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## Гражданско-правовая ответственность доверительного управляющего за нарушение режима траста в Китае

Цао Яцзюнь / Гражданско-правовая  
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**Аннотация:**

Статус траста с фиксированным платежом был нарушен новыми строгими мерами регулирования в отрасли управления активами, и число случаев траста растет и значительно возрастет в будущем в Китае. Проблемы в этой сфере в настоящее время связаны с ограничениями размера компенсации доверенному лицу и с растущими институциональными требованиями в случаях нарушения прав доверенного лица. В странах общего права законодательство о трастах относится к законодательству о собственности, и нарушение траста нарушает права бенефициара, так что управляющий несет деликтную ответственность. В странах континентальной системы права нарушение траста рассматривается как нарушение договора, и управляющий несет ответственность за нарушение договора. Существует много споров о характере гражданской ответственности управляющего за нарушение траста, что также указывает на важность независимости ответственности за нарушение траста в Китае. В частности, должны быть определены и урегулированы следующие юридические вопросы: определение убытков, правило отсутствия взаимозачета и причины освобождения от ответственности.

**Ключевые слова:**

трастовое право, доверительный управляющий, гражданско-правовая ответственность, нарушение траста, правило отсутствия взаимозачета.

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## Civil Liabilities of Trustee for Breach of Trust in China

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**Abstract:**

The fixed payment status of trust has been broken by the new strong regulatory measures in the asset management industry and trust cases are increasing and will increase significantly in the future in China. While we are facing a problem that the compensation scope of trustee is absence and should be solved, or is difficult to cope with the increasing institutional demands of trustee breach cases. In Common Law countries, trust law is subsumed into the Property Law, and the breach of trust infringes the rights of the beneficiary so that the trustee bears tort liabilities. In Civil Law countries, the breach of trust is regarded as breach of contract and the trustee bears the liability of breach of contract. There are many disputes about the nature of trustee's civil liability for the breach of trust, which also indicates the importance of the independence of the liability of breach of trust in China. Specifically, the following statutes should be defined and legalized: the definition of loss, the no-netting rule and the causes of exemption of the liability.

**Keywords:**

trust law, trustee, civil liability, breach of trust, no-netting rule.

### I. Question: How to Respond to the Increasing Institutional Demands of Trustee Breach Cases in China

In recent years, due to the breach of trust by trust companies, the events that trust companies cannot pay the maturing interests of the trust products have occurred frequently, involving huge funds and huge groups of beneficiaries with damaged rights and interests. In the current trust practice, the failure of trust management is closely related to the imperfect legal norms of the trustee's civil liabilities for breach of trust. It

is important to strengthen the trust supervision, and to prevent and defuse major trust financial risks from the trust industry. In the event of breach of trust, how to judge the civil liabilities of the trustee is worthy of further discussion, which involves the discussion of the scope of compensation for the breach.

The Article 22 of China's Trust Law generally stipulates the liability of the trustee for the breach, and at the same time, Article 26, 27, 28 and 30 stipulate the liability of the trustee for using the trust property for his own profit, turning the trust property into his inherent property, self-transaction, and delegation. Paragraph 1 of Article 22 of China's Trust Law provides for the behaviors of the breach of trust and liability forms. The behaviors of breach of trust includes: disposing of the trust property against the purposes of the trust, breaching of the management duties and improper handling of trust affairs. The liability forms of the breach includes: restoring trust property to its original state and compensation. It can be seen that the liability of the trust clauses in China's Trust Law does not stipulate the compensation scope of trustee for the breach. The compensation scope, which has important institutional value, is related to the calculation rules of the liability and other important contents.

With the implementation of a new round of strong regulatory measures in China's asset management industry, the rigid payment state of trust has been broken, and the number of trust cases entering the litigation procedures will increase significantly in the future [1, p.51] However, the problem of the absence of the compensation scope of trustee has not been solved. The existing trust legal norms of the trustee's civil liability may be difficult to cope with the institutional demands of the emerging cases of the breach in the future. China's Trust Law has been implemented for 20 years, and the new problems and challenges in practice have put forward new requirements for the Trust Law. This article mainly discusses the compensation scope of trustee for the breach, aiming to explore how to improve the civil liability of trustee for the breach in China's Trust Law, and to respond to the increasing institutional demands of the trustee breach cases in the future.

## II. The Independent Value of the Civil Liability of Breaching Trust in China

Only by making the accurate characterization of the breach of trust can better apply the corresponding legal. Since the legal relationship of trust is mainly established by trust contract, does the compensation scope of trustee still have the value of discussion? That is, whether the compensation scope of the liability of breach of contract can be directly applied to the liability of breach of trust? Through the debates of scholars on the nature of the civil liability of the trustee for breach of trust, and the in-depth analysis of the particularity and independence of trust, it is known that the civil liability of the trustee for the breach is an independent liability, and the compensation scope of which has important institutional value.

### (I) Legal Differences and Confusions about the Nature of the Trustee's Civil Liability for Breach of Trust

First comes the view of Tort Liability in the Equity Law. Trust Law was the invention of the court of Equity Law [2, p.137] Trust law contains the essence of Equity Law. Many textbooks of Trust Law in the Common Law countries often discuss Trust Law and Equity Law together. The nature of trustee's civil liability for the breach is classified as tort liability in the Equity Law, as the underlying reason being that the trust property has double ownership due to the Equity Law, for the trustee has the ownership of the trust property in the Common Law, and the beneficiary has the ownership of the trust property in the Equity Law. In the Common Law countries, Trust Law is classified into the Property Law, the beneficial right of the beneficiary is characterized as the property right, and the breach of trust infringes on the beneficiary's beneficial right [3, p.12] According to the basic theory of the elements of tort liability, it can be deduced that

the breach of trust is tort and the trustee undertakes tort liability. Trustee's liability of breach of trust is also the fair compensation liability in the Common Law, which mainly reflects the relief function of the beneficiary, which not affects the nature of the breach. However, unlike the existing theory of the trust property right in the Common Law countries, some scholars in the contemporary Common Law countries propose that trust is a contractual relationship. A trust is a transaction and a bargain about how to manage and allocate the assets of a trust [4, p.627]. Trust has all the general qualities of the contract, in other words, all the full elasticity of the contract [5, p.96].

Second is the view of The Liability for Breach of Contract in the Civil Law. In the trust legal norms and trust practice of the Civil Law countries, trust contract is undoubtedly a main way to set up a trust. The breach of trust means the breach of contract obligation of the trust, for the trust contract is considered to be a special contract, and the trustee bears the liability for breach of the trust contract. For example, Japanese scholars said that the breach of trust is a breach of contract, saying that, in Japan, the main means of setting a trust is the trust contract, and trust has always been a contract-centered thinking.[3, p.13] The Japanese Trust Act clearly states that the basis for the liability of trustee to beneficiary is a fiduciary obligation to a beneficiary under a decree or trust contract, and that the liability of the trustee is a debt because of the trust contract, which is the debt of default [6, p.43-44]. However, there are also Japanese Trust Law scholars believe that although the trust is established in the form of contract, the trust legal relationship is not a contract legal relationship, since the trust relationship is completely different from the contract relationship, for the starting point of the trust relationship is that the reality between the two parties of trust are not equal, such as doctors and patients, lawyers and clients. The trust legal relationship is a legal measure to guarantee that the vulnerable party can rely on the counterpart, while the contract legal relationship is a legal measure to guarantee the rights and obligations between equal entities. If the trust legal relationship is not a contractual legal relationship, then the civil liability of the breach of trust cannot be recognized as the liability for breach of contract [6, p.16].

#### (II) Disputes among Chinese Scholars on the Nature of the Trustee's Civil Liability for Breach of Trust

The first view is that the liability for breach of trust is Tort Liability. Scholars who support this view believe that the trust legal relationship is the real right legal relationship, and the beneficial right of the beneficiary is the real right. The breach of trust infringes on the beneficiary right, so the trustee should bear tort liability. The scholars who holding the view of tort liability do not agree with the view of liability for breach of contract, the reason is that the beneficiary is not the entity of the legal relationship of trust contract. In the trust contract legal relationship, the beneficiary is not the party of the trust contract; besides, in the will trust, declaration of trust, there is no contract relationship between the trustee and the trustor or beneficiary, so there is no liability for breach of contract [7, p.107-108].

The second view is that the liability for breach of trust is the Liability for Breach of Contract. This view holds that the liability of the trustee for breach of trust is primarily established by the trust contract and the trustee breaches of the obligations in the trust contract, so the trustee should be liable for breach of contract.

The third view is that the liability for breach of trust is dual liability of Tort Liability and Liability for Breach of Contract. This view holds that the breach of trust contains the dual nature of infringement of the property right and non-performance of the contract, the reason is that there is both property legal relationship and contract legal relationship between the trustee and beneficiary. The legal relationship of real rights is reflected in the beneficiary's beneficial right of the trust property, and the legal rela-

tionship of contract rights is reflected in the obligations of the trustee to manage and dispose of the trust property for the interests of the trust purpose and the beneficiary has the right to request the trustee to implement the obligations and pay the interests of the trust.[8, p.112]

The fourth view is that the liability for breach of trust is the independent liability for breach of trust. This view holds that the liability of breach of trust is an independent liability paralleled with contract liability and tort liability on the ground that the breach of trust meets neither the elements of contract liability nor tort liability.[9, p.19-20] Since Trust Law is developed by the justices of Equity Court according to the concept of conscience, fairness and fairness, the legal liability in the field of trust is an independent liability [10, p.184].

### (III) The Independence of The Liability for Breaching Trust

The legislative differences and confusions in the liability for breach of trust and the controversies of Chinese scholars confirm that the trustee's liability for breach of trust is inappropriate under either the liability of breach of contract or the liability of tort liability. The author supports the view that the trustee's liability for breach of trust should be an independent liability.

First, the view that the liability of breach of trust is Tort Liability is not feasible in China. China's Trust Law does not stipulates the beneficiary holds the real right of trust property. Trust property in the Common Law has dual ownership, but China's Property Law stipulates the principal of one ownership upon one property. Therefore, when the trust was established, the ownership of trust property whether belongs to the trustee or the beneficiary, there is no unified view in China's Property Law, so it cannot say that the beneficiary has the real right of the trust property. Beneficiary's beneficial rights based on the trust contract. Trustee's liability of the breach has put in the trust contract, including the subject of liability and object of liability, which is different from the tort liability. As to tort liability, before the occurrence of the cause of infringement, the subject of liability and the object of liability are not specific. Taking the incident of animal injury as an example, before the occurrence of the infringement event, no one can predict who will be injured by the animal raised by the other family.

Second, the view that the liability of breach of trust is Contract Liability is not feasible in China. In addition to the case of the trustor also is the beneficiary, the trustee does not bear the liability of the breach to the other party of the trust contract, the trustor; but to the beneficiary, the third party of the trust contract. Since the beneficiary is in a weak position of information asymmetry, so legislation of the liability of trustee for the breach needs to take into account the disadvantage of the beneficiary. The realization of the interests of the beneficiary depends entirely on the management behavior of the trustee, and legislation mainly from the perspective of the trustee is a major feature of the Trust Law [11, p.64]. In contrast with both parties of the contract may become the breach entities, the breach entities of trust usually only pointed to the trustee. In addition, trust is extremely flexible and unique, trust itself is an independent system, so the Trust Law should come first to adapt the trust legal relationship other than the Contract Law.

### III. The Institutional Value of the Trustee's Civil Liabilities for Breach of Trust in China

The trustee shall not be robbed of, and the beneficiary shall not be unjustly enriched [12, p.64]. A remedy in the Equity Law is a compensation in the Common Law. The rights of the trustee are protected in the Common Law, and the rights of the beneficiary are protected in the Equity Law [13, p.510]. The compensation of the damages of the trustee for breach of trust, in other words, is the remedy of the damages of the beneficiary. The compensation scope of the breach is a calculation of the loss caused by the trustee,

and a direct manifestation of quantifying the result of the breach and the scope of the beneficiary's remedy.

The concept of compensation scope of breach of trust follows the concept of Complete Compensation in the Civil Law, aiming to reasonably and comprehensively evaluate the compensability of the breach. The liability of breach of trust mainly refers to the compensatory liability, supplemented by the punitive liability.

The trustee should mainly liable for the compensation liability for breach of trust. First, compensation liability has the advantages of relatively clear constituent elements and standards, and the elements contain the breach actions, the result of damages, the causation, and the specific beneficiary. The standards of compensation is limited to fill the loss of the beneficiary. Second, the basic guiding ideology of compensatory liability is the unity of fault and liability. Trustee's compensation liability for the breach not only can balance the interests of the beneficiary and the trustee's duties, but also can let the trustee have a reasonable accountability for his own actions. Relative to the punitive liability, the compensation liability can maximize the power of the trustee to manage the trust property in the best interest of the beneficiary, so the trustee would not shrink in managing the trust property.

Under certain situations, the trustee should bear the punitive liability of breach of trust. The application of trust is very wide. Infringing on the special interests of the beneficiary, or some particularly malicious breaches, are the typical situations that the trustee should bear the liability of punitive damages. For example, in the case involving pension fund trust, education fund trust and other trusts for the purpose of protecting the survival and development rights and interests of the beneficiary, the trustee should bear certain punitive compensation liability for the breach. For another example, if the breach of trust infringes on the spiritual interests of the beneficiary, it may require the trustee to be liable for punitive damages. There have been many views about the applicable relationship between the punitive damages and spiritual damages, which is also applicable in the trust field. In some cases, using punitive compensation to replace mental damage compensation is feasible [14, p.112]. It is necessary to adhere to mental damage compensation is given priority to, individual exceptions under the punitive compensation [15, p.20]. For example, the trustee deliberately misappropriate the trust property and return it back later, although the trust property did not reduce, but the trustee breached of the trust, so in this case the trustee should bear punitive damages. Although in some cases, the trustee may bear the criminal liability of embezzlement, but shall not affect the application of civil liability for compensation. The punitive compensation has strong vitality, and China still has a large room for the development in the application of punitive compensation [16, p.135]. It is also necessary to introduce punitive compensation into the trust.

The significance of the compensation scope of trustee for breach of trust is similar to the meaning of the sentencing in the Criminal Law. The accurate sentencing of trustee's liability for the breach is more conducive to standardizing the trustee's investment right, protecting the rights and interests of the beneficiary, and highlighting the value of fairness and justice. First of all, clear liability rules with unified rights and responsibilities can give positive guidance to trustee and standardize the investment duties of the trustee to some extent. Too strong liability rules or too weak liability rules cannot play a positive guiding role. Secondly, it stipulates that the trustee has clear and unified rights and responsibilities, which can not only motivate the investment power of the trustee, but also give reasonable relief to the beneficiary when the trustee does breach of the trust, which is conducive to protecting the rights and interests of the beneficiaries. Finally, the provision of the trustee's clear and unified rights and responsibilities is conducive to the realization of fairness and justice in the trust.

#### IV. The Normative Regulation of the Trustee's Civil Liabilities for Breach of Trust in China

The United States Code of Trust and the Restatement of Trust Law (Third Edition) both stipulate the scope of compensation of the trustee for the breach, including the compensation for loss, no-netting rule, etc. As for the scope of compensation of the trustee for the breach, it is clear that the compensation for the actual loss and the loss of acquirable benefits, the no-netting rule and the reasons for liability exemption, which are of great significance to protect the rights and interests of the beneficiaries and standardize the behavior of the trustee.

##### (I) The Definition of Losses

The Uniform Code of Trust of the United States stipulates the compensation of trustee for breach of trust. Trust Law scholars of the United States use the relative concept of the compensation of depreciation damages and the compensation of expected benefits damages to describe the definition of compensation of losses for the breach [17, p.721]. The compensation of depreciation damages is the compensation for actual losses, and the compensation of expected benefits damages is the compensation for acquirable benefits.

##### a. Compensation for the Actual Losses

Compensation for the actual damages refers to the compensation for direct losses of the trust property, also namely for the loss of existing value, and the usual understanding is in depreciation or loss in the amount or value of the trust property. There are many forms of deficit. The most direct deficit is the actual loss, such as the trustee placing the trust assets in an unauthorized investment and resulting in depreciation, or paying the trust property in some undeserved way, or leaving the trust interests in a conflict with its own interests.[18, p.284] If the amount or value of the trust property is damaged or lost due to the breach of trust, the trustee shall be liable for the depreciation of the trust property, and the beneficiary shall enjoy the corresponding compensation rights. The beneficiary should be compensated for the losses suffered as a result of breach of trust by the trustee, whether through positive action, such as paying themselves remuneration to which they are not entitled, or inaction, such as leaving the trust fund uninvested [12, p.508]. For the losses of the current value of the trust property, the basic idea of relief is to fill the actual losses.

The idea of assessing the loss of the existing value of the trust property can be understood as calculating the difference between the due value of the trust property on the date of trial and the real value of the trust property on the date of trial. The due value refers to the natural added or naturally depreciated value of the trust property from the date set up the trust to the date of trial; the real value means the remaining value of the trust property on the date of trial.

##### b. Compensation for the Acquirable Benefits

The loss of acquirable interests, also namely the indirect loss of the trust property, may be reflected not only in the interests obtained by the trustee due to the breach, but also in the benefits that the trust property would have obtained if the trustee had not breach of the trust. The compensation of the value-added damages in the Common Law refers to the compensation for the loss of acquirable interest or income, for the value-added can be understood as acquirable interests and as the compensation for indirect loss of the beneficiary. Another form of deficit is that the trust funds could be increased if the trustee properly fulfilled his obligations, but not in fact [18, p.284]. Therefore, the acquirable interest means any reasonable income and interest that the trust property could have generated without the breach.

Although the acquirable interest is not the loss of existing property but the benefit

expected for future acquisition, is not imaginary, since the conditions and basis are realistic [19, p.109]. For example, if the trustee fails to invest when it should invest, fails to sell when it should sell, or makes unauthorized investments, etc., the income of the trust property may be impaired, and the trustee may be liable for damages for the acquirable interests of the trust property. The case of *Citizens and Southern Nat. Bank v. Haskins*, which embodies the trustee's liability for damages to acquirable benefits, had accepted the beneficiary's claim for the annual loss of principal return in determining the amount of investment loss that the trustee may have incurred under the prudent management. The indirect loss consists of two kinds: the first is the indirect loss incurred by the trustee through the breach of the objective obligation relating to the management of the trust property; the second is the indirect loss reflected by the interest derived from the trust property if no such breach [9, p.22]. The Restatement of the Trust Act (Third Edition) states that the liability of the trustee for breach of trust includes, (a) restoring the value of the trust property and its proceeds to the amount incurred if the portion of the breach is properly managed; or (b) any personal benefit gained by the trustee for breach of trust.

The scope of compensation for acquirable benefits in the trust legal relationship is the value of the trust property and the proceeds to the amount if the part of the breach is properly managed, which can be understood as the difference between the due proceeds of the trust property on the date of trial and the actual proceeds of the trust property on the date of trial.

#### c. Take the Date of Trial as the Deadline for Assessment of Losses

It is necessary to state why the date of trial is usually used as the deadline for the assessment of damages of the trust property? The reason is that, impairment of the value or earnings of the trust property caused by the breach of trust usually does not stop when the beneficiary brings an action. That is, until the date of trial, the default status of the trustee actually continues and the loss of the trust property is more likely to continue. Therefore, taking the date of trial as the cut-off date for assessing the loss of trust property can usually calculate the loss of the beneficiary to the maximum extent and make up for the loss of the beneficiary as fairly as possible. Whether calculating the actual losses or the loss of acquirable interests of the trust property, the date of the trial should generally be the date for assessing the loss. Of course, if the operation of the market economy fluctuates significantly from the date of default to the date of trial, and taking the date of trial as the date of assessing the loss is not conducive to the realization of fairness and justice, thus the day of the best market operation shall be selected as the loss-assessing date. If there is an opportunity to realize the property during the continuation of the default, profits may be assessed on the intermediate maximum value of the property between the date of the default and the date of trial [12, p.514]. Of course, this is a special situation. On the one hand, the probability of the market economy operating with obvious fluctuations in the short term is relatively low; on the other hand, using the date of trial as the loss date is more specific, while the day for the best market is difficult to determine.

#### (II) No-netting Rule

The no-netting rule is a classic liability rule in the Trust Laws in America. The Restatement of the Trust Act (Third Edition) explains the no-netting rule, a trustee liable for losses arising from a breach of trust shall not reduce the amount of liability by deducting the amount of profits arising from another apparent breach of trust; but if the breach of trust is not separate and distinct, the trustee is liable only for the net gain or only for the resulting net loss. The trustee may not offset the profits derived from an improper trust investment against its loss from elsewhere, which is that the trustee may not evaluate its breach of trust by reducing the improper loss by improper proceeds [20,

p.232]. In short, when each breach of trust is an independent misconduct, the trustee is separately liable for each misconduct, whether such misconduct give the trust property to gain or lose value. Of course, if a breach of trust brings multiple results, for example, a breach of trust not only brings benefits to part of the trust property but also reduces the value of other parts of the trust property, the loss can be offset by the income to calculate the amount of the compensation of the trust for this breach of trust. Like the case of *Bartlett v. Barclays Bank Trust Co Ltd*, the trustee was liable for the loss of one of the investments, but was allowed to set off the profits from the other investment, as both investments resulted from exactly the same investment policy [12, p.511].

The no-netting rule emphasizes that the proceeds resulting from a breach of trust cannot be used to set off the losses resulting from another breach of trust. The significance of the no-netting rule is on the one hand to avoid the trustee's intent to fill the loss caused by the previous breach, so as to prevent the trustee from falling into the dilemma of filling the mistake with mistake. On the other hand, the no-netting rule also reflect the essence of the trust, that any income from the trustee manages the trust property should belong to the trust itself, even if the income gained by the breach of the trust of the trustee, so the trustee breach of the trust cannot be used to set off the loss caused by another breach of trust. As trust is entitled to any proceeds derived from the breach, no loss can be offset from another breach, provided they are not a part of the same transaction [21, p.464].

### (III) Causes of Exemption of the Liability

The early Trust Law entrusts the trustee with absolute obligation and accordingly imposes absolute liability on the trustee for breach of obligation. But the liability of trustee in the modern Trust Law has tended to ease, devising the condition to exempt or limit the liability, and the trustor or beneficiary enjoys the benefit of the trust at limited risk [22, p.131]. The key and essence of a reasonable liability system lies in the exemptions of liability, the justifications of defense and rights of defense, and whether the rules of risk burden are fully covered and reasonable [23, p.225]. The scope of exemption of the trustee for the breach is an essential part of discussing the liability of trustee. The main reasons for exemption include: exemptions in the trust agreement of the trustor, prior consent or subsequent ratification of the beneficiary.

#### a. Exemptions in the Trust Agreement of the Trustor

The trust agreement is a concentrated expression of the wills of the trustor, and the trustee must perform the intention of the trustor in accordance with the provisions of the trust terms. The trust agreement exempts the trustee from the specific responsibility of the trustee, means the trustor exempts the specific responsibility of the trustee. For example, according to the relevant provisions of the Unified Prudent Investor Law of America, the Prudent Investor Rules can be extended, restricted, eliminated, or otherwise changed through the provisions of the trust. That is, the trustor may expand, restrict, cancel or otherwise change the obligations and responsibilities of the trustee under the Unified Prudent Investor Law of America through the terms of trust agreement. In the case of the *Robertson v. Central Jersey Bank & Trust Co.*, the trust agreement allowed the trustee to retain the initial assets without regard to the possible impact of any such investment or reinvestment on investment diversification, and the court held that the statement indicated that the trustor waived the obligation of diversify investment of trustee. Similar cases of waive of the diversify investment obligations of the trustee in the trust agreements include, *Brackett v. Tremaine*, *Nelson v. First National Bank and Trust Company of Williston*, *Donato v. BankBoston N.A.* and etc.

#### b. Prior Consent or Subsequent Ratification of the Beneficiary

The release of the trustee for breach of trust by the participation or consent of the beneficiary, is an excellent illustration of the tendency of the trustee to ease [22, p.131].

Trustee is generally liable to a third party for his personal conduct, even if he has performed his duty to act reasonably; he cannot bind the beneficiaries to those liabilities without their consent or participation, but if the duty is reasonably incurred, the trustee has a right of recovery or discharge on the trust property [20, p.11]. If the trustee has acted reasonably and in good faith with the knowledge of the beneficiary, the court may at its discretion release the trustee from all or part of the liability. The act aims to impose different damages measures on trustees for malign breach of trust and trustees for good faith breach of trust. The Japanese Outline of the Commercial Trust Act provides that, the liability of trustee may not be exempted in prior through the trust contract, but that the relevant liability of the trustee arising from the breach of the statute or trust contract may be waived or restricted with the consent of the beneficiary [6, p.133]. It can be seen that it is necessary to take the prior consent or subsequent ratification of the beneficiary as one of the reasons of exemption, for there have been many legislation and arguments for reference. Since trust is a legal relationship established for the benefit of the beneficiary, the wills of the trustor are usually only reflected at the moment of establishment of the trust, so it is generally not necessary to consider the prior consent or subsequent ratification of the trustor.

#### V. Conclusion

The distinguishing feature of trust is not the background event of the origin of the trust, not the transfer of trust property to the trustee, but the power and liability of the trustee to administer the trust property [4, p.627]. Langbein, a famous Trust Law scholar, pointed out that the two basic characteristics of trust are the trustee's power to manage the trust property and the liability of trustee. The two basic characteristics of the trust can be said as the two legs of trust, supporting the whole trust framework and leading the trust to walk. It can also be seen as that the standardisation of the civil liability of the trustee for the breach is not only guiding the trustee to exercise their power reasonably and to protect the rights and interests of the beneficiary, but also an important pillar to support the trust legal system.

In the financial market, there are many heavy losses to trustors or beneficiaries caused by the breach of trust of their trustee. The trust cases are increasing and will increase significantly in the future as the rigid payment state of the trust has been broken. It is necessary to standardize and strengthen the civil liability of the trustee for breach of trust. The provision on the civil liability of the trustee for the breach in the Trust Law of China need to be improved, especially the absence of the scope of compensation of the trustee. The scope of compensation of trustee for breach of trust has important institutional value in protecting the rights and interests of the beneficiaries, standardizing the unity of the rights and responsibilities of the trustee, keeping the system completion of the trust legal system, and promoting the steady development of the trust practice. The liabilities of trustee for breach of trust in the Trust Law in China, should be clear that: the loss includes the actual loss and the acquirable benefits of the trust property, the no-netting rule, the causes of exemption.

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