

Annual Filing System of PICs in Japan: Preliminary Study for International Comparison of Annual Filing System of Charities

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1. Introduction

All organizations, both “for-profit” and “not-for-profit”, need continuous financial resources, received either by selling goods and providing services, or by receiving contributions and subsidies. This is especially true in the case of public benefit organizations²⁾ (PBOs) to fulfill their mission(s), which is to deliver goods or services for public benefit globally. To receive continuous support from society, PBOs must first gain the trust of the community where they operate, as well as maintain it. Maintaining trustworthiness within the PBO is crucial to succeed. Without it, no PBO can carry on fulfilling their mission(s) in the long run.

Being registered or authorized by governmental bodies, such as the Charity Commission in England and Wales, is one way of gaining the trust of the public. Getting public benefit status is the first step for PBOs, followed by continuously assuring the public of their trustworthiness and accountability. Annual filing or reporting to a governing authority such as the Charity commission is one way of demonstrating trustworthiness and accountability. The annual filing is a mandate for registration or authorization, and it is by law only the least requirement for PBOs. The PBOs need to voluntarily identify opportunities to demonstrate their trustworthiness.

This study examines the annual filing systems of PBOs in Japan as preliminary research for an international comparison of charities in the United Kingdom and New Zealand. These three countries have similar systems for PBOs; in Japan, the authorization system was adopted based on the model of the Charity Commission in England and Wales. By comparing the annual filing systems in each country, we can clarify the characteristics and identify similarities in these countries. In analyzing annual filing systems, we will focus on the following

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²⁾ The term of “public benefit organizations” is equivalent for the terms “public interest corporations” in Japan, “charities” in the United Kingdom and New Zealand and “501(c)(3) organizations” in the United States.

research questions: (1) Characteristics and rationale; (2) procedures and conditions for authorization/registration; (3) state benefit; (4) obligations of PBOs; (5) penalty for failing in filing; (6) transparency/public disclosure of filed documents; and (7) inspection/audit.

2. PBO System in Japan

In Japan, a major reform of the legal framework of PBOs³⁾ took place in December 2008⁴⁾ “to promote sound development of non-governmental/not-for-profit activities” (PIC Commission 2014). Three new acts related to the Public Interest Corporations (PICs) were enforced in 2008 (enacted in 2006) to implement the reform, which replaced the old PIC system under the Civil Code. The Public Interest Corporation Commission (PIC Commission) describes the purpose of this reform as “building a society in which non-governmental public interest activities prevail, through authorizing new Public Interest Corporations, and ensuring proper operations thereof by appropriate and prudent regulation in accordance with the new laws” (PIC Commission 2014). The Act on “General Corporations” (Ippan Hojin) stipulates the establishment and governance of General Corporations⁵⁾. The Act on Authorization of “Public Interest Corporations” (Koeki Hojin) stipulates criteria and requirements for both authorization and regulation of PICs (Authorization Act)⁶⁾. The Act on “Transition” stipulates the procedures for transition of former Civil Code corporations to the new system⁷⁾.

According to the new legal framework under these three new acts, one can establish a General Corporation – which is a not-for-profit organization – easily as a juridical person, by registering with a Registration Office. A general corporation does not have to be for the public interest, and can pursue profit for mutual or common interest within a group. Under the new laws, a general corporation can become a public interest corporation (PIC) through authorization by the Prime Minister or a Prefectural Governor and in consultation with the PIC Commission or the Prefectural Councils⁸⁾, but not by the permission of other government officials.

³⁾ In Japan, PBOs are called “Public Interest Corporations”, and this paper uses the term “PICs” to identify the Japanese PBOs.

⁴⁾ Regarding the history of the not-for-profit legal system and the reform in Japan, see Deguchi, 2016.

⁵⁾ Act on General Incorporated Associations and General Incorporated Foundations (Act No. 48 of 2 June 2006)

⁶⁾ Act on Authorization of Public Interest Incorporated Associations and Public Interest Incorporated Foundation (Act No. 49 of 2 June 2006)

⁷⁾ Act on Arrangement of Relevant Acts Incidental to Enforcement of the Act on General Incorporated Associations and General Incorporated Foundations and the Act on Authorization of Public Interest Incorporated Associations and Public Interest Incorporated Foundation (Act No. 50 of 2 June 2006)

⁸⁾ The process of authorization depends on the area of activities of general corporations that apply to be PICs. A general corporation that operates in the areas of more than a single

The authorization is granted based on the reports of recommendations by the PIC Commission or the Prefectural Councils of whether the application meets the criteria stipulated in the Authorization Act (Okamoto 2015; PIC Commission 2014). This authorization system was adopted based on the model of the Charity Commission in England and Wales, as already mentioned.

As of 30 September 2017, there are 9,494 corporations that have been authorized as PICs (PIC Commission 2017).

3. Overview of Annual Filing System

(1) Characteristics and rationale

In the new PBO system described above, PICs are expected to improve their corporate governance by disclosure and self-discipline. Disclosure is the key concept of the new system, and through disclosure, PICs must aim to be transparent and accountable for their activities and administration. The annual filing system is implemented to supplement self-disclosure of PICs, with mandatory filing of annual reports to the PIC Commission.

There are two kinds of filing requirements: The first is a filing requirement for documentation of a business (or activity) plan, and the other is of a business (or activity) report. These documents are subject to public disclosure, and thus available for public inspection.

(2) Procedures and conditions for authorization

A general corporation who wants to become a PIC can apply for authorization with the competent administrative agency in charge (the cabinet office or prefectures). It shall then be authorized as a PIC, based on the consultation of the PIC Commission or the prefectural councils.

The PIC Commission criteria is set out in the Authorization Act (Article 5). According to the Act, PICs must carry out activities in the public interest that: (1) falls within any of the descriptions listed below that relate to scholarships, art, charity, or other public interests, and (2) contribute to the promotion of interests of many and unspecified persons.

There are 23 types of activities (listed in the Appendix to the Act):

- (1) to promote academism, science, and technology;
- (2) to promote culture and art;
- (3) to support persons with disabilities; needy persons; and victims of accident, disaster, or crime;

prefecture (nationwide), fall under the jurisdiction of the Prime Minister, and the PIC Commission oversees the consultation. A local general corporation that operates in a single prefecture falls under the jurisdiction of the relevant Prefectural Governor, and the Prefectural Councils are in charge for the consultation (PIC Commission 2014).

- (4) to promote the welfare of senior citizens;
- (5) to support persons wanting to earn an income in seeking an opportunity of employment;
- (6) to enhance public health;
- (7) to promote sound nurturing of children and youths;
- (8) to enhance the welfare of workers;
- (9) to contribute to sound development of mind and body of citizens, and to cultivate human nature through – for example – education and sports;
- (10) to prevent crime and to maintain security;
- (11) to prevent accidents and disasters;
- (12) to prevent and eliminate unreasonable discrimination and prejudice by reason of race, gender, or other characteristics;
- (13) to be respectful and to protect freedom of thought and conscience, freedom of religion, and freedom of expression;
- (14) to promote the creation of a gender-equal society and otherwise better society;
- (15) to promote international mutual understanding and economic cooperation towards overseas developing regions;
- (16) to preserve the global environment and to protect and maintain the globe's natural environment;
- (17) to utilize, maintain, and preserve the national land;
- (18) to contribute to the sound management of national politics;
- (19) to develop sound local communities;
- (20) to secure and promote fair and free opportunities for economic activity, and to stabilize and enhance the lives of the citizenry through invigorating the economy;
- (21) to secure a stable supply of goods and energy indispensable for the lives of the citizenry;
- (22) to protect and promote the interest of general consumers; and
- (23) in addition to the above, other types of activity that relates to the public interest, as prescribed by the Cabinet Order.

(3) State benefit

PICs have tax-exempt status, since public interest activities are exempt from corporate tax. Although income from 34 specified for-profit activities (which are listed on corporate tax law) by other not-for-profit corporations – such as schools and social welfare organizations – are usually levied, the PICs' authorized public interest activities are tax-exempt. This is a significant incentive for most of PICs.

Furthermore, tax deductions for donations to PICs are provided to individuals' income tax and companies' corporate tax.

(4) Obligations of PBOs

The PIC Commission requires all authorized PICs to file numerous documents annually. There are two kinds of filing requirements. Before the start of each business, PICs are required to file business documents which describe the coming year's business plan, such as Business plan and Budget for revenue and expenditure. Additionally, PICs are required to file documents describing the past year, reporting on factors such as Inventory of property, List of officers, Rule of executive compensation, Article of incorporation, List of members, Business report, Financial reports (Balance sheet, Activities Statement, Cash Flow Statement) and other detailed information (Authorization Act § 21).

These documents are not only filed to the PIC commission, but are also subject to public disclosure upon the request.

(5) Penalty for failing in filing

There are two kinds of penalties with regards to annual filing by PICs. Any person or PICs as a juridical person who fails to prepare and keep the relevant documents, shall be punished by a fine of three hundred thousand yen or less.

Additionally, directors, auditors, or liquidators of PICs shall be punished by a non-penal fine of five hundred thousand yen or less.

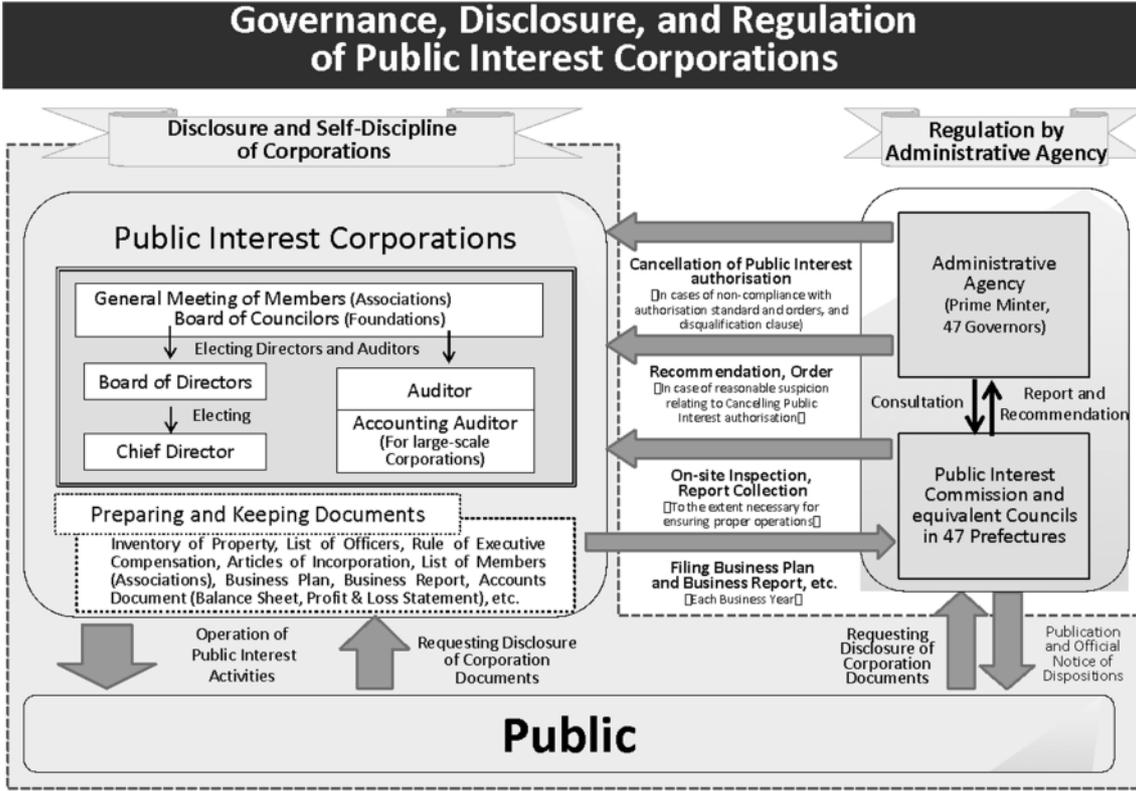
(6) Transparency/public disclosure of filed documents

The Public may request disclosure the documents filed by a PIC to the PIC Commission. There are two ways to access the documents. One is to go to the PIC Commission directly to read or/and copy them, and the other is to access the documents through the Internet.

Although the Internet access seems to be very convenient, it is very limited to access the documents. If you want to access the documents of some PICs, you need to fill in the users application form and register the names of PICs and documents, and when to access them. Once your registration is done, you will have a URL to access the requested documents for ten days only. There is no database on the web page of the PIC Commission, which one can freely access.

(7) Inspection/audit

The PIC Commission inspects all documents filed by PICs, and if deemed necessary, an on-site inspection and a report collection shall be made. Upon completion of the proper procedure, such as collecting, inspecting and questioning, the Commission can recommend that the Prime Minister (the competent administrative agency) take measures based on the recommendation or the order (Authorization Act §46I, §54). The PIC Commission plans to inspect all PICs on site once every three years. (Cabinet Office 2017).



[Source] PIC Commission 2014.

4. Conclusion

This study reviewed the annual filing or reporting system in Japan, as a preliminary study for international comparison. Two factors are pointed out for further study pertaining to the planned comparison: The volume of filed documents, and inspections by the PIC Commission.

The volume of documents filed by PICs is considerable. Most of documents required by the Commission are not too voluminous. However, some of the appendices or schedules, which are fixed formats, are very detailed, complicated, and time-consuming. Some of these appended documents are over 40 pages long. Considering the average number of staff is 5 per corporation (Cabinet Office 2017), preparing these documents is too labor-intensive, especially for small PICs.

Regarding inspections by the PIC Commission; in Japan, the Commission reviews all the documents filed by PICs every year theoretically, and inspect each of the PICs on site every three years. This means the PIC Commission needs to employ enough personnel to operate and manage the authorization system. Contrary to Japan, in New Zealand, the Charities Services disclose the documents filed by registered charities on the web, instead of reviewing all the documents internally, putting the onus on the public to monitor the charities.

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