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ICNL Workshop
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I OVERVIEW-NPOs in JAPAN

1. One of the most significant features of NPOs in Japan is the fact that there are several kinds of NPOs in terms of legal framework. Therefore we must explain even the same theme separately, for instance registration, taxation and etc., based on each regulations to different types of NPOs.
2. The most traditional NPO is Public Interest Corporation (PIC) created in 1886 by the Civil Code. There are two types of PIC, Association and Foundation. In 2008, the Civil Code was drastically reformed in order to encourage citizens to do their voluntary and innovative activities more easily and vividly for the benefits in the society. As a result, the new type of NPO called "General Corporation (GC)" was created and if a GC obtains the recognition from the government as for the public benefit character, it becomes new Public Interest Corporation. Now, we have about 9,300 PICs and approximately 35,000 GCs.
3. The Specified Non-Profit Corporation (SNPC) is rather new type created in 1998 soon after "Hanshin Awaji Big Earthquake" of which aim was to give easy incorporation procedure to the small community based citizens groups. Similar to GIC, SNPC can become Recognized SNPC (RSNPC) by getting government recognition as for its public status. Currently there are almost 50,000 SNPCs and nearly 500 RSNPCs.
4. Other than the above, we have several kinds of NPOs based on different laws such as Social Welfare Corporation, Private School Corporation, Religious Corporation, Offender Rehabilitation Service Corporation and likes.

II Registration of NPOs

1. General Corporation & Public interest Corporation

Citizens can set up GC very easily by only registration at registration office after getting verification of the charter at the Notary Public. If a GC wants to become PIC, it is needed to apply the competent authority. If the activities are carried in one specific prefecture, the competent authority is the Prefectural Governor, otherwise the Cabinet Office.

When the applicant's activities fall into one or more businesses described¹ in "Act on Authorization of Public Interest Incorporated Associations and Public Interest Incorporated Foundation" and the applicant governance, and financial status comply with 18 requirements² set forth in the Act, the competent authority must recognize it as PIC.

In the recognition process, the competent authority must decide based on the conclusion of a council called Public Interest Committee that is very similar to "The Charity Commission" in England and Wales. GCs are tax exempt other than income generating business. On top of it, once recognized as PIC, donation both from individuals and companies are deductible to some extents and even more in some case tax credit is selective for individuals.

2. Specified Non-profit Corporation & Recognized Specified Non-Profit Corporation

In order to get authorization as SNPC, citizens must submit the application to the Prefectural Governor where main office locates. The requirements for SNPC are rather very relaxed including governance and simple financial condition.

If a SNPC wants to become RSNPC, it must apply to the Prefectural Governor. When its application meets 8 requirements, the Prefectural Governor must recognize it as RSNPC.

As for taxation, SNPC resemble to GC and RSNPC is very similar to PIC.

3. Other types of NPOs

¹ See the attached paper 1

² See the attached paper 2

As for other types of NPOs, like Social Welfare Corporation and Private School Corporation, you must need to get the approval from relevant authorities. Tax treatments mostly resemble to PIC and RSNPC.

III Governance of NPOs

In Japan, the good governance is understood as follows.

“The three powers relating the decision making process, the execution process and supervision process are properly allocated to separate organs.”

1. Decision making Organ

The Members Meeting is the decision making organ in case of association type of NPOs and the Councilors Meeting for Foundation type. The powers of these organs are to appoint/dismiss trustees and internal auditors, to approve the annual report and account, to approve the amendment of the charter, to decide a marge and finally to decide its dissolution.

Other than the above legally stipulated matters, NPOs are able to give certain powers freely by their charter to these organs.

2. Board of Trustees

The Board of Trustees is the organ of execution of activities according to the charter, by-laws and basic policies set forth by The Members Meeting or the Councilors Meeting.

The Board appoints representative trustee(s) and in some case executive trustee(s). They are in charge of the actual execution of activities.

In most case, NPOs employ staffs to let them help trustees' responsibilities and work daily administration.

3. Internal Auditor(s)

The Internal Auditor(s)' may be very unique organ as compared with other countries. They monitor the decisions and execution of Board of Trustees and respective trustees including representative trustees if there are illegal or improper decisions or doings. And if they find these unfavorable matters, they appeal to The Members Meeting and furthermore in case to accuse trustee(s) at the court.

Internal Auditor is not necessarily to be professionals like accountants or lawyer.

In case of big Public Interest Corporations, they must appoint certified accountant as external auditor.

IV Self- Regulations

“Autonomy “and” Independence “are key words when we tell the indispensable necessities of NPOs.

But, at the same time we must consider the other side of coin.

In this regards, Self-Regulations are also fundamental to NPOs.

We understand that Self-Regulations affect to three dimensions.

They are Governance, Compliance and Transparency.

1. Proper Governance

Mentioned already. See P.3.

2. Compliance

It is needless to say we must fully comply with laws, regulations and many requirements for NPOs.

On top of it, we should comply with the charter, bylaws and internal rules.

In this sense, we recommend NPOs to establish best practice based rules internally including “Code of Ethics “ or “Code of Conduct”.

In case of JACO, we enact 34 internal regulations and disclose some of them by our internet site.

3. Transparency/Accountability

NPO s should be very transparent and accountable to the society.

Regulations in Japan prescribe about disclosure of certain documents stating that NPOs must provide annual report, balance sheet, income /expenditure statements, charter, a list of trustees/councilors/auditor(S) at the office of NPOs.

NPOs should show and illustrate these documents if someone requests.

Also NPOs should submit these documents to the respective authorities and the authorities disclose them through their official sites. ³

NPODAS (non-profit organizations data system) run by JACO collects government data, reformed to be understood by citizens and is

³ <https://www.koeki-info.go.jp> <https://www.npo-homepage.go.jp>

uploading them at the portal site.⁴

And many of PICs and RSNPCs are spontaneously disclosing their important and useful information at their own sites.

V Fund Raising

1. NPOs in Japan especially in case of SNPCs & RSNPCs are very enthusiastic to raise donation from individuals and companies. Our government is also encouraging people to donate and recently tax deduction on donation as for individuals are dramatically improved. The restrictions on fund raising does not exist in national bases. Only the Act on Authorization of Public Interest Incorporated Associations and Public Interest Incorporated Foundation prescribes roughly about the bans for excessive solicitation of donation. And some of prefectural decrees stipulate the similar rule to the above.

2. Composition of NPOs Revenues

The ratio of donation to total revenue for Public Interest Corporations was extremely low of 0.6% in Japan. But this was as of Dec. end in 2008 so that we expect the resent figure would be much higher.

The same ratio for Specified Non-Profit Corporations is 5.2% much higher than PICs.

For your reference, in case of Public Charities in the U.S., the ratio is 13.2%.

As a conclusion, the donation culture especially from individuals is yet pre-matured stage in Japan.

The Attached paper 1

22 Qualified Businesses as public interest activities

- (i) Business to promote academism and scientific technology

⁴ <http://www.nopodas.com/>

- (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 will to work for seeking the opportunity of 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 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 the 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 indispensable for the lives of the citizenry
- (xxii) Business to protect and promote the interest of general consumers

The Attached paper 2
18 Requirements for Public Interest Corporation

- (i) 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, councilors, directors, auditors, employees or other concerned persons specified by Cabinet Order with any special interest.
- (iv) When it operates its business, it does not engage in any act providing any donation or other special interest to any persons who run a stock company or other business for profit purposes or any other persons specified by Cabinet Order as ones that engage 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 interest for the business for public interest purposes
- (v) It does not operate any speculative transaction, financing with high interest or other businesses specified by Cabinet Order as ones being not suitable 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 cost 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 cause trouble to the operation of the business for public interest purposes
- (viii) When it operates its business activity, the ratio of the business for public interest purposes set forth in Article 15 is expected to exceed 50/100.
- (ix) When it operates its business activity, the amount of idle property set forth in paragraph 2 of Article 16 is expected not to exceed the restriction under paragraph 1 of said Article.
- (x) With respect to each director, the total number of said director and his or her spouse or relatives within the third degree of kinship

(including persons having special relationships specified by Cabinet Order with said director as those standing in a position similar to these persons) who are directors does not exceed one third of the total number of directors. The same shall apply to auditors.

- (xi) The total number of directors who are directors or employees of other identical organizations (excluding public interest corporations or others specified by Cabinet Order as those standing in a position similar to them) and other persons specified by Cabinet Order as those who stand in a similar position and have mutually close relationships with them does not exceed one third of the total number of directors. The same shall apply to auditors
- (xii) It has an accounting auditor; provided, however, that this does not apply in the event that the amount of revenue, the amount of cost and loss the amount of and such other accounts as specified by Cabinet Order of such juridical person in each business year does not reach the standards specified by Cabinet Order.
- (xiii) With respect to remuneration, etc. paid to its directors, auditors and councilors (which means remuneration, bonus or other property benefit paid as the consideration for the execution of their duties and the retirement allowance: the same shall apply hereinafter), it has standards for payment, as specified by Cabinet Office Ordinance, so that the amount of payment is not unsuitably high in view of the remuneration, etc. for directors and officers of business operators in the private sector, salary of employees, accounting situation of the juridical person in question or other circumstances.
- (xiv) In case of general incorporated associations, those falling under all of the following:
 - (a) It does not attach any unreasonably discriminatory conditions for treatment, or any other unreasonable conditions, for the acquisition or loss of qualification of members in the light of the purpose of the juridical person in question
 - (b) In the event that its articles of incorporation have provisions relating to the number of voting rights that are exercisable at the general meeting of members, matters for which voting rights are

exercisable, conditions for exercising voting rights or any other provisions relating to voting rights of members, such provisions fall under all of the following:

1. It does not treat voting rights of members in an unreasonably and discriminatory manner in the light of the purpose of the juridical person in question.
2. 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.

(c) It has a board of directors

(xv) It has no stock or other properties specified by Cabinet Office Ordinance that enable it to be involved in the decision making of other organizations; provided, however, that this does not apply to cases specified by Cabinet Order as those in which the possession of such properties would not result in substantial control of the business activities 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 any remaining amount of the public interest purposes acquired property (which means the remaining amount of the public interest purposes acquired property set forth in paragraph 2 of Article 30) exists when it receives a disposition of the cancellation of the Public Interest Corporation Authorization pursuant to the provisions of paragraph 1 or paragraph 2 of Article 29 or that a juridical person extinguishes as a result of a merger (excluding a case in which a juridical person that succeeds its rights and obligations is a public interest corporation), it provides in its articles of incorporation that it shall donate the property equivalent to such amount to other public interest corporations having a similar purpose of business or juridical persons listed below or the national government or local governments within one month after the day of such cancellation of Public Interest Corporation Authorization or the day of such merger.

(a) Educational institution set forth in Article 3 of the Private Educational Institutions Act

- (b) Social welfare juridical person set forth in Article 22 of the Social Welfare Act
 - (c) Relief and rehabilitation juridical person set forth in paragraph 6 of Article 2 of the Relief and Rehabilitation Business Act
 - (d) Incorporated administrative agency set forth in paragraph 1 of Article 2 of the Act on General Rules for Incorporated Administrative Agency
 - (e) National university corporation set forth in paragraph 1 of Article 2 of the Act on National University Corporation (Act No. 112 of 2003) or Inter-University Research Institute Corporation set forth in paragraph 3 of said Article
 - (f) Local incorporated administrative agency set forth in paragraph 1 of Article 2 of the Act on Local Incorporated Administrative Agency
 - (g) Other juridical persons specified in Cabinet Order as juridical persons similar to those listed in (a) to (f)
- (xviii) It provides in its articles of incorporation that, in case of liquidation, it causes the remaining property to be attributed to any other public interest corporations having similar business purpose or any juridical person listed in (a) to (g) in the preceding item or the national government or local governments.