

## Use of the B-Corp Certification System in Sustainability Management

Corporate Newsletter

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Authors:

[Akihisa Yamamoto](mailto:a.yamamoto@nishimura.com)  
[a.yamamoto@nishimura.com](mailto:a.yamamoto@nishimura.com)

[Takahisa Watanabe](mailto:t.watanabe@nishimura.com)  
[t.watanabe@nishimura.com](mailto:t.watanabe@nishimura.com)

[Rutsu Matsunaga](mailto:r.matsunaga@nishimura.com)  
[r.matsunaga@nishimura.com](mailto:r.matsunaga@nishimura.com)

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### 1. Introduction

The "New Capitalism Grand Design and Action Plan" (June 2022), announced in relation to the Kishida administration's "New Capitalism" vision, includes the topic of "consideration of new form of corporate structure that plays a public role in the private sector and reforming existing corporate structures". Since the plan's release, discussions on corporate structures that adopt the Japanese stakeholder model have come to attract attention. This "new form of corporate structure that plays a public role in the private sector" was intended to introduce a form reminiscent of the "Benefit Corporation" type in many U.S. states (particularly the Public Benefit Corporations of Delaware). However, the necessity of such form in Japan has been controversial.<sup>1</sup> In fact, the plan does not necessarily discuss the introduction of new systems, and no new corporate forms have been introduced so far.

Instead, attention has been placed on a stakeholder-conscious certification system acquirable without the need to change corporate form, the "B-Corp" - a globally recognized certification system granted to companies that conduct their business activities in a socially and environmentally conscious manner. As a result, an increasing number of corporations in Japan are considering acquiring B Corp certification.

In response to this trend, on March 1, 2024, the new establishment of B Market Builder Japan (hereinafter referred to as "BMBJ") was announced as an official partner responsible for the dissemination of B Corp certification in Japan.

In this news letter, we, who also provided legal advice when the BMBJ was established, outline an overview of B Corp certification and the current situation regarding B Corp certification in Japan, the merits of acquiring B Corp certification, and the acquisition process and points to note for Japanese companies. Also, we will provide

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<sup>1</sup> Although we do not deep into the discussion about the necessity of a new corporate form in this newsletter, some in Japan object to the introduction of new corporate forms is based on the operation of the duty of care in Japan. The principle of maximizing shareholder interest is defined as the obligation of due care in management by Japanese directors that allows them to flexibly incorporate the interests of stakeholders (even if the legal system itself is designed on the assumption of the principle of shareholder first). In other words, while US Benefit Corporations are seen as freeing stock company directors from the principle of maximizing shareholder returns in a strict sense, it is widely accepted in Japan that the benefits of shareholders include "Long-term benefits." Moreover, since it is also widely accepted to interpret such obligations to include that a company should be allowed to act as expected by society to a considerable extent, even if it does not lead to the maximization of shareholder returns, there is little room to argue that it is not possible to achieve the objective of managing a company that emphasizes not only shareholder interests but also public interests without the introduction of new corporate forms. This situation is similar to the situation in which the United Kingdom where directors are required to act considering stakeholders' benefits or interests (see Article 172 of the Companies Act 2006) has not introduced a system equivalent to Benefit Corporation of the United States. For an outline of Benefit Corporations and equivalent corporate forms in other countries, see also Nishimura & Asahi (Gaikokuho Kyodo Jigyo), "Investigation Report on New form of corporate organization that plays a public role in the private sector in the United States and Other Countries (Outsourced by the Secretariat of the Cabinet Secretariat's New capitalism Realization Headquarters)" March 31, 2023.

an explanation for the relationship between the articles of incorporation provisions on sustainability management and B Corp certification.

## 2. Overview of B Corp Certification

B Corp is an abbreviation for an enterprise that has received a certification as a B Corporation (B Corp certification). The “B” in B Corp refers to the English word “Benefit for all” and is based on the belief that it is to the company’s benefit to produce positive outcomes for employees, customers, communities, and the environment, not only shareholders.

B Corp certification is an internationally recognized private certification system provided by the U.S. non-profit organization, B Lab<sup>2</sup>, and is granted to companies that have applied for B Corp certification and are recognized as having a high level of social and environmental performance, accountability, and transparency as determined by B Lab.<sup>3</sup>

Notable companies that have acquired B Corp certification in other countries include French grocery company Danone’s group company, French luxury fashion brand Chloé, Swiss coffee and beverage company Nestlé Nespresso, U.S. outdoor products company Patagonia, U.S. snowboard products company Burton Snowboards, U.S. environmentally friendly sneakers company Allbirds, French skincare products company L’Occitane, and Australian beauty products company Aēsop.

To obtain B Corp certification, companies are required to (i) pass a rigorous examination by B Lab on social and environmental performance; and (ii) make legal commitments by changing their corporate governance structure to ensure accountability to all stakeholders as well as shareholders (requirements vary by region); and (iii) provide transparency by making information on performance measured against B Lab standards publicly available on B Lab’s website (see 5. below for more information on the certification process). The examination hurdle is considerably high, and there are a considerable number of corporations that fail to obtain certification despite having submitted an application.<sup>4</sup> Nevertheless, B Corp certification is a system that can be used regardless of the size, industry, listed/unlisted status, or history of a company (from start-up to long-established companies). For Japanese companies, it is a system worth active and strategic consideration of its use from various perspectives, such as marketing, branding, recruiting, and ESG·SDG perspective.

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<sup>2</sup> B Lab is a Philadelphia-based non-profit organization established in 2006 that aims to support a global movement that leverages the power of businesses as a means of improving society. In addition to granting B Corp certification, B Lab manages B impact management programs and software, and adopts and improves state-level Benefit Corporation legislation through policy-making activities.

<sup>3</sup> B Corp certification is a system in which B Lab, a third-party organization, evaluates the company’s stakeholders and community-wide efforts and labels the company as a “good company.” B Corp refers to the name of an organization that has obtained certification among those that use an existing organizational structure (for example, a joint-stock company, etc.) and differs from Benefit Corporation, which is a type of corporate structure. For differences in Benefit Corporation’s B Corp certification, see also Nishimura Asahi Legal Office, “Research Report on New form of corporate organization that plays a public role in the private sector in the United States and Other Countries (Commissioned by the Secretariat of the Cabinet Secretariat’s New capitalism Realization Division),” March 31, 2023.

<sup>4</sup> See B Lab’s HP (<https://www.bcorporation.net/en-us/certification/>).

### 3. Present Status of Japanese B Corp Certification System and Establishment of BMBJ

According to B Lab<sup>5</sup>, as of May 6, 2024, 8,622 corporations (from 162 industries) in 98 countries had acquired B Corp certification, representing a dramatic increase over the last few years. B Lab has a global partner called B Global Network in each region of the world, and as of the date of this writing, 14 Global Partners around the world are supporting regional B Corp movement.<sup>6</sup>

In Japan, the number of companies that have acquired B Corp certification has been increasing since 2021 in particular, and as of May 6, 2024, there were 40 B Corps (including two listed companies).<sup>7</sup> As far as we are aware, there are many Japanese corporations, including listed corporations, who are currently considering and preparing to obtain B Corp certification, and it is expected that the number of certified corporations will increase dramatically.

In response to this trend, on March 1, 2024, the newly established BMBJ was announced as an official partner responsible for disseminating B Corp certification in Japan. BMBJ is composed of entrepreneurs, executives, and employees of B Corp certified corporates, and consultants. It is slated to be responsible for enquiries concerning B Corp certification, information-dissemination regarding B Corp (its SNS and BMBJ Dashboard etc.), and management of the B Corp community (B Corp School) for those interested in engaging in B Corp processes in cooperation with external experts.<sup>8</sup>

The establishment of BMBJ will considerably improve the problem of lengthy audit durations, which has often been cited as an issue hampering B Corp certification in Japan. In addition, by introducing local Japanese user voices and opinions to B Lab Global, BMBJ is expected to address the fact that Japan's specific circumstances were not necessarily taken into account in creation of the examination standards' content and operation.

### 4. Advantages of acquiring B Corp certification

The advantages of acquiring B Corp certification vary by company, but it is conceivable that a certified company will secure and retain qualified and sustainability-oriented talents (in particular, appealing to the millennial generation), increase awareness through exposure to the media, earn the trust of stakeholders (including business partners), secure long-term commitment to the company's mission, and strengthen their supply chain through building relationship between B Corps.

These advantages are likely to exist in the same manner (to varying degrees) when using a corporate form equivalent to the Benefit Corporation mentioned in section 1. (above). However, in Europe and the United States, in particular, there are companies that recognize B Corp certification as more effective in terms of attracting customers and employees because of the fact that it is more widely recognized in society than Benefit

<sup>5</sup> HP of B Lab (<https://www.bcorporation.net/en-us>).

<sup>6</sup> See B Lab's HP (<https://www.bcorporation.net/en-us/movement/global-network>)

<sup>7</sup> Japanese corporations that have acquired B Corp certification can be identified in HP of B Lab (<https://www.bcorporation.net/en-us/find-a-b-corp/?refinement%5BhqCountry%5D%5B0%5D=Japan>).

<sup>8</sup> According to the press release, the Japan Social Innovation and Investment Foundation, the Social Impact Management Initiative, and the Japan Research Institute, Ltd. are the official partners.

Corporations. The following advantages are considered to be specific to B Corp certification.

### **(1) Business benefits**



When B Corp certification is obtained, the above certification seal can be affixed to the packaging of the company's products. B Lab has been working for more than 15 years to raise awareness of B Corp certification and brand power. In particular, in Europe and the United States, recognition of B Corp certification has been spreading, including among ordinary consumers. The certification mark has branding and marketing benefits, such as increasing brand differentiation and customer loyalty by those who emphasize corporate sustainability and social responsibility.

In addition, by obtaining B Corp certification, certified companies are perceived to have sustainable business models and internal systems, leading to improved assessments in the global supply chain. In particular, in recent years, supply chain management has become an issue for many global companies, partly due to the tightening of regulations on ESG, and obtaining B Corp certification also may lead to an expansion of corporate opportunities with such companies.

Furthermore, business-to-business collaboration between B Corps also is taking place. For example, in the domestic market, Fermentation Co., Ltd. and SIGMAXYZ Group (both B Corp certified companies) have jointly implemented projects. They have begun to develop aroma sprays and disinfectant sprays containing up-cycle ethanol from wine residues.<sup>9</sup>

### **(2) Continuous review of internal systems through B Impact Assessment**

B Impact Assessment ("BIA") is the process required for obtaining and renewing B Corp certification (see 5.(2) below), but it is not the only process. That also is an online assessment tool that can be used to continuously improve corporate social and environmental initiatives. BIA is designed to make meaningful comparisons regardless of the size of the company, allowing it to identify the advantages and benefits of its efforts over those

<sup>9</sup> See press release, December 12, 2022, "Fermentation Co., Ltd. realizes a collaborative project between SIGMAXYZ Group and B Corp certification companies."

of other companies. So to speak, BIA is an effective Due Diligence tool. Since the outcome of BIA is a numerical value for each item assessed, the method can be utilized to improve a company's sustainability, etc., by setting KPI for individual items and continuously reviewing the company's internal systems. It is available free of charge to corporations not aiming to acquire B Corp certification; the number of companies using it has reached more than 280,000.<sup>10</sup>

### **(3) Collective efforts through participation in a B Corp community**

For some B Corp, becoming a member of a B Corp community has been cited as an advantage in acquiring certification. B Lab also recommends that B Corp Peer Circles be organized as a gathering of certified companies and that knowledge be shared among certified companies through such as the B Movement Builder Program, which will be described later. In addition, each region has its own B Corp Movement.<sup>11</sup>

B Corps also have been engaged in proactive coordination. For example, with regard to climate change, there are groups that engage in cross-sectoral collaboration on climate change, including B Corp Climate Collective policy recommendations. In the beauty industry, cosmetics companies that have acquired B Corp certification have formed a consortium called the B Corp Beauty Coalition to conduct study sessions, and to publish B Beauty Navigator, guidance on best practices in key operational areas, such as joint raw material procurement, responsible and sustainable packaging, and logistics.<sup>12</sup>

Efforts through collaboration with academia are also being actively undertaken in each country. In Japan, for example, in February 2024, the Japan Research Institute, Ltd. and Waseda Business School jointly launched a course entitled "SX Human Resource Development Utilizing B Corp" and conducted activities to disseminate and educate Japanese business people about B Corp.

BMBJ also is focusing on the creation of such communities in Japan. For example, it has set up a "BMBJ Dashboard" where information on B Corp is gathered domestically and internationally, and a "B Corp School" where people who are interested in B Corp can gather. It is expected that this community will develop further in the future.

## **5. B Corp certification process**

### **(1) Outline of the acquisition process and points to note**

Enterprises seeking to acquire B Corp certification may vary somewhat depending on industry, sales, number of employees, group-capital structure, etc. However, the current situation generally involves obtaining B Corp certification through the following procedures. Even in the case of Japanese companies, the procedures are basically required to be in English and do not correspond to the Japanese language (with the exception of some

<sup>10</sup> B Lab's Annual Report(2023 Year Version) (<https://infogram.com/1tqq4oled29lzdc4omkqgkpk2eu8k7y0e1x>)

<sup>11</sup> "B Corp Handbook: Measurement, Practice, and Improvement of Good Businesses" (translated by Nozomi Torii, Shinya Yashiro, and Kei Wakabayashi) p. 51 and thereafter provide an outline of B Corp Movement by region.

<sup>12</sup> See Released on March 29, 2023 ([https://www.bcorpbeauty.org/wp-content/uploads/2023/03/Press-Release\\_B-Beauty-Navigator\\_-B-Corp-Beauty-Coalition.pdf](https://www.bcorpbeauty.org/wp-content/uploads/2023/03/Press-Release_B-Beauty-Navigator_-B-Corp-Beauty-Coalition.pdf)).

processes).

- (i) Register for online B Impact Assessment (an assessment to measure, manage, and improve positive impact) and answer approximately 200 questions about the company in five areas: governance, employees, community, environment, and customers.
- (ii) After scoring 80 or more points on an on-line BIA (out of 200 points in principle), apply for a formal BIA Review by submitting the findings. Even among enterprises that have actually obtained certification, however, there are many cases in which they have not been able to obtain more than 80 points in the initial BIA, and in such cases, it is common for them to form a team within the company and then go through the process of taking the necessary internal remedial measures to obtain the required scores.
- (iii) Once the application is accepted, B Lab analyst will be assigned and will undergo a B Corp certification Review Process. The audit often requires verification of Legal Requirements and the submission of evidence for randomly selected questions from approximately 200 questions subject to BIA. Applicants provide necessary explanations and upload supporting materials and data online, and then conduct oral questions and submit additional materials with the assigned specific analysts.<sup>13</sup>
- (iv) When the final examination is completed and it is confirmed that 80 or more points have been achieved, B Corp certification is obtained by signing a B Corp Agreement stipulating licensing of the use of intellectual property rights, such as the prescribed oath (B Corp Declaration of Interdependence) and B Lab logos, and paying the prescribed annual certification fee according to the region and annual sales of the company.<sup>14</sup>

Companies with B Corp certification need to publish their BIA score and impact reports on the B Corp Directory accessible on B Lab's homepage. In addition, companies that have obtained B Corp certification need to renew their certification procedures once every three years. Upon updating, a new BIA should be received and an impact report should be submitted. This rigorous certification process and ongoing external disclosure ensure the prevention of “washing.”

An important point to note when applying for B Corp certification is that B Lab has established specific Risk Standards for particular industries and practices. Risk Standards is an additional criterion that a company belonging to an industry associated with an issue that B Lab designates as a “Controversial Issue” must meet in order to qualify for B Corp certification.<sup>15</sup>

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<sup>13</sup> Confirm how to incorporate Stakeholder Governance, which is a legal requirement as a B Corp, subject to the company's legal structure (legal entity). It should be noted that the requirements of companies in each country can be confirmed by the Legal Requirement Tool, and for Japanese companies, changes to the articles of incorporation are not required on the assumption that certain pledges are made during the certification process.

<sup>14</sup> Some experts have pointed out that the mechanism by which enterprises receiving certification pay certification fees to organizations that create and certify standards is itself problematic from a structural conflict of interest perspective. In this regard, it can be said that this is a problem that applies to certification and rating systems in general. However, self-help efforts must be made in B Lab to ensure the reliability of standards, such as by making the process of preparation and certification transparent, objective, and neutral, and by making the design of certification fees reasonable and objective.

<sup>15</sup> For Controversial Issue, refer to HP of B lab for further information (<https://www.bcorporation.net/en-us/standards/controversial-issues/>).

If the applicant is doing business related to a Controversial Issue, then (i) the applicant may be determined not to qualify for certification in the first place, and (ii) the applicant may need to disclose that it meets the additional risk criteria set forth in B Lab or take corrective actions that meet the criteria. In addition, B Lab may not be able to proceed with a substantial certification process for companies in industries that have not yet completed the development of such additional standards or for which standards have not yet been developed.<sup>16</sup>

Furthermore, since the type of industry in which an enterprise belongs is determined by the discretionary decision of B Lab based on the actual sales and business conditions of the enterprise in question, there are cases in which it is not always possible to file an application in the industry in which an enterprise desires. In this regard, some people have heard that rigid procedures may be implemented that do not necessarily take into account the circumstances and customs unique to Japan. It is expected that BMBJ will be able to enter B Lab Global with a local point of view. In addition, it is assumed that the application process will be difficult if the application of the company concerned is subject to Controversial Issue review. Therefore, it is essential to confirm and prepare in advance how to explain to B Lab whether or not the company's business falls under a Controversial Issue specified by B Lab or if there is any such concern.

## **(2) Introduction to B Impact Assessment**

As mentioned in (1) above, in order to acquire B Corp certification, a score of 80 or more must be obtained in the BIA (out of 200 points in principle). The current BIA consists of approximately 200 questions with five main questions: Governance/Employees/Communities/Environment/Customers, all of which are scored.

### **A) Governance**

With regard to governance, the BIA confirms how the company's mission is incorporated into the company's internal rules, such as the articles of incorporation, and how it is secured from the viewpoint of the company's decision-making process and internal control, such as the composition of directors and committees, in order to create a positive impact on society and the environment.

The above Legal Requirement is also relevant, but in governance, in addition to the mission statement that the company has voluntarily formulated and does not have any particular legal effect, there are questions regarding whether or not environmental and social considerations are legally indicated as part of the decision-making process. Typically, the articles of incorporation provide for the benefit of stakeholders, and questions are asked as to whether a corporate form incorporating the benefit of stakeholders, such as a Benefit Corporation, has been adopted.

Since there is no corporate form equivalent to Benefit Corporations in Japan at this time, the standard practice is to obtain B Corp certification is obtained after pledging to make decisions that take into account the impact on not only shareholders but also employees, customers, suppliers, local communities, and the environment to the extent possible under the country's legal system, and to use a system equivalent to a Benefit Corporation

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<sup>16</sup> At the date of this writing, B Lab has announced that it will develop risk standards for platform economy and engineering consulting companies with clients in the defense sector. In addition, the automobile and machinery industries, block chains, construction, fisheries, agricultural chemicals, social media industries, etc. require specific risk standards, but they are considered to be industries that are not yet planned to be developed.



as soon as its established in Japan.

## **B) Employees**

In the Employees section, employees' satisfaction and engagement with the company are evaluated. Evaluation items include employee ownership of the company (stock options, stock holding associations, etc.), salary systems, etc., ensuring mental and physical security and health, support for career development and skill upgrading, accessibility of financial data from the viewpoint of employees, presence or absence of childcare leave and paid pay, and implementation of anonymous satisfaction surveys and engagement surveys.

When comparing the score distributions among Japanese B Corps, the fields involved show relatively little difference in employee scores. The reason for the employee requirements is that, although there are some restrictions based on Japan labor legislation and labor-management practices, there are many that can be dealt with by establishing an internal system without involving business partners or supply chains, and it is easy for corporations to improve.

## **C) Community**

In the community section, how the company connects with and contributes to various communities as a member of the local community is evaluated. Specifically, it is necessary to answer questions regarding initiatives related to the diversity, impartiality, and inclusion of women, races, LGBT, disabled people, and low-income people (including recruitment, managerial positions, and wage differences), the status of volunteer and pro-bono initiatives by employees, social service activities such as donations, and other initiatives related to contributions to the local community in the workplace environment. As to diversity in the supply chain, there also are questions about whether the company has a supply chain diversity policy, procurement fees from local vendors, and assessments of the social and environmental impacts of suppliers.

Nevertheless, it seems that many Japanese companies find it difficult to comply with the requirements of B Lab if they assume a traditional working environment for Japanese companies. International trends, for example, tend to require corporations to take active measures to deal with social issues and to provide external explanations. B Lab standards that require proactive measures to resolve such issues as discrimination and inequality are consistent with these trends. However, many Japanese companies have traditionally not been involved as a company in privacy-related topics such as LGBT, or in non-business and private matters such as the participation of employees in volunteer. In addition, the perception of minorities in the workplace is not necessarily the same as in the Western countries in light of Japan's cultural and historical background.<sup>17</sup>


## **D) Environment and customers**

Regarding environmental section, there are questions about the environmental management system and its contents. In addition to questioning typical environmental issues, such as evaluation of Scope 1 2 3 emissions

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<sup>17</sup> For example, in April 2023, TIFD (Task Force on Inequality-related Financial Disclosures) and TSFD (Task Force on Social-related Financial Disclosures) were announced to create a framework for disclosing information on social issues such as inequality and disparities. In ISSB's "Request for Information: Consultation on Agenda Priorities", new research and standard-setting projects that may be added to the work plan for the next two years include human capital and human rights.





monitoring in supply chains emissions and waste volumes, office water conservation, environmental management in remote work situation for employees, and environmental efforts in manufacturing supply chains and product packaging.

In the customer section, questions are asked about how the company's products and services affect and provide value to customers, and how the company checks and monitors feedback from customers. For example, ISO 9001 acquisition, establishment of privacy and ethical marketing policies, and provision of customer service contacts can be regarded as effective efforts.

BIA scores for Japanese B Corp show a marked difference between this environment and the scores for customers. Although it is not possible to make an overall comparison because some companies are more likely to have a positive impact than others depending on their industry, business model, and company size. However, there seems to be some room for improvement in the description and explanation of the same fact, such as how to express it in a way that is well connected to their business model. In this regard, it would be beneficial to exchange information with companies that have already obtained B Corp certification, or to seek the assistance of consultants and other advisors who can assist in obtaining B Corp certification.

### **(3) Revision of B Corp certification standards**

B Lab continually reviews its B Corp certification standards in collaboration with the Standards Advisory Council, which is independent of B Lab's governance-based on best practices, stakeholder inputs, and findings. The most recent BIA is Version 6, which was revised in January 2019. Since 2020, the certification standards have been drastically revised, including the revision of BIA.<sup>18</sup>

The draft of the new standard was released for public comment between September 26 and November 30, 2022, and the second public comment was carried out between January 16 and March 26, 2024.

A key change in the draft of the new standard, which was included in the public comments, was to eliminate the criteria required to obtain at least 80 points in a BIA, and require the fulfillment of two levels of criteria: Foundation Requirements for obtaining B Corp certification for corporates, and Performance Requirements for performance-related requirements that need to be managed and continually improved to achieve and maintain B Corp certification. In addition, definitions of enterprise sizes will be added, and the requirements will change depending on enterprise size and the corporate form of the applicant enterprise.<sup>19</sup>

Foundation Requirements and Performance Requirement items presented in the draft of the new standard for public comment are as follows.

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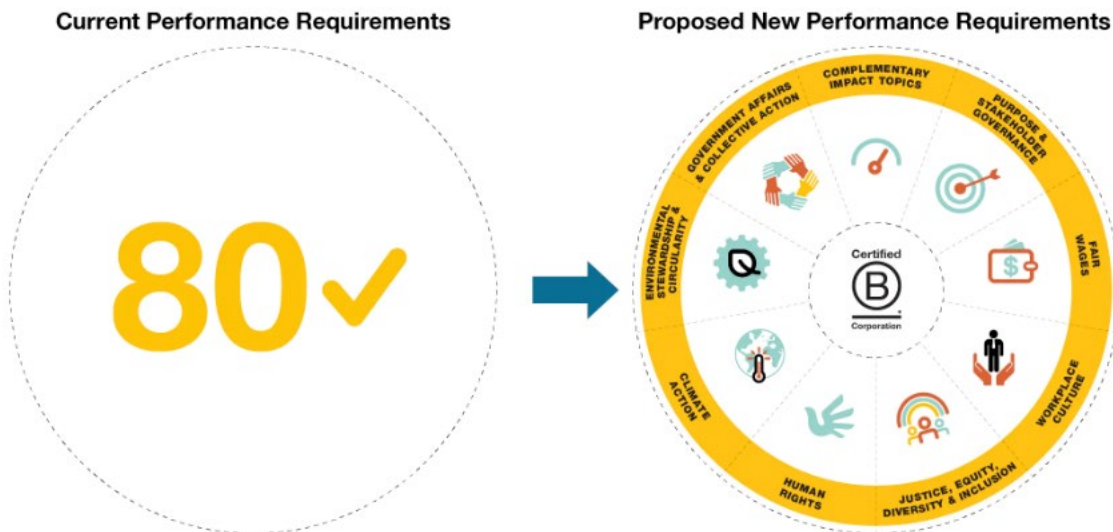
<sup>18</sup> In addition, Regional Standards Advisory Group are organized into six regions of Asia, Australasia, East Africa, Europe, Latin America, UK with a view to reflecting the regional context in the standards.

<sup>19</sup> See <https://standards.bcorporation.net/en-us/draft/overview>, a new standard attached to public comments, and <https://standards.bcorporation.net/en-us/draft/standards/what-are-the-requirements-for-b-corp-certification>, published by B Lab on January 16, 2024.

Foundation Requirements	Performance Requirements
<ul style="list-style-type: none"> <li>➤ Eligibility Requirements               <ul style="list-style-type: none"> <li>✓ Not operating for at least 12 months or operating in industries considered to be significantly contrary to B Corp's mission</li> </ul> </li> <li>➤ Legal Requirement (described above)</li> <li>➤ Risk Assessment (described above, with additional requirements for corporates in industries related to the Controversial Issues)</li> <li>➤ Impact Business Model Assessment               <ul style="list-style-type: none"> <li>✓ Assessment of the social and environmental impacts of the business by responding to Impact Business Model inquiries in established BIA</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ Purpose &amp; Stakeholder Governance</li> <li>➤ Workplace Culture</li> <li>➤ Fair Wages</li> <li>➤ Justice Equity Diversity &amp; Inclusion</li> <li>➤ Human Rights</li> <li>➤ Climate Action</li> <li>➤ Environmental Stewardship &amp; Circularity</li> <li>➤ Government Affairs &amp; Collective Action</li> <li>➤ Complementary Impact Topics</li> </ul>

Thus, in the past, if a BIA total score (overall score) is 80 or more, the breakdown of the score was not questioned, but it is assumed that the new standard stipulates the matters to be satisfied for each of the performance-related requirements set forth in the Impact Topics.

[Proposed new performance requirements]



(Source: B Lab's website)

In the public comments mentioned above, B Lab does not indicate any specific plans for future processes. It is explained that this new standard will not be applied by at least 2025, but future trends need to be watched closely.<sup>20</sup>

<sup>20</sup> See B Lab publications (<https://standards.bcorporation.net/en-us/draft>).

## 6. Relationship between provisions of Articles of Incorporation with regard to Sustainability Management and B Corp Certification Requirements

In recent years, due to the growing interest in sustainability management, it is noteworthy that more and more Japanese listed companies have incorporated descriptions that take into account the interests of stakeholders in their articles of incorporation. Specifically, there are two methods: (1) adding a new business purpose to the purpose clause itself, which is an absolute description matter (as demonstrated by Euglena) and (2) adding a new corporate philosophy clause separately from the purpose clause as a optional description matter (as seen with Eisai, Rotto Pharmaceutical, Aeon, Marui Group, Ryohin Keikaku, etc.). TV Asahi Holdings also refers to SDGs as a reason for changing the business objectives of the articles of incorporation.<sup>21</sup>

The legal significance of such provisions in the articles of incorporation concerning certain missions and consideration of stakeholders differs from country to country. In Japan, however, the director is obliged to comply with the matters stipulated in the articles of incorporation in accordance with legal effect of the resolutions of general meetings of shareholders (Article 355 of the Corporate Law). Therefore, in theory, if there are directors who do not comply with the provisions of the articles of incorporation, they may be held personally liable on the basis of Article 355 of the Corporate Law. Furthermore, Article 360, para.1 of the Companies Act lists acts outside the scope of the purpose of the company and other acts in violation of laws and regulations or the articles of incorporation as grounds for injunction of directors' acts by shareholders. Therefore, in the event such provisions of the articles of incorporation are established, theoretically, acts contrary to the mission set forth in such articles of incorporation may be subject to demand for injunction.<sup>22,23</sup>

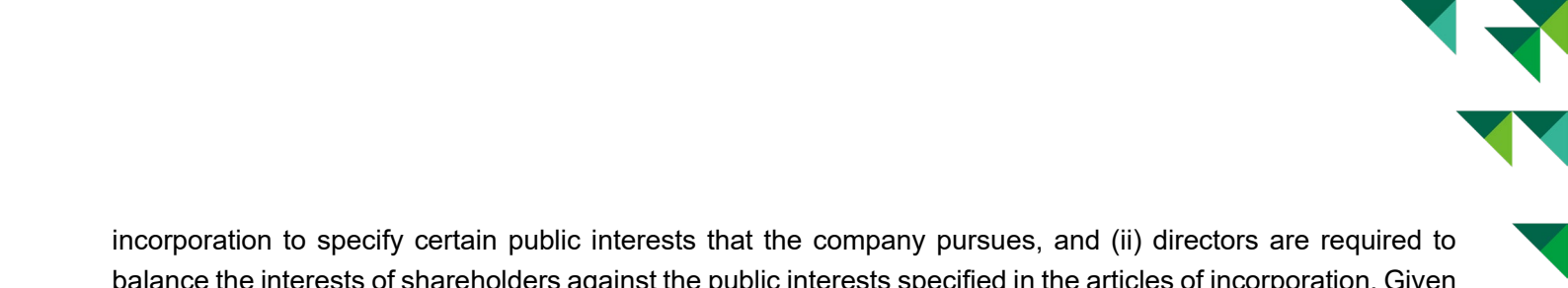
However, even in cases where a stock company has established such provisions in its articles of incorporation, B Lab does not recognize that it is substantially equivalent to adopting a corporate form that incorporates the interests of stakeholders on the ground that there is no corporate form equivalent to a Benefit Corporation in Japan. However, among the US Benefit Corporations, for example, PBC in Delaware requires (i) the articles of

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<sup>21</sup> The question arises as to whether, and to what extent, provisions that consider the interests of stakeholders can be included in the purpose clause of absolute description matters are related to corporate character (see Article 105, para.2 of the Companies Act). In this regard, it has been interpreted that, as in the case of political donations, projects that are not likely to benefit at the company concerned lack the eligibility to be listed as the purpose of the company, but it has been understood that it is valid to provide the statutory regulations for the purpose of promoting benefits other than those of the shareholders, if it is not contrary to the nature of a profit company (Yuko Matsumoto, Purpose of the company, Hougaku Kyoshitsu (493), p.14 (October 2021)). Since Japan kabushiki-kaisha is a corporation whose purpose is "Profit," it is well-established that the obligation of directors is to maximize the benefits of shareholders (principle of maximizing shareholder profits). However, it is widely accepted that the interests of shareholders include "Long-term benefits," and there is a wide range of discretionary power in the application of so-called managerial decision-making principles to directors. Furthermore, as represented by CSR activities of enterprises in the past, it is strongly construed that it is permissible for a company to perform socially expected activities to a considerable extent, even if it does not lead to the maximization of shareholder interests (Wataru Tanaka, Corporate Law (Third Edition) (University of Tokyo Press, 2021), p. 273). Consequently, it is believed that the validity of the purport clause, which seeks only public benefit, is problematic because it conflicts with the profit of the Kabushiki-Kaisha, but it is possible to create a statement that takes into account the interests of stakeholders to the extent that it does not violate such profit initiatives.

<sup>22</sup> See also Oxford University Sustainable Finance Program, Directors' Obligations for Climate Change in Japan, February 2021, p. 28. Nevertheless, in situations where the individual responsibility of a director is actually pursued, it will be necessary to continue discussions regarding the circumstances under which the individual responsibility is recognized.

<sup>23</sup> However, in reality, as long as the mission stipulated in the articles of incorporation is abstract and conceptual, it is assumed that it is usually difficult to decide primarily whether or not a director's decision-making and business execution is contrary to the mission stipulated in the articles of incorporation by the company. Therefore, it seems to be a hurdle to enforce the prohibition legally.



incorporation to specify certain public interests that the company pursues, and (ii) directors are required to balance the interests of shareholders against the public interests specified in the articles of incorporation. Given that (i) it is possible for Japanese joint stock corporations to establish provisions concerning certain missions and consideration for stakeholders in their articles of incorporation, and (ii) the obligation to comply with the articles of incorporation and violation of the articles of incorporation can theoretically be the target of injunction demands, there seems to be room to claim that, if a Japanese joint stock corporation establishes such articles of incorporation provisions, it may possible to deem that corporation as having adopted a corporate form that adds the interests of stakeholders to the same extent as Benefit Corporations.

## 7. Concluding remarks

This newsletter provides an outline of B Corp certification and an overview of the present status of B Corp certification in Japan, the merits of the certification, and the acquisition process and points to note in Japanese companies and explains relationship between provisions of articles of incorporation with regard to sustainability management and B Corp Certification requirements. B Corp certification is expected to become increasingly attractive in the future amid global trends that require companies to take social and sustainability measures. The number of certified companies also is increasing in Japan. In addition, the establishment of BMBJ is expected to make further use of the B Corp certification system.

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Public Relations Section, Nishimura & Asahi [newsletter@nishimura.com](mailto:newsletter@nishimura.com)