

Small Corporations: Business Life Insurance Trust and Application of Trust Theory to Devolution of Their Business

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There are numerous closely held corporations in Japan. Controlling shareholders of these corporations frequently confront problems which are not faced by shareholders of publicly held corporations. Among these are problems triggered by the death of a controlling shareholder, such a difficulties of surviving shareholders retaining control and difficulties in continuing the business, and problems of transferring controlling shares smoothly to a designated successor during the lifetime of a controlling shareholder. This article examines utilization of the trust device to resolve these two congeries of problems.

In America, the business life insurance trust is used to ensure that surviving shareholders retain control of the corporation and that its business can continue. There are two principal variations of business insurance trust. Under one, the controlling shareholders pay premiums upon policies of insurance on each other's lives which are the principal initial asset of a trust. The trustee is obligated under the trust agreement to acquire the stock of the deceased shareholder from his estate and to transfer it to the surviving shareholders; the estate of the decedent is obligated to sell the stock to the trustee. Under the second variation, where statutory limitations on corporations purchasing their own shares are not likely to impede acquisition of the shares by the corporation, the corporation itself pays the insurance premiums, and the trust agreement binds the trustee to transfer the shares to the corporation.

In Japan, the first variant of the business life insurance trust can be

utilized without difficulty. However, because the law prohibits corporations from acquiring their own shares in principle (Commercial Code art. 210), use of the second variant is problematical. Nevertheless, in the situation in which continuation of the business requires bringing third parties into management rather than retention of control by the surviving shareholders, if the corporation has established restrictions upon transfer of its shares, the second variant may be used. This is because the law recognizes a limited exception to the prohibition upon treasury shares for shares subject to restrictions upon transfer.

Turning to transfer of controlling shares to a designated successor, a controlling shareholder may accomplish this smoothly during his lifetime by transferring his shares to a trust on the following terms: Until a future date which the controlling shareholder sets or specifies (this being a date when his designated successor will be experienced enough to take over management of the business), the controlling shareholder-settlor is to be the beneficiary. After that date, his designated successor is to be the beneficiary (additional measures are taken to ensure fairness to other heirs apparent). During the existence of the trust, the trustee will vote shares as the beneficiary instructs.