benefits at the beneficiaries' expense, trustees exercise the rights against the persons in whom it is to vest first, and if they are not satisfied, they should exercise the rights against beneficiaries.

The third parties who exercised the compulsory execution before the termination of trust can also continue the compulsory execution after the trust property is transferred to beneficiaries and persons in whom it is to vest.

For that reason, if the compulsory exection is carried out only to the property of beneficiaries, beneficiaries are to claim against only to persons in whom it is to vest.

3) The timing of the final accounting of trust affairs and the persons to approve

Upon termination of trust, trustees must make a final accounting of trust affairs and obtain beneficiaries's (including persons' in whom it is to vest) approval and when their approvals are obtained, their responsibilities come to the end. However, as the timing of obtaining trust benefits for beneficiaries and persons in whom it is to vest are different, the timing of final accounting are different.

In principle, timing of final accounting for beneficiaries comes earlier than for persons in whom it is to vest and it is not believed to be disadvantageous for beneficiaries because after the beneficiarise exercise their rights or they lose their right as beneficiaries, they do not have to admit the rights of approval of trustees.