

Duration of Trust in Case of Successive Beneficiaries—Some questions on the application of Section 91 of Japanese Trust Act

Masami Okino
(Hitotsubashi University)

Section 91 of Japanese Trust Act provides: When a trust instrument provides that a beneficiary's right ceases upon her death and that in turn another person acquires another beneficial right (and the beneficiary's right ceases upon her death and that another person acquires another right as a beneficiary, and that it continues as such), the trust is effective until the beneficiary's right, that has been acquired by the person designated as beneficiary, existing, on or after 30 years since the creation of the trust, ceases upon the beneficiary's death or on other causes.

Section 91 is introduced to confirm the validity of the arrangement of transferring assets over generations with the designation of the successive beneficiaries in a family trust setting. It is also meant to clarify the limit of such arrangement; otherwise it would be left to be judged through the general thus vague idea of public policy.

Section 91, however, poses several questions on its applicability and consequences. There are several reasons for the ambiguity of the section. First, the wording of the section 91 is twisted. Second, the wording was changed in the drafting process at the Ministry of Justice, from the wording of the outlines of the reform of the trust act submitted to the Minister of Justice by the legislative deliberative council, without explicit explanation. Thirdly, and more importantly, the underlying philosophy of the section 91 remains unclear.

This article first points out major questions under section 91 (part

1), then examines the development of the rule against perpetuities in the United States (part 2), describes the characteristics of the rule of section 91 in comparison with the developments in the United States on the rule against perpetuities, uncovers the underlying philosophy of section 91, and lastly expresses views on the questions above pointed (part 3).

This article argues: (1) section 91 is based on the view to limit the range where the judgment of the settlor prevails to the sphere where the settlor ordinarily is able to know the family members, and where the settlor could dispose of her assets under the Civil Code with exceptions provided by the institution of trust, that is permissibility of the unborn as beneficiary, i.e. functional donee; (2) the suggestion through the outlines of the trust law reform by the legislative deliberative council to the MOJ gives more plausible explanation of the spirit of the section, thus the section should be interpreted accordingly; (3) under the existence requirement, the future beneficiaries should exist on the time 30 years has passed since the creation of the trust to acquire beneficial rights thereafter; (4) the future beneficiaries who meet the existence requirement are entitled to acquire beneficial rights according to the provisions of the trust instrument, and that the duration of trust is determined by the life of the beneficial right of the person, in case of plural acquisitions, who acquires her right lastly.