

# Consideration from the aspect of Japanese Trust Act for Promotion of Risk Sharing Corporate Pension Plan

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“Risk-sharing corporate pension plan” (hereinafter referred to as “RS plan”), newly launched corporate pension scheme in January 2017 and was implemented by companies gradually. In order to promote implementation of RS plan more, I researched required business conduct of relating parties, i.e. settlor (employer) and trustee (trust bank), based on the clarification of the role and responsibility of such parties. Financial Services Agency published “Principles of customer-oriented business conduct” (hereinafter referred to as “the Principles”) in March 2017, and, in my research, I analyzed the effect of the Principles to the management of corporate pension operation by trust bank.

I first outlined the characteristics of RS plan and mentioned important points for managing RS plan, compared with the conventional Defined Benefit corporate pension scheme. Subsequently, the following three points on the legal role and obligation of the employer and the trust bank were pointed out.

(1) the employer is responsible for the overall operation and control of the corporate pension plan,

(2) the trust bank, which entered into a pension trust contract with the employer, is responsible under Japanese Trust Act for (i) segregating pension asset from its own asset and (ii) investing

pension asset with discretion based on employer's instruction of asset management, and

(3) the employer and the trust bank generally enter into three types of mandate contracts ((i) a consulting contract related to retirement benefit design, (ii) an outsourcing contract regarding pension plan management, and (iii) a leading manager contract regarding cash management of pension plan), and the trust bank shall fulfill the obligation of each contract with duty of care of prudent manager.

Based on the above mentioned roles and obligations of the concerned parties, I considered the customer-oriented business conduct of trust banks in corporate pension operations. The customer-oriented business conduct is regarded to be constituted by three factors, such as “customer”, “beneficiary” and “the best interests of both the customers and the beneficiary” and the definition of which shall be clarified for the consideration. In my research, I defined these factors as follows:

“customer” of corporate pension trust : employer,

“beneficiary” of corporate pension trust : recipients of pension benefit and participating employees to the pension plan, and

“the best interests of both the customers and the beneficiary” of corporate pension trust : the state under which the right of receiving pension payment is secured by the employer and the beneficiaries are able to receive pension payment subscribed in the provision of the pension plan in the future.

Moreover I insisted that although management of the corporate pension plan is primarily conducted at the solo discretion of the employer, the trust bank shall intervene and conduct its business to

the extent of preventing and correcting the instability of the pension plan management.

Based on the above mentioned examination, I analyzed the following 4 issues which might be capable of making the pension plan management unstable.

(1) designing pension plan : whether reduction adjustment of pension benefit occurs frequently,

(2) conclusion of labor-management agreement for pension plan introduction : whether the employer explain the plan sufficiently,

(3) notice of reduction adjustment : whether the employer timely pre-disclose the relevant information to the beneficiaries, and

(4) change of asset management policy : whether the asset management policy is changed unfairly from its original design, or whether such change is timely disclosed to the beneficiaries.

As a result of the analysis, I evaluated the actual business conduct of trust banks, which supports employer in managing pension plan, as being reasonably managed according to the Principles in general. Finally, I concluded that further enhancement of effective support from trust banks to employer shall be necessary for the new scheme, RS plan, to be well implemented in the future.

