



KWANSEI GAKUIN UNIVERSITY

# Self-Determination and Realization of the Settlor's Intent in Trusts for Persons with Disabilities

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## I . Introduction

Need to introduce an affordable system of the personal care and property management for persons with disabilities, modest wealth and no reliable families

	Voluntary Guardianship	Financial Arrangements of Trust Banks	Family Trust
Notarization	Required at the time of the execution	Not required	Not required (In fact, often created by notarized deed)
Power of Trustee or Agent	<ul style="list-style-type: none"> <li>▪ Property management</li> <li>▪ Personal welfare (No power of consent to medical treatment)</li> </ul>	Property management	Property management
Supervisor	<ul style="list-style-type: none"> <li>▪ Appointment required to take effect</li> <li>▪ Family court</li> </ul>	The person with the power of consent or the right to see the relevant document	Not required

## II . Determination in Choosing the Arrangement

Voluntary Guardianship	Financial Arrangements of Trust Banks	Family Trust
<ul style="list-style-type: none"> <li>▪ Task of property management is burdensome for non-professional individuals</li> <li>▪ Not enough potential agents</li> <li>▪ No government subsidies to a supervisor fee</li> </ul>	<ul style="list-style-type: none"> <li>▪ Voluntary supervision works well ?</li> <li>▪ Not suitable for parents concerned with the care of their child</li> </ul>	<p>Susceptible to the trustee's abuse of power</p>

## Ⅲ. Decision-making as to Terms of a Family Trust

1. Trustee (受託者)

2. Trust purpose (信託の目的)

3. Trust terms (信託条項)

\* Tokyo District Court Case (Oct. 23, 2018)

⇒ The settlor's claim to rescind the trust advantageous to the trustee was dismissed.

## III. Decision-making as to Terms of a Family Trust

If the trust terms are deviated from default rules of the Trust Act and not reasonably related to the trust purpose, those professionals who get involved in setting up the trust should owe a legal duty to fully explain its significance and effect to the settlor before the creation of it.

(ある信託条項が信託法の任意規定から逸脱しており、かつそれが信託の目的に照らして合理的といえない場合、当該条項に関する委託者の意思を特に十全に確認することが必要である。信託設定に関与する専門家は、利害関係者のいないところで、委託者の内容理解を支援することを義務とすべきではないか。)



## IV. Decision-making as to Termination or Modification of a Trust

The settlor-beneficiary can have some freedom to terminate or modify a trust if the settlor wishes so.

## IV. Decision making as to Termination or Modification of a Trust

- Desirable to advise the settlor to appoint someone with the power of consent in the case of termination or modification of the trust .  
(信託の変更・終了の際には同意権者の同意を条件とすることが望ましい。)
- Decision-making support for termination or modification of trusts is highly recommended after the impairment of the settlor-beneficiary's decision-making capacity  
(委託者兼受益者の判断能力が低下した後に信託の変更・終了を決定する際には特に、意思決定支援を受けることが推奨される。)



## V. Carrying out the Settlor's Intent

Professionals (e.g., lawyers, notaries and bankers) who undertake to give advice to the settlor should owe a legal duty to recommend to appoint a trust supervisor if a family member of the settlor or other individual is appointed as a trustee.

(信託設定に携わる専門家は、個人が受託者に選任される際には、信託監督人の選任を推奨する義務を負うと解すべき)

## VI. Special Gift Trust (特定贈与信託)

- Trust for the benefit of the persons with serious disabilities
- Exemption of gift tax up to JPY¥60,000,000 (SGD \$ 660,000)  
(最大6,000万円まで贈与税が非課税)
- Disability basic pension becomes a means-tested benefit,  
If the disability was caused by the events before the person reaches 20. Otherwise, it is not means-tested.  
(20歳前疾病による障害基礎年金には所得制限がある)

## VIII. Issues of Japanese Version of Special Needs Trust

### 1. Beneficiary

Children with special needs ?

Including elderly people concerned with mental incapacity ?

Means-tested support system ?

(障害年金受給条件に影響を及ぼす?)

### 2. Regular update of the care plan and the letter of intent

Any possibility to allow the settlor to revoke or modify the trust ?

(委託者が信託を取消すまたは変更する権利を認めるべき?)

# Issues of Japanese Version of Special Needs Trust

## 3. Trustee

Non-profit trust company accredited and subsidized by the government ? (認定NPO、公的補助?)

## 4. Investment

Is it possible to give a settlor an option to choose from several investment strategies according to their tolerance for risk ?

(リスク許容度に応じた投資の選択を認めることは可能か?)

## Issues of Japanese Version of Special Needs Trust

### 5. Carrying out the Settlor's Intent

- Need to appoint a case manager for each beneficiary

Who should be a case manager ?

(各受益者にケースマネージャーが必要であるが、誰が選任されるべき?)

- Internal decision-making guidelines of SNTC on whether to approve or reject the disbursement requests that are outside of the settlor's letter of intent ⇒ useful source of information

(委託者の意向趣意書にない支出要求に応ずるか否かに関するSNTCの指針)

# Issues of Japanese Version of Special Needs Trust

## 6. Residual Funds from Terminated trusts

(残余財産の受託者への帰属または寄付を認めるべき?)

## Conclusion

Japanese version of special needs trust may deserve consideration

How should we strike a balance between reducing costs and respecting the individual's latest wishes ?

(制度のコスト削減と委託者の最終意思の尊重をいかに調整すべきか？)



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