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Information Duties

Japanese and German Private Law

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Information Duties under the Japanese Law Governing Public Interest Incorporated Associations and Foundations

Makoto Arai[*]

I. Reform of Public Interest Incorporated Associations

1. Background

For a period of almost 100 years after Japan's Civil Code was promulgated, a non-profit associations or foundation could only become a juridical person by incorporation (hereinafter a "former public interest corporation"). Following, and in conjunction with the 2006 revisions to the Civil Code (hereinafter "the revised Civil Code"), the former Article 34 stipulated that:

"Any association or foundation relating to any academic activities, art, charity, worship, religion, or other public interest which is not for profit may be established as a juridical person with the permission of the competent government agency."

Criticism of former public interest corporations had long included allegations that: 1) Some public interest corporations were "public interest" in

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name only, and it was difficult to accurately describe them as actually being "in the public interest"; 2) the determination of whether or not they really served utilitarian purposes was left to the discretionary powers of the competent authorities, and was therefore extremely vague; 3) there were suspicions that public interest corporations were being recklessly used as convenient places to dispatch reappointed public servants; 4) the content of the work of public interest corporations was not being transparently made available to the public, and 5) public interest corporations that were in fact making money were subject to lenient tax benefits, which was unfair. In an attempt to redress these problems, public interest corporation reforms came into force in 2008. As an example of a former public interest corporation, the Nihon Sumo Kyōkai (Japanese Sumo Association), which was founded in 1925 as a foundational juridical person, is the only juridical person hosting sumo tournaments on a nationwide scale and on a for-profit and occupational basis.

The former public interest corporations established prior to 1 December 2008 – when the "three laws aimed at reforming public interest corporations," which I will discuss in more detail later, came into force – were established by satisfying the following three conditions: 1) that they would conduct work for the public benefit; 2) that they would be non-profit, and 3) that they obtained the authorization of the competent authorities. Public interest corporations meeting these conditions and established as of October 2006 numbered 24,893 organizations (12,572 public interest incorporated associations, and 12,321 public interest incorporated foundations).

The public interest corporation reforms altered the system for the former public interest corporations greatly; the new system made a major distinction between non-profit organizations (public interest corporations) whose public benefit had been approved, and all other non-profit organizations (general corporations). Under the new system, the appraisal of establishment and public benefit were separated, and the structure made it became possible to obtain juridical personality (to become a general corporation) merely by completing registration, while corporations that set their main objective as conducting projects for the public interest require approval from the administrative agency (the prime minister or prefectural governor) according to the opinions of a specially convened meeting composed of private sector experts (the Public Interest Corporation Commission).

2. Laws Related to the Reform of the Public Interest Corporation System

In response to the process of reforms to the public interest corporation system, three new laws were established in May 2006, coming into force in December 2008. These laws were the "General Corporation Act", the "Public Interest Corporation Act" and the "Act Concerning Establishment of

Laws etc. on General Incorporated Associations and General Incorporated Foundations Accompanying the Execution of Laws Concerning the Authorization etc. of Public Interest Incorporated Associations and Public Interest Incorporated Foundations" (hereinafter "the Establishment Act"), collectively known as the "three public interest corporation laws."

The General Corporation Act created a system for general corporations in which organizations and foundations, whose objective is not the allotment of surplus funds, can obtain juridical personality regardless of whether or not their work is in the public interest. All that is required is the completion of a process of creating articles of incorporation, authorization and registration, and it provides regulations regarding their establishment, organization, operations and management. The Public Interest Corporation Act created a system in which the prime minister or prefectural governor is involved in independent commissions set up to approve and monitor public interest corporations and public interest foundations. Finally, the Establishment Act stipulated the procedures for transferring former public interest corporations and preparing the Civil Code and related legislation accompanying the enforcement of the two above laws.

3. An Outline of the Systems after the Reform

The laws related to the reform of the public interest corporation system, as I have mentioned, numbered three in all. In the General Corporation Act that serves as their bedrock, with regard to the proposed articles of incorporation it became possible to establish a general corporation (public interest corporation or public interest foundation) by following the registration procedures and obtaining the attestation of a notary public. This format of establishment is known as the "rule-based approach," and it enables the establishment of a non-profit organization (general corporation) with the same ease and over a similarly short span of time as it takes to set up an ordinary company.

The overriding principle of general corporations is that their purpose is not to generate profits; a general incorporated association can be established with just two staff and a general incorporated foundation with contributory assets of just three million yen or more, and there are no particular restrictions on them as long as the purpose of their establishment and their activities do not violate the law or public order and morality. Moreover, when they are dissolved, a meeting of employees (in the case of general incorporated associations) or a board of trustees (in the case of general incorporated foundations) are free to allot dividends to personnel, executives and founders, and they enjoy a high level of freedom due to an absence of any governmental supervision.

In contrast, public interest corporations must firstly satisfy the demands of the General Corporation Act, and having met these various conditions, they must then meet all the authorization conditions and criteria of the Public Interest Corporation Act. This results in public interest corporations, in view of their societal role, being restricted or weighed down, not only by the above-mentioned requirements demanded of general corporations but also in terms of their purposes, project plans, qualification of directors, disclosure of information and assessment of any surplus assets they may possess. Table 1 below compares the details of general corporations and public interest corporations.

Table 1: Comparison between general corporations and public interest corporations

	General Corporations	Public Interest Corporations
Corporate establishment	Rule-based approach (establishment through registration)	Same
Personnel/sum of assets	Two or more personnel (three million yen or more for foundations)	Same
Purpose	No restrictions on purpose	To contribute to increasing the profit of an irregular and multiple number of persons
Business	Unrestricted, unregulated	Main business shall be one cited in the Public Interest Corporation Act (excluding business unsuitable for the maintenance of society's trust in the above law)
Allotment of surplus funds	Not possible	Same
Allotment of residuary assets	Possible	Allotment to personnel and directors *not* possible
Information disclosure	Restricted to personnel and creditors	Includes the general public
Supervision	Unsupervised	Government authority (the Public Interest Corporation Commission)
General meeting of personnel (corporate juridical person)	Body deciding upon legalities and articles of incorporation (when a board of directors is not in place the body deciding all matters)	Body deciding upon legalities and articles of incorporation

	General Corporations	Public Interest Corporations
Board of trustees	Body deciding upon legalities and articles of incorporation (At least 3 persons required to form a board of trustees)	Same
Director(s)	At least 3 persons when a board of directors is put in place; 1 or more persons when a non-directors meeting format is in place	Three or more persons
Board of Directors	Setting up a board of directors is optional (mandatory in the case of foundations)	Mandatory (the body decides upon the execution of business and supervises the director)
Auditor	Appointment of auditor is optional (mandatory in the case of large scale corporations, corporations with a board of directors and all foundations)	One or more auditors mandatory
Independent auditor	Mandatory at large scale corporations	Same

II. ESTABLISHMENT OF CORPORATIONS

1. General Incorporated Associations

a) From the authorization approach to the rule-based approach

Previously, establishing a former public interest corporation required authorization from the competent authorities (the approval approach, Article 34 of the Civil Code prior to amendment (Establishment of Public Interest Corporation)). With regard to the approval (or lack thereof) according to the Civil Code, the discretion of the competent authorities was far-reaching, and the issues I have mentioned above were often cited. Therefore, separate decisions now determine acquisition of juridical personality and public benefit, meaning that regardless of the presence or absence of any public benefit, the non-profit organization system has made establishment easier according to the rule-based approach. The establishment of non-profit organizations (general corporations) does not require the approval of the competent authorities and their establishment is recognized simply by registration.

b) Creation of articles of incorporation

In order to establish a general incorporated association, the two or more people who intend to operate as its personnel, (the founders), are required to create together articles of incorporation, (Article 10 of the General Corporation Act).

The articles of incorporation must state the following: the purpose, the name, and the organisational details matters (Article 11 of the General Corporation Act).

aa) Purpose

There are no specific limitations, as there are no restrictions on the business that a general corporation conducts. However, Paragraph 2 of Article 11 states that: "Any provision in the articles of incorporation that grants to members the right to receive the distribution of a surplus or residual assets shall not be effective." This is in keeping with the nature of a non-profit organization.

bb) Name

The name must include the words "general incorporated association," furthermore Article 5 of the law states that: "A general incorporated association shall not use words in its name that are likely to cause it to be mistaken for a general incorporated foundation."

cc) Organisational details

In addition to aa) and bb) above, the association must state its main place of business, the names and addresses of the members of the incorporation, personnel at the time of establishment, provisions on the acquisition or loss of member qualifications, method of public notice and dates of business year.

The articles of incorporation shall not take effect unless they are certified by a notary (Article 13). Members at incorporation shall keep the articles of incorporation in a place specified by a member at incorporation (or, after the formation of a general incorporated association, at the principal office and a branch office of the said general incorporated association) (Article 14).

c) Appointment officers (and director) at incorporation

In the event that a director is not stipulated at incorporation, a director must be appointed without delay, pursuant to the articles of incorporation after fulfilment of the commitment to contribute property (Article 159). The director(s) in question at incorporation must investigate without delay

whether the procedures employed in incorporating the general incorporated association comply with all relevant laws and regulations as well as with the articles of incorporation (Article 20-(1)). Furthermore, under Article 20(2), the directors must notify the members at incorporation if the above-mentioned investigations revealed any procedures which violated any laws and regulations or the articles of incorporation, or contain any wrongful matters. Article 23(1) also goes on to stipulate that if, at incorporation, a member, a director, or an auditor is negligent in performing his or her duties with respect to the incorporation of the general incorporated association, he or she shall be liable to compensate the general incorporated association for any resulting damages.

d) Registration

Article 22 states that a general incorporated association is formed when its incorporation is registered at the address of its main place of business. This registration must be completed within two weeks of the completion of the investigation by the director(s) at incorporation ((iii) above) or a day specified by the members at incorporation, whichever of the two dates is the later (Article 301(1)).

At incorporation, the details of the articles of incorporation, the purpose, name, address of main place of business and any branch offices, the name of the director(s) and name and address of the representative director (Article 301(2)) must be registered.

This registration must be conducted by the appropriate representative director of the association in question. The required documents, other than the articles of incorporation, are as prescribed in Article 318.

e) Members

Article 27 states that members, as provided by the articles of incorporation, are responsible for the payment of expenses to the general incorporated association. They may withdraw from the association whenever they wish. Although the articles of incorporation may make alternative provisions, if a member still has to withdraw due to unavoidable circumstances they may do so (Article 28). Article 29 enables members to withdraw for the following reasons: 1) the occurrence of grounds for leaving as set forth in the articles of incorporation; 2) the agreement of all the other members; 3) death or dissolution and 4) expulsion of the member.

Finally, Article 31 states that the general incorporated association must compile a member registry that includes the names and addresses of all its members.

2. General Incorporated Foundations

a) Creation of articles of incorporation

As stated in Article 152 of the Act on General Incorporated Associations and General Incorporated Foundations, in the incorporation of a general incorporated foundation, the founder (if there are two or more founders, both or all of them) shall prepare articles of incorporation, which the founder(s) must sign, or to which they shall affix their names and seals. Article 152(2) further provides that a founder may express in their will their intent to incorporate a general incorporated foundation. In such a case the executor, after said will has taken effect, shall, without delay, prepare articles of incorporation that include the matters provided for in the will, and either sign them or affix their name and seal on the articles.

The following items a) to d) must be included in the articles of incorporation (Article 153(1)).

aa) Purpose

As a general incorporated foundation had no restrictions placed upon its business there are no particular limitations. However, none of the provisions in the articles of incorporation which grant the founder the right to receive any surplus monies or residual assets shall be effective, which is consistent with its purpose as a non-profit organization.

bb) Name

The name shall contain the words "general incorporated foundation" and no name may be used that could lead to the foundation being confused as a general incorporated association (Article 5).

cc) Method for appointing and dismissing board of trustees

Article 153(3)(i) states that no provisions in the articles of incorporation which provide that either a director or the council appoints or dismisses the board of trustees shall be effective.

dd) In addition to a) to c), Article 153(1) stipulates that the following must be detailed: the main place of business, the name and address of the founder, the assets to be contributed by the founder at incorporation and the amount, and matters pertaining to the selection of the board of trustees and auditors at incorporation. Furthermore, Article 153(1) stipulates that if the general incorporated foundation to be incorporated has accounting auditors,

it must detail matters related to the appointment of the auditors at incorporation, the method of publication and the dates of its business year.

The articles of incorporation may be changed by decision of the board of trustees, (with the exception of a) to c) above (Article 200). With regard to items a) to c) when, due to conditions that were unforeseeable at the time of incorporation, the operation of the organization in question becomes impossible or extraordinarily difficult to continue, changes may be made by the board of trustees with the authorization of a court to all or any of a) to c) (Article 200(3)).

The articles of incorporation shall not take effect unless they are certified by a notary. Members at incorporation (or, after the formation of a general incorporated association, the said general incorporated association) shall keep the articles of incorporation in a place specified by a member at incorporation (or, after the formation of a general incorporated foundation, at the main place of business and branch offices of the said general incorporated foundation) (Articles 155 to 157).

b) Officers at incorporation (director)

If a director at incorporation is not provided for in the articles of incorporation, this person shall be appointed without delay (Article 159(1)). The director at incorporation shall, without delay, investigate to ensure that the commitment to contribute property is fulfilled and that the procedures employed in the establishment of the general incorporated foundation are not in violation of laws and regulations (Article 161).

If, as a result of this investigation, the director at incorporation or the auditors at incorporation find any violation of the applicable laws and regulations or articles of incorporation they shall give notice to such effect to the founder (Article 161(2)). Moreover, Article 166(1) provides that if a founder, a director or auditor at incorporation is negligent in performing their duties with respect to the incorporation of the general incorporated foundation, they shall be liable to the general incorporated foundation for any damages arising as a result.

c) Fulfilment of the commitment to contribute property

The founder (or executor) shall, after certification by a notary, pay the total amount of the monies pertaining to the contribution prescribed, or deliver all non-monetary property pertaining to the contribution prescribed without delay; provided, however, that this does not preclude the performance of acts necessary to assert the establishment or relocation of registration, recording and other rights with respect to a third party after the formation of the general incorporated foundation if such is prescribed by the founder

(Article 157). According to Article 153(2) the total value of the property may not be less than three million yen. If property has been contributed by inter vivos transfer, the property shall belong to the general incorporated foundation when the formation of the general incorporated foundation is accomplished, but if the property has been contributed to a general incorporated foundation by will, it shall be deemed to belong to the general incorporated foundation when the will comes into effect (Article 164).

d) Registration

Article 163 states that a general incorporated foundation is formed when its incorporation is registered at the address of its principal office. Article 302(1) provides that the registration of incorporation shall be completed within the space of two weeks from the day the investigations (ii above) are completed, or on a day stipulated by the founder, (whichever is the later date). The items for registration at incorporation include the details of the articles of incorporation; the purpose, name, addresses of main place of business and any branches; the method of publication; the names of the members of the board of trustees, director and auditor; and the names and addresses of officers (Article 302(2)).

The registration of incorporation of a general incorporated foundation shall be effected by application of a person representing the general incorporated foundation. The required documents that upon registration, including the articles of incorporation, are stated in Article 319.

3. Authorization of Public Interest Corporations

a) The public interest corporation system

Article 1 of the Act on Authorization of Public Interest Incorporated Associations and Public Interest Incorporated Foundations ("the Public Interest Corporation Act") asserts that, given the importance of the implementation of business voluntarily conducted by organizations in the private sector for public interest purposes, the Act aims to "[…] establish a system for authorizing public interest corporations capable of implementing such business in a suitable manner […] and thereby to contribute to the promotion of the public interest and the realization of a vibrant society."

The Act, consisting of just 66 articles, is relatively brief, and its details are entrusted to the government ordinances and enforcement regulations with which the Act is associated. The Cabinet Office has published its "Public Authorization Guidelines" with regard to unclear specific items. The Cabinet Office also releases FAQs on the subject when deemed necessary.

Under the Public Interest Corporation Act, those involved in "work for public interest purposes (business for public interest purposes)" are general incorporated associations or general incorporated foundations that have been "authorized" by government authorities (Article 4 of the Public Interest Corporation Act). These authorizations are granted by the prime minister and prefectural governors (as stated in Article 3) who are shown in the table of public interest corporation categories below as authorized to act for the competent authorities subsequent to the amendments made to the public interest corporation system. Traditionally the competent authorities were given free powers of discretion to approve both the benefit to the public and award juridical person status. However, as I have mentioned, there were problems with this system, and therefore the establishment of juridical persons and the approval of their benefit to the public were separated into a two-tier system. First of all, the establishment of a juridical person follows the General Corporation Act, and comes into effect by registration according to the rule based approach, simplifying the process. At this stage, public benefit is not required to affect establishment; as establishment has become possible quite regardless of the discretion of the competent authorities, it could be said that in cases in which efforts are made to become a juridical person the likelihood of succeeding has increased. Furthermore, removing the competent authorities' discretion regarding the approval of establishment and public interest, has also potentially removed the obstacle of the so-called vertically divided administration. In addition, when becoming a public interest corporation, the public interest of the corporation becomes approved under the Act. Under the Public Interest Corporation Act, the administrative government agencies approve the public benefit of general corporations based on the opinions of a committee composed of private sector experts, and conduct the supervision of the approved juridical persons (i.e. the corporations)[1].

Table 2: Conditions for approval of public interest corporations

Public interest corporations whose approval by administrative government agencies is conducted by the prime minister:
(i) Corporations with a place of business in two or more prefectures;
(ii) Corporations whose articles of incorporation state that the corporation will conduct business with the purpose of the public benefit in two or more prefectures. (In such cases this also includes corporations whose articles of incorporation state that they will conduct business for the public benefit

1 FAQ – A Commentary on the General Corporation Act and Public Interest Corporation Act, I. KOMACHIYA/I. FUJIWARA/J. MAKITA/J. AKIYAMA (Tōkyō 2008) 114–115.

overseas. Furthermore, it is not adequate for a corporation merely to state in its articles of incorporation that it will conduct its business in two or more prefectures, and it is necessary for that state of affairs to actually be demonstrated (FAQ Question I-9–(1).)

(iii) Corporations stipulated by Cabinet order whose purpose is work for the public interest and whose work (projects) are closely related to the national government.

Public interest corporations whose approval by administrative government agencies is conducted by a prefectural governor:
The governor of the prefecture where the corporation's place of business is located is the administrative government agency conducting approval for public interest corporations other than those listed in (i) to (iii) above.

b) Works constituting public benefit

According to Article 2-4 of the Public Interest Corporation Act, works for the public benefit must satisfy the following two conditions:

(1) Business that relate to scholarship, art, charity or other public interests
(2) That contribute to the promotion of interests for many and unspecified persons.

The conditions in a) above are nearly all covered by the appended table of the Act.[2] However, businesses that do not provide good grounds in their

2 Business for the public interest is defined as that conducted for the following purposes: (i) Business to promote academia and scientific technology; (ii) Business to promote culture and art (iii) Business to support persons with disability or needy persons or victims of accident, disaster or crime; (iv) Business to promote welfare of senior citizens; (v) Business to support persons having the will to work in seeking employment; (vi) Business to enhance public health; (vii) Business to seek sound nurturing of children and youths; (viii) Business to enhance welfare of workers; (ix) Business to contribute to sound development of mind and body of the citizen or to cultivate abundant human nature through education and sports, etc.; (x) Business to prevent crimes or to maintain security; (xi) Business to prevent accident or disaster (xii) Business to prevent and eliminate unreasonable discrimination and prejudice by reason of race, gender or others; (xiii) Business to pay respect or protect the freedom of ideology and conscience, the freedom of religion or of expression; (xiv) Business to promote the creation of gender-equal society or other better society; (xv) Business to promote international mutual understanding and for economic cooperation to overseas developing regions; (xvi) Business to preserve the global environment or protect and maintain natural environment; (xvii) Business to utilize, maintain or preserve the national land (xviii) Business to contribute to sound operation of national politics; (xix) Business to develop sound local community; (xx) Business to secure and promote fair and free opportunity for economic activity and to stabilize and enhance the lives of the citizenry by way of activating the economy; (xxi) Business to secure stable supply of goods and energy indispen-

articles of incorporation or their purpose, may in some cases not be approved as a public interest corporation (refer to the Cabinet Office's Public Authorization Guidelines, I-1).

It is the condition b) above that presents problems. [The condition that a corporation] "contributes to the promotion of interests for many and unspecified persons" must mean the true public interest of society as a whole, not just the benefits of individuals or small groups. However, even if an interest superficially appears to be specific and small-scale, if it is foreseeable that a larger number of entities may benefit, it may be deemed as being for the public interest (FAQ IX-6).

c) Public interest authorization criteria

These are the criteria used by the administrative government agencies when authorizing public interest, and as long as they are met, the corporation or foundation is authorized as being of the public interest.

The authorization conditions are provided in detail in Article 5 (nos. 1–18) of the Public Interest Corporation Act,[3] and are listed here in footnote

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sable for the lives of the citizenry; (xxii) Business to protect and promote the interest of general consumers (xxiii) In addition to each of the foregoing items, business provided for in Cabinet Order as one relating to the public interest.

3 *Public Interest Corporation Act, Article 5 (nos. 1–18)*

Its principal objective is to operate the business for public interest purposes. (ii) It has an accounting base and technical capability necessary to operate the business for public interest purposes. (iii) When it operates its business, it does not provide its members, councillors, directors, auditors, employees or other concerned persons specified by Cabinet Order with any special benefits. (iv) When it operates its business, it does not engage in any act providing donations or other special benefits to any persons who run a stock company or other business for profit purposes, or any other persons specified by Cabinet Order as engaging in any activity to seek interest for any specific individual or entity; provided, however, that this shall not apply to cases in which it engages in any act providing a public interest corporation with any donation or other special benefit for the business for public interest purposes operated by said public interest corporation. (v) It does not operate any speculative transaction, financing with high interest or other businesses specified by Cabinet Order as unsuitable for maintaining the social trust of a public interest corporation or any business that could be harmful to public policy. (vi) With respect to the business for public interest purposes operated by it, the revenue pertaining to said business for public interest purposes is expected not to exceed the amount compensating the reasonable costs for its operation. (vii) If it operates any business other than the business for public interest purposes (hereinafter referred to as "Profit-Making Businesses"), the operation of the Profit-Making Businesses does not interfere with the operation of the business for public interest purposes. (viii) When it operates its business activities, the ratio of the business for public interest purposes set forth in Article 15 is

3. What should be noted is that the obligation to submit business reports and calculation documents (Article 21(2)) and undergo on-site inspections (Article 27(1)) in a series of checks applies not only businesses undergoing public interest authorization for the first time, but all businesses in each subsequent business year. This differs from determinations made concerning the authorization of a corporation: although its past track record of activities is not generally considered, the difference is that while its future plans are looked at (FAQ I-10-i), in subsequent checks the emphasis is placed upon its actual performance. It is essential that all of these conditions are satisfied at all times. Should there be a lapse in just one area, the administrative government agencies must issue recommendations to the corporation in question (Article 28(1)); if the said corporation fails to rectify these maters, the government agencies can order them to do so (Article 28(3)). Failure to comply at this point will result in the Public Interest Corporation Authorization being cancelled (Article 29(1)(iii)).

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expected to exceed 50/100 (the "50% rule."). (ix) The amount of idle property is expected not to exceed the restrictions stipulated. (x) With respect to directors and auditors, the total number of directors and their spouses or relatives within the third degree of kinship does not exceed one third of the total number of directors. (xi) The total number of directors, auditors or employees who are directors, auditors or employees of similar organizations (excluding public interest corporations) does not exceed one third of the total number of directors. The same shall apply to auditors. (xii) Large-scale corporations must have an auditor. (xiii) It has standards for payment, so that the amount of remuneration is not unsuitably high. (xiv) It does not attach any unreasonably discriminatory conditions for treatment, or any other unreasonable conditions, for the acquisition or loss of qualification of members, it does not treat voting rights of members in a different manner according to the amount of money or other properties provided by members to the juridical person in question, and it has a board of directors. (xv) It has no stock or other properties that enable it to be involved in the decision making of other organizations. (xvi) In the event that it has specific property indispensable for operating the business for public interest purposes, its articles of incorporation specify such circumstance and necessary matters for its maintenance and restriction on disposition. (xvii) In the event that its public benefit authorization is revoked or extinguished as a result of a merger, it provides in its articles of incorporation that it shall donate the property equivalent to such amount to another public interest corporations having a similar purpose of business. (xviii) It provides in its articles of incorporation that, in case of liquidation, it will cause the remaining property to be attributed to any other public interest corporations having a similar business purpose.

III. International Comparison of Public Interest Corporation Systems

1. Organizations Authorizing Public Interest

a) The four types of organizations authorizing public interest

Internationally, how does this compare to the authorization process for public interest corporations (and the tax concessions accompanying authorization)? This comparison is structured by a range of questions:. For example, 1) whether or not there is a corporate system for regular non-profit or public interest corporations, 2) what is the state of legislative systems regarding public interest, and what organizations are involved, and 3) whether tax laws grant concessions based on determinations of public interest, or if they conferred only by certain legislation. However, leaving aside the finer details, for ease of discussion here, the organizations authorizing (determining) public interest have been categorized into four main types.

The first is the national tax authority. Where the regulations concerning determination of public interest of private sector corporations are included in taxation law, the taxation authorities decide whether or not a corporation is of the public interest and confer financial tax concessions such as tax exemptions. In addition to Germany (as mentioned below) this system can be observed in Holland, Sweden, Finland, Portugal and Denmark.

The second is the minister or head of a department or ministry. In the United States (as mentioned below) the administrative government agency varies from one state to another. For example, the documentation required to become a non-profit organization in the state of California is submitted to the state's attorney-general (in the Department of Justice) while in New York, it is submitted to the secretary of state (in the regional legal affairs bureau).

The third is an advisory body, a joint council system composed of several committees. The UK Charity Commission (as mentioned below) and Japan's Public Interest Corporation Commission both fit into this category. This type includes two formats, one in which the commission is a governmental body, and one in which it is a consultative body, but in either case an effort is made to secure impartiality and expertise by leaving the substantive right of non-profit determination to a council-based body.

The fourth and final type is when the authorization of public benefit is made by a court of law. This is the system adopted in nations including France (as mentioned below), Greece and Hungary.

In all the above-mentioned cases, decisions about tax concessions are made according to the stipulations of the respective nations' tax laws, but when a body other than the taxation authority authorizes public benefit, this is usually divided into two ways, one in which the authorization of public

benefit and tax concession measures are aligned, and one in which partial tax concession measures are made while the subject's public benefit is authorized. In the case of Japan, under the former Civil Code system, Specified Public Service Promotion Corporations enjoying preferential tax treatment were just a fraction of all the public interest corporations (as of the year 2008 the proportion was just 4%), but after the 2008 reforms to the system all public interest corporations were treated as Specified Public Service Promotion Corporations.

b) Japan's Public Interest Corporation Commission

Japan's Public Interest Corporation Commission is a deliberation council (consultative body) within the Cabinet Office, consisting of seven members who are all private sector experts. The Commission receives inquiries from the prime minister, and 1) deliberates on the conversion of general corporations to public interest corporations, and 2) makes recommendations about public interest corporations, deliberates on commands and the revocation of public interest authorization, and replies to the prime minister. Administrative actions such as authorization, approval and revocation are conducted by the prime minister as the administrative office in charge, but the effective determination in such cases is carried out by the Commission.

Furthermore, the Commission itself is empowered by law to collect reports from public interest corporations and hold on-site inspection visits in its own right. In addition, the Public Interest Corporation Commission is able under law to express its opinions on related Cabinet orders and the tentative plans of the Cabinet to either establish or revoke a corporation. Looked at in this light, the Commission could be described as possessing functions very close to those of a government office. (With regard to corporations operating within a single prefecture, administration is carried out by the prefectural governor in question. Each of the prefectures has a council system in place, composed of local private sector figures. These councils do not, however, have any rights to comment on government ordinances.)

2. Stipulations Regarding Non-profit and Public Interest Corporations

a) The wide scope of public interest corporations

As previously stated, Japan's public interest corporations are non-profit and must contribute to the increase in benefits (public interest) of a large but unspecified number of people to qualify for such a distinction. In order to obtain the authorization of the Public Interest Corporation Commission, their business must be for the public interest, and relate to "[…] scholarship, art, charity or other public interest […] that contributes to the promo-

tion of interests for many and unspecified persons" under Article 2 of the Public Interest Corporation Act. The table appended to the Act lists 23 types of business. Again, Japan's public interest corporations are general corporations that apply for and receive authorization under the General Corporation Act, for which they must demonstrate their non-profit status.

It is in this way that the public interest corporations authorized by the Japan Public Interest Corporation Commission represent a system in parallel to the non-profit organization system that is composed of juridical persons that are both non-profit and work for the public interest. However, religions, schools, social welfare and offender rehabilitation organizations are all separately established from the outset.

The authorization of religious corporations is conducted by either the Minister of Education, Culture, Sports, Science and Technology (MEXT) or a prefectural governor (under the Religious Juridical Person Law). The authorization of educational corporations that establish private universities and higher educational institutions is conducted by the Minister of Education, Culture, Sports, Science and Technology, while the authorization of educational corporations establishing only private high schools or schools for younger students is the remit of the prefectural governor in question (under the Private Schools Act). Establishing a medical corporation requires the authorization of the prefectural governor in question according to the Medical Care Act, while under the Social Welfare Act social welfare corporations are authorized either by the prefectural governor or the competent authority in the case of designated cities and designated mid-level cities. The establishment of a rehabilitation corporation is authorized by the Ministry of Justice.

The system for NPOs is also regulated by the Cabinet Office's Director-General for Policy Planning, Economic and Social Systems, but the competent authority is the prefecture where the office of the NPO is located (under the Act on Promotion of Specified Non-profit Activities). For this reason, in a narrow sense, Japan's public benefit corporations (despite a few exceptions such as hospitals run by public benefit corporations) do not include temples, shrines, churches, schools, hospitals and social welfare facilities, whereas in overseas nations the systems that can be perceived as roughly equivalent to Japan's public interest corporations, in the vast majority of cases, include what in Japan would be defined as "religious corporations," "educational corporations," "medical corporations" and "social welfare corporations." Moreover, in Japan, juridical persons such as independent administrative corporations, authorized corporations and special public corporations that have become public corporations are sometimes also included.

In the case of the United Kingdom, large charities include churches, universities and hospitals; in Japan the equivalent religious corporations, edu-

cational corporations, national university corporations and medical corporations appear to be few and far between. Furthermore, entities such as the British Council and the British Red Cross, which in Japan take the form of independent administrative institutions (the Japan Foundation) or authorized corporations (the Japanese Red Cross Society), are charitable bodies in the United Kingdom. In the United States too, institutions such as churches, schools and hospitals are representative types of public charities under the Internal Revenue Code.

In Germany, churches, universities, chambers of commerce and professional occupational bodies are NPOs under public law. With regard to the institutions in Germany that are roughly equivalent to Japan's independent administrative institution, it can be assumed that nearly all of them are also juridical persons under public law. In France, while some private universities exist, they are not fully independent from the French government.

As one can see, the composition of the systems that serve as prerequisites varies from nation to nation and society to society, and the domains shouldered by the non-profit sector are different too. Thus, when comparing public sector non-profit and public benefit bodies (juridical persons), we need to consider what we are going to compare and for what purpose.

b) Legislative differences between nations

Simultaneously comparing the legal systems for organizations and juridical persons and the taxation concessions accompanying them is, in other words, a comparison of legislation. With regard to the systems, the many differences between nations are conspicuous, but the United Kingdom and the United States have a common law concept of charity and "the charitable," which is in contrast to those of Germany and France, which have their roots in continental law. In this paper, I specify those that I feel are nearest to the Japanese public benefit corporation system (in a narrow sense), and focus on a comparison between the mechanisms of these systems, but a wider comparison of the scope and scale of activities of the non-profit sector, and the repercussions for society and economics would no doubt require a broader perspective.

c) Differences in capacity to hold rights in juridical persons

Thus far, I have treated non-profit and pubic benefit organizations and juridical persons rather loosely and without any particular definitions, but not all of these bodies are necessarily juridical persons or can become juridical persons. Moreover, even if they are a juridical person there may be differences in their ability to acquire and dispose of assets, and their competency to stand trial.

The charities of the United Kingdom include trusts for the sale of charitable work. However, it has been pointed out that in recent years the juridical person-type of charity is becoming more common. In the United States too, the majority of foundations take the form of a trust. In the US, the lion's share of academic societies, professional occupational qualification boards and clubs undergo a series of tests according to the stipulations of the Internal Revenue Service Code, by which they obtain qualification for national and state tax exemptions without obtaining juridical person status according to state laws. However, in the case of such organizations with neither trusts nor juridical person status, the non-business liability of its directors etc. is unlimited.

In Germany, in recent years, the offer of limited liability for directors has meant the legal forms of limited liability companies and closed companies are increasing being used for non-profit purposes under the *Handelsgesetzbuch* (Commercial Code). These company structures are gaining in popularity as registration obligations and public surveillance are minimal, they are easy to establish, and are user friendly for non-profit businesses.

In France, the legal stipulations concerning non-profit corporations *(associations)* are somewhat laxer than those governing profit-making corporations *(sociétés),* but *associations* can acquire only the property directly needed for the business of a juridical person, and it is not possible to confer inheritances in the case of publicly authorized non-profit corporations.

d) Associations and foundations

From the perspective of one used to the Japanese system, the fact that systems for associations and foundations run side by side does not raise any particular questions. However, the French Civil Code of the year 1804 contained no stipulations whatsoever about associations or foundations. Even after the French clearly defined the grounds for founding associations in 1901, there was no law for foundations until the enactment of the *Loi sur le Développement du Mécénat* (the first law on foundations) in 1987, prior to which the Conseil d'État (Council of State) had individually authorized foundations through declarations. In Germany too, the Federal Civil Code provides the grounds for establishment of associations, but the precise requirements for private foundations are in effect left to the discretion of each state. This demonstrates how the treatment of associations and foundations is quite different from one country to another, (although one feels that there is a link with the basic human right of freedom of association, and that associations that bind people together are seen as fundamental).

Thus, in the basic legislation concerning non-profit and public benefit corporations, it is not always clear whether or not associations and founda-

tions are being regulated in the same way. Japan's Civil Code is thought to have drawn on German and French law when it was first drafted in the Meiji Era (it was adopted in the year 1896), but where the systems concerning public interest corporations are concerned, there are certain manifest differences.

Table 3: An international comparison

	Type of non-profit organization	Judgmental criteria for public benefit	Tax concessions
England and Wales	• Limited liability company (The Company Act) • Organizations and trusts without juridical personality • provident societies, housing trusts etc.	The Charities Act (registration with the Charity Commission) (Some charities are exempted from registration such as traditional universities, the Boy Scouts Movement etc.)	Stipulations of separate tax laws and practice under these
France	• Corporations (Law of July 1 1901) • Foundations (*Loi sur le Développement du Mécénat* 1987) (authorized by declarations of the *Conseil d'État* according to 1990 Law on Corporate Foundations (other NPOs include mutual associations, cooperatives and trade unions)	Same as left-hand column	Separate tax law stipulations
Germany	• Registered associations (federal law) (certification through public notary, registration with court of law of regional authority • Foundations (effectively delegated by Civil Law to each state's foundation laws (authorized by each state)	General Tax Law (Abgabenordnung) (regional tax offices decide upon whether public benefit, charitable or church support is applicable)	State tax offices decide according to General Tax Law and its stipulations.

	Type of non-profit organization	Judgmental criteria for public benefit	Tax concessions
Japan	・General incorporated associations ・General incorporated foundations In either case registration by a notary required under General Corporation Act (rule-based approach)	Act on Authorization of Public Interest Incorporated Associations and Public Interest Incorporated Foundations (determination by the Public Interest Corporation Commission and authorization procedures by administrative government agency)	Income and corporate taxation (interlocked with authorization of public benefit)
United States	・Non-profit organizations (NPO law of each state or company law) (registration with each state authority) ・Organizations without juridical personality (most academic societies, professional occupational bodies, clubs etc. enjoy exemptions from federal taxes through this format.) ・Trusts (this format is common amongst foundations).	Company system is as to the left, tax concessions as to the right (they share the charity concept that is part of common law.) E.g. Internal Revenue Code 501 (c) (3) stipulates charitable organizations as subject to federal income tax exemption.	Internal Revenue Code (authorization can be obtained through submitting Form 1023 (Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code) (Distinction between Public Charity and Private Foundation etc.) Tax laws of each state (tax concessions are led by treatment of federal tax laws)

IV. The Operation of Public Interest Corporations and Supervision by Administrative Government Agencies

1. Operation of Public Interest Corporations

The competent authority is decided upon for all public benefit non-profit organizations, including public interest corporations, social welfare corporations, educational corporations and so on, and they undergo different degrees of supervision. However, general corporations do not operate under a similar level of oversight by a supervisory agency, nor are they required to regularly submit any documentation. In the event that a problem arises, it is judged by a court of law. Furthermore, with regard to the disclosure of information, as only members (trustees in the case of foundations) and creditors may request

information, certain documents must be prepared and kept in their offices for perusal or reproduction according to legal stipulations (article 129 and 199 of the General Corporation Act), and these requirements are more limited than the legislation concerning public interest corporations (refer to Table 5).

Table 4: Disclosure requirements for a General Corporation: Documents to be kept on premises

Documentation	Timeframe	Disclosure method	Disclosure Audience
Articles of incorporation	At all times	Perusal/copying	Employees (trustees), creditors
List of employees	At all times	Same as above	Employees
Records of employee meetings and board of trustees meetings	For 10 years (5 years at branch offices)	Same as above	Employees (trustees), creditors
Record of meetings of boards of directors	10 years	Same as above	Employees (trustees), creditors (permission of a court of law required except in the case of trustees)
Annual reports of each business tear and supplementary details	5 years (3 years at branch offices) (must be kept for 10 years)	Same as above	Employees (trustees), creditors
Accounting documents (balance sheet, profit and loss statement) and supplementary details	Same as above	Same as above	Same as above
Accounting books	At all times (Must be kept for 10 years after closure)	Same as above	One tenth or more of employees and one or more trustee

When a general corporation is authorized as being of public interest, it must register the change in its name at the place where its main business office is located within the space of two weeks (three weeks for branch offices). The name of the corporation changes from "general incorporated association (or foundation)" to "public interest incorporated association (or foundation)," but since its juridical personality remains unchanged, as a juridical person it is still subject to the General Corporation Act.

However, gaining authorization as a public interest corporation brings a number of rules that must be observed, and places the public interest corporation under the supervision of the administrative government agency with jurisdiction over it, which changes its position from an ordinary juridical person, as I shall explain below.

a) Observance of public benefit criteria and standards

The criteria for acquiring authorization as being of public benefit that I have explained above continue to apply after authorization and must still be observed once the entity has become a public interest corporation. In particular, over the course of each business year the corporation has to satisfy the conditions laid down for the ratio of business for public interest purposes, restrictions on possession of idle property, and the principal balance amortization.

Furthermore, Article 18 of the Public Interest Corporation Act established the concept of "Property for Business for Public Interest Purposes," stipulating income should be used for public interest works (50% or more of the donations, subsidies and membership fees designated for use in public interest works, 50% or more of income received in consideration of business conducted for the public benefit, and profits from the management of assets owned for public interest purposes), and its expenditure on business for the public benefit. On annulment of public interest authorization the sum of its donated assets ("the remaining amount of the public interest purposes acquired property") has to be calculated and managed at the end of every period of operation (Article 30 of the Public Interest Corporation Act). Moreover, Article 17 of the Act prohibits public interest corporations from making excessively persistent solicitations for donations.

b) Disclosure of information

In order that public interest corporations are accountable to society, they are required to keep in their offices various types of documents concerning their organization, business activities and finances in their offices, and must accept demands from members of the public who wish to peruse them (Article 21 of the Public Interest Corporation Act). Table 5 (next page) lists the documents that a corporation must keep in its offices and disclose to the public when necessary.

c) Regular submission of documents to the administrative government agencies and disclosure through the agencies

As stipulated in Article 22 of the Public Interest Corporation Act, public interest corporations must, within the three months of the end of each business year, submit a business report and accounts to the respective administrative government agency. This regular submission may be carried out electronically. Furthermore, the administrative government agency receiving this report may disclose the documents on the Internet for perusal by the public.

Table 5: Disclosure requirements for a Public Interest Corporation: Documents to be kept on premises

Documentation	Term to be kept in the office	Disclosure method	Disclosure audience
Articles of incorporation	At all times	Perusal	Anybody
List of employees	At all times	Same as above	Anybody (the corporation is, however, allowed to conceal addresses of those other than employees and trustees)
List of directors	From within the first 3 months of fiscal year for a space of 5 years (3 years for branch offices here and in the rest of the table)	Same as above	Anybody (the corporation is, however, allowed to conceal addresses of those other than employees and trustees)
Criteria for directors' remuneration	From within the first 3 months of fiscal year for a space of 5 years	Same as above	Anybody
Business and budget plans	Until end of business year	Same as above	Same as above
Fundraising and capital expenditure plans	Same as above	Same as above	Same as above
Inventory of assets	From within the first 3 months of fiscal year for a space of 5 years	Same as above	Same as above
Cash flow statement	Same as above	Same as above	Same as above
Outlines of operational organization, business activities and documents containing vital figures	Same as above	Same as above	Same as above
Specific cost reserve funds/reserve limits on assets acquired for funding/ basis of calculations	Same as above	Same as above	Same as above

2. Supervision by Administrative Government Agencies

Administrative agency supervision includes requesting reports, making on-site inspections, recommendations, orders and the annulment or cancellation of the authorization of a public interest corporation. The most extreme case is that in which authorization is cancelled, but even when a corporation violates the authorization criteria, or fails to observe regulations, its authority is not immediately cancelled. The administrative agencies, while continually checking on the changing situation of the public interest corporation and its efforts to reform itself, go through the various steps of demanding reports, making on-site inspections, recommendations and giving orders. Only when the corporation in question appears incapable or unwilling to remedy the situation will the final measure of cancelling its authority be taken.

The Cabinet Office has announced the following outline of its approach to supervising public interest corporations.

(i) In principal, it will supervise corporations in line with the conditions clearly stipulated by law
(ii) It will act from a perspective of providing support, to enable new corporations to appropriately adapt themselves to new systems, and thereby increase their benefit to the public while retaining self-governance as the main premise
(iii) When necessary to secure the trustworthiness of the system it will act swiftly and stringently against new corporations with problems
(iv) It will at every available opportunity strive to ascertain the state of corporations through the screening of applications for authorization, the verification of regularly submitted documents and on-site inspections etc.

a) Requests for reports (Article 27 of the Public Interest Corporation Act)

To the extent to which it is necessary to secure the appropriate management of public interest corporations, a corporation may be requested to submit the requisite reports on its operational organization and business activities. This request for reports is an irregular measure and is generally regarded as being an indicator that there are suspected irregularities in the management of the corporation in question.

b) On-site inspections (Article 27 of the Public Interest Corporation Act)

To the extent to which it is necessary to secure the appropriate management of public interest corporations, on-site inspections are carried out in order to verify the operational state of a corporation with regard to the matters, clearly stipulated by law, which they have to observe as a public interest corporation.

Specifically, the on-site inspections are conducted according to the following procedures.

(i) The first inspection is carried out once within the first three years of authorization
(ii) About one month's notice is provided regarding the date, time and place of the inspections
(iii) The inspections are carried out in a focused manner that uses the items handed over at the time of screening for public interest, periodically submitted documents, notifications of changes, tax collection reports etc.
(iv) The director and auditor and any other people involved are expected to give an account of themselves.

3. Recommendations (Article 28 of the Public Interest Corporation Act)

If an administrative agency has reasonable grounds to believe that public interest corporations could fall under any one of the respective following items, it may issue a recommendation including a time limit by which necessary measures, including improving their work, must be made:

(i) In the event that they no longer conform to the authorization criteria.
(ii) In the event that they fail to comply with the criteria.
(iii) In the event that they are in violation of laws and ordinances or administrative disposition (acts carried out under law)

It should be noted that, in principal, recommendations are issued after consultation with the Public Interest Corporation Commission and following the receipt of their reply, and the details of the recommendations are disclosed to the general public.

4. Orders (Article 28 of the Public Interest Corporation Act)

Should, despite having received the above-mentioned recommendations, a corporation fail to take the relevant measures without any justifiable reasons, the administrative government agency may issue an order that the corporation in question takes the recommended measures. Orders are also principally given after consultation with the Public Interest Corporation Commission and following the receipt of their reply, and the details of the orders are disclosed to the general public.

5. Cancellation of Public Interest Corporation Authorization

a) Compulsory cancellation

In the event that a public interest corporation falls under any of the following, its public benefit authorization shall be cancelled without fail (Public Interest Corporation Act 29(1)).

(i) In the event that they fall under any of the items (excluding item (ii)) of Article 6
(ii) In the event that they obtain the Public Interest Corporation Authorization, the authorization for change under paragraph 1 of Article 11 or the approval under paragraph 1 of Article 25 by fraudulent or illegal means
(iii) In the event that they fail to comply with the order pursuant to the provisions of paragraph 3 of the preceding Article without justifiable grounds
(iv) In the event that they apply for the cancellation of the Public Interest Corporation Authorization

b) Cancellation at the discretion of the competent authorities

In the event that a public interest corporation falls under any of the following, its public benefit authorization shall be cancelled without fail (Aricle 29(2) Public Interest Corporation Act).

(i) In the event that they no longer conform to any of the public benefit criteria
(ii) In the event that they fail to comply with the provisions of Chapter 2 Section 2 of the Public Interest Corporation Act
(iii) In the event that they violate laws and regulations

In the case of cancellation by discretion, the administrative government agencies shall in principle enquire to and seek the response of the Deliberation Council of the Public Interest Corporation Commission, and the reason for cancellation is published under the Administrative Procedures Law.