

June 16, 2023

Opinion Paper – Summary of Research on Introduction of Benefit Corporation in Japan

In March 2023, the team completed research investigating the introduction of Benefit Corporation law in Japan commissioned by the Social Innovation and Investment Foundation (hereafter called SIIF). This article provides a summary of the submitted paper, "Research on Introduction of Benefit Corporation in Japan".

1. Purpose and Background of the Research

Globally, but most advanced in Europe and the United States, new legal entities such as the Benefit Corporation (BC) in the United States, which do not fall under the category of for-profit or not-for-profit corporations, are being established to realize the “common good”. In addition, there is a growing interest in companies not only to maximize shareholder profits but also to promote social missions and address social and environmental issues.

Under these circumstances, the Japanese government has also begun to examine a new corporate entity that will play a public role in the private sector in the Basic Policies for Economic and Fiscal Management and Reform 2022.

Believing that the Japanese version of the BC legal system and how it is supported by private sector certification will have a significant impact on the development of the domestic impact economy in the future, we conducted the "Research on Introduction of Benefit Corporation in Japan (Hereafter called this investigation)" to compile recommendations for the issues under consideration.

2. Three Main Research Approaches

(A) Desk/literature survey on the status of major overseas legal systems and private certification

a) Major overseas legal systems

We conducted a literature survey of the legal systems of four countries: the United States, Italy, and Spain, where the BC legal system has been established, and the United Kingdom, which has a similar legal system, as a reference when considering the Japanese version of the BC legal system.

< Comparison of Overseas Legal Systems >

	USA (Delaware State)	UK	ITALY	SPAIN
Legal Status Name	Public Benefit Corporation	Community Interest Company - CLG: Company Limited by Guarantee - CLS: Stock Limited Liability Company	Societa Benefit	Las Sociedades de Beneficio e Interes Comun
Governing Law	The Delaware General Corporation Law	Companies Act 2006	28-12-2015 n. art 1. 376-384 (Stability Law)	La Ley Crea y Crece, Ley 18/2022 (Create and Grow Law)
Year of Enforcement	2013	2005	2016	October 2022
Registration Procedure	Submission to State Department Business Division	Submission to: Company Registration Office Reviewed by: CIC Inspector	Submission to Italy Competition Authority	
Number of Company	3,823 (As of 2021, Delaware)	CLG:21,820 (83.7%) CLS:4,240 (16.3%) (As of March, 2022)	1,344 (As of Sep, 2021)	
Transparency/Benefit Reporting	- Every 2 years, Benefit Report is required. - Public sharing is not required. - Third party review is not required.	- Annual – CIC to draft CIC Report and submit to Registration Office.	- Annual Benefit Report submission is required together with Financial Reporting. - Third party review is required. - Required items are listed.	- Annual Benefit Report submission is required together with Financial Reporting. - Third party review is required.
Remarks	- MBCL has higher transparency requirement.		- Translation in English is required in some area. - Guidance support for B Corp application is available.	- Information is limited due to recent enactment of the law

Source: Final report of the “Research on Benefit Corporation in Japan”, by SIIF
Excerpts from (https://www.siif.or.jp/wp-content/uploads/2023/03/PBC_research_final.pdf)

b) Private Certification System

One of the private certification systems, the B Corp Certification System, is a third-party certification system by B Lab, an American non-profit organization, that evaluates a company's environmental and social performance. B Corp certification is an international third-party certification with more than 5,000 companies certified in 79 countries worldwide (as of May 2022), and because B Lab is leading the formation of a movement in each country in which for-profit companies pursue the realization of the public interest (hereinafter referred to as the B movement), we conducted a literature survey on B Corp certification to use it as a reference when considering a Japanese version of the BC legal system.

(B)Phone/in-person interview with experts

a) Direct interview of overseas experts

To identify important points to consider in developing the BC legal system and forming the B movement in Japan, interviews were conducted with a total of four overseas experts including B Lab staff and lawyers.

b) Interviews with overseas B Corp certified or applying companies

To understand the motivation, purpose, and background of obtaining B Corp certification overseas, the advantages and disadvantages obtained by obtaining B Corp certification, its relationship to the Head Quarter, and their views on the B movement, the interview was conducted with a total of four overseas companies that have obtained or are applying for B Corp certification.

c) Interviews with domestic stakeholders

To understand the perspectives and points to keep in mind when considering the BC legal system in Japan, the purpose and background of obtaining B Corp certification, the issues involved in obtaining it, and the issues involved in building up the B movement, the interview was conducted with a total of eight persons concerned in Japan (Academia, B Corp Certified Companies, BIA supporting consultants, etc.).

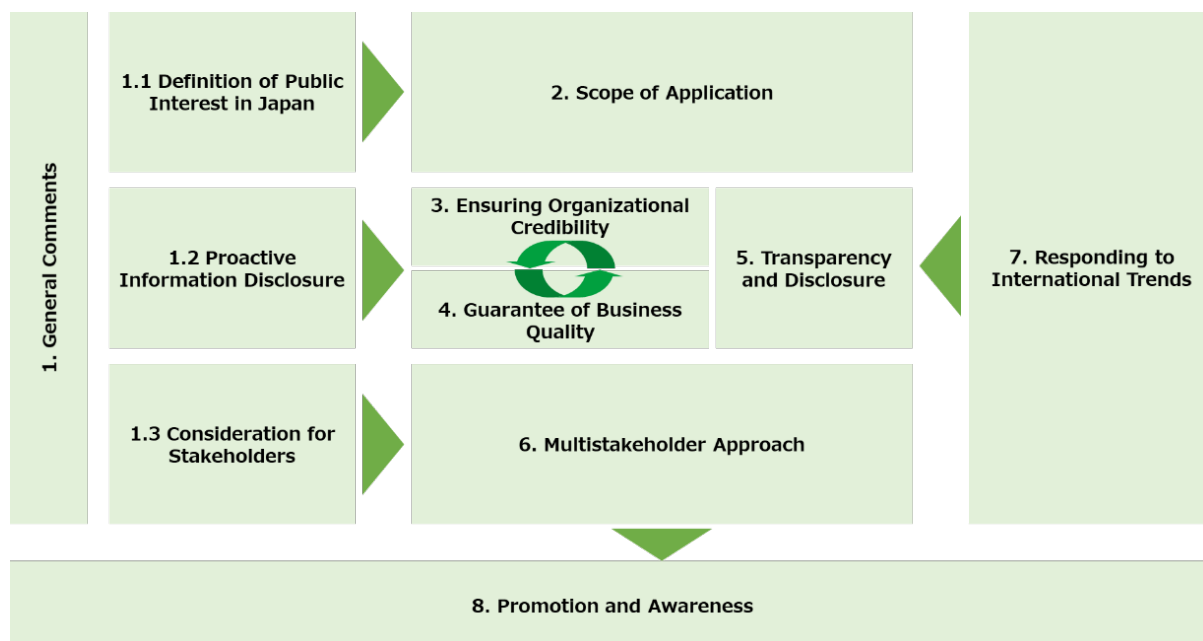
(C) Holding a Roundtable – February 2022

To create a collective proposal that reflects the views of diverse participants, we held a "Roundtable for the Development of the Impact Economy and the Possibility of a Japanese Version of the BC Law," gathering business companies, investors, and experts to exchange views on what to expect and what not to expect when a BC corporation is established in Japan, what benefit reports are required of BC corporations, ideas for expanding the scope of the B movement in Japan, and necessary environmental improvements.

3. Recommendations Based on the Findings

Based on the findings so far, we have compiled the following eight recommendations regarding the significance of the Japanese version of the benefit corporation legal system and the perspectives required (the figure below is an illustration of this).

< Relevance of Each Recommendation >



Excerpts from (https://www.siif.or.jp/wp-content/uploads/2023/03/PBC_research_final.pdf)

Recommendation 1: General Comments

BC in other countries is a system aimed at realizing the public interest by for-profit companies, not nonprofit organizations. The Japanese version of the BC legal system also needs to go beyond simply creating a corporate entity and contribute to solving social issues and creating social value by realizing the public interest through for-profit enterprises, which is the original purpose.

On that basis, BC companies should include in their articles of incorporation a definition of the public interest they pursue so that they are legally guaranteed to continue to pursue their originally established public interest objectives, even after a change in shareholders or management.

In addition, BC companies should promote the disclosure of information through benefit reports on solving social issues and creating social value as a result of business activities in order to enhance transparency in corporate management.

Furthermore, BC companies should take into account the interests of all stakeholders in their business activities while simultaneously pursuing economic activities and the realization of the common good.

Recommendation 2: Scope of Application

The Japanese version of the BC legal system should be a legal entity that can be selected and utilized by all profit-making companies, regardless of their size or industry, aiming to

simultaneously generate public interest and profits.

However, the requirements for companies require consideration of proportionality according to their size. In addition, it is necessary to fully consider how to apply the BC Act to complex business forms such as large companies operating in multiple business domains and regions.

Recommendation 3: Ensuring the Organizational Credibility

The use of private certification based on third-party standards, such as B Corp certification, which allows BC companies to objectively assess their social and environmental initiatives, is effective in ensuring organizational credibility.

Recommendation 4: Guarantee of Business Quality

Certain mechanisms such as impact measurement and management (Impact, Measurement and Management < IMM>) should be disseminated to ensure the quality of the public benefits that BC companies create through their business. It is also necessary to develop an environment for data and evidence to promote the implementation of mechanisms such as IMMs.

Recommendation 5: Transparency and Disclosure

For the BC companies to be accountable for their organizational efforts and the public benefits they create through their business, mechanisms should be established to ensure certain standards and practicability of information disclosure using benefit reports. For example, guidance and guidelines on the preparation of benefit reports should be provided, and the items listed should be common for comparability.

Recommendation 6: Multi-stakeholder Approach

Before a full-fledged study of the Japanese version of the BC legal system, BC companies and their surrounding stakeholders should be identified and their needs identified and reflected in the design of the legal system.

Recommendation 7: Responding to International Trends

The Japanese version of the BC legal system should be developed in a way that does not conflict with global trends, such as information disclosure (transparency), stakeholder consideration (accountability), and impact-oriented (quality assurance). In order to show that sufficient prior case studies have been conducted, it is desirable that the design and introduction of the Japanese version of the BC legal system be made known, including the background to the emergence of new legal entities in each country.

Recommendation 8: Promotion and awareness

In operating the BC corporate status system, it is necessary to promote BC corporate status to all stakeholders, from investors, financial institutions, educational institutions, local governments, and the general public, not only to gain recognition for companies that can become BC, but also to raise awareness of society as a whole.

Team Member: Makiko Hashizume, Nozomi Mizuno Witherspoon, Tamako Watanabe, Reiya Kaneki.

Source: [Research on Introduction of Benefit Corporation in Japan. \(siif.or.jp\)](https://www.siif.or.jp/en/research/introduction-of-benefit-corporation-in-japan/)

Summary Translated by: Nozomi Mizuno Witherspoon

<Contact Information>

Nozomi Mizuno Witherspoon

Sustainability & Social Impact Specialist

Japan Research Institute

Mizunowitherspoon.nozomi@jri.co.jp