



The Legal Infrastructure of Social Enterprise in Japan

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1. What is “Social Enterprise”?

➤ Definition from the U.K. Cabinet Office

“The criteria applied for an SME to be classed as a social enterprise are:

- The enterprise must consider itself to be a social enterprise
- It must not pay more than 50% of profit or surplus to owners or shareholders
- It must not generate more than 50% of income from grants and donations (or, equivalently, it should generate at least 50% of income from trading)
- It should think itself either ‘a very good fit’ or ‘a good fit’ with the following statement: ‘A business with primarily social/environmental objectives, whose surpluses are principally reinvested for that purpose in the business or community rather than mainly being paid to shareholders and owners’.”

(“Social Enterprise: Market Trends” (Cabinet Office, 11th March 2016),

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507236/SOCIAL_ENTERPRISE-_MARKET_TRENDS_2015.pdf)


➤ Definition from METI (2008)

An outlines of the three elements are,

- i. that whose work's mission is to deal with social problems that are required to be solved,
- ii. that the organization engages in business to pursue the mission, and continuingly keeps on their business activity, and
- iii. that the organization develops or utilizes new social commodities or services, or ways to provide those, and that the organization creates new social value.

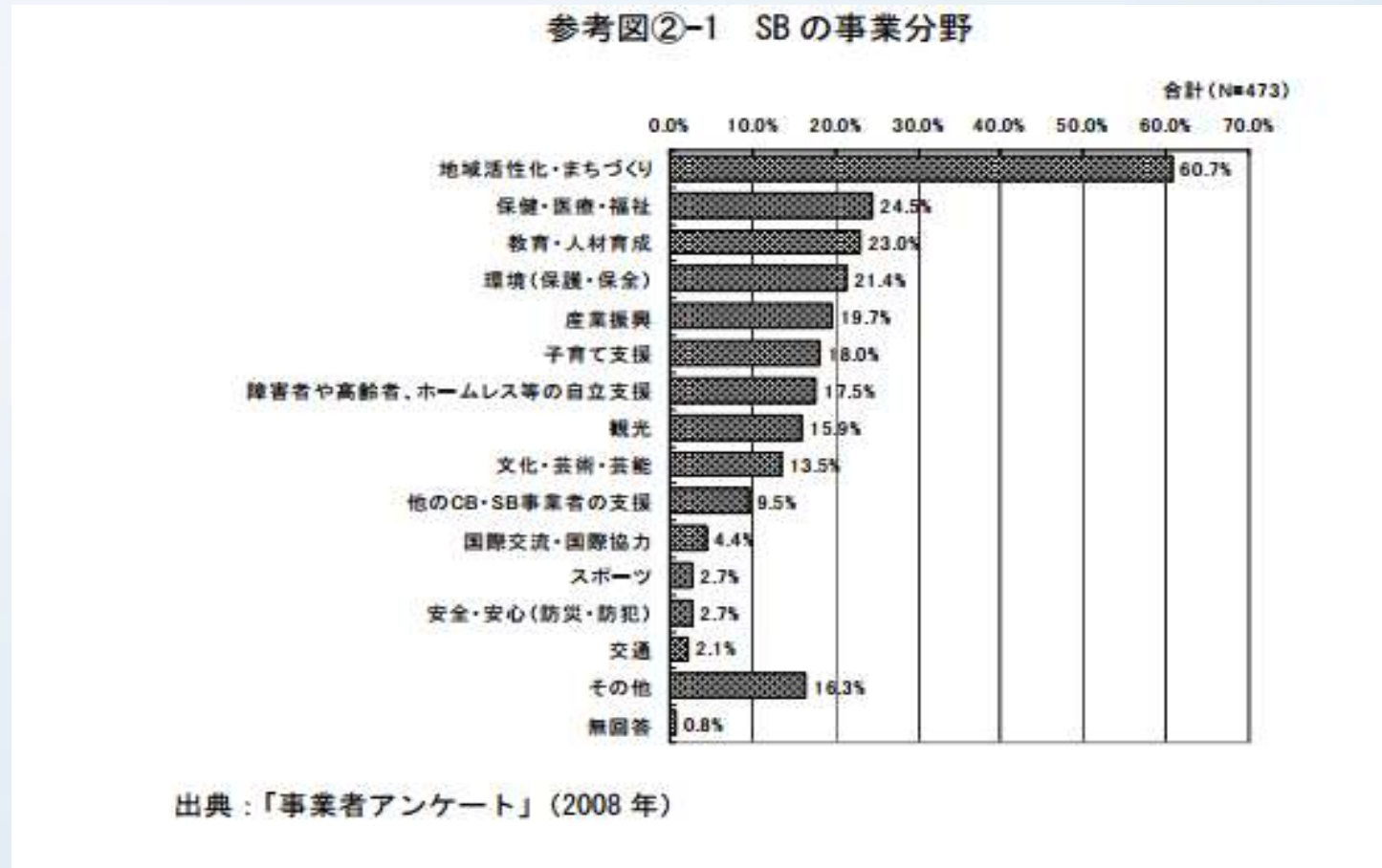
(Study Group on Social Businesses at METI (2008),

http://www.meti.go.jp/policy/local_economy/sbcb/sbkenkyukai/sbkenkyukaihoukokusho.pdf



2. Current Status of Japanese Social Enterprise

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– 8,000 social businesses, employing 32,000 people.

(Data and chart from Study Group on Social Businesses at METI (2008),

http://www.meti.go.jp/policy/local_economy/sbcb/sbkenkyukai/sbkenkyukaihoukokusho.pdf)





3. Available Options for Japanese Social Enterprise

Here, I refer to a company

- i. whose mission is to deal with social problems, and
- ii. who itself engages in business, rather than earns money mainly by donations or governmental grants.

i. As a nonprofit corporation

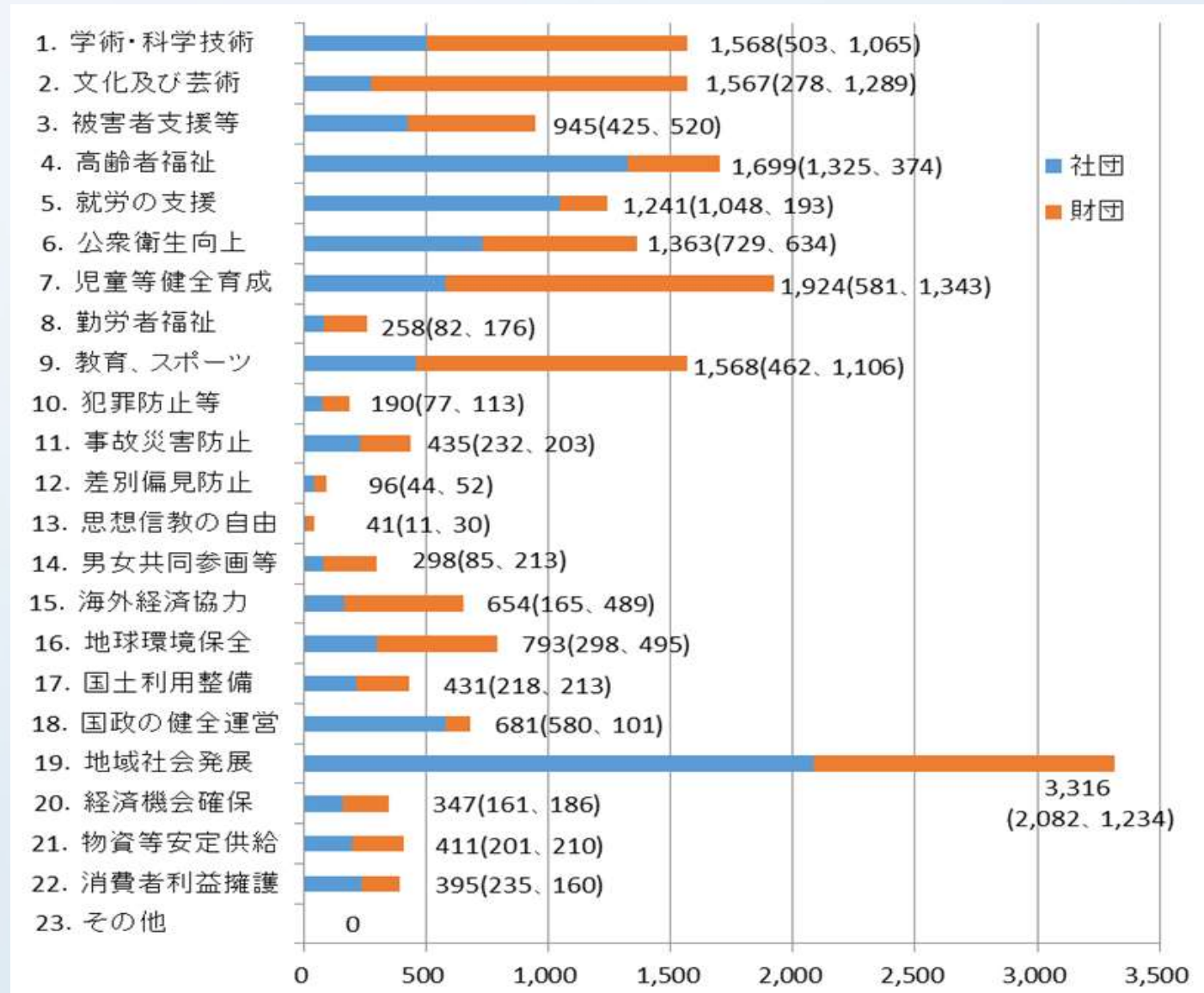
Status of legal entities	Number of existing entities	As of	The year of implementation of relative law
Public Interest Corporation	9,470	Dec. 2016	2008
General Non-profit Corporation	47,591	Jan. 2017	2008
Approved SNPC	1,237	Jan. 2017	1998
Specified Nonprofit Corporation	51,014	Jan. 2017	2002
Medical Services Corporation	53,408	Jan. 2017	1948
Private School Corporation	8,020	Jan. 2017	1949
Religious Corporation	181,810	Dec. 2014	1951
Social Welfare Corporation	20,733	Jan. 2017	1951
The Relief and Rehabilitation Corp.	164	Jan. 2017	1995

(Chart from The Japan Association of Charitable Organizations, Data Book (2017): Charitable and Non-profit Organizations in Japan, <http://www.kohokyo.or.jp/english/File/Data%20Book%202017.pdf>)

(i) General nonprofit corporation/public interest corporation

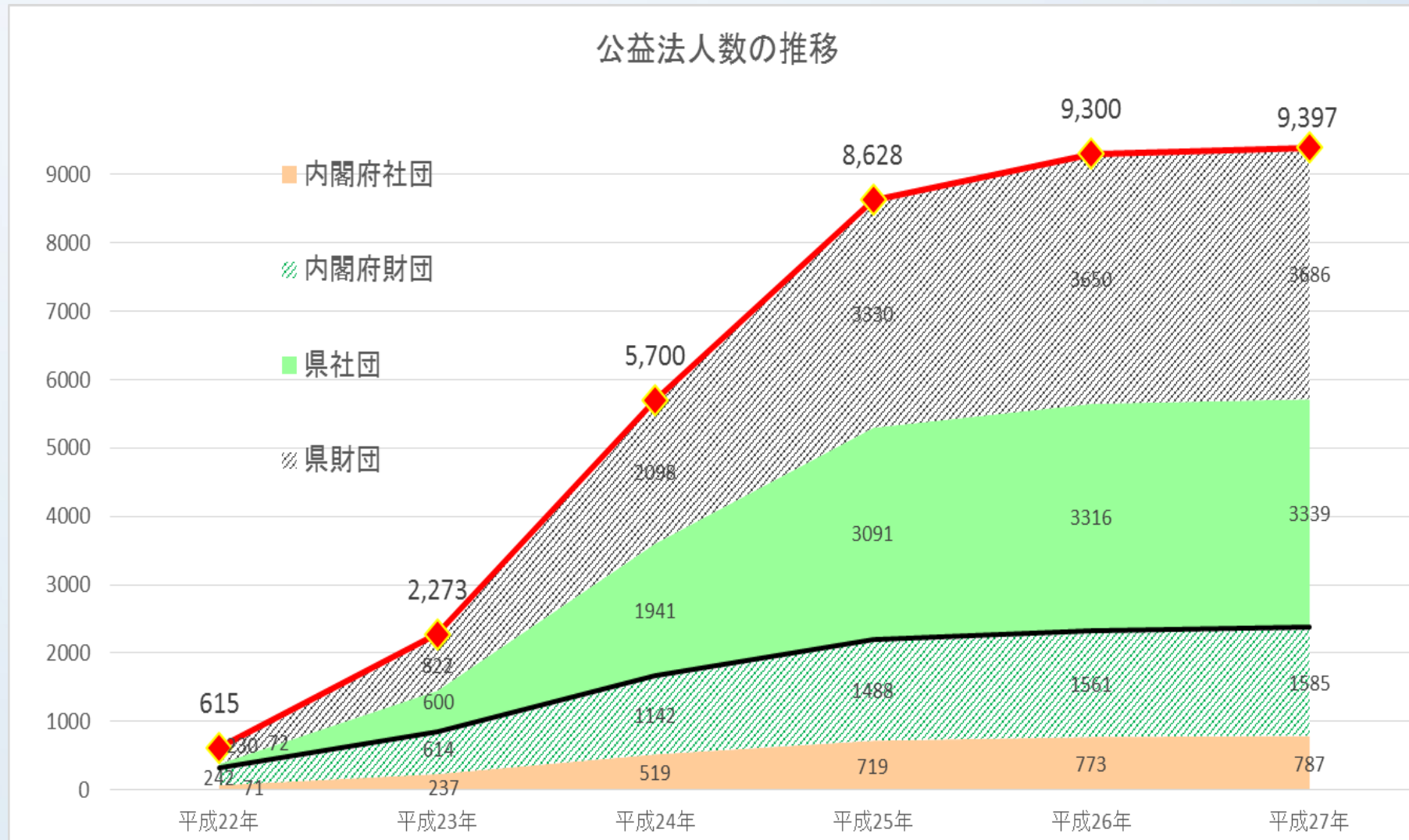
- Big Reform of Japanese Nonprofit Corporation Law in 2008
- Before the Reform: “public interest corporation based on civil code”
- Two acts were legislated.
 - Act on General Incorporated Associations and General Incorporated Foundations (herein after “general nonprofit corporation act”)
 - Act on Authorization of Public Interest Incorporated Associations and Public Interest Incorporated Foundation (herein after “authorization act”)
- General nonprofit corporation/public interest corporation
 - The principal objective of the public interest corporation has to be to operate the business for public interest purposes.

➤ 23 businesses of public interest corporation



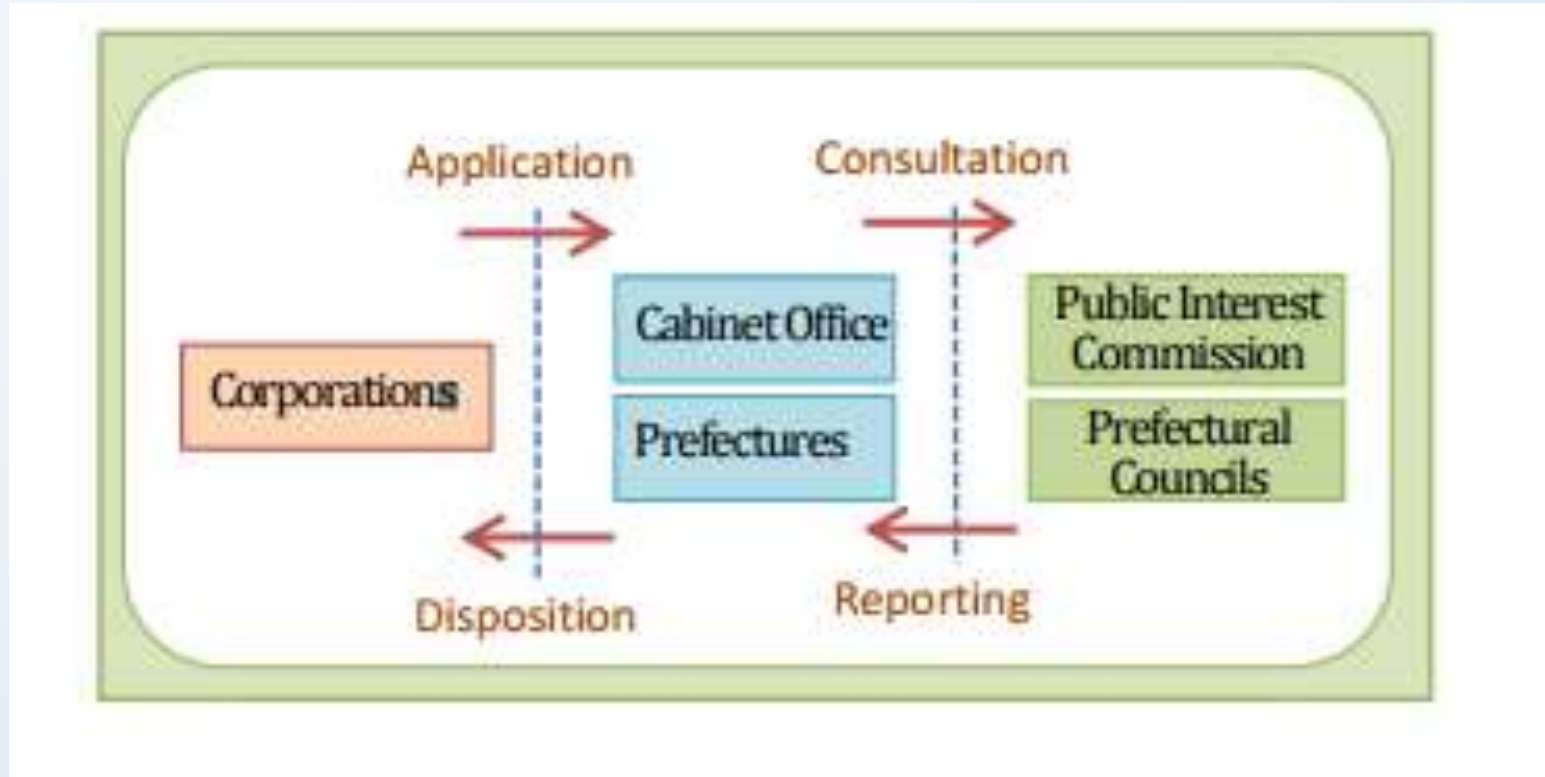
(As of 2015/12/31. Data and chart provided by Cabinet Office.)

➤ Number of public interest corporations



(As of December 31, each year. Data and chart provided by Cabinet Office)

➤ How to be a public interest corporation



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(Chart from Executive Office, Public Interest Commission, http://www.cao.go.jp/en/pmf/pmf_15.pdf)

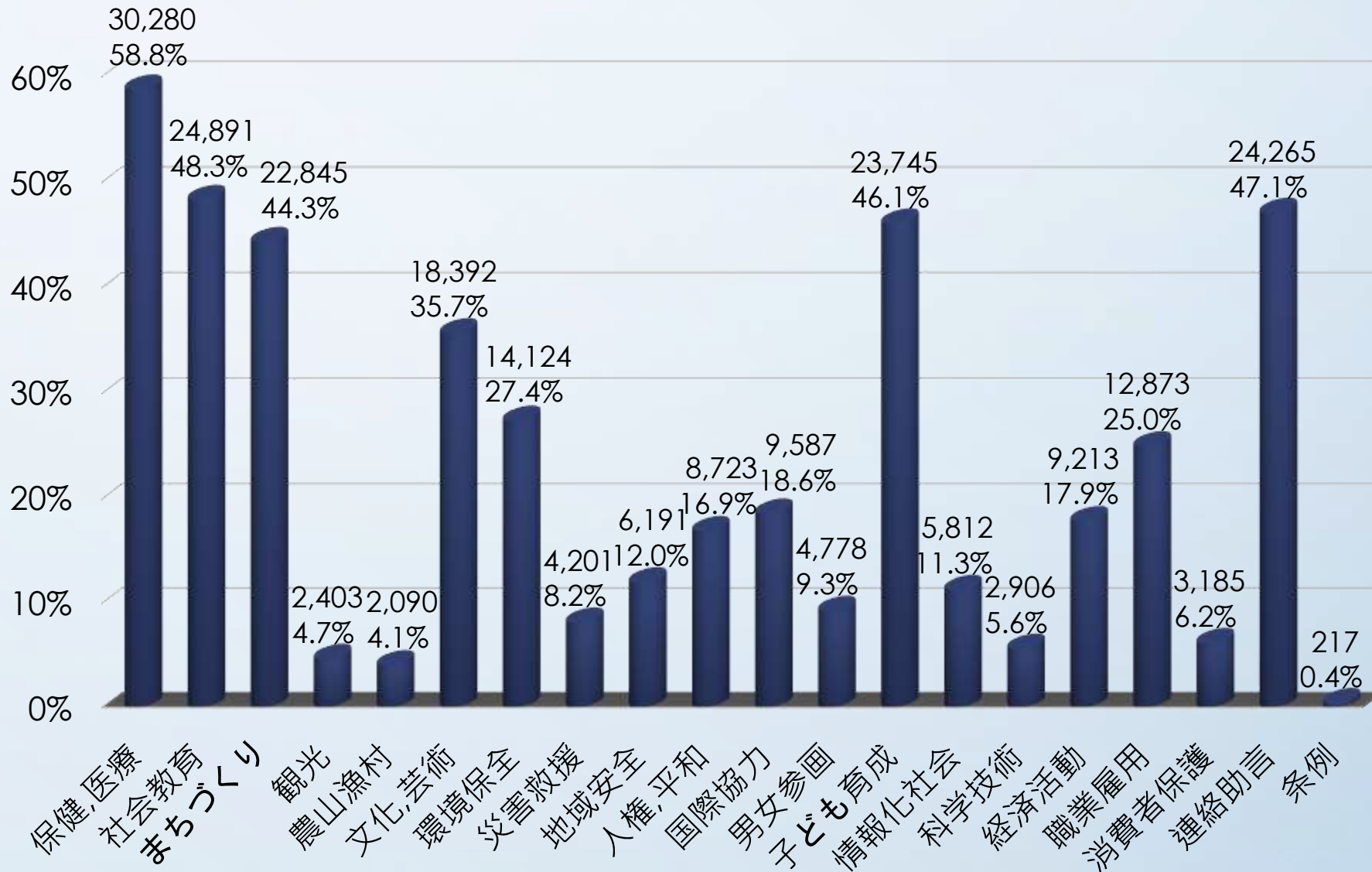
➤ 7 commissioners of public interest commission

- Tatsuaki KITACHI, Certified Public Accountant, Partner of Deloitte Touche Tohmatsu LLC, Deloitte Tohmatsu Tax Co.
- Keiko KOBAYASHI, Former Director of Maebashi District Court
- Mikio KOMORI, Certified Public Accountant, Former Senior Partner of ShinNihon LLC
- Mariko NISHIMURA, Professor at Meiji Gakuin University
- Yutaka HORI, Lawyer, Director and Vice-President of Chiba University
- Sayuri MEGUMI, Honorary Professor of Edogawa University, Tokyo
- Toru YAMASHITA, Senior-Advisor of NTT DATA Corporation

(ii) NPO Corporation/Approved NPO Corporation

- NPO Corporation and Approved NPO Corporation
- Why Japan has both General Nonprofit Corporation/Public Interest Corporation and (approved) NPO Corporation
 - NPO Corporation Law was enacted in 1998
 - After that, sweeping reform of the nonprofit corporation law system in 2008
 - NPO Corporation is one of the most used nonprofit corporate structures in Japan.
- Revision of Charitable Trust Law (now under consideration)

Activities of NPO corporation (as of March 31, 2017)



(Data and chart provided by Cabinet Office.)

ii. As a business corporation

- CSR Activity of Business Corporation
- Ultra Vires?
- Breach of Directors' Duty?

➤ Yahata-Seitetsu Case (1970)

[as to ultra vires]

- A Corporation has as its primary purpose the operation of a business that earns profit. Toward that end, it should focus on those activities that directly help it accomplish the purposes describes in its charter. Like humans, however, companies are social beings, constituent parts of the national and local community. With that social context comes social responsibility. Even if a given action appears to lack a connection to the purposes states in a firm's charter, if society expects the firm to take those actions then it has the legal capacity to do so.

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[as to director's duty of loyalty]

- When deciding the amount and other details of a company's potential political donation, directors should reasonably consider a wide range of matters, They should, for example, consider the company's scale, its performance, its social and financial situation, and the identity of the potential recipient. If they donate an amount that unreasonably exceeds the appropriate scale, they breach their duty of loyalty as directors.

English translation above is from J. Mark Ramseyer & Masakazu Iwakura, Casebook Mergers & Acquisitions (2015, Shoji-Homu) at 140.

ii. As a business corporation

- We do not have U.S. style benefit corporations or U.K. style CIC under Japanese law.



4. What do Japanese Social Businesses need?

(1) Difficulties to get financing

(Study Group on Social Businesses at METI (2008),

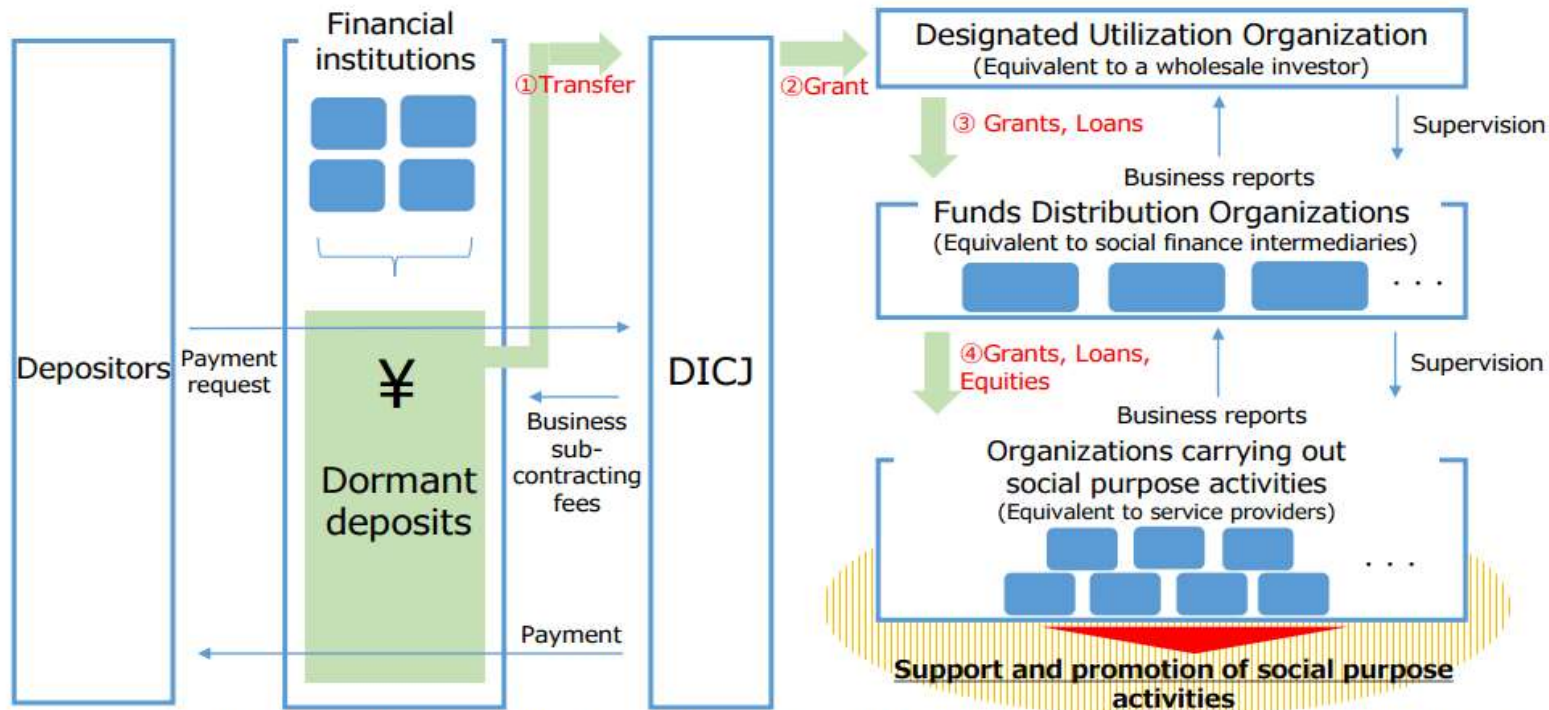
http://www.meti.go.jp/policy/local_economy/sbcb/sbkenkyukai/sbkenkyukaihoukokusho.pdf)

(2) Act on Utilization of Funds Related to Dormant Deposits to Promote Social Purpose Activities (2016)

➤ Act on Utilization of Funds Related to Dormant Deposits to Promote Social Purpose Activities (2016)

Flowchart of Dormant Deposits

- ① Financial institutions transfer dormant deposits to the Deposit Insurance Corporation of Japan (DICJ).
- ② DICJ grants the amount necessary for implementation of business plan to the Designated Utilization Organization.
- ③ The Designated Utilization Organization will be responsible for the implementation of promoting social purpose activities, selecting Funds Distribution Organizations based on the Business Plan and providing grants or loans.
- ④ Funds Distribution Organizations will select organizations engaging in social purpose activities and finance their projects.



※Depositors may request for the withdrawal of funds from dormant deposits (total principal and accrued interest) through the financial institutions even after transferred to the DICJ

(Useful materials written in English)

- Cabinet Office (内閣府), Outline of the Act on Utilization of Funds Related to Dormant Deposits to Promote Social Purpose Activities (Tentative), http://www5.cao.go.jp/kyumin_yokin/1704gaiyou_e.pdf
- Cabinet Office, Overview of system for transfer, management, and utilization of Dormant deposits (Tentative) , http://www5.cao.go.jp/kyumin_yokin/1703overview_e.pdf
- Cabinet Office, Material about Utilization of Dormant Deposits (Tentative), http://www5.cao.go.jp/kyumin_yokin/1702siryoushu_e.pdf
- The Japan Association of Charitable Organizations (公益法人協会), Data Book (2017): Charitable and Non-profit Organizations in Japan, <http://www.kohokyo.or.jp/english/File/Data%20Book%202017.pdf>
- English translation of “Act on General Incorporated Associations and General Incorporated Foundations,” <http://www.japaneselawtranslation.go.jp/law/detail/?id=2127&vm=04&re=01>
- English translation of “Act on Authorization of Public Interest Incorporated Associations and Public Interest Incorporated Foundation,” <http://www.japaneselawtranslation.go.jp/law/detail/?id=145&vm=04&re=01>

Thank you!

