

Fundamental Policy Recommendations for the Governance System of Non-profit Organizations

December 2013

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I

Introduction

In the past, when the economy was smaller, public services were generally operated by the government. With the expansion of the economy and the diversification of society, though, the government has reached its limit in terms of being able to take sole responsible for public services while meeting a wide range of societal needs. For this reason, the private nonprofit sector has formed to replace the government in certain roles, and the roles of the nonprofit sector have gradually expanded.

There has been heated discussion over whether voluntary nonprofit activities from the private sector, rather than the government, should supply the goods and services members of society need. According to Weisbrod (1998), small, private nonprofit organizations, rather than the government, can more efficiently supply public goods to satisfy societal needs that vary based on class and region. The supply of public goods and services through voluntary charity activities has also contributed to relieving the fiscal burden on the government, and this role has increased in significance for countries seeking smaller government, including the U.S., the U.K., and South Korea. Each government has offered tax support encouraging the activities of non-profit organizations (NPOs), while imposing accountability and obligations on them regarding transparency.

The terms—public service corporations and nonprofit organizations—are used without distinction. In fact, the latter has more comprehensive implications than the former, and public service corporations are based on their public nature. They are distinguished from one another and governed by different laws only

in Korea; in most cases they are used interchangeably.¹⁾

According to current law in Korea, a public service corporation refers to a person operating a business for religious, charitable, academic or other public interest purposes,²⁾ and may be distinguished from NPOs in that its purpose lies in seeking the interests of unspecified individuals. The scope of public service corporations is more limited compared with that of NPOs receiving tax-free benefits for specific-purpose businesses under the Corporate Tax Act, and public service corporations are required to pay gift taxes when using their donations for reasons other than those considered the proper business purposes of that organization.

However, this study will use the more inclusive term of “NPO” as it aims to cover a comprehensive range of public-interest, non-profit corporations. This study will, however, clearly distinguish between the terms when dealing with the relevant Korean Acts requiring such distinction.

NPOs in Korea have played a host of roles in fields specified in Article 32 of the Civil Act, such as social welfare, culture, charity, religion, and education. Currently, NPOs have gained attention as an employer supplying public goods and social services, and their contributions to the national economy have also increased.

The scale of employment in the nonprofit sector (including religion) increased from 510,000 in 1997 to 580,000 in 2003, accounting for 9.5 percent of the total employment index of the service industry, while its operating expense (except in religion) grew from 3.4 percent compared with GDP in 1997 to 3.9 percent in 2003.³⁾

This trend has been found in many other countries, such as Canada, the U.S., Australia, and Japan—as presented in <Table I-1> and <Table I-2>

1) The Relevant Act in Japan also has similar terminology related to public-interest corporations/ non-profit organizations by classifying them as NPOs (recognized as NPOs), general incorporated foundations (incorporated public-interest foundations), and general incorporated associations (incorporated public-interest associations) based on the Act of Promoting Non-Profit Activities (for short, the NPO Law). However, NPOs are required to seek a significant level of public interest.

2) Article 16 of the Inheritance Tax and Gift Tax Act.

3) Park, Taekyu, “A Study on Korean NPOs’ Estimated Outputs and Their Economic Implications,” *National Account*, No. 4 (Serial No. 27), Bank of Korea, 2006, pp. 68–70.

below—indicating that NPOs have gained in significance as their scale and economic role have received attention.

<Table I-1> **NPI Contribution to GDP (including volunteers) by Country**

(Unit: % compared to GDP)

	Paid workers	Volunteers	Total
Canada	7.1	1	8.1
U.S.	5.5	1	6.6
Japan	4.2	1.1	5.2
Australia	3.6	1.3	4.9
France	3.3	1.4	4.7

Source: Salamon L. S. *et al.*, "The state of global civil society and volunteering," comparative non-profit sector working paper no. 49, Center for Civil Society Studies, Johns Hopkins University, 2013.

<Table I-2> **NPI Contribution to GDP by Measuring Method**

(Unit: % compared with GDP)

	UN NPI handbook measure	Standard SNA measure
Canada	7.1	1.5
U.S.	5.5	5.5
Japan	4.2	2
New Zealand	2.8	1.9
France	3.3	1.2

Source: Salamon L. S. *et al.*, "The state of global civil society and volunteering," comparative non-profit sector working paper no. 49, Center for Civil Society Studies, Johns Hopkins University, 2013.

According to the current status of NPOs by year, presented in <Table I-3>, NPOs in Korea have drastically increased in number since 1993. As of 1993, the number stood at a mere 10,329 but had more than doubled to 21,970 by 2011.

〈Table I-3〉 Numbers of Corporations in Operation by Year (1995~2011)

(Unit: No., 100million won)

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
For-profit	101,933	114,363	130,597	148,112	166,741	169,018	193,059	229,120	273,561	304,880
	90.9	91.2	91.9	92.5	93.0	93.0	93.6	94.4	95.5	96.1
Nonprofit	10,329	11,050	11,487	11,959	12,575	12,817	13,295	13,532	12,791	12,274
	9.2	8.8	8.1	7.5	7.0	7.0	6.4	5.6	4.5	3.9
Total	112,136	125,413	142,084	160,071	179,316	181,835	206,354	242,652	286,352	317,154
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
For-profit	317,055	328,181	347,234	337,199	379,015	400,193	400,217	420,225	438,644	
	96.0	96.0	96.2	95.6	96.3	96.2	95.4	95.5	95.2	
Nonprofit	13,132	13,685	13,587	15,448	14,685	15,924	19,203	19,798	21,970	
	4.0	4.0	3.8	4.4	3.7	3.8	4.6	4.5	4.8	
Total	330,187	341,866	360,821	352,647	393,700	416,117	419,420	440,023	460,614	

Note: 1. NPOs include incorporated associations and incorporated foundations that operate profitable projects, as well as public corporations.

2. For-profit corporations include public limited companies, joint-stock limited partnerships, unlimited partnership companies, limited liability companies, and foreign corporations.

Source: National Tax Service, *Statistical Yearbook of National Tax*, Each year.

Tax revenue collected from NPOs has also drastically increased compared with that seen in 1995, but no consistent trend has been found.

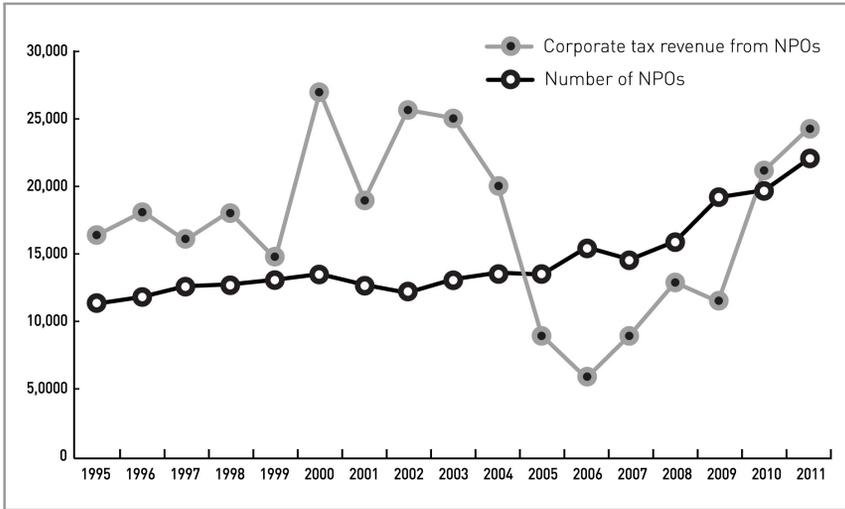
〈Table I-4〉 Reported Corporation Tax by Year (1995~2011)

(Unit: 100 million won, %)

	1995	1996	1997	1998	1999	2000	2001	2002	2003
For-profit	59,523	57,115	54,972	51,770	62,293	118,809	130,326	146,684	198,431
	78.3	75.9	77.4	74.2	81.0	81.5	87.3	85.1	88.8
Nonprofit	16,506	18,123	16,036	18,039	14,643	26,923	18,961	25,666	25,030
	21.7	24.1	22.6	25.8	19.0	18.5	12.7	14.9	11.2
Total	76,029	75,238	71,008	69,809	76,935	145,732	149,287	172,350	223,461
	2004	2005	2006	2007	2008	2009	2010	2011	2012
For-profit	195,362	267,150	259,435	298,851	360,209	336,994	274,611	355,344	
	90.7	96.8	97.8	97.1	96.6	96.7	92.8	93.6	
Nonprofit	20,139	8,931	5,922	9,002	12,859	11,552	21,203	24,275	
	9.3	3.2	2.2	2.9	3.4	3.3	7.2	6.4	
Total	215,501	276,081	265,356	307,853	373,068	348,545	295,814	379,619	

Source: National Tax Service, *Statistical Yearbook of National Tax*, Each year.

[Figure I-1] NPOs by Number and Corporate Tax Revenue Generated (1995~2011)



Source: National Tax Service, *Statistical Yearbook of National Tax*, Each year.

As the number of NPOs and the amount of corporate tax revenue they generate has increased, the amount of donations offered by individuals has also increased. As a result, the total amount of donations has grown, as presented in <Table I-5>, and the number of NPOs has also gradually increased over the same period.

[Table I-5] Tax-Deductible Donations of Individuals and Corporations by Year (2001~2011)

(Unit: trillion won, %)

	2001	2003	2005	2007	2008	2009	2010	2011
Total amount of donations	4.67	5.90	6.79	8.75	9.04	9.61	10.01	11.63
Individuals	2.98	3.74	4.32	5.43	5.66	6.15	6.51	6.95
Corporations	1.69	2.16	2.47	3.32	3.38	3.46	3.50	4.68

Source: National Tax Service, *Statistical Yearbook of National Tax*, Each year.

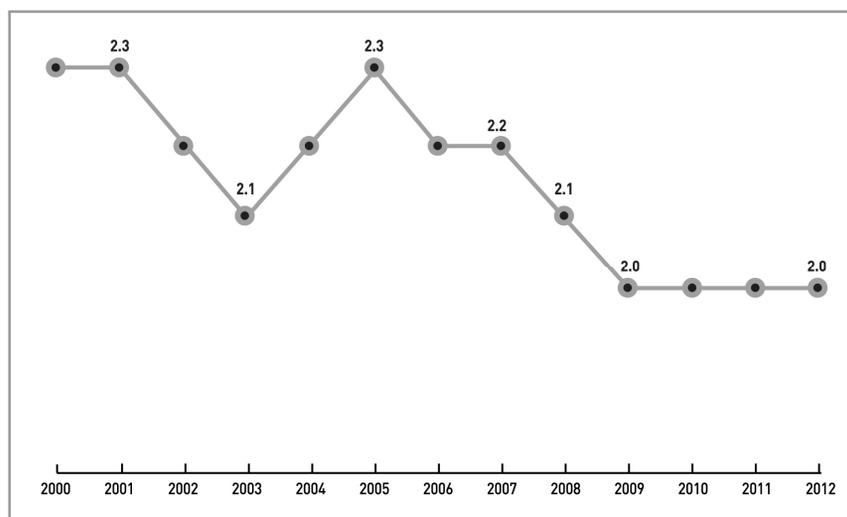
It is believed that a growing number of NPOs has contributed to increasing donations and invigorated public interest activities.

To analyze the increase in the number of NPOs and the amount of donations, this study will make a comparative analysis with the current status of NPOs in the U.S., which has the world's largest share of donations compared with GDP.⁴⁾

The share of U.S. donations compared with GDP amounted to 2.0 percent in 2013, recording an average of 2.14 percent between 2000 and 2012.

[Figure I-2] Share of U.S. Donations Compared with GDP

(Unit: %)



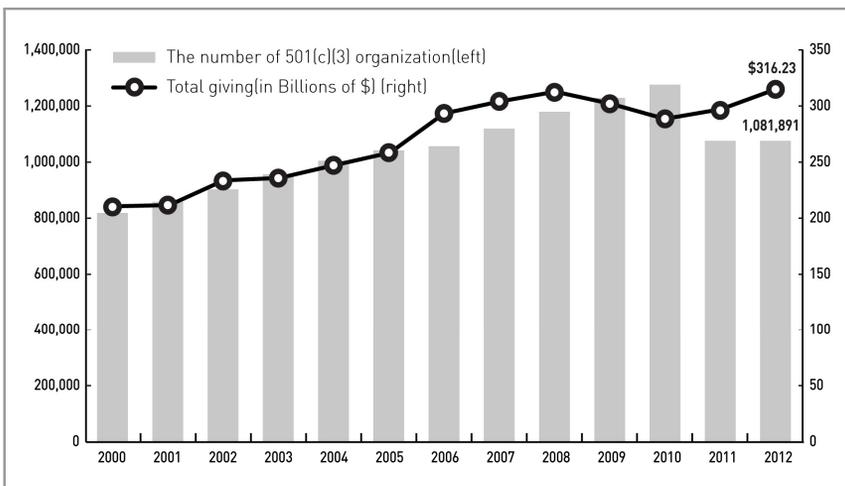
Source: Giving USA Foundation, "Giving USA," 2000~2012.

4) In the case of public service corporations conducting activities concerning aid or payment of scholarships in Chungcheongbuk-do in Korea, the number of corporations stood at 60 in 2006 and increased 6.7 percent in 2007, 9.3 percent in 2008 and 4.3 percent in 2009 (amounting to 73 corporations), year-on-year. Donations during the same period amounted to 4,745 million won in 2006 and increased by 22.4 percent in 2007 compared with the previous year, 65 percent in 2008 and 9.1 percent in 2009 to reach 10,512 million won. This is known to be a representative case showing a proportional relationship between the number of NPOs and donations.

Also, the total amount of donations in the U.S. between 2000 and 2012, as seen in [Figure I-3], started with 210.89 billion dollars in 2000 and reached its highest level of 315.08 billion dollars in 2008. Following its domestic economic recession, U.S. donation decreased to 290.89 billion dollars but made an upturn, posting 316.23 billion dollars in 2012.

However, donations started to decrease in 2008 and continued their downturn through 2012, showing a 0.1 percent reduction in the donations-to-GDP ratio. It has been reported that donations in the U.S. peaked in 2008, although the global economic crisis struck the same year because donations of inherited property hiked. This increase in inherited property donations offset the expected decline in donations in 2008, thereby leading to a donations increase. The decline in donations since 2009 was attributed to the global economic crisis, the prolonged economic recession in the U.S., and the hindered economic recovery.⁵⁾

[Figure I-3] NPOs by Number and Total Giving in the U.S.



Source: Giving USA Foundation, "Giving USA," 2000~2012.

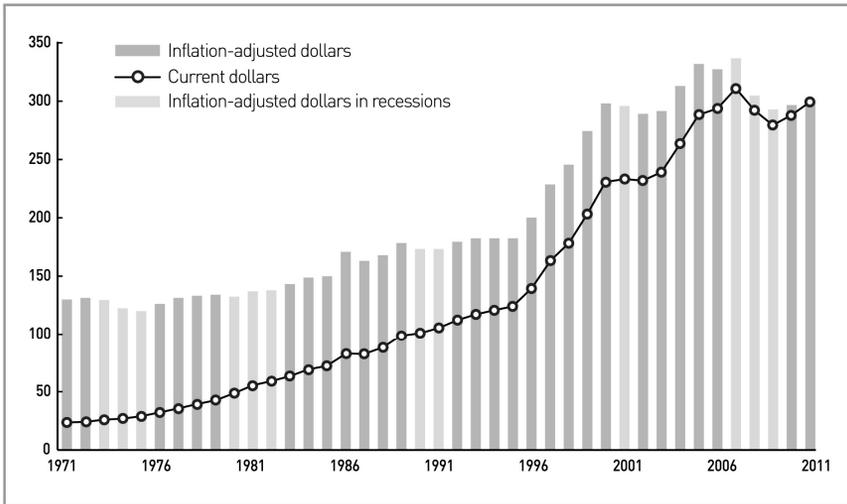
5) Giving USA Foundation, "Giving USA," 2011.

During the same period, the number of organizations under the US tax code sec. 501(c)(3) stood at 819,008 in 2000 and peaked at 1,280,739 in 2010. However, it decreased by 15.66 percent compared with the previous year to 1,080,130 corporations, and the similar level continued in 2012.

It has been reported that NPOs in the U.S. have plunged in number since 2010 because the Internal Revenue Service (IRS), under the Pension Protection Act of 2006, has disqualified NPOs that fail to file tax reports for three consecutive years (2007~2010) from tax exempt status.⁶⁾ As a result, more than 200,000 NPOs were excluded from the statistical data, a majority of which had stopped their operations or were small in their size.

[Figure I-4] Donations of NPOs in the U.S. by Year

(Unit: billions of \$)

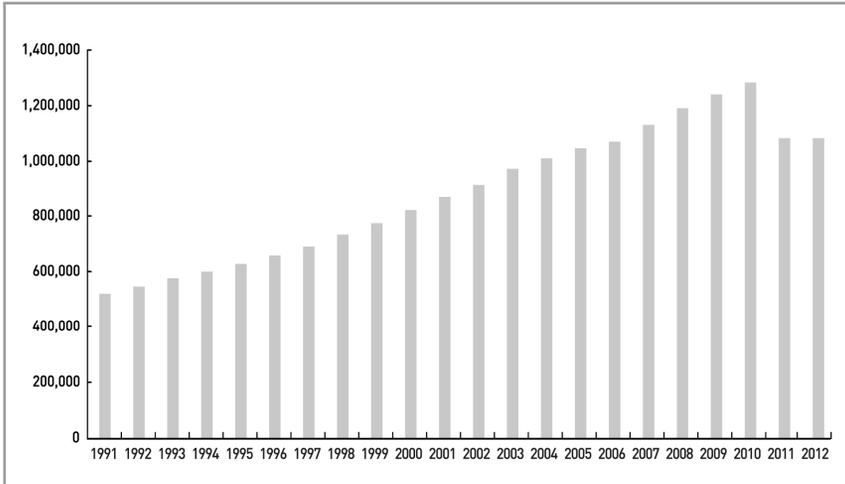


Source: Giving USA Foundation, "Giving USA," Presentation summary, 2012. p.4

6) Major IRS checkpoints are largely divided into accuracy of tax report, compliance with the organization's mission statements submitted at the organization's foundation, and report of income irrelevant to the organization's activities.

[Figure I-5] The Number of NPOs in the U.S. by Year

(Unit: No.)



Source: Giving USA Foundation, "Giving USA," 2000~2012.

As seen in the aforementioned cases of Korea and the U.S., the number of NPOs is generally in proportional relation with the total given, except in certain periods such as the global economic crisis. From the comparative analysis, it is expected that if the Korean government deregulates the establishment and activities of public service corporations and NPOs, public interest activities will be revitalized, along with donations.

Revitalizing NPOs' public interest activities requires the advancement of NPOs' governance systems. Schemes related with NPOs are largely classified into establishment and post-management. As for the latter, post-management systems are, in part, closely related with the Tax Act, and related Articles were amended following the current revision of the Inheritance and Gift Tax Law. With other post-management systems, however, the efficacy has been questioned. Therefore, this paper attempts to suggest a comprehensive range of improvement plans, including systems for verifying publicness, as well as schemes regarding establishment and post-management of NPOs. With the aim of analyzing the

actual conditions and problems in current systems and suggesting alternatives for improvement, this study will examine cases from the U.S. and other advanced systems, including Japan, which recently revised its relevant legislation, as well as other major countries such as the U.K., before drawing policy implications. Also, this paper will suggest concrete action plans to institutionalize and implement improvement plans.

II

Socio-economic Roles of NPOs

In Korean society, there has not been much awareness of the importance of NPOs seeking public interest rather than profit, but as the U.N. recently formulated manuals to estimate the satellite accounts of NPOs' economic scale⁷⁾, growing attention has been paid to the social and economic roles of NPOs.

First, NPOs are able to address market failure and inequality issues that can occur under a strictly market-based approach, by acting as a public service provider. They can play an important role by making a reform toward a better welfare state and pushing forward social development while supplementing the government and market.

Second, NPOs can serve as infrastructure for civil society. NPOs have gained in significance for their contribution to social integration and fairness by participating in social services. Society's capability to achieve economic growth and form a government through democratic procedures depends on a level of social capital and mutual trust facilitating social interaction. The infrastructure of civic organizations is created when members of society have an opportunity to participate in society and build up confidence among like-minded people through NPOs. The repetition of this process is expected to contribute to the development of society by influencing the economy and politics.

Third, NPOs can be used as a tool for enhancing social accountability. They can directly or indirectly demand social accountability or confirm whether

7) U.N. 2003 *Handbook on Nonprofit Institutions in the System of National Accounts* (ST/ESA/STAT/SER.F/91).

relations among parties are accountable, including between citizens-government, citizens-corporations, corporations-government, and civic groups-interested parties. In addition, by operating a business related to social accountability, NPOs can improve accountability so that external and internal social accountability can be mutually complemented.

In promoting a welfare society with ever-growing demand for welfare services, the role of NPOs as a social services provider has gained more significance than ever before in Korean society. However, NPOs should resolve their problems—inability to serve in charitable purposes, collectivity, paternalism, and lack of expertise—to prevent failures and enhance their efficiency as suppliers of social services. To do this, legislation and systems regarding NPOs need to be improved to reflect real conditions.

NPOs' roles and relations with the government have displayed different developmental paths according to the relevant legislation, government policies, and the socioeconomic and cultural characteristics of society. Despite the varying circumstances, a host of countries have one thing in common: NPOs are highly recognized for increasing roles as social service suppliers and partners with the government in the national economy. As for their role in supplying social services, some NPOs maintain independence from government influence (as is the case in the U.S.), and others depend on the government for financial assistance (as in the U.K.).

In Korea NPOs are also engaged in activities contributing to the public interest and social development, such as environmental conservation, advocating for the rights and interests of the socially disadvantaged, and supplying social services. Since the 1990s, in particular, a change in government policies has led to the expansion of NPOs' role as a social services provider. The same is true for NPOs in other countries, including the U.S. and U.K.

NPOs in Korea demonstrate characteristics similar to their counterparts elsewhere in that—beyond their role as a supplier of social services—they are responsible for public service activities promoting social development. It is therefore important to benchmark and introduce the policies and legislation of other countries, such as the U.S., the U.K., and Japan, whose NPOs have spearheaded supply of social services and social development facilitation.

So far, NPO-related policies and laws in Korea have been developed around

taxation systems, but development was limited. Now is high time for a fundamental change in the system to offer assistance to NPOs more effectively so that they may actively perform their role in economic and social advancement.

In terms of NPO governance schemes as a performer of public interest services, a discussion, using the U.K.'s system as a basis, would be proper. Firstly, the U.K. expanded the scope of its public interest activities, which had been limited, by revising the Charity Law in 2006 in the hopes of encouraging more aggressive participation by NPOs. The U.K.'s policy reform was designed to enhance NPOs' independence while admitting their role as a social services supplier. With a system designed to maintain NPOs' independence, the authorities attempted to promote NPOs' transparency and accountability—a significant factor required for the development of NPOs in Korea.

Since the 1990s, Korea has witnessed revitalized activities among NPOs in the form of public service corporations engaged in a range of public interest activities beyond fields stipulated in special laws governing fields such as education, social welfare, and medical services. Since the turn of the millennium, the scope and size of these NPOs has been on the rise. Despite qualitative and quantitative growth, NPOs' support systems have retained levels set in the past, when NPOs' side effects were a cause for concern. Related policies should be reformed to support NPOs' activities in the form of the public interest corporations that society demands, and to assist in monitoring NPOs' public interest, transparency, and accountability.

III

Analysis of the Current Status of NPOs in Korea

1 Governance Systems Related with NPOs

A. Establishment⁸⁾

<Table III-1> shows the regulations and rules regarding establishment of NPOs, consisting of the Private School Act, the Social Welfare Service Act, and the Medical Service Act, based on the Civil Act and Act on the Establishment and Operation of Public Interest Corporations.

Article 32 of the Civil Act defines NPOs as “associations or foundations relating to science, religion, charity, art, social intercourse, or otherwise relating to enterprises not engaged for profit or gain.” The Act on the Establishment and Operation of Public service Corporations, a special law of the Civil Act, defines NPOs as “legal persons, either as incorporated foundations or incorporated associations, with the purpose of conducting activities concerning aid or payment of school expenses, scholarships or research expenses, sciences, and charities.” Other special laws in force regarding the founding of NPOs include: the Private School Act (governing the establishment of school

8) This section has been updated reflecting revised legislation and the following articles: Son, Wonik, “The Comparison between International Governance Systems of Nonprofit Organizations,” *Finance Forum*, May 2011 (No. 179); Oh, Yeong-ho *et al.*, “A Study on Improvement Plans of Governance Systems of NPOs,” Korea Institute for Health and Social Affairs, 2011.

foundations);⁹⁾ the Social Welfare Service Act (governing the establishment of social welfare corporations); and the Medical Service Act (governing medical services corporations).

〈Table III-1〉 Laws and Regulations Related with NPOs

Title of Acts	Applicable Entities
○ Civil Act	Article 32 defines NPOs as associations/foundations relating to science, religion, charity, art, social interaction, or otherwise relating to enterprises not engaged for profit or gain under the permission of the competent authorities.
- Regulations on the Establishment and Supervision of Non-profit Corporations	<ul style="list-style-type: none"> - This is a sub-regulation of the Civil Act, which supplements regulations over the establishment of NPOs by managing and supervising NPOs by ministry. - 1) Board of Audit and Inspection; 2) Ministry of Employment and Labor, Fair Trade Commission; 3) Fair Trade Commission; 4) Ministry of Education, Science and Technology; 5) Ministry of Patriots and Veterans Affairs; 6) Ministry of National Defense and its affiliated administration; 7) Ministry of Land, Transport and Maritime Affairs and its affiliated administration; 8) Financial Services Commission; 9) Ministry of Strategy and Finance and its affiliated administration; 10) Ministry for Food, Agriculture, Forestry and Fisheries and its affiliated administration; 11) Ministry of Culture, Sports and Tourism and Cultural Heritage Administration; 12) Minister of Justice; 13) National Court Administration; 14) Ministry of Government Legislation; 15) Ministry of Health and Welfare and its affiliated administration; 16) Ministry of Gender Equality and Family; 17) Ministry of Foreign Affairs and Trade; 18) National Election Commission; 19) Minister of Knowledge and Economy and administrator of its affiliated administration; 20) Ministry of Unification; 21) Ministry of Security and Public Administration and its affiliated administration; 22) Constitutional Court Secretariat; and 23) Ministry of Environment and Korea Meteorological Administration
○ Act on the Establishment and Operation of Public service Corporations	- Legal persons, either as incorporated foundations or incorporated associations, with the purpose of conducting activities concerning aid or payment of school expenses, scholarships or research expenses, sciences and charities to contribute to the general interest of society

9) Article 2 of the Private School Act.

〈Table III-1〉 Continue

Title of Acts	Applicable entities
○ Special Acts	– School corporations under the Private School Act, social welfare corporations under the Social Welfare Service Act, and medical corporations under the Medical Service Act
– Private School Act	– Schools referred to in the Early Childhood Education Act, the Elementary and Secondary Education Act, and the Higher Education Act, which are established by school juridical persons, juristic persons other than public organizations, or other individuals. – Juridical persons organized for the purpose of establishing and operating only private schools
– Social Welfare Service Act	– Any program for protection, guidance, or welfare under any of certain Acts, various welfare programs for social welfare counseling, vocational support services, protection of the homeless and etc., and other programs for providing voluntary services and for operating or supporting welfare facilities
– Medical Service Act	– A place where a medical person practices medical services or midwifery services for the general public or multiple specific persons, and entities allowed to establish a medical institution include: 1) doctors, dentists, oriental medical doctors or midwives; 2) the government or local autonomous entities; 3) medical corporations; 4) NPOs ; and 5) quasi-governmental agencies, local medical centers, the Korea Veterans Welfare and Healthcare Corporate. ¹⁾ As aforementioned, medical corporations are one entity allowed to establish a medical institution

Note: 1) Article 33(2) of the Medical Service Act.

Source: Oh, Yeong-ho *et al.*, *A Study on Improvement Plans of Governance Systems of NPOs*, Korea Institute for Health and Social Affairs, 2011.

B. Publicness Verification System

Currently, the only system in Korea verifying NPOs' eligibility for public interest is the scheme assigning an organization to “designated donation organizations,” in which the donation amount collected by the organization—or the “designated donation”—may be accepted as a deductible expense within legal limits. “Designated donation” refers to the amount of money spent by the designated organization for proper business purposes.

Corporations and organizations appointed as designated donation organizations, such as welfare organizations, should then report to the competent authorities whether they satisfy the requirements, with these authorities later notifying the Ministry of Strategy and Finance. After the designation period,

should the organization be revealed to have engaged in acts harming public interest, the Minister of Strategy and Finance may cancel their designation.¹⁰⁾

C. Post-Management System

The post-management system is stipulated in the Civil Act, the Act on the Establishment and Operation of Public-Service Corporations, the Assistance for Non-Profit, Non-Governmental Organizations Act, and the Inheritance Tax and Gift Tax Act.

The Regulations on the Establishment and Supervision of Nonprofit Corporations, a sub-provision of the Civil Act, defines the requirements regarding establishment and supervision of public service corporations. According to <Table III-2>, displaying regulations on the establishment and supervision of nonprofit corporations, most NPOs are required to report to the competent authorities the following: business plans, budget bill, business results, balancing accounts, reasons for the increase/decrease in assets, property inventory, and employee movement. Also, the Board of Audit and Inspection imposes stricter regulations over the competent authorities, demanding additional reports on conditions such as reasons for the increase/decrease in assets and change in number of employees.¹¹⁾

The Act on the Establishment and Operation of Public Service Corporations stipulates regulations on supervision, under which the competent authorities are required to take responsibility for supervising the business of public service corporations. Also, the Assistance for Non-profit, Non-governmental Organizations Act stipulates redemption of subsidy and rules of punishment, under which the Minister of Security and Public Administration or mayor/provincial governors are required to redeem subsidies from NPOs that have reported false information or received subsidies through unlawful means.

The Inheritance Tax and Gift Tax Act defines public service corporations as an operator of business related to religion, charity, academic, medical services,

10) Article 36(8) of the Enforcement Decree of Corporation Tax Act.

11) Son, Wonik, *The Current Status of NPO Statistics and Policy Proposal for Improvement*, Korea Institute of Public Finance, 2013.

or other business favoring the public interest.¹²⁾ Therefore, entities regulated under the Inheritance Tax and Gift Tax Act are limited to public service corporations, rather than a more comprehensive scope of nonprofit corporations.

〈Table III-2〉 Regulations on the Establishment and Supervision of NPOs

	Business plans/ budget bill	Business results/ balancing accounts	Reason for the increase /decrease in assets	Property inventory	Employee movement	Period
						Requirements
1. Board of Audit and Inspection	○	○	○	○	○ In the case of incorporated associations	Within two months after the end of each business year ※ Business plans/budget bill: within one month prior to the end of each business year Board of Audit and Inspection
2. Ministry of Employment and Labor	○	○	×	○	×	Within two months after the end of the business year Minister of Employment and Labor
3. Fair Trade Commission	○	○	×	○	×	Within two months after the end of the business year The competent authorities
4. Ministry of Education, Science and Technology	○ Business plans/ budget bill	○ Business results/ balancing accounts	×	○	×	Within two months after the end of the business year The competent authorities
5. Ministry of Patriots and Veterans Affairs	○ Business plans/ budget bill	○ Business results/ balancing accounts	×	○	×	Not later than within two months after the fiscal year Minister of Patriots and Veterans Affairs
6. Ministry of National Defense and its affiliated offices	○	○	×	○	×	Within two months after the end of the business year The competent authorities

12) Article 16 of the Inheritance Tax and Gift Tax Act.

<Table III-2> Continue

	Business plans/ budget bill	Business results/ balancing accounts	Reason for the increase /decrease in assets	Property inventory	Employee movement	Period
						Requirements
7. Ministry of Land, Transport and Maritime Affairs and its affiliated administration	○	○	×	○	×	Within two months after the end of each business year
						The competent authorities
8. Financial Services Commission	○	○	×	○	×	Within two months after the end of each fiscal year
						Financial Services Commission
9. Ministry of Strategy and Finance and its affiliated administration	○	○	×	○	×	Within two months after the end of each business year
						The competent authorities
10. Ministry for Food, Agriculture, Forestry and Fisheries and its affiliated administration	○	○	×	○	×	Within two months after the end of each business year
						The competent authorities
11. Ministry of Culture, Sports and Tourism and Cultural Heritage Administration	Deleted June 4, 2005	Deleted June 4, 2005	×	Deleted June 4, 2005	×	Deleted June 4, 2005
12. Minister of Justice	○ Business plans/ budget bill	○ Business results/ balancing accounts	×	○	×	Within two months after the end of each business year
						Minister of Justice
13. National Court Administration	○ Business plans/ budget bill	○ Business results/ balancing accounts	×	○	×	Within two months after the end of each business year
						National Court Administrator
14. Ministry of Government Legislation	○ Business results/ budget bill	○ Business results/ balancing accounts	×	○	×	Within two months after the end of each business year
						Minister of Government Legislation
15. Ministry of Health and Welfare and its affiliated administration	○	○	×	○	×	Within two months after the end of each business year
						The competent authorities

〈Table III-2〉 Continue

	Business plans/ budget bill	Business results/ balancing accounts	Reason for the increase /decrease in assets	Property inventory	Employee movement	Period
						Requirements
16. Ministry of Gender Equality and Family	○	○	×	○	×	Within two months after the end of each business year Minister of Gender Equality and Family
17. Ministry of Foreign Affairs and Trade	○ Business results/ budget bill	○ Business results/ balancing accounts	×	○	×	Within two months after the end of each business year Minister of Foreign Affairs and Trade
18. National Election Commission	○ Business results/ budget bill	○ Business results/ balancing accounts	×	○	×	Within two months after the end of each business year ※ excluded when a policy research institute has submitted an annual activity performance report and an accounting report Chairperson
19. Minister of Knowledge and Economy and administrator of its affiliated administration	○	○	×	○	×	Within two months after the end of each business year The competent authorities
20. Ministry of Unification	○	○	×	○	×	Within two months after the end of each business year Minister of Unification
21. Ministry of Security and Public Administration and its affiliated administration	○	○	×	○	×	Within two months after the end of each business year The competent authorities
22. Constitutional Court Secretariat	○ Business results/ budget bill	○ Business results/ balancing accounts	×	○	×	Within two months after the end of each business year Deputy Secretary General
23. Ministry of Environment and Korea Meteorological Administration	○	○	×	○	×	Within two months after the end of each business year The competent authorities

Source: National Law Information Center, *The Regulations on the Establishment and Supervision of Non-profit Corporations by Department*, as of March 18, 2013.
Son, Wonik, *The Current Status of NPO Statistics and Policy Proposal for Improvement*, Korea Institute of Public Finance, 2013, pp. 9-10.

D. The Trust Act

The purpose of this Act is to provide for the legal relations on the trust in private laws. The term ‘trust’ means a legal relation that a person who creates a trust (hereinafter the ‘truster’) transfers a specific piece of property to a person accepting the trust (hereinafter the ‘trustee’), establishes a security right or completes any other disposition, and requires the trustee to manage, dispose of, operate, or develop such property or engage in other necessary conduct fulfilling the purpose of the trust, for the benefit of a specific person or for a specific purpose, based on a relationship of confidence between truster and the trustee.¹³⁾

A public trust refers to any trust for educational, scientific, religious, ritual, charitable, crafts, environmental, and other public interest purpose¹⁴⁾ which is a representative regulation exceptional to the user-beneficiary principle. The purpose of the Trust Act, revised in 2011, is to encourage public trusts aiming to preserve the environment by adding sub-provisions related to the environment, and any trust contributing to the interest of unspecific individuals—though not stipulated in the Act—is considered having the purpose of public interest.¹⁵⁾

〈Table III-3〉 Revised Trust Act

Law prior to revision [Enforcement Date April 1, 2006] [Act No. 7428, March 31, 2005, Revision of other laws]	Current law [Enforcement Date July 26, 2012] [Act No. 10924, July 25, 2011, Wholly amended]
<p>Article 65 (Public trusts)</p> <p>Any trust aimed at the arts and sciences, religion, ancestral rites, charity, crafts, and other public interests, shall be a trust for public interest, and the supervision thereof shall be subject to the provisions of Article 7.</p>	<p>Article 106 (Public trusts)</p> <p>Any trust for educational, scientific, religious, ritual, charitable, crafts, environmental and other public interest purpose shall be created as a public trust.</p>

13) Article 1 and 2 of the Trust Act.

14) Article 106 of the Trust Act.

15) The Ministry of Justice, *Explanation of the Reform Bill of Korean Trust Act*, February 2010.

2 Current Status and Policy Challenges

A. Current Status and Structural Characteristics of NPOs

With a lack of statistical data placing Korean NPOs on an accurate scale, their current status must be determined through: *The Statistical Yearbook of National Taxation* for tax data; *The Census on Basic Characteristics of Establishments* for data on employees working in the nonprofit sector; and “NPOs’ Final Consumption Expenditure in Favor of the Household Economy” for checking domestic private spending as one an item of the national account.

Corporate tax is levied on NPOs’ income incurred only from their profit-making businesses, not from their proper business purposes. In principle, NPOs are liable to pay inheritance taxes, but public service corporations are exempt from inheritance tax for contributed property.

According to *The Statistical Yearbook of National Taxation*, the number of NPOs increased from 10,329 in 1993 to 21,970 in 2011. In addition, donations—the financial source for NPOs—also consistently grew from around 4,000.06 billion won in 2001 to 11,000.06 billion won in 2011.

In addition, according to the Act on the Establishment and Operation of Public-Service Corporations and Article 12 of the Enforcement Decree of the Inheritance Tax and Gift Tax Act, the number of public service corporations stood at 5,221 in the late 1998, with 25 percent (1,309) being public service corporations without contributed property and 75 percent (3,912) being public service corporations with contributed property. The total number of NPOs has been rising, amounting to 27,500 in 2006 and 29,170 in 2011.

B. Policy Proposals for Improvement of NPOs

It is assumed that as NPOs in Korea have grown in both quantity and quality, donations and voluntary activities related with NPOs have accordingly been revitalized.¹⁶⁾ This means there has been a growing awareness of NPOs, and they are expected to expand their business into a wider range of public services,

including social welfare services.

However, NPOs should resolve several problems to efficiently perform their socioeconomic roles. They should guard against failing to perform as a public services supplier. In other words, they need to earn a high degree of trust from the public to secure the financial sources required to implement public interest activities in the form of voluntary private donations. Also, NPOs have consistently been taken to task for inefficient operations due to lack of expertise. To resolve obstacles to private donation for charity activities, they should enhance transparency in their operations. Enhancing expertise is another important task for NPOs to secure the same degree of efficiency that profit-making corporations do.¹⁷⁾

To resolve the operational problems facing NPOs, governmental laws and systems can be used to guarantee public interest. As Korean society suffers from a lack of policies supporting and monitoring NPOs to help them live up to their socioeconomic roles, related policies should undergo reform.¹⁸⁾

Such policy challenges are closely related to problems facing NPOs in Korea. Currently, regulations on NPO establishment make it harder to found a corporation, but the government has no monitoring system in place. Such problems - combined with NPOs' other issues over lack of transparency, accountability, and expertise - can cause secondary issues, as well as a failure to satisfy social needs such as supplying public services. Therefore, the government should repair regulation systems.

As mentioned above, NPOs are supposed to perform public interest activities in a wide range of fields according to societal needs, but the current registration scheme by department is limited in restricting NPOs' public services to certain fields. In addition, there is no objective procedure for confirming public interest

16) Son, Wonik and Taekyu Park, *A Study on Private Donation of Korea*, Korea Institute of Public Finance, February 2008.

17) Son, Wonik, Soon-tae Lee, and Sae-kyung Park, *A Policy Recommendation for Proliferation of Charitable Contribution*, Korea Institute of Public Finance, October 2010.

18) Son, Wonik, Hyeong-min Lee, and Kyung-hwa Jung, *An Analysis of Operation of Public Service Corporations and Policy Recommendations*, Korea Institute of Public Finance, August 2012.

in tax benefits for NPOs. To resolve this, objective standards should be put in place to assess whether NPOs receiving tax benefits satisfy the requirements of public benefit.

In conclusion, NPO governance systems regarding establishment, operation, and monitoring should be reformed so NPOs can more effectively perform their roles by enhancing transparency, accountability, and expertise. As illustrated in the policy cases of foreign countries, it is time to switch NPO-related policies from passive to proactive.

IV

Management Systems for Non-profit Organizations in Major Countries

1 The United States

A. Classification of Non-profit Organizations

Non-profit and tax-exempt organizations in the United States are exempt from federal income taxes. Furthermore, they are entitled to the benefit of their contributions being treated as charitable donations if they are recognized as an organization falling under the Internal Revenue Service (IRS) code §501(c)(3). This clause defines an organization qualified for tax exemption as follows: an organization which is a community chest, fund or foundation organized and operated exclusively for purposes that are religious, charitable, scientific, concerning public safety testing, literary, educational, fostering of national or international amateur sports competition, and preventing cruelty to children or animals; no part of whose net earnings inure to the benefit of private shareholders or individuals; and which is not, as a substantial part of its activities, engaged in lobbying expenditures or political activity to participate in a political campaign or attempt to influence legislation.

B. Publicness Management System

Organization and operational tests are performed to manage the publicness

of tax-exempt organizations. They must pass the tests to maintain their tax-exempt status.

1) Organizational Test

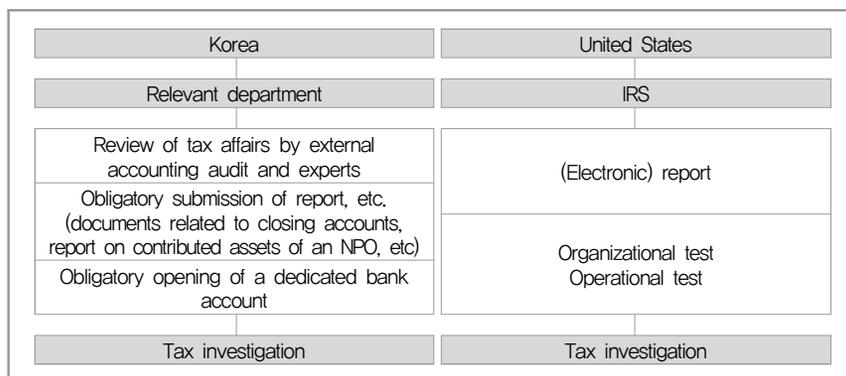
The organizational test verifies whether the relevant organization satisfies the following criteria:

- (a) Meeting the purposes stated in the IRS code §501(c)(3);
- (b) Engaged in activities for exempt purposes;
- (c) Properly stating the use of assets in detail;
- (d) Stating the matters related the dissolution of the organization.

2) Operational Test

The operational test verifies whether the assets of a tax-exempt organization are dedicated for purposes within the limit stated in the IRS code §501(c)(3). It should pass this test to maintain its status as a tax-exempt organization. [Figure VI-1] presents a brief comparison of South Korea’s and the United States’ post-management systems.

[Figure IV-1] Post-Management Systems of Non-Profit Organizations (NPOs) in Korea and the U.S.



Source: Adapted from & Son Wonik and Kim Sang-heon, “Post-Management of Non-profit organizations and Non-profit Corporations,” *Economic Analysis on Support for Public Interest Organizations and Improvement of Legislation*, report commissioned by Ministry of Justice, 2011, p. 63.

2 Japan

A. NPO Corporations

Enacted in December 10, 1998, the Act on Promoting Non-profit Activities in Japan (hereinafter the ‘NPO Law’) defines a non-profit organization (NPO) as a corporation dedicated to a specific non-profit-making activity that has acquired corporate personhood under the same act. The purpose of the NPO Law is to give corporate personhood to an entity engaged in a specific non-profit activity to facilitate the sound development of a specific non-profit activity with social contributions such as volunteer work and to contribute to enhancing the public interest.¹⁹⁾ Furthermore, the Law provides the qualification criteria²⁰⁾ for an NPO corporation. If an entity satisfies these criteria, its establishment shall be recognized by the competent authorities.

B. Certified NPO System

Certified NPO status is conferred to an NPO corporation meeting the requirements set by the director of the National Tax Service and which has passed a certain test. With this recognition, tax benefit is given for contributions. To pass the public support test (PST) - the most difficult test to pass - an certified NPO must have an annual average of 100 or more donators making donations of 3,000 yen or more for each business year. A certified NPO should pass the PST and other tests to acquire the status of a certified NPO corporation.

C. New Non-profit Organization System

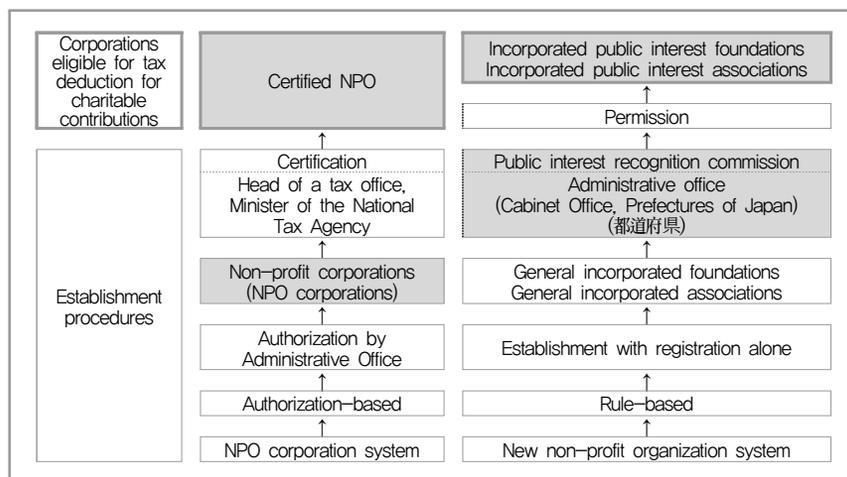
The new non-profit organization system was introduced to compensate for the shortcomings of the existing system, where permission for establishment

19) Article 1 of the NPO Law

20) Article 16 of the NPO Law

should be acquired from each government. The problems of the existing system were as follows: 1) it was permission-based, allowing for a wide range of discretion; 2) it was not easy to establish a corporation; 3) different competent authorities were involved, making monitoring and supervision complicated; and 4) there were no adequate criteria in place for disclosing information and determining publicness.²¹⁾ Publicness had to be recognized for the competent authorities to grant permission. However, the lack of criteria for judging publicness invited controversy over transparency in how non-profit organizations acquired permission to establish. In terms of subsidies and tax benefit, collusion between non-profit organizations and the competent authorities as well as authorities' unilateral discretion brought about harmful effects.²²⁾ To tackle this problem, a new NPO corporation system was introduced. [Figure IV-2] compares the procedures for the establishment of NPOs.²³⁾

[Figure IV-2] Procedures of Establishment of NPOs in Japan



21) Center for Nonprofit Research and Information, *The Japanese Nonprofit Almanac*, 2010.

22) Legislation and Judiciary Committee, "Review Report of the Bill of the Public Trust Act," February 2013.

23) Son, Wonik and Sang-heon Kim, "Post Management of Non-profit Organizations and Non-profit Corporations," report commissioned by Ministry of Justice, 2011.

1) Public Interest Recognition Commission in Japan

The Public Interest Recognition Commission was launched on April 1, 2007 along with the reform of non-profit organizations in Japan. Consisting of seven members, it serves as a private advisory body to the cabinet prime minister. An application for recognition is submitted to the cabinet prime minister, who makes the final decision on the advice of the commission. The minister may, in theory, reject the advice of the commission, but must provide a persuasive explanation for the rejection given the intention of the system. The commission's budget belongs to the Cabinet Office.²⁴⁾

2) Criteria for Recognition of Publicness

The Act on the Qualification of Incorporated Public Interest Association and Foundation (公益社団法人及び公益財団法人の認定等に関する法律) stipulates that if any corporation founded under the General Corporation Law (一般社団法人及び一般財団法人に関する法律) has publicness, it can be a non-profit organization after its publicness is recognized.

The Act was designed to improve the traditional systems, under which the establishment, permission, and supervision of an NPO were governed by the discretion of the competent authorities. According to the Act, an independent commission must carry out the recognition and supervision of a public interest incorporated association and foundation.

The Law defines business for public interest purposes as “those related to scholarship, arts, charities, and other public interests and serving the interest of many unspecific persons.” The publicness of an incorporated association or foundation used to be determined by the competent authorities. Under the new NPO system, however, the Public Interest Recognition Commission under the Cabinet Office and an equivalent collegial regulatory body under the prefectures of Japan (都道府県) do the job.

24) Legislation and Judiciary Commission, “Review Report on Charitable Trust,” February 2013.

3) Post-management

The Qualification of Incorporated Public Interest Association and Foundation Law includes a reporting and inspection provision pursuant to which the administrative office may, if necessary, request that an NPO submit a report, inspect its ledger, or pose related questions as stipulated under the Cabinet Office Ordinance.²⁵⁾ The office may recommend a required action pursuant to the provisions on recommendation or order.²⁶⁾

3 United Kingdom

A. Office for Civil Society (Office of the Third Sector)

The Office for Civil Society is an organization under the Cabinet Office which is one of the ministerial departments in the U.K. The Cabinet Office comprises a total of 20 departments, including the Society.²⁷⁾

Established in 2006, the Office of the Third Sector supports the third sector, including social enterprises, charities, voluntary organizations, and communities in order to create an environment where third sector activities can be actively performed. The Office for Civil Society (OCS) replaced the Office of the Third Sector after the general election in 2010 and takes responsibility for the Cabinet Office's charities, social enterprises, and voluntary organizations.

Along with the Cabinet Office minister, the minister of OCS takes care of matters regarding not only transparency and corruption but also reforms in public sector efficiency, accuracy, or debt and holds responsibility for (a) voluntary works, the Big Society agenda, and charities, (b) social investment and enterprises, and (c) the reform of public institutions.²⁸⁾

25) Qualification of Incorporated Public-Interest Association and Foundation Law § 27.

26) Qualification of Incorporated Public-Interest Association and Foundation Law § 28.

27) <https://www.gov.uk/government/organisations>

28) The Government of the United Kingdom, <https://www.gov.uk/government/ministers/parliamentary-secretary-minister-for-civil-society>

B. Charity Commission

1) Overview

The Charity Commission is a non-ministerial department in the United Kingdom, totally independent from the influence of government or charities. The commission has authority to supervise and register charities in England and Wales with its quasi-judicial function similar to that of the High Court, and is required to report its track records to Parliament every year.²⁹⁾

A) Legal Basis of the Charity Commission

Established in 1858, the Charity Commission evolved into a corporate form based on the Charity Act 2006, which tightened supervision of charities.

Replacing most of the Charities Act of 1992 and 1993 and 2006 and all of the Recreational Charities Act of 1958, the Charities Act of 2011 prescribes how all charities in England and Wales be registered and regulated. However, the Act does not substitute any provision on fund-raising.

B) Roles of the Charity Commission

Although the Charity Commission is a national agency with a budget fully funded by the national treasury, it is politically independent and does not belong to any government department.³⁰⁾ It confers charity status on organizations and supervises them. However, its supervision, in its nature, is close to governmental support to charities (Charities Act 1992, Sec 1(3)).³¹⁾ As an independent agency that does not belong to any government department the Commission is not subject to the direction or control of any minister or other government departments(Charities Act 2011, Sec. 13(4)).

29) www.charitycommission.gov.uk/

30) Legislation & Judiciary Committee, "Review Report on the Public Trust Act."

31) Kim, Jin-woo, "Legal Structure of Public Trust," *Comparative Private Law*, Vol. 19, 1st issue, (Serial No. 56), 2012.

D) Register and Disclosure System for Charities

The Charity Commission is obliged not only to keep and record a charity register but register charities. All charities in England or Wales with an annual income of more than £5,000 shall be registered in the register, unless they fall under certain categories.

〈Table IV-1〉 Status of Charities Registered with the Charity Commission (1999-2012)

(Unit: number, billions euro, %)

As of 31 December	Total number of charities	Total annual income	Number of larger charities (with annual income above £10 million)	Total annual income	Proportion
2012	162,915	58.48	958	33.50	57.3
2011	161,649	55.87	901	31.75	56.8
2010	162,415	53.86	883	30.10	55.9
2009	160,515	51.74	833	28.26	54.6
2008	168,354	48.40	747	25.67	53.0
2007	169,297	44.55	679	22.41	50.3
2006	168,609	41.26	627	20.10	48.7
2005	167,466	37.86	570	17.59	46.5
2004	166,336	34.86	511	15.84	45.4
2003	164,781	31.62	460	14.19	44.9
2002	162,335	29.45	421	13.04	44.3
2001	160,778	26.71	372	11.42	42.7
2000	159,845	24.56	336	10.27	41.8
1999	163,355	23.74	307	10.19	42.9

Source: Charity commission website, "[www.charitycommission.gov.uk/About us/About charities/Factfigures.aspx](http://www.charitycommission.gov.uk/About_us/About_charities/Factfigures.aspx)."

2) Establishment of a Charity

Any person intending to set up a charity needs to: 1) clearly understand the meaning of charity, including what a charity can or cannot do; 2) choose a name for the charity by differentiating between words that can or cannot be used; 3) identify a charity type; 4) set charity rules; and 5) find a trustee for the charity.

3) Criteria for Recognition of Publicness

The U.K.'s Charities Act 2006 has no explicit concept or provision for the criteria of recognition of NPOs. As all charities in the U.K. except small ones should be registered with the Charity Commission, their publicness is automatically recognized with the recognition of their charity purposes.

The Charity Commission has discretion in determining whether an organization is sufficiently public. Although the commission refers to the judicial precedents and its own cases when determining publicness, it is allowed to recognize a new public interest purpose in consideration of social and economic changes.³²⁾

The Sec.1(1)(a) of the Charities Act 2011 defines a charity as an organization established for "charitable purposes," whose definition is provided in Sec. 2 therein. Specifically, Sec.2(1) defines the purposes as those which 1) fall within Sec. 3(1), and 2) are for the public benefit. Sec. 3(1) of the same Act lists the charitable purposes specifically as follows:

- (a) The prevention or relief of poverty
- (b) The advancement of education
- (c) The advancement of religion
- (d) The advancement of health or the saving of lives
- (e) The advancement of citizenship or community development
- (f) The advancement of the arts, culture, heritage, or science
- (g) The advancement of amateur sport
- (h) The advancement of human rights, conflict resolution, or reconciliation or the promotion of religious or racial harmony or equality and diversity
- (i) The advancement of environmental protection or improvement

32) The U.K. act prescribes explicitly who may be disqualified for a public charity trustee (Charities Act 1993, Sec. 72). For example, a person convicted of an offense leading to a criminal prosecution or adjudged bankruptcy, or removed or replaced from the office of charity trustee or trustee for a charity by an order made by the High Court or the Charity Commission is the case in point. If the person acts as a public charity trustee while disqualified, he or she is liable to a fine or imprisonment for a term not exceeding two years (Charities Act 1992, Sec. 73(1)). However, the Charity Commission may allow an exception in an individual case (Charities Act 1993, Sec. 72(4)).

- (j) The relief of those in need by reason of youth, age, ill health, disability, financial hardship, or other disadvantage
- (k) The advancement of animal welfare
- (l) The promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire, and rescue services or ambulance services
- (m) Others³³⁾

4) Post-management

The audit for larger charities is prescribed in Article 144 of the Charities Act 2011 (c.25). This provision applies to a charity's fiscal year 1) where the gross income exceeds £500,000, or 2) whose gross income exceeds the accounts threshold³⁴⁾ at the end of the year and the aggregate value of its assets exceeds £3.26 million.³⁵⁾ If this provision applies to a charity's specific fiscal year, the charity's accounts for that year must be audited by a person who 1) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, or 2) is a member³⁶⁾ of a body for the time being specified in the regulations under section 154 and eligible for appointment as a charity auditor under the rules of that body.

5) Benefits

As most charities in the U.K. exist in a form of a charitable trust, the benefits for a charity mean those for a charitable trust. Once a charity becomes a charitable trust, it may enjoy the privileges of a purpose trust. According to the website of the Charity Commission, if an organization becomes a charity, it:

33) Charities Act 2011.

34) "The accounts threshold" means the sum for the time being specified in section 133.

35) Charities Act 2011 chapter 3, 144

36) Member of a body for the time specified in regulations under section 154 and is under the rules of that body eligible for appointment as auditor of the charity.

- will be exempted from income taxes/corporate taxes, capital gains taxes, stamp taxes, and estate and gift taxes;³⁷⁾
- will pay no more than 20 percent of normal business rates on the buildings which they use and occupy to further their charitable aims;
- can receive special VAT treatment in some circumstances;
- may be able to raise funds from the public, grant-making trusts, and local government more easily than non-charitable bodies;
- can formally represent and help to meet the needs of the community;
- is able to provide the public with assurance that they are being monitored and advised by the Commission; and
- can seek advice from us, can get information from the Commission.³⁸⁾

4 International Comparison of Information Disclosure Lists

<Table IV-2> compares the data submitted by an NPO in each country. The information disclosure lists, applicable to an NPO with a higher degree of publicness than any other in each country, is compared to evaluate the required level of information disclosure in Korea. Compared are NPO information disclosure lists under the Tax Act in Korea, recognized NPO corporations in Japan, and non-profit and tax-exempt organizations in the U.S.

Korea and the U.S. both require disclosure of both business results and the increase/decrease in assets, while only the former is required in Japan. A closer examination, however, reveals that all three countries require similar information. All countries ask for information on the soliciting and spending of donations. While the U.S. does not request information on the organization's

37) <http://www.charitycommission.gov.uk>
<http://www.charitycommission.gov.uk/detailed-guidance/registering-a-charity/registering-as-a-charity-cc21/#p61>

38) <http://www.charitycommission.gov.uk>
<http://www.charitycommission.gov.uk/detailed-guidance/registering-a-charity/registering-as-a-charity-cc21/#p61>

executives, etc. Korea and Japan do, indicating a higher interest in special stakeholders.

Korea and Japan do not pay much attention to the information on personal details of major donors and expenditures on activities for legislation, while the U.S. has a great interest in and thus requests such information. This seems attributable to the culture of the U.S., where tax benefits are made exhaustively inaccessible for the NPOs that influence legislative activities.

As illustrated in the comparison, the level of information disclosure required of non-profit organizations in Korea is comparable to that of major countries. However, it seems desirable for the Korea government to reform the relevant schemes so that, in the future, all tax support is denied to any organization engaged in political activities, as with the case of the U.S. In conclusion, to enhance NPO transparency, a verification process to ensure efficacy of disclosed information is considered more important than a required list of information disclosure. The windows for information disclosure, currently distributed in a sporadic way, need to be unified to relieve NPOs of administrative burden. Furthermore, the window should be improved to provide the statistics generated by applying and processing the data on such organizations so that they may be utilized in academia and policymaking.

The adequate information-disclosure range for Korea, set based on the results of a comparison between the information-disclosure levels in Korea and other major countries, is as follows: At present, the level of information disclosure in Korea is equal to or higher than those of the U.S., Japan, and other advanced countries. Its information disclosure level for special stakeholders, in particular, is the highest among these countries. However, when it comes to information on an NPO's participation in political activities, its level is much lower than the U.S.'s. Given that NPOs are increasingly engaged in political activities, the required level of relevant information disclosure should be adjusted upward. In conclusion, it is considered appropriate for the current level of information disclosure on special stakeholders-which is higher than that of the advanced countries-should stay unchanged, while that of an NPO's political activities should be adjusted upward to the level of those advanced countries (such as the U.S.).

Table IV-2) Comparison of List of Data to be Submitted by each Non-profit Organization

	Business results	Increase/decrease in assets	Property inventory	Business plans	Soliciting and spending of donations	Information on executives, etc.	Contribution, holding, and disposal of stocks, etc.	Status of dividend and stock disposal	Names and addresses of major donors	Spending on legislative activities, etc.	Payment or overseas remittance of raised fund	Membership information
Non-profit corporations	o ¹⁾	x ²⁾	o ¹⁾	o ³⁾								
	Non-profit organizations	o	o	o								
Korea	Non-profit organization under the Tax Act	o	o		o	o	o	o				
	Organization deemed a corporation			o ⁴⁾		o ⁵⁾			o			
Japan	NPO corporations	o	o	o		o ⁶⁾						
	Recognized NPO corporations	o ⁷⁾			o ⁸⁾	o ⁹⁾					o	o
	Non-profit organizations			o		o ¹⁰⁾						
U.S.	Non-profit and tax-exempt organizations	o	o	o	o			o	o			

Note: 1) Not applicable to the Ministry of Culture, Sports and Tourism

2) Not applicable to the Board of Audit and Inspection

3) Protected balance sheet and income statement are submitted as settlement for accounts documents

4) Needed only for the purpose of receiving subsidies

5) The names, addresses, remuneration and other payments of the foundation manager and high-salaried employees

6) Including the list of executives who received remuneration in the previous year

7) Revenue details by source, details of borrowings, information on the transfer of assets, etc., transaction information (names, titles, addresses, and the amount of transactions with the top five counterparts)

8) Names of donors of more than 200,000 yen and donation amounts, etc

9) Regulations on executive remuneration and employee wages

10) Including criteria for payment of remuneration for directors

Source: Oh, Yeong-ho *et al.*, "A Study on Improvement Plans of Governance Systems of NPOs," Korea Institute for Health and Social Affairs, 2011.

V

Plan for Fundamental Improvement

1 Basic Direction

The basic direction for institutional improvement of non-profit organizations (NPOs) is to make it easier to establish them while carrying out a more thorough management of them. As NPO establishment becomes easier more of them will be established, facilitating public interest activities. However, if NPO establishment is made easier but without proper post-management, social problems such as moral hazard are likely to occur. Thus, easier establishment should entail tighter post-management.

Institutional improvement should be attained so that NPO publicness may be verified in an objective and impartial manner. Results of the verification of an NPO's publicness should be reliable as it relates to the exemption of various taxes. To this end objective verification procedures, as well as a reliable verifying agency, shall be in place. Since verification of publicness is also linked to NPO post-management, it is more efficient to make a single agency responsible for both verifying and post-management. This is also needed for ensuring the reliability of the results of the verification and post-management. In other words, to advance institutions related to non-profit corporations and facilitate public interest activities, a single agency shall cover the whole process from matters regarding NPO establishment and the publicness verification to post-management. For the non-profit corporation to efficiently perform public interest activities for Korean society while earning

public trust, discussion needs to take place centering on the relevant British institutions. In the U.K., policy has changed direction from limiting public interest activities to expanding their range to facilitate them. Furthermore, thanks to proactive policy, the role of non-profit organizations as a social service provider has been acknowledged and independence increasingly encouraged. Also, the institutions necessary for maintaining NPO publicness and transparency have been streamlined. It is therefore time to have policy and institutions like those of the U.K., in which the role of NPOs and their accountability and credibility can meet Korean society's expectations. To do this, an organization similar to the U.K.'s Charity Commission should be established to oversee all affairs related to NPOs. It should be affiliated directly with the President or the Prime Minister's Office to create an environment where it can be operated independently of other government departments.

The policy options suggested by this study are applicable both to NPOs established under Article 32 of the Civil Act and public interest corporations under the Act on the Establishment and Operation of Public Interest Corporations. Corporations established under Special Acts such as social welfare corporations (Social Welfare Act), school foundations (Private School Act), and medical corporations (Medical Service Act) are not in the scope of this study. Affairs regarding the establishment, publicness verification, and post-management of an NPO established under a special act are governed by separate regulations set by the relevant special act. In the long term, it will be advisable to establish a governance system for governing NPOs established and operated under the special acts.

2 Policy Options

This section will suggest an improvement plan for the establishment, publicness verification, and post-management in stages.

A. Establishment of an NPO

Establishment of an NPO needs to be converted from permission- to approval-based. The definitions and characteristic of the permission- and approval-based systems are prescribed in the Civil Act in <Table V-1> below:

<Table V-1> Terminology for the Civil Act Amendment Bill Regarding the Establishment of NPOs

	Permission-based	Approval-based
Definition	<ul style="list-style-type: none"> – Legislative principle where the permission of the competent authorities is a prerequisite for corporation establishment. 	<ul style="list-style-type: none"> – The approval-based system refers to a principle where a corporation can be established when the statutory requirements for the establishment of a corporation are met and approval is obtained from the competent authorities. When an application is made with the statutory requirements met, the person with the authority to approve shall provide approval.
Characteristics	<ul style="list-style-type: none"> – Discretionary administrative behavior of the competent authorities 	<ul style="list-style-type: none"> – The authority to approve acts as a powerful tool for discipline as the authorities has a substantial authority to review the requirements for approval. – Under the permission-based system, the discretionary power of the competent authorities is reduced.

The approval-based approach is legally bound in that the competent authorities should provide approval to the organization satisfying the statutory requirements when filing an application. Thus, it is clearly different from the permission-based system where permission is at the discretion of the competent authorities. If the permission-based system, which inconveniences the public through its cumbersome criteria and requirements, is converted to an approval-based one in which meeting certain criteria inevitably leads to approval, there will be no case in which a corporation cannot be established due to failing to obtain a permission from the competent authorities.

In 2011, the Ministry of Justice brought in a bill for the amendment of the Civil Act to switch the permission-based system to an approval-based one

for the establishment of “an NPO under the Civil Act.” However, the bill failed to pass the National Assembly and was then discarded. The revision option suggested by this study is applicable not only to NPOs under the Civil Act, but also ‘public interest corporations’ under the Act on the Establishment and Operation of Public Interest Corporations.

The conversion of NPOs from permission - to approval - based is expected to facilitate public interest activities. If NPO registration is handled by an integrated management agency (ex: Charity Commission), NPOs currently affiliated with each respective department will come under one single integrated management agency. This will bring about a variety of advantages, such as efficient management, but may also cause resistance from each department, which will need to transfer the NPOs under their control to the agency.

B. Verification of the Publicness of NPOs

NPO publicness can best be verified by an integrated agency whose management covers the entire range of affairs, spanning from establishment to the post-management of the corporation. At present, the Tax and Customs Office of the Ministry of Strategy and Finance verifies and authorizes publicness (by classifying organizations as eligible for designated or legal donations) on the recommendation of each department. If the authorization affairs of publicness are transferred to an integrated management agency, it can be expected that the number of personnel in charge will expand and expertise secured, leading to improved objectivity and expertise in publicness authorization. In addition, the shift has an underlying intention to change the subject of the publicness authorization from the government to the private sector. (It is an important intention underlying the establishment of the Publicness Authorization Committee in Japan.) The verification of publicness will be performed in a manner similar to the organizational and operational tests by conducted by the U.S.’s Internal Revenue Service. Publicness will be verified on a regular basis to determine whether to provide tax reduction benefits by performing an organizational test for a newly established organization and an operational test for an existing one.

C. NPO Post-management

It is desirable that an integrated management agency (ex: Charity Commission) take charge of NPO post-management while the National Tax Service collects and analyzes the relevant data and provides the results to the commission. At present, the National Tax Service, in addition to each department, performs NPO post-management. As for each branch of one government, management effectiveness is questionable due to a manpower shortage and lack of expertise. As for the National Tax Service, management is not carried out practically, as there is no incentive for the verification and investigation of reports submitted by NPOs.

An integrated management agency verifies the publicness NPO operation on a regular basis (ex: every three years) before renewing or cancelling authorization. The supporting evidence used by the integrated management agency for post-management will be collected and analyzed by the National Tax Service to be provided to the commission (legal basis for this needed). To do so, a new department needs to be established in the National Tax Service. Since the verification of publicness and post-management is based on data collected by the National Tax Service, personnel at the National Tax Service should be dispatched to the secretariat of an integrated management agency to carry out affairs related to the National Tax Service. For efficient post-management, regulations governing the obligatory provision of an NPO's information need to be wholly streamlined.

NPO information disclosure in Korea is comparable to that of the advanced countries, including the U.S. and Japan. Its level of information on special stakeholders is the highest among the countries compared, while that of political activities by NPOs is much lower than that of the U.S. Thus, the required level of information disclosure needs to be adjusted upward. When it comes to information disclosure for post-management purpose, it seems desirable that the level of information on special stakeholders should be maintained, while that of an NPO's participation in political activities shall be adjusted to match that of the advanced countries (ex: U.S.), given the increasing political involvement of such organizations.

D. Establishment an Integrated Management Agency for NPOs

A legal basis should be created to comprise an integrated management agency for NPOs with the nature of a private committee to be operated independent of the government. In addition, a secretariat of civilians and public servants should be installed to support the commission. An integrated management agency for NPOs should be established directly under the President or under the Prime Minister's Office. Its head should be a respected civilian and its membership should mainly be composed of public officials with experienced private experts included. In addition, a person at the National Tax Service is obligatorily dispatched to the agency to verify publicness and post-management.

If not practically feasible to establish a new governmental organization such as an integrated management agency for NPOs, one alternative may be for an organization at the level of a bureau to be established as a sub-organization in the National Tax Service to perform a similar function by managing NPOs in a comprehensive manner. As a case in point, in the U.S. the IRS has already performed the similar function. This precedent will be expected to ease resistance to the option of establishing an organization in the National Tax Service. However, given the public's perception of the agency, entrusting the affairs of public services to it is likely to result in negative public sentiment

As mentioned, if an integrated management agency like the Charity Commission is set up and private experts equipped with expertise in a variety of non-profit areas perform management functions, its expertise will greatly exceed the National Tax Service's, as the NTS only has tax affairs experts. Also, if private experts in a variety of non-profit areas other than public officials are responsible for management affairs, they may also contribute in the socio-economic roles of the non-profit sector. The discussion evolved so far is summarized in <Table V-2> below:

〈Table V-2〉 Comparison Analysis of Governance Systems for NPOs

Classification	Alternative 1: Integrated management agency (Charity Commission)	Alternative 2: New organization Established in the National Tax Service
Pros	<ul style="list-style-type: none"> - Affairs regarding establishment, operation, publicness verification, and management of NPOs are performed by a single agency, improving the efficiency of the operation. - An objective verification of publicness is made possible by the expansion of personnel in charge of NPOs and reinforcing expertise through education. - Compliance costs borne by NPOs can be reduced by eradicating the necessity to submit the duplicate material to each department. - The non-profit sector can play its socio-economic role better with the help of the agency. 	<ul style="list-style-type: none"> - Setting up an organization through a restructuring of government departments is politically easier and more cost-effective than establishing a new commission.
Cons	<ul style="list-style-type: none"> - Possible resistance to the costs incurred in transferring the exiting NPOs to the new agency. - Administrative obstacles are expected for the establishment of a new agency. - There may be objections and conflicts among government departments and disagreements on the transfer of affairs. 	<ul style="list-style-type: none"> - Given the public's perception of the National Tax Service, entrusting the affairs of the public services to it is likely to invite negative public sentiment. - The lack of expertise of the non-profit sector will persist. - The creditability of the publicness verification by an agency which is not independent from the government will continue to be questionable.

E. Other Considerations

1) Treatment of Existing NPOs

When a new integrated NPOs management agency is established, a newly established NPO will be registered, its publicness verified by and its post-management assumed by the new agency. However, for an already established and operated NPO, registration should be transferred from each relevant department to an integrated management agency while an institution

needs to be established so that publicness verification and corporation post-management will be handled by the new agency.

The transfer should take place with a two-to-three-year grace period. For example, having reformed the NPOs, the Japanese government has a system in place where a conventional NPO's registration as a new one is required within a certain grace period.

As for publicness verification, existing NPOs should undergo verification for their publicness every three-to-five years as the verification schedule requires. In addition, the conventional publicness verification system shall undergo a drastic improvement by tailoring a system similar to the operational test administered by the IRS to the conditions of Korean society.

As for post-management, all documents should be standardized and duplicate documents submitted to multiple relevant departments need to be streamlined to greatly reduce compliance costs. The drastic decrease in compliance costs is expected to serve as a compelling incentive to induce registration of existing NPOs with the integrated management agency over a short period of time.

2) Facilitation of Merger among NPOs

Under the current system where a non-profit corporation is required to be registered with each department, the relevant department is determined based on the activity area of the corporation. Of course, there is a case where the founder of a corporation chooses the department because its area of activity does not exactly match that of any department. The current system requires a corporation that intends to be engaged in public interest activities in various areas to establish and operate multiple NPOs (foundations). If registration of all NPOs is unified as suggested in this study, a single corporation, instead of multiple ones, will be needed to perform public interest activities in a variety of areas.

As for a corporation operating a number of NPOs, it should be allowed to merger them so that it can be induced to spend their reduced operating costs on public interest activities. The merger among NPOs is difficult in practice under the current system, as it requires merger after liquidation. Therefore, the merging process needs to be dramatically streamlined for a certain grace period

to facilitate the restructuring of NPOs. In the meantime, an interim institutional back-up should be put in place. When the institutional backup is provided, they can have an additional effect of accelerating the transfer to the integrated management agency.

3) Streamlining and Standardizing of Required Documents

Under the current system, the documents an NPO should submit are very complex and redundant in nature. As already discussed in Chapter III, <Table III-2> lists the kinds of documents and information an NPO should submit according to the Regulations of the Establishment and Supervision of NPOs. It is a problem that there is difference in the content of information requested by each department and that the information submitted is virtually not verified. In addition to the document to be submitted to each competent department, there is also a variety of information that needs to be provided to the head of the competent tax office under the Tax Act. Public interest corporations of a certain size under the Inheritance Tax and Gift Tax Act should undergo an external accounting audit and submit the audit report to the head of the competent tax office. In addition, among public interest corporations subject to tax verification, those with a total asset value of no less than 1 billion won and those with a combined value of revenue and contributed assets standing at no less than 0.5 billion won should disclose relevant data at the National Tax Service's website. As there is no standardized form regarding information disclosure, each non-profit organization discloses it in its own way, making it hard for the information to be utilized as statistical data. Furthermore, although the accuracy and reliability of the disclosed information has been questioned, the competent agency, the National Tax Service, has not managed its accuracy, making the effectiveness of the disclosure questionable.

As discussed so far, although NPOs have a variety of and a massive amount of data submitted to a number of government agencies, the reliability of their data has been doubted, making it hard for the public's confidence to be improved and for the public's donations to be expanded. Therefore, all documents and information required of NPOs should be simplified and standardized as much as practically possible; the agencies to which data is submitted should be unified

to an integrated management agency; and submission of redundant data should be prevented to reduce the compliance costs borne by an NPO. Furthermore, an institutional mechanism needs to be in place to ensure that reliable post-management is performed for the data and information submitted, as well as to, ultimately, restore public confidence in NPOs.

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