Charitable Trust in Japan

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Abstract

Trust Act in Japan was enacted back to in 1922 that included one section of charitable trust.1

However charitable trust had never been utilized until 1977 when first two charitable trusts were authorized. At present there are about 500 charitable trusts existing in Japan almost all of which trustees are Trust banks.

In 2006, Trust act was entirely reformed to comply with the rapid developments of commercial trusts, especially trusts related to securities investments. However, charitable trust remained as it was because government considered it should be balanced with the drastic reform of Public Interest Corporation system that was ongoing at that time.

In 2015, Ministry of Justice started finally to study the sweeping reform of Charitable Trust Act in responding series of requests by non-profit sector. The study will conclude by the end of 2015 fiscal year and is expected to submit to Diet 2016 or the latest 2017.

This article aims to suggest some kind of insight for ongoing movement of reforming legal scheme related to charitable trust in China by illustrating Japan’s experiences including the historical background, the influence given by Public Interest Corporation Reform, the introduction of issues of current study for reform and overview on the current situation of charitable trusts with several cases.

1. Historical Review on Law of Trust and Charitable Trust

1-1. Background in origin

Early 1900’s in Japan, there were about 500 hundred companies that bore the “Trust Company” in their names even though their businesses were nothing to do with trust system.2 Among them there were companies running unfavorable businesses like usurers. Therefore government decided to enforce Trust Business Law in order to regulate strictly those pretending “trust companies”. But, Trust Business Law must be necessarily drafted based on trust definition, powers and

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1 Charitable Section is very simple, consisted of only 8 articles.
duties of settler, beneficiary and relevant parties and etc. This is the very reason why Trust Act was enacted at the same time with Trust Business Act. So in this regard, Trust Business Act is first and Trust Act second in terms of importance from government’s point of view.

On top of it, charitable trust was not prescribed in the government’s early draft because government had only interest in commercial trust due to the reason aforesaid and had not any interest in charitable trust. However a prominent scholar strongly claimed charitable trust should be included because it was a heart of “Trust”. Finally charitable trust was prescribed in one section of Trust Act 1922.

1-2. Utilization of charitable trust before 1977

However charitable trust had never been utilized until 1977. I believe there were four reasons, firstly government’ negligence of necessary preparation such as detailed regulations of charitable trust establishment, secondly people, even lawyers, at that time in Japan were not familiar with trust because trust was a creation of common law while Japan was a country of continental law. Thirdly foundation were already common and prevailed nationwide to some extents so that charitable incorporated foundation was popular and enough as a means of philanthropy. Finally, there were influential legal theories that trust companies had not eligibility of undertaking charitable trust as trustee, although this theory was completely denied nowadays.

Thus, charitable trust had been forgotten in the society and surviving only as one of subjects of trust law related academism for more than 50years.

1-3. Utilization of charitable trust after 1977

In early 70’s, there occurred controversial corruptions and misuse of funds among several famous public interest corporations and Diet ordered competent ministry to study the effective way of supervision for public interest corporations.

Taking this opportunity, one government official studied Charitable Trust by which he thought it might be one of solutions for better use of endowment and better practice. As a result, government commissioned a comprehensive study of Charitable Trust to Japan Association of Charitable Organization (JACO) After submitting a report, JACO together with Japan Business Federation (KEIDANREN) and Trust Companies

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5 JACO set up a Study Team of which chairperson was Prof. Minoru Tanaka: Keio University.
Association had continued advocacies to adopt Charitable Trust system in practical use as one of means to achieve philanthropic activities especially for grant making and scholarship types of endowment.

Finally, in May 1977 two historical charitable trusts were authorized respectively by Ministry of Foreign Affairs and Ministry of Infrastructure (now, the Ministry of Land, Infrastructure, Transport and Tourism).

Triggered by these two creations of trusts, charitable trusts are gradually spreading in Japanese society. The purposes of existing charitable trusts are diversified as in the table* below. However, one may say the speed of growth is very slow and even after the burst of bubble in 1991 rather decreasing as shown in the graph* below, due to the reasons of current stagnant economy and on top of that, due to very strict requirements for establishment and insufficient tax benefits in comparison with public interest foundation.

*Both the table and the graph are based on figures of home pages of Trust Companies Association of Japan.

<table>
<thead>
<tr>
<th>Charitable Trusts by Objective (March 2015)</th>
<th>(¥million)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Objectives</strong></td>
<td><strong>Number</strong></td>
</tr>
<tr>
<td>Study Grants</td>
<td>159</td>
</tr>
<tr>
<td>Assistance for Natural Science Study</td>
<td>76</td>
</tr>
<tr>
<td>Promotion of Education</td>
<td>63</td>
</tr>
<tr>
<td>Promotion of International Cooperation and Exchange</td>
<td>38</td>
</tr>
<tr>
<td>Social Welfare</td>
<td>36</td>
</tr>
<tr>
<td>Promotion of Arts and Culture</td>
<td>24</td>
</tr>
<tr>
<td>Improvement and Preservation of Urban Environment</td>
<td>26</td>
</tr>
<tr>
<td>Preservation of The Natural Environment</td>
<td>20</td>
</tr>
<tr>
<td>Assistance for Cultural Science Study</td>
<td>15</td>
</tr>
<tr>
<td>Protection of Cultural assets</td>
<td>3</td>
</tr>
<tr>
<td>Preservation and Breeding of plant and animal Species</td>
<td>1</td>
</tr>
<tr>
<td>Greening Activities</td>
<td>1</td>
</tr>
<tr>
<td>Others</td>
<td>22</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>484</strong></td>
</tr>
</tbody>
</table>

balance: in 100 million
2. Public Interest Corporation (PIC) Act and its influence to charitable trust

2-1 PIC Reform 2008

Public Interest Corporation was based on Civil Code enacted in 1898 and never been revised during a period of 110 years despite the fact that sovereign system, social, and economical environments have had completely evolved after World War II. It can be said as a miracle.

However at last, PIC legal framework was drastically reformed in 2008. PIC Reform is not a main subject of the Seminar today so that I eliminate the detail, but I like to emphasize three conceptual points of the Reform. These are illustrated by three key words, that is “Free” “Fair” and “Global”.

“Free” means to secure autonomy of PICs by lifting bans by government control.
“Fair” means transparency and accountability of PICs to the public. And “global” is, needless to say, to catch up global standard of NPO legal and tax framework.

2-2 Influence of PIC Reform to Charitable Trust

In 2006, Trust Act was sweepingly reformed due to the reason that Trust act 1922 was very simple and fitting to rather personal trust than commercial trust. But, in reality, trust banks have been almost sole players as trustees. So, in this regard, we can say Japan’s trust system has been developed through commercial trust especially through so called “Collective Investment Scheme”. So, the new trust act is aiming to comply
with these circumstance.

As I described earlier, Charitable Trust was defined in the last section of Trust Act. However Charitable Trust was not revised at this timing because of the reason that ongoing PIC Reform was not finalized yet at that time so that government considered it was better to take up after PIC reform was concluded. As a result, the section on Charitable Trust was separated from Trust Act and became single act called Charitable Trust Act. But, in fact nothing changed.

In this connection, our Diet resolved as a conditional opinion that Charitable Trust should be reformed soon by coordinating the concept of PIC reform because Charitable Trust had a similar role to PIC in the society.

3. Ongoing study of new scheme on Charitable Trust

The following chart indicates how charitable trusts are generally operated in practical use.

3-1 Study Team by Ministry of Justice

Since the PIC Reform including its taxation was finalized and accumulated somewhat experiences of its operational issues, JACO has been urging repeatedly
relevant ministries and lawmakers to study charitable trust aiming to reform in line with new PIC legislation.6

Finally Ministry of Justice set up “Commission for Charitable Trust Reform”7 in April 2015 consisting of scholars, practitioners and government officers of relevant ministries. The discussion of the Commission is expected to be concluded by the end of this year and hopefully will be submitted to the Regular Session of the Diet in 2016 after finishing necessary procedures like ruling parties’ examination.

3-2 Points of Issues at the Commission

1. Establishment

Present regulation
Need to obtain approval by relevant minister or governor of prefecture.

Ongoing discussion
Need to obtain authorization by Cabinet Office or governor of prefecture (hereinafter authority) depending on its area of charitable activities based on Recommendation by the third party commission8 installed at each authorities. This is just similar to the reformed PIC authorization system.

2. Scope of charitable activities

Present regulation
Limited to grant making and scholarship activities, operational activities are not permitted.

Ongoing discussion
Some kinds of operational activities should be permitted, but excluding taxable businesses like trading.

3. Requirements for public status

Present regulation
Present requirements are separately prescribed such as in Charitable Trust Act, ministerial decrees and tax laws. Some of them are very ambiguous and remained discretionary judgment to government officials.

Ongoing discussion
Some of 18 requirement imposed to PIC shall be succeeded to charitable trust and all

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6 The latest formal JACO’s petition with draft bill summary was submitted to relevant five ministries including Ministry of Justice in April 2013.
7 The Commission is headed by Yasuhiro Nakata, The University of Tokyo Graduate Schools for Law and Politics. The author of this article is one of the member.
8 The third party commission is generally consisted of scholar, lawyer, accountant and practitioner, and the roles are similar to Charity Commission in U.K.
those requirements shall be prescribed in one single Act, that means new charitable trust. But unsuitable requirements for legal character of trust, especially financial related criteria should be excluded.

4. Governance Structure

Present regulation
Trustee has a full power such as decision making and execution of trust management as described in Trust Law. And trust administrator of which function is supervisory on behalf of general public is compulsory for charitable trust although it is optional in case of non-charitable trust. And almost all charitable trusts have advisory body called “Administrative Board” of which main function is to advise trustees as for such matters like grant making. But, please note that the Board is not legally defined but voluntarily set up in each charitable trusts by government instruction.

Ongoing discussion
Trust administrator shall be compulsorily installed. As for “Administrative Board”, it is very controversial among two opinions, compulsory or voluntary.

5. Supervisory Power by Settler

Present regulation
Settler has some kind of supervisory power like right to claim trustee to disclose documents of trust management, to claim to restore trust properties when mismanagement by trustee occurs and other rights.

Ongoing discussion
This point is very controversial. There are opinions of advocating these powers should be remained and on the other hand of insisting these powers should be abolished as for charitable trust.

6. Qualification of trustee

Present regulation
Legally speaking, no restriction is exiting in Charitable Trust Act. However tax law strictly limited to trust banks and trust companies. As a result, almost all trustees of existing charitable trusts in Japan are trust banks and trust companies including their agents.

Ongoing discussion
There are strong voices from civil sector that qualification of trustee should not be limited to trust banks and should expand to other legal persons especially non-profit organizations such as PIC and even to professional individuals like lawyers. This is one of the most controversial issues among Study Team.
4. Case study of Charitable Trust

In order to make readers’ understanding more clearly, several cases of charitable trusts in Japan are shown here.

1) Asian Community Trust (ACT)\(^9\)

Act was set up in 1979 aiming to aid people suffering from poverty, from lack of sufficient education, from poor medical condition and so forth in developing countries of Asia through grants to local NGOs. ACT was modeled on community foundations in the United States so that continuous fund raising is indispensable. Especially it should be noted that ACT has 26 baby funds with names of donors within Trust.

Donors of baby funds are entitled to designate the area of their interest as for their grant making. ACT accepts the baby funds when donor wants and amount is ¥10,000,000 and more. In this regard, Act is very unique scheme compared with traditional charitable trusts in Japan. Another notable feature is that ACT appoints outside secretariat specified in researching local environment, communicating with local NGOs, examining grant applications previously and fundraising.

Since its inception, ACT collected more than ¥1.2billion and disbursed ¥665million for 570 grants to Asian NGOs so far.

2) Hisao Iwai Memorial Scholarship Trust

The late Iwai was born 1920, grew up in Miyagi Prefecture and he inherited huge amount of properties before World War II, later he had been living and working in Tokyo. He had been always very eager to return his wealth to both communities sometime in the future. Then, he set up two living trusts by 600million Yen in 2009, of which purposes are to achieve high level of natural science education by giving scholarship to universities’ students in Tokyo through one trust and another for in Miyagi.

He passed away in 2011, left a will bequeathing his legacy of 7billion Yen additionally to entrust into the above trusts. So, at present, total amounts of two trusts reached to 7.6 billion Yen (equivalent to 400million Yuan).

Each amount of scholarship is 100 thousand Yen monthly for faculty students and 120 thousand Yen for post graduates respectively. And at present, 81 students are receiving scholarship and studying hard without worrying about living costs.

3) Minebea Trust for orphans by Northeast Japan Earthquake and Tsunami

\(^9\) http://www.acc21.org/act/
The great earthquake and Tsunami attacked northeast part of Japan in 2011, and 240 children lost their parents according to a statistics.\footnote{Ministry of Health, Labour and Welfare: as of November end 2011}

This charitable trust is one of examples of the showcases that business corporations utilize charitable trust as a means of performing corporate social responsibility.

Minebea is one of leading Japanese companies of bearing production and 2011 was its 60 years’ anniversary. Thus, the company decided to support to orphans by the disaster and set up this trust from corporate social responsibilities’ point of view. The Trust gives 100 thousands Yen yearly to every orphans if they want till they reach year of 18.