

# A Study of Principal and Income in Commercial Trusts

Hisanobu Amino (The Toyo Trust and Banking)

Although the words "principal" and "income" are used in many trust business situations, trust laws of Japan have no provision of principal and income, and there are only a few treatises and articles on this matter.

In Japan, a beneficiary of a trust is usually both a principal beneficiary and an income beneficiary, therefore, there have been few practical needs of discussing principal and income of trusts. However, the circumstance is changing, there are actual needs to study and discuss this matter.

In this study, I focus arguments on principal and income of commercial trusts in Japan, and I avoid discussions on non-commercial trusts and issues concerning tax and accounting of trusts. Major points of this study are as follows.

Principal and income of a trust can be determined by the terms of the trust. The Tentative Draft of the Revision of Act of Trust of Japan (1985) and Uniform Principal and Income Act of U.S. provide that the terms of the trust are dominant even if these Acts have different provisions from the terms of the trust.

The right of a beneficiary of a commercial trust need not be always linked to each asset (such as a stock certificate, a government bond) which belongs to the trust property. Also, the principal and income of the commercial trust need not be always determined by each asset and its related dealings (ex. stock certificates by purchase, money acquired as rent, etc.).

I surmise that there are two approaches to "default rules" of

principal and income of trusts. One is to direct attention to “assets” of a trust, the other is to direct attention to “value” of a trust. The former is a traditional way of thinking which U.S. Uniform Principal and Income Act adopts, the latter is a way of thinking which Japanese trusts for asset management (ex. collective trusts ) may adopt.

In Japanese trusts for asset management, each asset of trust property is frequently changing its form (money to a bond, a bond to a stock, etc.) . In this type of trust, to trace each deal of each asset is impractical for determination of principal and income. Instead, this type of trusts establishes “the amount of principal” which is the standard for determination of principal and income, and the trustee shall pay the excess of the “the amount of principal” to the income beneficiaries of the trust.

In this study, I tried to grope for hints of default rules about 4 categories of commercial trusts in Japan, by considering which approach above mentioned each category of commercial trusts may adopt.