New Trust Act and corporate pension law in Japan

Jun Kozakura
(Kobegakuin University)

When new Trust Act is established, and it becomes general law, I think it will have a not a little influence on a part of corporate pension law as a special law. This article examines how the pension law rules to be affected and should be affected by the new Trust act which has the distinctive features of directory statute and strengthened beneficiaries rights.

When I examine, I use the American Employee Retirement Income Security Act (ERISA) and the rules and a precedents, a pension example of our country.

1. How should there be a duty of care and duty of loyalty in the pension fund administration and investment?

At first, I examine the range of the both duties of new Trust act, and then, those of corporate pension laws.

For the protection of pension benefits, and the rights of pension beneficiaries, I think the Trust Law must be applied. And to realize the equitable remedies to the breach of duty of loyalty, the duty of care and the duty of loyalty should be diversified distinctively.

2. If a voting right of the stocks is one of the property rights of a pension, who should use it which corporate pensions hold?

In America, PBGC cannot legally direct the voting the stock of companies that it obtains in the course of its business. Such stock can only be voted by PBGC's custodial trustees or outside money managers.

In Japan, Goverment Pension Investment Fund (Nenkin tumitatekin kanri unyou dokurituhouzin) holds the stock of companies and directs the voting the stock of companies.

As it has a huge amount of stock, it can affect the corporate governance. But almost of the members of Goverment Pension Investment Fund were of public officials who have no fiduciary duty. So, the autonomy of private company is jeopardized. Such stock should be voted by outside independent managers solely for the pension benefit.

3. "Throwback Effect" of Trust law

ERISA is the most preferable statute for the pension protection. But if the statute would have a defect, Trust case law has throwback effect that means reincarnation of the old case laws, and repairs the defect to protect pension benefit.

In Japan, I hope new Pension Law should have the same recognition and role that make sure the pension benefit.