

## Legal Aspects on Indemnity of Trustee for Expenses

Masanori Endo (The Mitsubishi Trust and Banking)

Article 36 of Trust Act stipulates that if a trustee incurs a liability in the administration of a trust without negligence on his part, he is entitled to indemnity out of the trust estate. This article suggests to me that we should focus more on obligation-rights relations among parties concerned, although the very basic concept of Trust Act is favoring beneficiary.

The trustee's right is interpreted as obligee's claim, provided that the indemnity out of the trust estate consists of the trustee's personal claim plus his right to sell the trust estate by means of a declaration of his will.

The trustee's right to sell the trust estate is transformed, after trustee's duty is duly met, into the right to sell by official public auction the trust estate or levy compulsory execution as per Article 54. On the contrary, there's no such article as for the indemnity from the beneficiary, which leads to the idea that the indemnity right from the beneficiary still exists on after the trustee's duty is met.

In terms of the exercise, the indemnity out of the trust estate is a sort of preferential right, enabling the trustee to sell the trust estate, as shown by the fact there's no such articles in the Civil Execution Act, and the indemnity from the beneficiary, however, is obligee's claim against the beneficiary.

When does the trustee's right arise? It is when the trustee pays the

expenses, just like the indemnity as to the delegation in the Civil Law.

The trustee may exercise the indemnity right, which does not hinder the purpose of the trust, provided that the trustee compensates for losses inflicted upon such trust estate, incurs in the proper management of trust affairs.

It is trustee, trustee's heir and their agent who can claim the indemnity and it is trust estate, beneficiary and person designated in the act of trust who owe the indemnity.

And indemnity may be transferred as the right against his own estate, except for the right to sell the trust estate at his discretion, like the claim in the Civil Law.