MAJOR LEGISLATION

Jan. 1985 – Dec. 1986

1. Constitutional and Administrative Law

Administrative Law

1. Collective Arrangement of Subsidies Act.
Promulgated on May 18, 1985. Ch. 37.

[Background of the Legislation]

From the latter half of the 1970's, our country was plunged into a serious financial crisis due to a drop in revenue by an economic recession and an accumulated deficit of national bonds. In order to get through this financial crisis, the Ad Hoc Advisory Council on Administration was started in 1981, and it reviewed thoroughly the structure of expenditure and revenue for the purpose of administrative reform and curtailment of expenses in the name of financial reconstruction. The Council took up the problem of the present subsidy system, one of the main subjects for discussion, which was complicated and extensive, and the Council advised the Government on the arrangement and rationalization

of the system. For the purpose of reducing uniformly ten percent of those high rate subsidies in accordance with the Council's advice, this Act was established to amend fifty-nine laws collectively (en bloc) in order to arrange sixty-six issues of various subsidies such as social welfare expenses, compulsory education expenses and public works expenses. This Act was a temporary law for one year covering the budget for the fiscal year of 1985.

[Outline of the Act]

With a view to reforming national finance and improving the expenditure of the funds, this Act provided the following measures:

(1) From the point of view that subsidies which were originally entrusted to independent measures of the local governments should be transferred to the general expenditure of the National Treasury, this Act provided to eliminate or abrogate some kinds of subsidies (such as subsidies for traveling allowance and teaching material expenses of pay-roll for public school staff and subsidies for office expenses of juvenile protection costs and life protection costs).

(2) In order to reduce the future financial burden on the National Treasury, the method of proportional subsidy was changed to a fixed subsidy. (For example, subsidy for agriculture committee expenses and subsidy for expenses of assistant staff in the education of the handicapped.)

(3) The Temporary Special Measures for Subsidy Act which was established in 1954 was perpetuated.

(4) The application term of the Special Measures for Administration Reforms Act which reduced the share rate of subsidies as a regional exception by one-sixth from the year of 1982 was prolonged one year.

(5) This Act provided the reduction of subsidies of which the share of the Government exceeded fifty percent by a uniform ten percent. (For example, subsidy for life protection expenses, subsidy for protection expenses of the elderly, and subsidy for sewage enterprise expenses.)

[Comment]

The arrangement and rationalization of a subsidy system which had shown wasted expense and which had been criticized for being a hotbed of political clientelism for some time reached a national consensus, and efficient management of the system corresponding to the changes of the social and economic situation was required. The reduction related to the subsidies of the National Treasury by this Act was estimated to reach up to 842 billion yen. But, in the process of discussing the enactment of this Act, some arguments were raised in reference to the measures and the objectives.

In the first place, it was pointed out that a uniform reduction of subsidizing rate without any discussion on the fundamental policy of the allocation of the tasks and expenses between the Government and the local governments was not reasonable. Secondly, in connection with the aforesaid matter, there was criticism that the expenses of social security should be charged to the National Treasury, and these expenses should be treated in distinction from other voluntary and incentive subsidies. Moreover, it was feared that this measure of high rate reduction of subsidies was nothing but the transference of financial burden to the local governments. And one view insists that the transference of the office work and the finance to the local governments should be executed more boldly.

2. National Pensions Amendment Act.

Promulgated on May 1, 1985. Effective since April 1, 1986. Ch. 34.

[Background of the Legislation]

In our country, the National Pensions Act was established in 1959, and the execution of National Pensions System by the donation method which started in 1961 gave practical effect to all national pensions. Since then, seven kinds of pension plans including six kinds of the employed pension insurance and one

non-employed pension insurance had been independently executed for the reason that every kind of pension plan was institutionalized by stages and individually. However, in the latter half of the 1970's, the independence of each system caused differences in payment and donation among these systems. The financial stabilization of the pension was strongly requested with the progress of the aged (senior citizens) in the composition of the population and the maturing of pension plans. From this point of view, the amendment of the Act was done with the view of unification of the public pension plans in order to work toward a long-term stabilization and coherent development of the public pension plans in correspondence to the fundamental consideration of the coming elderly society.

[Outline of the Act]

The principal object of this amendment is to plan a measure that will keep a long-term balance of payment and donation with the establishment of the fundamental pension that is common to all citizens.

The major points are as follows:

(1) Introduction of fundamental pension

In order to solve the problems such as the system differential and the instability of the system base, the current national pension plan is improved so that the fundamental pension is paid commonly and the minimum amount of pension is guaranteed.

(2) Rationalization of the payment and the donation

In order to restrain the future increase of insurance obligations, the payment level is gradually rationalized to balance with the laborer's income level.

(3) Establishment of women's pension right and the completion of the pension for the handicapped people

By establishing the principle of one pension for each person, an independent pension right is guaranteed to the employees' wives (household wives) who were personally unrelated to the pension plan — they were related only as an addition to their husbands' pension. And the fundamental pension is paid to all

adult handicapped people.

[Comment]

This Amendment Act is an epoch-making one in the sense that it seeks to unify the various public pension plans in order to meet the difficulty of pension financing with the future fluctuation of the economic and social situation in consequence of the adjustment of the system differential in the complicated public pension plan by means of the introduction of the fundamental pension system. (At the same time of this amendment, with the introduction of the common fundamental pension system, the Welfare Pensions Insurance Act and the Seamen's Insurance Act were amended. The public pensions section of the seamen's insurance was integrated into the Welfare Pensions Insurance. With respect to every kind of mutual aid pension system to which this amendment did not apply, the Mutual Aid Associations Act was amended in December of the same year, and the whole unified new public pensions system came into effect on April 1, 1986.)

However, it has been pointed out that the requirement of the beneficiary's liability to all citizens under the principle of one pension security for each person may, though an exemption and a deferment of liability are provided as exception clauses to the Act, cause the danger of problems such as the loss of pension right because of nonpayment of the premium among the low-income class or the occurrence of a small amount of pension payment which does not qualify for the pension security. In addition, another view criticizes that this amendment, which attempts to raise the insurance premium, to extend the donation term, and to reduce the payment of pension under the name of rationalization of payment and donation, is merely a claptrap measure to reduce the Treasury's expenditure and goes against the ideology of the Welfare State.

3. Partial amendment of the Local Government Act and the National Property Act accompanied with the adoption of the land trust of the State and public land.

Local Government Amendment Act.
Promulgated and coming into effect on May 30, 1986. Ch. 75.
National Property Amendment Act.
Promulgated and coming into effect on June 3, 1986. Ch. 78.

[Background of the Amendment]

In the low growth economy, the State and the local governments had been suffering from chronic financial difficulty and reached a deadlock for new regional development or the reorganization and completion of the social funds. Thus, the purpose of the introduction of the land trust system of the State or the public lands by this amendment was to attempt an effective use of those vacant or wasted lands, and consequently to ensure the realization of the administrative purpose and financial revenue. In our country, formerly, the State and the public lands had been considered to be under management by the State Government and the local governments, and therefore the existing National Property Act and Local Government Act did not intend the land trust system to be the method of management or disposition of the State and the public lands. However, with the background of the rising of so-called "Introduction Program of Private Vitality" which aggressively introduces the management ability and capital of the private sector into the public sector to try to vitalize Governmental activities, this amendment was promulgated.

[Outline of the Amendment]

The land trust is a trust in which a land owner (trustor) entrusts a trust bank (trustee) with his land for the purpose of effective use of the land and, in return, the trust bank manages and invests the land and pays a trust dividend to the trustor in accordance with the agreement. In this system, the ownership of the land is transferred to the trustee during the trust period (the

trustor holds a beneficial right as chose in action during the period), and the ownership of the land reverts to the trustor at the termination.

It has become possible to entrust State and public land, though it is restricted to the land and the fixtures on it as a non-administrative property in accordance with this amendment of the Acts (National Property Act, Art. 28.2 (1); Local Government Act, Art. 238.5 (2)). By this amendment, the concept of "a beneficial right of a real estate trust" has been added in the category of State and public property (National Property Act, Art. 2 (1) (vii); Local Government Act, Art. 238 (1) (viii)), and the trust properties of State and public land are managed as chose in action. The trust period is provided to be a period of not exceeding twenty years in case of the State land trust (National Trust Act, Art. 28.3), and there is no particular restriction on the period of a private land trust. The trust contract is in principle executed by the method of open public tender as in other public contracts.

[Comment]

The merits of the land trust are as follows:

(1) A trustor does not need any financing as a trust bank raises the necessary funds to start an enterprise.

(2) As a trustor entrusts a trust bank with the project and the management of the real estate enterprise, he can save the troubles of having to manage or to dispose of his property.

Therefore, this system is a reasonable method to promote the flexible administrative activities of the State and the local governments which are in financial difficulty. This measure is considered not only to be helpful for the effective use of State and public land but also to contribute to the promotion of urban redevelopment, the repletion of social capital, the magnification of domestic demand, and the advancement of the regional economy. However, there remain many subjects for review in the future, such as the selection of a suitable place for the land trust, the purpose and the scale of the enterprise, the profitability of the enterprise,

and the ensuring of reasonable management.

4. Japanese National Railway Reform Act.

Promulgated on December 4, 1986. Effective since April 1, 1987. Ch. 87.

[Background of the Legislation]

The Japanese National Railways, since its establishment in 1872, assumed a very important role as a key traffic system to promote social and economic modernization. In 1906 JNR was nationalized and in 1949 its management was transferred to the public sector to be operated as a public corporation. Since JNR summed up a yearly deficit of 30 billion yen in 1964 for the first time, its deficits kept increasing every year and finally reached 14 trillion yen in total deficits and 23.6 trillion yen as the balance of long-term obligations in 1985. Therefore the financial standing of JNR had taken a turn for the worse. Under such circumstances, the Surveillance Committee for Reconstruction of the Japanese National Railways was set up as an advisory organization for reform of JNR in 1983. They reported that the territorial division and transference of JNR to the private sector was indispensable and urgent, concluding that one of the biggest reasons for the failure of JNR management was nation-wide unitary management under the public corporation system. This Reform Act was legislated to meet the findings of the Committee.

[Outline of the Act]

Major points of this Act are as follows:

(1) To divide the whole business of railways carrying passengers into six regional blocks and to establish each regional railway company by each block respectively.

(2) To establish the Shinkansen Holding Organization which will hold collectively the present Shinkansen business.

(3) To establish the Japan Freight Railway Company for the taking over of the cargo railway business from JNR.

(4) To transfer and separate the bus business to each new regional railway company in every block.

(5) To reorganize the former business body (JNR) into JNR Settlement Corporation for the disposal of the remaining assets and obligations.

[Comment]

Concerning the issue of nation-wide unitary organization in the public corporation system in connection with the legislation of this Act, the following problems were pointed out:

(1) indefiniteness of responsibility of management due to lack of independence in management,
(2) abnormality of the labor-management relations due to the consciousness of "Uncle Sam will foot the bill,"
(3) regidity of business activities,
(4) penetration of bureaucratism and difficulty of rational management and control due to the enlargement of the organization,
(5) inefficiency in management due to the imbalance of earnings and expenses by regions or by divisions, and
(6) lack of self-reform consciousness due to non-competitive and exclusive business.

Therefore, the territorial division and transference of business to the private sector was introduced in order to solve the aforesaid problems. However, some critics point out that this reform places such great importance on the efficiency of the management that it is apt to make light of the public benefit in this business, as in the discontinuation of JNR's money-losing local lines in the depopulated areas, and that the problems solved with only the idea of cost/benefit remain unsatisfactory. Moreover, many undecided problems such as the settlement of long-term obligations and the re-employment of the nearly forty thousand surplus workers remain to be resolved.

By Prof. HIDETAKE SATO
KOJI FUJII