

全球化下跨境勞動者之社會保障課題
—兼談日本社會保障協定之法制動向—

**The legal issues on the cross-border workers' social security
under economic globalization**

--Agreements for the social security in Japan—

林倖如 Lin, Hsing-Ju

摘要

隨著經濟全球化所導致的勞動力的全球移動，日益頻繁；個人跨越國境至他國提供勞務，已是今日各國普遍現象。但是，跨境勞動者—無論是外國勞工來臺或國人赴海外工作—均可能因勞務提供地（異動或不易確定）與出身國籍的不一致，致其適用勞務提供地所在國內國法制之際，或未必能受到基本勞動條件或社會安全制度等之保護，或被要求多重納保之情形，甚至於符合請領給付資格者可否選擇長居他國而仍持續請領該國社會給付等，因跨境所衍生不同國家間社會保障法秩序相互交錯而出現消極或積極適用爭議，已非少見。在摸索如何整合上述不同社會保障法秩序衝突之方向上，日本自 2000 年起已陸續與德、英、韓、美、中國大陸等二十餘國間簽訂雙邊社會保障協定；並制定了「實施社會保障協定之厚生年金保險等特例法」，作為日本社會保障協定轉銜其內國法上之基本規範，以求與其現行各種年金保險法制無縫接軌。是以，本文之主要內容，首先將檢視我國現行跨境勞動者社會安全制度現況，其次，剖析跨境勞動者社會保障規範的國際整合與調整法制動向後，繼而，以日本近年來陸續與各國所簽訂社會保障協定為研究對象，扼要檢討日本社會保障協定之基本架構及其法制動向，期以他山之石，提供我國相關法制發展之參考或為相關法理論進一步深化之基礎。

關鍵詞： 社會保障協定、跨境勞動者、跨境勞動者之社會保障、排除雙重投保

Abstract

As the economic globalized that leads labors to move frequently. It has been become common for an individual to offer service or work in other countries. However, no matter foreigners worked in Taiwan or Taiwanese worked in overseas, it was possible that the place offering a labor an opportunity to work was different from his or her birth place or nationality. Consequently, the related laws may not sufficiently provide the basic working condition or social security system's protection for those workers by not requiring them to pay social insurance premiums or the eligible payees who live overseas unable to receive their benefits of social security from their motherland. It is not uncommon to evolve some adjustments or arguments due to the cross border's complicated legal issues. To solve those conflicts between different social security systems since 2000 Japan has had been signed the dual social security agreements with over twenty countries such as German, England, South Korea, US and mainland China. By practically executing the agreement of social security, Japan has legalized "Act on Special Provisions for the Employees' Pension Insurance as its domestic legal transition and foundation. The purpose of the Act was to pursuing of no gap with existing various laws for social or pension insurance.

The order of the content of this article, first of all was to review our country existing crossing borders system of social security for foreigner workers. Secondly, was to understand the trending, the changing and integration of international on social security. In the end, was to study the social security agreements of Japan with various countries and to analyze the basic structure of Japan's agreement of social security and its evolvement. Ideally, the results of this article could offer some references for our country legal thesis development.

Keywords : social security agreement , cross-border workers , cross-border worker's social security , prevent double participation of social insurances