



# Election Law: Selected Issues

Australia • France • Germany • Israel • Japan

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**AUSTRALIA**  
**ELECTION LAW: SELECTED ISSUES**

*Executive Summary*

*Australia has compulsory voting and federal election campaigns are traditionally six weeks long. Australia has both public and private funding of political parties and political campaigns, and does not restrict the level or source of private political donations (other than via disclosure obligations). There is no limit to the amount of political advertising, except that commercial broadcasters are limited in the amount of advertising per se that may be shown.*

**I. Background**

Australia is a parliamentary democracy. Federal elections may be for either house of Parliament. Voting is compulsory for all Australian citizens above the age of eighteen.<sup>1</sup> The Australian Electoral Commission (AEC), an independent statutory authority, is responsible for conducting federal elections, maintaining the Commonwealth electoral roll, and undertaking a range of electoral education programs and activities.<sup>2</sup>

**II. Duration of Election Campaigns**

Federal election campaigns traditionally last for approximately six weeks.<sup>3</sup> Polling day<sup>4</sup> for federal elections must be on a Saturday and must be at least 33 days but no more than 58 days after issuance of electoral writs, which command the electoral officer to hold an election and thus commence the election process.<sup>5</sup>

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<sup>1</sup> Commonwealth Electoral Act 1918 (Cth) §§ 93, 245.

<sup>2</sup> *Id.* § 7. The AEC is headed by a Chairperson (a current or former judicial officer), the Electoral Commissioner, and a non-judicial member. *Id.* § 6.

<sup>3</sup> For dates of the election period, see the AEC website, [http://www.aec.gov.au/Elections/Australian\\_Electoral\\_History/hor\\_dates.htm](http://www.aec.gov.au/Elections/Australian_Electoral_History/hor_dates.htm) (last visited Oct. 28, 2008).

<sup>4</sup> Alternate voting methods (e.g., postal) are permitted under certain circumstances but the majority of Australians cast their vote on polling day.

<sup>5</sup> Commonwealth of Australia Constitution Act §§ 12, 32; Commonwealth Electoral Act 1918 (Cth) §§151-154. However, in relation to Senate elections, this maximum period may not always be possible, as § 13 of the Australian Constitution requires the election to be completed by June 30 of each third year. The Electoral Roll is “closed” the third working day after the date of the writs (although generally the roll is not amended after the date of the writs) and candidates must be nominated between 10 and 27 days from the date of the writs. The polling date must be more than 23 but less than 31 days from the date of the nomination of the candidates. Commonwealth Electoral Act 1918 (Cth) §§ 155-157.

### III. Regulation of Political Advertising

Australia regulates the format and presentation of political advertising but has little regulation of the content of political advertising.

Printed Matter – An “electoral advertisement, handbill, pamphlet, poster or notice”<sup>6</sup> containing “electoral matter”<sup>7</sup> must carry the name and address of the authorizing person, and (unless in a newspaper) must also include the name and address of the printer.<sup>8</sup> An advertisement that contains electoral matter within a journal must have “advertisement” printed as a headline and must include the name and address of the authorizing person.<sup>9</sup>

Video Recording – A video recording containing electoral matter must have the name and address of the authorizing person at the end of the recording.<sup>10</sup>

Internet Advertising – Any electoral advertising<sup>11</sup> appearing on the internet (excluding general commentary on a website) must contain the name and address of the authorizing person.<sup>12</sup>

Exceptions – Authors of “letters to the editor” and callers to talk-back radio shows do not have to be identified.<sup>13</sup> T-shirts, lapel buttons, lapel badges, pens, pencils, balloons, or business or visiting cards that promote a candidate for election, or letters and cards that bear the name and address of the sender and do not include a representation of a ballot sheet are not required to contain details of the authorizing person or the printer.<sup>14</sup>

Broadcasts – Conditions imposed on broadcasting licensees<sup>15</sup> in relation to broadcasts of political and election matter<sup>16</sup> include:

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<sup>6</sup> But this does not include an advertisement in a newspaper announcing the holding of a meeting. Commonwealth Electoral Act 1918 (Cth) § 328(5).

<sup>7</sup> “Electoral matter” is “matter which is intended or likely to affect voting in an election.” *Id.* § 4.

<sup>8</sup> *Id.* §§ 328(1), 328(1A).

<sup>9</sup> *Id.* §§ 328, 331. It is an offense to write, draw, or depict any electoral matter directly on any roadway, footpath, building, vehicle, vessel, hoarding (billboard), or place. *Id.* § 334.

<sup>10</sup> *Id.* § 328(1A).

<sup>11</sup> In contrast to the regulation of printed material, the use of “advertisement” in § 328A does not refer to electoral matter and therefore any “announcement designed to attract public attention, which was intended to affect voting in a federal election” would fall within § 328A. AEC, ELECTORAL BACKGROUNDER NO. 15 – ELECTORAL ADVERTISING ¶ 30-31 (Aug. 2007), available at [http://www.aec.gov.au/pdf/backgrounders/15/EB\\_15\\_Electoral\\_Advertising07.pdf](http://www.aec.gov.au/pdf/backgrounders/15/EB_15_Electoral_Advertising07.pdf) (last visited Oct. 27, 2008).

<sup>12</sup> *Id.* § 328A(1), (4).

<sup>13</sup> See AEC, ELECTORAL BACKGROUNDER NO. 15, *supra* note 11.

<sup>14</sup> Commonwealth Electoral Act 1918 (Cth) § 328(3).

<sup>15</sup> This includes broadcasting licensees for commercial television, commercial radio, community radio, and subscription television, and persons providing broadcasting services under class licenses. Broadcasting Services Act 1992 (Cth), Schedule 2. While there is no limit on the amount of political advertising, there is a limit on the amount of advertising that a broadcaster may broadcast (generally, no more than 13-15 minutes per hour). *Id.* § 123; see also Commercial Television Industry Code of Practice, available at <http://www.freetv.com.au/Content/Common/pg-Code-of-Practice.seo> (last visited Oct. 28, 2008).

<sup>16</sup> “Political matter,” “election matter,” and related terms are defined in the Broadcasting Services Act 1992 (Cth), Schedule 2, cl. 1.

1. *Equal Access* – Where any election matter is broadcast during an election period by a broadcaster, then that broadcaster must give all parties contesting the election a reasonable opportunity to have election matter broadcast during the election period.<sup>17</sup> It is not a requirement that the broadcaster broadcast the material for free, however.<sup>18</sup>
2. *Identification of Authorizing Party* – When broadcasting political matter at the request of another person, a broadcaster must ensure the announcement<sup>19</sup> of identifying details of the person authorizing the political matter and the name of every speaker who makes an address or statement that forms part of that matter;<sup>20</sup>
3. *Black-out Period* – Broadcasters must comply with the “blackout” period (from midnight on the Wednesday before polling day to the close of polls on polling day);<sup>21</sup>
4. *Retain Records of Requesters of Political Advertising* – A broadcaster must retain, for six weeks from the date of broadcast or until the end of the election,<sup>22</sup> records detailing the name, address, and occupation of the person (or, if a company, the name and address of the principal office) of requesters for broadcasts of political matter;<sup>23</sup>
5. *Retain Records of News on Current or Political Affairs* – A broadcaster who broadcasts a matter in the form of news, an address, statement, commentary, or discussion that relates to a political subject or current affairs must retain a record of the matter for six weeks (or 60 days if a complaint has been made about the matter), and must make such records available to the Australian Communications and Media Authority (ACMA);<sup>24</sup> and
6. *Identification of Sponsorship of Current Affairs* – Broadcasters of commercial radio have an obligation to provide on-air disclosure of any commercial agreements with

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<sup>17</sup> *Id.* cl. 3(2).

<sup>18</sup> *Id.* Schedule 2, cl. 3(3).

<sup>19</sup> On radio the announcement must be spoken; on television it must be spoken and appear as written text. *Id.* cl. 1; *see also* AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY (ACMA), BROADCASTING AND COMMUNICATION OF POLITICAL AND ELECTION MATTER, [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_310646](http://www.acma.gov.au/WEB/STANDARD/pc=PC_310646) (last visited Oct. 28, 2008).

<sup>20</sup> Broadcasting Services Act 1992 (Cth) Schedule 2, cls. 1, 4. Where the matter is authorized by a political party, it must include the name of the party; the town, city, or suburb of the principal office of the political party; and the name of the natural person responsible for the authorization. *Id.* If the political matter was authorized by a person other than a political party, then the name of the person who authorized the broadcasting of the political matter, and the town, city, or suburb in which they reside (or, if a corporation or association, where the principal office is situated) must be indicated. *Id.*

<sup>21</sup> *Id.* cl. 3A.

<sup>22</sup> This applies where matter relates to an election and was broadcast during an election period. *Id.* cls. 1, 4.

<sup>23</sup> ACMA may direct a broadcaster to retain records for a longer period and, if requested, these records must be provided to ACMA. *Id.* cl. 4(3).

<sup>24</sup> ACMA may direct a broadcaster to retain the records for a longer period of time. *Id.* cl. 5(2), (3), (6) and (8).

sponsors or advertisers that may have the potential to affect the content of a current affairs program.<sup>25</sup>

Spam and Telemarketing Calls – Electronic messages authorized by registered political parties are exempt from the prohibition on sending unsolicited electronic messages (“spam”).<sup>26</sup> Calls by, or authorized by, registered political parties, a member of Parliament, or a candidate for election are designated “telemarketing calls;” however, they are exempted from the operation of the Do Not Call Register.<sup>27</sup>

#### IV. False Advertising or Statements

It is an offense to print, publish (including by radio or television),<sup>28</sup> or distribute, or to cause to be printed, published, or distributed, any matter or thing that is likely to mislead or deceive a voter in relation to casting their vote.<sup>29</sup> This is applicable to the marking of a ballot paper, not for whom the vote is cast,<sup>30</sup> and is only applicable during the election period (i.e., from the time of the writs to the closing of the polls).<sup>31</sup> It is also an offense to publish (without the authority of the candidate) that a candidate is associated with or supports an association, league or other body of persons.<sup>32</sup>

#### V. Political Advertising on Election Day

Broadcasters must cease political advertisements three days before polling day.<sup>33</sup> Canvassing for or against a candidate or party is not permitted within six meters (approximately 19.7 feet) of an entrance to a polling booth.<sup>34</sup> This prohibition extends to any use of a loud speaker or a public broadcasting device that permits canvassing activities to be audible within a polling booth, at the entrance to a polling booth, or within six meters of the entrance to a polling

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<sup>25</sup> Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2000, as mandated by the Broadcasting Services Act 1992 (Cth) Schedule 2, cl. 8(1)(b). Licensees must also keep a register of commercial agreements between sponsors and presenters of current affairs programs and make it available to ACMA and the public; and ensure that a condition of employment of presenters of current affairs programs is that they comply with relevant obligations imposed by the Act, the Codes, and the Standards. Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2000, cl.13.

<sup>26</sup> Spam Act 2003 (Cth) §§ 3, 16, and Schedule 1, cl. 3.

<sup>27</sup> Do Not Call Register Act 2006 (Cth) § 11(1), Schedule 1, cl. 3.

<sup>28</sup> Commonwealth Electoral Act 1918 (Cth) § 329(6).

<sup>29</sup> *Id.* § 329.

<sup>30</sup> *See* Evans v. Crichton-Browne (1981), 147 CLR 169.

<sup>31</sup> The Commonwealth Electoral Act 1918 (Cth) § 329(1) refers to “relevant period” in relation to an election, which is defined in § 322.

<sup>32</sup> *Id.* § 351(1). There is no longer any specific provision addressing false claims regarding candidates, and candidates must now seek redress for defamation under statutory or common law.

<sup>33</sup> Broadcasting Services Act 1992 (Cth) Schedule 2, cl. 3A.

<sup>34</sup> Commonwealth Electoral Act 1918 (Cth) § 340.

booth.<sup>35</sup> Officers and scrutineers (poll-watchers) may not wear badges or emblems of any political party or candidate within the polling booth on polling day.<sup>36</sup>

## VI. Funding of Political Advertising and Disclosure of Donations

Candidates, registered political parties (including associated entities), and donors must lodge annual or election period financial disclosure returns with the Australian Electoral Commission (AEC).<sup>37</sup> The AEC makes such returns publicly available.<sup>38</sup>

Returns must indicate: (1) the total value of donations received; (2) the total number of donors; (3) all individual donations received above the disclosure threshold (currently 10,900AUD<sup>39</sup>); (4) details of donations (such as the date received, the amount, and the name and address of the donor); and (5) electoral expenditures (mainly advertising, printing, and direct mail costs) incurred between the issuance of the writs and polling day.<sup>40</sup> People or organizations making donations to candidates in excess of the disclosure threshold must also lodge a donor return.<sup>41</sup>

Where a candidate receives at least 4 percent of the formal first preference votes, they (or their registered political party) are entitled to claim an amount of election funding.<sup>42</sup> There is no requirement that the candidate substantiate their claim by evidence of actual expenditures.

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<sup>35</sup> *Id.* § 340(1A).

<sup>36</sup> *Id.* § 341.

<sup>37</sup> *Id.* §§ 304–306A, 314AB–314AEC.

<sup>38</sup> See AEC, *Financial Disclosure*, [http://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/index.htm](http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/index.htm) (last visited Oct. 28, 2008).

<sup>39</sup> Approximately US\$7,022.16 on the presumption of 1 AUD = US\$0.644235.

<sup>40</sup> Commonwealth Electoral Act 1918 (Cth) §§ 303-309, 313-314, 314AA-314AEC.

<sup>41</sup> *Id.* §§ 305A, 305B.

<sup>42</sup> Senate and House candidates pay deposits with their nominations that are returned if the candidate gains more than 4 percent of the total first preference votes, or if the candidate is in a group of Senate candidates which polls at least 4 percent of the total first preference votes. *Id.* §§ 294-297.

**LAW LIBRARY OF CONGRESS**  
**FRANCE**  
**ELECTION LAWS: SELECTED ISSUES**

*Executive Summary*

*The official presidential campaign is strictly regulated by law and monitored by various institutions and bodies. All forms of paid commercial advertisements through the press or by any audiovisual means are prohibited during the three months preceding the election. Instead, political advertisements are aired free of charge on an equal basis for all of the candidates on national television channels and radio stations during the official campaign. Campaign expenditures are capped. Candidates whose campaign accounts are certified by a special commission may be reimbursed up to fifty percent of their expenses by the state if they meet certain conditions.*

**I. Introduction**

Both the President of the Republic and the National Assembly are elected through direct universal suffrage. The official election campaigns in both instances are strictly regulated by law and monitored by various institutions and bodies. This report focuses on presidential campaigns. The President is elected for a five-year renewable term.<sup>1</sup> An absolute majority of the vote cast is required for election on the first ballot. If no candidate receives a majority in the first ballot, a second round of balloting is held two weeks later. Only the two top, first-round candidates who choose to remain in the running are eligible for the second balloting. Presidential elections must be held not less than twenty days and not more than thirty-five days before the expiration of the term of the President in then office.<sup>2</sup> France's most recent presidential election took place in April and May of 2007.

**II. Duration of Presidential Campaigns**

The presidential campaign is officially opened "the second Monday that precedes the first round of balloting". Ballots are always held on a Sunday. If a second ballot is necessary, the campaign re-opens on the day of the publication of the two remaining candidates in the official gazette.<sup>3</sup> The dates of presidential elections are set forth by decree. In the 2007 election, the decree was published on February 22, 2007. The decree provided that the first ballot would take

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<sup>1</sup> 1958 Constitution, art. 6, CODE ELECTORAL, Annexe II, 811, (Daloz 2008).

<sup>2</sup> *Id.* art. 7

<sup>3</sup> Decree 2001-213 of March 8, 2001, art. 10, CODE ELECTORAL, Annexe II, 828, (Daloz 2008).



place on April 22, 2007, and, if necessary, the second ballot would occur on May 6, 2007. The campaign officially started on April 9, 2007.<sup>4</sup>

### III. Regulation of Political Advertising

#### Campaign Literature

The Electoral Code contains a few provisions regarding propaganda. The code provides for example, that electoral posters or other campaign material may only be affixed in locations and spaces officially assigned to each candidate by local authorities during the three months preceding an election.<sup>5</sup> Each candidate is allowed an equal amount of space for placing this advertisement. In addition, access by the public to toll free telephone numbers and computer databases set up by the candidates or political parties is also prohibited during the same period.<sup>6</sup>

#### Political Advertisement on Radio and Television

All forms of paid commercial advertisements through the press or by any audiovisual means during the three months preceding the election are prohibited.<sup>7</sup> Political advertisements are aired free of charge on an equal basis for all of the candidates on national television channels and radio stations during the official campaign.

The law provides that each presidential candidate is entitled to an equal amount of time for public television and radio broadcast advertisement during the official campaign.<sup>8</sup> The total minimum air time set forth by law is fifteen minutes per television channel and radio station for each candidate on the first ballot and one hour on the second ballot. The High Council on Audiovisual, (CSA) approves the actual amount of time of advertisement in cooperation with the candidates. During the 2007 presidential election, CSA approved 45 minutes of advertisement per channel and station for each candidate for the first ballot<sup>9</sup> and sixty minutes for the second ballot.<sup>10</sup> CSA also established with the candidates the duration, format and numbers of advertisements to be run within the time limits set forth above.

CSA is an independent administrative authority comprised of nine members, a third of which are appointed by the President of the Republic; a third by the president of the National Assembly; and a third by the president of the Senate. Its main missions are;

- to oversee the quality and diversity of television programs;

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<sup>4</sup> Decree 2007-227, of February 21, 2007, Journal Officiel [France's Official Gazette], J.O, Feb. 22, 2007, 3258.

<sup>5</sup> CODE ELECTORAL, art. L.51 (Daloz 2008).

<sup>6</sup> *Id.* art. L 50-1.

<sup>7</sup> *Id.* art. L52-1.

<sup>8</sup> Decree 2001-213 of March 8, 2001, art. 15, Code Electoral, Annexe II, 828, (Daloz 2008).

<sup>9</sup> CSA Decision 2007-142 of April 3, 2007, J.O. Apr. 5, 2007, 6453.

<sup>10</sup> CSA Decision 2007- 282 of April 27, 2007, J.O. Apr. 29, 2007, 7666.

- to issue broadcasting licenses;
- to ensure that the principle of pluralism in opinions is respected;
- to appoint the presidents of state owned radio and television channels; and,
- to set forth the rules of election programs to be produced by public radio and television channels.<sup>11</sup>

During a presidential campaign CSA has to conciliate two essential principles: the principle of freedom of communication and the principle of pluralism in opinions. It issues recommendations and instructions to the media prior and during an election campaign to ensure that the principle of equity governs the appearances and coverage of the candidates. CSA closely monitors the media to verify that this principle is upheld.<sup>12</sup> The 2007 report prepared by CSA on the presidential campaign concluded that the principle of pluralism was generally respected. CSA did, however, send warnings to eleven television and radio stations and two summons to a television channel. CSA also receives complaints from candidates themselves concerning possible breaches of the principle of equality. For the 2007 election, CSA investigated forty five complaints.<sup>13</sup>

### **Prohibition on Advertisement on a Specific Day**

Distribution of campaign material on election day is prohibited. Distribution to the public of any electoral message by any electronic means of communication on election day eve is prohibited.”<sup>14</sup> Publication of polling results is also prohibited during this period.<sup>15</sup>

## **IV. Campaign Financing**

### **A. Private Funding**

Individual contributions to one or more candidates for a specific election are authorized only “during the year that precedes the first day of the election and until the date of the ballot when the election is completed.” Contributions must be collected through an authorized financial representative appointed by the candidate, and may never be paid directly to the candidates themselves.<sup>16</sup>

With regard to contribution amounts, a distinction is made between contributions below or equal to €150, (referred to as “cash contributions”) and contributions of more than €150.

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<sup>11</sup> CONSEIL SUPERIEUR DE L’AUDIOVISUEL, Rôle et missions, [http://www.csa.fr/conseil/role/role\\_csa.php?rub=4](http://www.csa.fr/conseil/role/role_csa.php?rub=4) (last visited 10-27-2008).

<sup>12</sup> LAURENT TOUVET & YVES- MARIE DOUBLET, DROIT DES ELECTIONS, § 366 (Economica 2007).

<sup>13</sup> CONSEIL SUPERIEUR DE L’AUDIOVISUEL, Rapport sur la campagne présidentielle de 2007, [http://www.csa.fr/upload/publication/rapport\\_presidentiel\\_07.pdf](http://www.csa.fr/upload/publication/rapport_presidentiel_07.pdf) (last visited 10-28-2008).

<sup>14</sup> CODE ELECTORAL, art. L 49 (Daloz 2008).

<sup>15</sup> LAURENT TOUVET & YVES- MARIE DOUBLET, DROIT DES ELECTIONS, § 394 (Economica 2007).

<sup>16</sup> CODE ELECTORAL, art. L52-4.

Contributions of more than €150 must be paid by check, with the donor duly identified. Individual contributions of more than €150 are allowed for an amount of up to €4,600. Cash contributions to a candidate cannot exceed 20 percent of the authorized campaign expenditure amount when such amount is equal to or more than €5,000.<sup>17</sup>

Individual donations made to political parties or to election campaigns, and political party membership fees, give rise to a tax credit equal to 66 percent of their amount, with a limit of twenty percent of the taxpayer's taxable income. Proof of the donation or fee must be provided in order to be allowed the credit.<sup>18</sup> A candidate's contribution to their own campaign does not give rise to a tax deduction.

No legal entity is allowed to participate in financing a political candidate, unless the legal entity is a political party or a political group. Financing is not allowed in any form. This prohibition applies whether the financing is direct, such as the donation of money, indirect, such as the rendering of services or the granting of favors or advantages to a candidate's political campaign by providing services and/or products below regular market fees or prices.<sup>19</sup>

Foreign states or foreign legal entities cannot make direct or indirect donations to a political candidate.<sup>20</sup> No restriction is mentioned regarding foreign individual contributors, and there is no provision regarding the requirement to raise all or the majority of funds within a candidate's home constituency.

There is no limit to the amount a candidate may contribute to his own campaign other than the general ceiling on campaign expenditures; however, proof that the funds legitimately belong to the candidate must be provided. There is no limit to the amount a party may wish to contribute to the campaign of one of its candidate other than the general ceiling on campaign expenditures. The ceiling on campaign expenditures is discussed below.

## **B. Limits on Presidential Campaign Expenditures**

The ceiling on expenditures for the 2007 presidential campaign for each presidential candidate was €16,166,000.00 for the first ballot, and €21,594,000.00 for each of the two candidates present at the second ballot.<sup>21</sup> The 2007 campaign account of President Nicolas Sarkozy shows that his expenditures were €21,038,893.00,<sup>22</sup> while the total expenditures of his opponent, Segolène Royal, were €20,712, 043.00.<sup>23</sup>

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<sup>17</sup> *Id.* art. L52-8, On October 27, 2008, 1€equaled 1.24 USD.

<sup>18</sup> CODE GENERAL DES IMPOTS, art. 200-3, (Dalloz 2008).

<sup>19</sup> CODE ELECTORAL, art. L52-8.

<sup>20</sup> *Id.*

<sup>21</sup> Decree 2007-140 of February 1, 2007, on Increasing the Ceilings on Campaign Expenditures, J.O. Feb. 3, 2007, 2097.

<sup>22</sup> Decision of the National Commission on Campaign Accounts and Political Financing of November 26, 2007 regarding Nicolas Sarkozy, presidential candidate, J.O. Jan. 10, 2008, 574.

<sup>23</sup> Decision of the National Commission on Campaign Accounts and Political Financing of November 26, 2007 regarding Segolène Royal, presidential candidate, J.O. Jan. 10, 2008, 568.

### C. State Funding

Presidential candidates are each entitled to reimbursement from the state, equal to one twentieth of the allowable ceiling for their election campaign. However, for candidates that obtained at least five percent of the vote on the first ballot, the reimbursement amount is 50 percent of the allowable ceilings on expenditures. In any case, the amount of reimbursement cannot exceed the actual expenses as shown in the candidate's campaign accounts.<sup>24</sup> The state pays in advance €153,000 to the candidates when the official list of candidates is published in the official gazette.<sup>25</sup>

The state also will reimburse the candidates for the cost of paper and for the printing of ballots, posters, and election circulars. Justification must be provided for these expenses.<sup>26</sup>

### Audit of Campaign accounts

Within two months following the election, each candidate must file a campaign account with all justification for expenses and income with the National Commission on Campaign Accounts and Political Financing. The Commission will review the accounts and either certify, decline to certify or reject them. Without certification from the Commission, a candidate will not receive reimbursement for campaign expenses from the state. Campaign accounts of presidential candidates are published in the official gazette.<sup>27</sup>

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<sup>24</sup> Law 62-1292 of November 6, 1962, on the Election of the President of the Republic as amended, art. 3, CODE ELECTORAL, Annexe II, 815, (Daloz 2008).

<sup>25</sup> *Id.*

<sup>26</sup> CODE ELECTORAL, art. R 39. ( Daloz 2008)

<sup>27</sup> Law 62-1292 of November 6, 1962, on the Election of the President of the Republic as amended, art. 3, CODE ELECTORAL, Annexe II, 815, (Daloz 2008).

**LAW LIBRARY OF CONGRESS**  
**GERMANY**  
**ELECTION LAWS: SELECTED ISSUES**

*Executive Summary*

*Federal legislation does not determine the duration of election campaigns, and the relevant cases of the Federal Constitutional Court indicate that the length of a campaign may vary for different purposes. Whereas political parties are supported by governmental funds on a continuous basis, in part because of their lengthy campaign preparations, government entities must be especially careful to remain neutral during the six months preceding an election, and it is appropriate for the German states to limit campaign advertisements on radio and television to a few weeks preceding the election; likewise, state and local laws may limit campaigning by billboards to a few weeks before the election.*

*Aside from a prohibition of influencing the voters on Election Day in or near the polling place, Germany has no federal legislation on political advertisements. Political speech may be robust, but is not exempt from the governance of criminal law.*

*Political parties obtain up to one half of their funding from public sources. The funds may be used for all legitimate party expenses that include but are not limited to campaigning.*

**I. The Federal Election System**

Germany elects the Federal Diet, the representative chamber of the bicameral federal legislature, by popular vote.<sup>1</sup> As a rule, these elections are held every four years,<sup>2</sup> and they are the only popular federal elections in Germany. The members of the Federal Council, the other chamber of the federal legislature, are appointed by the state governments,<sup>3</sup> and the Federal President is elected by the Federal Diet and an equal number of electors from the state parliaments.<sup>4</sup>

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<sup>1</sup> Grundgesetz für die Bundesrepublik Deutschland [GG], May 23, 1949, BUNDESGESETZBLATT [BGBl, official law gazette of the Federal Republic of Germany] 1, art. 38.

<sup>2</sup> The legislative period is four years [GG art. 39], but it can be shortened if the legislature casts a vote of no-confidence in the Federal Chancellor [GG art. 67].

<sup>3</sup> GG art. 51.

<sup>4</sup> GG art. 54.

The election system for the Federal Diet combines elements of a proportional representation system and a winner-take all constituencies system. Each voter casts two ballots: one for a state-wide party list and the other for one of the candidates competing in a district. Half of the Diet representatives are the winners of the district ballots, and the other half are chosen from the party lists in proportion to the election outcome.<sup>5</sup>

## II. Duration of Election Campaigns

### Federal law – Constitutional Parameters

German federal law contains no provisions limiting the duration of election campaigns. Moreover, there appears to be no consensus in case law or legal literature on how long election campaigns are or should be, and it is not clear whether the federal legislature would have the power to limit their duration.<sup>6</sup> The Federal Constitutional Court has held in 1966<sup>7</sup> that there is a short period before an election that is definable as the campaign period. Its length, however, is not specified, and it may vary for different purposes.

The 1966 decision dealt with campaign finance. The Federal Constitutional Court held that it was constitutionally permissible for the government to reimburse the political parties for their costs of campaigning, whereas the public funding of the parties in continuity was not permissible. The Court did not specify for what period of time such a reimbursable campaign could be waged, but indicated that campaigns lasted for a short period of time and that the campaign activities of the parties could be separated from their continuous endeavors to influence the public.

In 1968, the Court reversed its view on how to define the campaign period, at least for the purpose of public funding. The Court found that the granting of advance payments toward the parties' campaign expenditures was permissible, because it took the parties longer than one year to prepare for an election.<sup>8</sup> In 1992, the Court reversed even more of its decision of 1966, by pronouncing that the parties deserved public funding for all their legitimate functions, not just campaigning.<sup>9</sup> Nevertheless, the Court's 1966 decision on campaign financing has remained a valid guidepost for limiting certain campaign activities to a short period, yet these limits are imposed by the states.

According to the Court, however, the day on which the Federal President announces the date of the election<sup>10</sup> is of significance for governmental activities.<sup>11</sup> This announcement is

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<sup>5</sup> Bundeswahlgesetz [BWahlG], repromulgated July 23, 1993, BGBl I at 1288, as amended, §§ 4 – 7; G. SMITH, *DEMOCRACY IN WESTERN GERMANY* 130 (New York, 1979).

<sup>6</sup> C. WALTHER, *WAHLKAMPFRECHT* 29 (Baden-Baden, 1989).

<sup>7</sup> Bundesverfassungsgericht [BVerfG], decision of July 19, 1966, 20 *ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS* [BVerfGE] 56.

<sup>8</sup> BVerfG, decision of Dec. 3, 1968, 24 *BVerfGE* 300.

<sup>9</sup> BVerfG, decision of Apr. 9, 1992, 85 *BVerfGE* 264.

<sup>10</sup> BWahlG § 16.

usually made six months before the election.<sup>12</sup> The Federal Constitutional Court held in 1977<sup>13</sup> that from that date forward the executive branches of the federation and the states must be particularly careful when providing public information so as to remain neutral and not to engage in election campaigning.

### **State Law – Billboards**

The limitation of billboards and flyer distributions to a short period of time preceding the election is the general practice in the German states.<sup>14</sup> In Bavaria, for instance, the State Ministry of the Interior issued a Directive on the use of public streets and roads for campaign purposes.<sup>15</sup> It limits the use of loudspeakers and billboards on state-owned roads to six weeks before the election for federal and European Elections. The limitation is four weeks for state elections, and two weeks for municipal elections. In addition, this Directive recommends that the local communities enact similar rules for the roads owned by them.

### **State Law – Radio and Television Broadcasts**

A short campaign period is also taken for granted under the state laws and interstate agreements that deal with the giving of air time by public and private radio and television broadcasters to campaigning political parties.<sup>16</sup> In Bavaria the campaign spots of the public broadcasters are granted during a period of exactly 31 days before the election.<sup>17</sup> The same time frame is provided for the private broadcasters of most of the states by a joint communication of the state supervisory agencies for private broadcasters.<sup>18</sup>

Campaign spots on the broadcast media do not provide a very sizeable benefit. Not only are they granted for a short campaign period but, depending on state law or agreement, they are limited to one and one half or two and one half minutes that may not be exceeded per advertisement. Moreover, only a handful of campaign spots are allocated to the major parties, and proportionally less to smaller parties. For instance, for the federal election of 1990, the Christian Democratic Union, one of the largest parties in the country, was only granted eight

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<sup>11</sup> BVerfG, decision of Mar. 2, 1977, 44 BVerfGE 125.

<sup>12</sup> W. SCHREIBER, HANDBUCH DES WAHLRECHTS ZUM DEUTSCHEN BUNDESTAG 325 (Köln, 2002).

<sup>13</sup> BVerfG, decision of Mar. 2, 1977, 44 BVerfGE 125.

<sup>14</sup> Walther *supra* note 6 at 30.

<sup>15</sup> Staatsministerium des Inneren, Werbung auf öffentlichen Strassen, June 30, 1980, BAYERISCHER STAATSANZEIGER No. 30 (1980).

<sup>16</sup> A. SCHULZE-SÖLDE, POLITISCHE PARTEIEN UND WAHLWERBUNG 190 (Frankfurt, 1994).

<sup>17</sup> Satzung über die Wahlwerbung in Angeboten nach dem Bayerischen Mediengesetz, Feb. 4, 1999, BAYERISCHER STAATSANZEIGER no. 6, as last amended by Satzung, May 8, 2008, § 8, Bayerischer Staatsanzeiger no. 20, available at [http://www.blm.de/apps/documentbase/data/de/www\\_08\\_neu.pdf](http://www.blm.de/apps/documentbase/data/de/www_08_neu.pdf).

<sup>18</sup> Rechtliche Hinweise der DLM zu den Wahlsendezeiten für Politische Parteien, July 6, 2005, at <http://www.alm.de/fileadmin/Download/Positionen/Rechtliche-Hinweise-Wahlsendezeiten-2005.pdf>.

advertisement spots on each of the public television broadcasting networks.<sup>19</sup> In 2005, the state supervisory agencies for the private broadcasters published guidelines indicating that a total allocation of twelve minutes per campaign period per broadcaster was appropriate for the two largest political parties, while smaller parties should get six or three minutes. The parties were to decide how to break this time down. The larger parties were to decide whether they wanted eight one and one half minute slots or twenty four half minute time spots.<sup>20</sup>

The severity of limiting campaign airtime for the political parties is enhanced by the consensus of the German states that the political parties may not purchase advertisement time from broadcasters.<sup>21</sup> This prohibition is valid at any time, not only during the campaign period, and it effectively limits the period during which the public must put up with campaign activities. Nevertheless, the public is not deprived of political information in the broadcast media because the broadcasters have the mandate to inform the public on political matters and they air programs in which politicians participate in discussions or interviews.<sup>22</sup>

### III. Regulation of Political Advertisements

Aside from a prohibition of advertising, influence-peddling, or signature-collecting on Election Day in or near the polling place,<sup>23</sup> German federal law contains no specific rules on political advertisements. Instead, the parameters of permissible campaigning conduct are set by constitutional guarantees on the one hand, and the applicability of criminal law, on the other. The most pertinent constitutional guarantees are contained in article 5 of the Federal Constitution that guarantees freedom of expression. In addition, its article 21, paragraph 1 establishes the role of the political parties in the political process.

Article 21, paragraph 1 of the Federal Constitution translates as follows:

Political parties shall participate in the formation of the political will of the people. They may be freely established. Their internal organization must conform to democratic principles. They must publicly account for their assets and for the sources and use of their funds.<sup>24</sup>

According to the Federal Constitutional Court,<sup>25</sup> this provision encompasses the rights of the parties to campaign by means of posters, flyers, and similar modes of distributing campaign

<sup>19</sup> C. v. Mannstein, *Was Werbung wirklich leisten kann*, FRANKFURTER ALLGEMEINE ZEITUNG 13(Nov. 17, 1990).

<sup>20</sup> Rechtliche Hinweise der DLM zu den Wahlsendezeiten für Politische Parteien, July 6, 2005, at <http://www.alm.de/fileadmin/Download/Positionen/Rechtliche-Hinweise-Wahlsendezeiten-2005.pdf>.

<sup>21</sup> Rundfunkstaatsvertrag, Dec. 31, 1991, as amended, BAYERISCHES GESETZ- UND VERORDNUNGSBLATT 132 (2007), reprinted in W. HAHN & T. WESTING, BECK'SCHER KOMMENTAR ZUM RUNDFUNKRECHT at 1 (München, 2008), § 7 ¶8 and §42, ¶2.

<sup>22</sup> H. SCHNEIDER & WOLFGANG ZEH. PARLAMENTSRECHT UND PARLAMENTSPRAXIS 411 (1989).

<sup>23</sup> BWahlG § 32.

<sup>24</sup> Translation from PRESS AND INFORMATION OFFICE, BASIC LAW FOR THE FEDERAL REPUBLIC OF GERMANY (Bonn, 1998).

<sup>25</sup> BVerfG, reasoned chamber decision denying certiorari, Aug. 1, 2002, reprinted in NEUE JURISTISCHE WOCHENSCHRIFT at 2938 (2002).



materials. In exercising this right, however, the parties remain bound by restrictions of administrative and civil law, for instance, an individual's right to deny the acceptance of advertising material in his mailbox,<sup>26</sup> or city ordinances limiting the use of billboards.<sup>27</sup>

In a 1978 decision,<sup>28</sup> the Federal Constitutional Court ruled on the applicability of criminal law to campaign activities. The Court held that broadcasters may refuse campaign spots that obviously violate criminal provisions. In the case at issue, the Communist parties of several states had published statements that employed very disparaging language about parliaments and democracy, and, according to the Court, this may have constituted the offenses contained in section 90(a) of the Criminal Code (CC),<sup>29</sup> prohibiting the disparagement of the state and its symbols, and also of section 90(b) CC, prohibiting the anti-constitutional disparagement of constitutional organs.

Among the other criminal offenses that conceivably could be perpetrated in campaign spots is incitement to hatred against segments of the population, in particular racial, ethnic, or religious groups, as stated in CC, section 130. Incidentally, this provision also penalizes the dissemination of the holocaust lie. Section 131 of the CC could also be committed in advertisements. This provision prohibits the glorification of violence in print, the media, or public statements or displays. In addition, the CC contains a group of offenses dealing with insult, malicious gossip and disparagement<sup>30</sup> that also could become applicable in aggressive campaigning.

#### IV. Campaign Financing

Political parties receive governmental funds for all of their constitutional functions,<sup>31</sup> and campaigning is one of these functions. Public funding is granted to all parties that have obtained 0.5 percent of the vote in the latest national or European election, or one percent in the latest state election. Funding is limited in two ways: the overall limit for all annually disbursed funds is 133 million Euros, and a party may not receive more public annual funds than it has earned or otherwise generated during the year.

Within these limits, the parties are granted €0.70 for each obtained vote, however, €0.85 are granted for the first 4 million votes obtained in an election. Generally, the vote for the party list is counted for this purpose, but not the ballot for the single constituency candidate (see above in the Introduction). In addition, the parties are entitled to matching funds of €0.38 for each

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<sup>26</sup> *Id.*

<sup>27</sup> Verwaltungsgericht München, decision of May 26, 2002, BAYERISCHE VERWALTUNGSBLÄTTER 732 (2002).

<sup>28</sup> BVerfG, decision of Feb. 14, 1978, 47 BVerfGE 198.

<sup>29</sup> Strafgesetzbuch [StGB], repromulgated Jan. 2, 1975, BGBl I at 1, and Nov. 13, 1998, BGBl. I, 3322, as amended.

<sup>30</sup> StGB §§ 185 – 200.

<sup>31</sup> Parteiengesetz, repromulgated Jan. 31, 1994, BGBl I at 149, as last amended by Gesetz, Dec. 22, 2004, BGBl I at 3673, at [www.bundeswahlleiter.de/bundestagswahl2005/downloads/parteieng.pdf](http://www.bundeswahlleiter.de/bundestagswahl2005/downloads/parteieng.pdf), §§ 18 – 22.

Euro received from membership fees and individual donations not exceeding € 3,300. The government distributes funds four times a year, in the form of estimated advance payments that are based on former entitlements, and these payments are later adjusted to the appropriate amount as computed by the statutory formula.

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**LAW LIBRARY OF CONGRESS**  
**ISRAEL**  
**ELECTION LAW: SELECTED ISSUES**

*Executive Summary*

*Israel elects its Knesset (Parliament) in a single general election. The Prime Minister is the head of the executive branch and is usually the head of the winning party. The campaign period is limited by law generally to ninety days, but with a sixty-day limit on the broadcasting of campaign advertisements. Specific restrictions apply both to the content as well as to the medium by which advertisements are conveyed. Israel regulates the financing of general elections by imposing ceilings on both income and expenditures, by providing governmental financing, and by establishing strict auditing mechanism.*

**I. Introduction**

Israel maintains a parliamentary system. Its electoral system is based on nation-wide proportional representation. Accordingly, a single general election has to be held once every four years, or earlier upon a decision by the Knesset or the Prime Minister to hold early elections. A later election date can also be determined under special circumstances. The contest in the elections is among lists of candidates selected by their parties directly in primaries or via the party's institutions. Following elections, the President assigns the task of forming a government to a Knesset Member who has notified him that he is prepared to do so; usually, this is the head of the political party that won the most seats in the 120 Member Knesset and who was able to reach agreements with smaller parties to establish a coalition government. Unlike the Prime Minister who serves as the head of the executive branch, the President of the State has mainly ceremonial status as the head of state and is elected by the Knesset for a seven-year term, which cannot be extended.<sup>1</sup>

**II. Duration of Election Campaigns**

The period of restrictions under the Elections (Modes of Propaganda) Law, 5719-1959,<sup>2</sup> as amended, is generally ninety days prior to Election Day. The broadcasting of campaign advertisements, however, is permitted only during the sixty days prior to the elections.<sup>3</sup> Certain restrictions, including on the improper use of public assets, aircrafts, and vessels, however,

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<sup>1</sup> *The Electoral System in Israel*, THE KNESSET (Parliament) OFFICIAL WEBSITE, [http://www.knesset.gov.il/description/eng/eng\\_mimshal\\_beh.htm](http://www.knesset.gov.il/description/eng/eng_mimshal_beh.htm) (last visited Oct. 24, 2008).

<sup>2</sup> Elections (Modes of Propaganda) Law, 5719-1959 § 2, 13 LAWS OF THE STATE OF ISRAEL (Authorized Translation from the Hebrew by the Ministry of Justice, hereafter LSI) 146 (5719-1958/59).

<sup>3</sup> *Id.* § 5.

extend beyond this period.<sup>4</sup> The usage of a letter from the alphabet to designate a candidate list for the purpose of campaign propaganda is permitted only within forty-two days prior to the elections.<sup>5</sup>

The Political Parties (Financing) Law, 5733-1972/73,<sup>6</sup> as amended, defines the “election period,” for the purpose of financing of elections, as “the period from the determining day to election day.” The “determining day” is defined as any of the following, as relevant:

- (1) The 101<sup>st</sup> day before elections to the Knesset; or
- (2) In relation to elections held under a Law for the dissolution of the Knesset, the third day after the coming into force of that Law; or
- (3) In early elections held for reasons including no confidence vote and inability to pass a budget bill, the third day from the start of the event leading to early elections.<sup>7</sup>

### III. Regulation of Political Advertisement

Political advertisement is regulated by the Elections (Modes of Propaganda) Law, 5719-1959,<sup>8</sup> as amended. Subject to some exceptions, the law generally prohibits the use of public facilities or property, aircrafts, and vessels for the purpose of election campaigns.

Special prohibitions apply to the use for campaign purposes of the names or images of terrorism victims and of persons belonging to Israel’s security forces (the Israel Defense Forces, Israel’s Police, the Prison Service, and other security agencies) killed or injured in action, in the absence of either personal or, in the case of death, family written consent. The use of the Israel Defense Forces in campaign propaganda in a way that may create an impression that it identifies with a party or a candidate list is similarly prohibited. The law also specifically prohibits the use of minors under the age of fifteen in campaign advertisements, except where the minor appears in a routine activity.<sup>9</sup>

Special restrictions apply to campaign broadcasting via TV and radio. Campaign broadcasts through these media are permitted only during the last fourteen days prior to elections.<sup>10</sup> The law also regulates the time allotments dedicated to the broadcasting of campaign propaganda. Each party and candidate list is entitled to TV broadcasting of seven minutes and every party represented in the outgoing Knesset (Parliament) is given two additional minutes for every representative it had in that Knesset.<sup>11</sup> Radio broadcasts are allotted in fifteen-

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<sup>4</sup> *Id.* § 2.

<sup>5</sup> *Id.* § 7.

<sup>6</sup> The Political Parties (Financing) Law, 5733-1972/73, 27 LSI 48 (5733-1972/73).

<sup>7</sup> *Id.* § 1.

<sup>8</sup> Elections (Modes of Propaganda) Law, 5719-1959, 13 LSI 146 (5719-1958/59).

<sup>9</sup> *Id.* § 2c.

<sup>10</sup> *Id.* §§ 15(a1); 15a(a).

<sup>11</sup> *Id.* § 15a(b).

minute segments per party, with four additional minutes per representative in the outgoing Knesset.<sup>12</sup> Although broadcasted without cost, the campaign advertisement segments must be produced and financed by the parties or the candidate lists and approved by the Chairman of the Central Election Committee.<sup>13</sup>

The law further prescribes rules regarding the advertisement of polling results. These include requirements to specify, within twenty-four hours from publication of the results, the identity of the organization that ordered the poll and of the pollster, the date or period in which the poll was conducted, the population from which a segment of responders was drawn, the number of persons who were requested to participate, the actual number of participants, and the margin of error for the data obtained. The law prohibits advertisement of the results of a voting poll that has not been broadcast prior to the Friday before the opening of the polling stations until polling stations are closed. Publication of a pre-published voting poll during this period, however, may be permitted if it clearly states that the poll is not up-to-date and does not indicate any voting patterns or public positions on the day of the publication or broadcast.<sup>14</sup>

#### IV. Campaign Financing

Israeli law permits both public financing as well as private funding of national elections.

##### A. Private Funding

Individual contributions are permitted as long as they originate from donors who are Israeli citizens and residents above the age of eighteen.<sup>15</sup> Minors and anonymous donors are specifically prohibited from contributing to candidates' elections as well as to their primaries' campaigns.<sup>16</sup> Corporate contributions are prohibited.<sup>17</sup> Campaign contributions originating from foreign sources, whether individual or corporate, are similarly prohibited.<sup>18</sup>

The competition in the general election is among parties. Heads of parties who won the primaries or are appointed by their parties as such do not compete individually in the general election. Voters, however, know that a vote for a particular major party is likely a vote for its head to serve as the Prime Minister. The law prescribes limits on donors' contributions to parties during election years as well as during non-election years.<sup>19</sup> The law further provides mandatory

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<sup>12</sup> *Id.* § 15(a).

<sup>13</sup> *Id.* § 15a(d).

<sup>14</sup> *Id.* § 16e.

<sup>15</sup> Political Parties (Financing) Law 5733-1973 § 8(d1), 27 LSI 48 (5733-1972/73), as amended.

<sup>16</sup> *Id.* § 8(d2); The Parties Law, 5752-1992 § 28d(2), SEFER HA-HUKIM [Book of Laws, Official Gazette] No. 1395, p. 190 (5752-1992), as amended.

<sup>17</sup> Political Parties (Financing) Law 5733-1973 § 8(a), 27 LSI 48 (5733-1972/73), as amended.

<sup>18</sup> *Id.* § 8(d1).

<sup>19</sup> *Id.* § 8.

ceilings on campaign expenditures and encourages voluntary spending limits on party groups that forego direct public financing.<sup>20</sup>

### B. Government Funding

Parties and candidates may obtain both direct and indirect public funding. The former is paid out of the Treasury, through the Chairman of the Parliament, into the party group's bank account in accordance with the Political Parties (Financing) Law. Every party group is entitled to financing for its election expenses during the election period,<sup>21</sup> and to ongoing expenses (expenses other than election expenses) for every month from the month following the publication of the results of parliamentary elections until the month in which the results of the elections to the next Parliament are published.

In addition to direct funding, qualified parties and candidate lists are also entitled to indirect funding of specific expenses, including transportation of voters to the polling place; printing, mailing, and posting of election materials; and TV and radio campaign broadcasting, subject to eligibility requirements. The free broadcasts do not preclude parties and candidates from producing additional paid advertisements.

### C. Financial Disclosure

The law imposes bookkeeping requirements on all party groups, in accordance with directives issued by the State Comptroller. Party group accounts must show all income and expenditures. The directives specify that the accounts should enable clear identification of party groups' expenses for the election and any runoff election, ongoing expenses, and identify receipts and sources of donations. Similarly, the amount of the contribution as well as details permitting identification of the contributor for auditing purposes must be registered in the attachment for each receipt included in the receipt book, which each party group must maintain.<sup>22</sup>

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<sup>20</sup> *Id.* § 8c.

<sup>21</sup> The election period is the period commencing on the 101st day before elections to the Knesset, or, in relation to elections held under a law for the dissolution of the Knesset, from the third day after that law comes into force.

<sup>22</sup> Political Parties (Financing) Law, 5733-1973 § 9, 27 LSI 48 (5733-1972/73), as amended.

**LAW LIBRARY OF CONGRESS**  
**JAPAN**  
**ELECTION LAW: SELECTED ISSUES**

*Executive Summary*

*The campaign period in Japan is short and campaign methods are regulated in detail. The law sets a ceiling on spending and a portion of campaign costs are subsidized by the government.*

**I. Introduction**

This report discusses the national election law applicable to members of the Diet (Japan's Parliament). The Prime Minister is selected by a resolution of the Diet from among Diet members.<sup>1</sup> Therefore, there is no national election for the Prime Minister.

In regard to elections to the lower house of the Diet, the House of Representatives, the number of seats is 480.<sup>2</sup> Among them, 300 members are elected from single-member districts, while the remainder are chosen according to a party's proportional share of the vote in 11 electoral regions.<sup>3</sup> For upper house (House of Councillors) elections, the 242 seats are divided into 96 seats that are filled through a nationwide proportional representation system, and 146 seats that are filled by local districts.<sup>4</sup> Every three years, one-half of the upper house membership is elected.<sup>5</sup> A party must win at least five seats among both houses or two percent of the vote in the previous election to qualify to enter a proportional representation election.<sup>6</sup>

**II. Duration of Election Campaigns**

An election campaign can be conducted between the filing date of a person's candidacy and the day before the election day.<sup>7</sup> The election campaign period is short in Japan. For lower house elections, an announcement of the election day can be made as little as twelve days before

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<sup>1</sup> Constitution of Japan (1946), art. 67.

<sup>2</sup> Kōshoku senkyo hō [Public Election Law], Law No. 100 of 1950, *as amended*, art. 4, para. 1.

<sup>3</sup> *Id.* art. 12, para. 1 and art. 13, para. 1.

<sup>4</sup> *Id.* art. 4, para. 2.

<sup>5</sup> Constitution of Japan (1946), art. 46.

<sup>6</sup> Public Election Law, Law No. 100 of 1950, *as amended*, art. 86-2, para. 1 and art. 86-3, para. 1.

<sup>7</sup> *Id.* art. 129.

the election.<sup>8</sup> For the upper house, an announcement of the election day can be made as little as seventeen days before the election.<sup>9</sup>

### III. Campaign Advertisement

#### A. General Rules

There are detailed rules on campaign advertisement. Minors cannot engage in campaign advertisement.<sup>10</sup> No one can make door-to-door visits<sup>11</sup> or gather signatures for campaign advertisement purposes. Because of various regulations, campaign activities of third parties who are not involved in candidates' and political parties' campaigns are almost limited to telephone advertisements.<sup>12</sup> Candidates and political parties can have a few cars with loudspeakers to advertise themselves while driving<sup>13</sup> or make speeches from cars while parking.<sup>14</sup> Candidates and political parties can distribute a specified number of postcards and brochures. For example, a lower house district candidate can send 35,000 postcards and 70,000 brochures.<sup>15</sup> In addition, political parties can distribute pamphlets or booklets that describe their policies in a specific manner.<sup>16</sup> Posters and signs can be displayed in a specific manner, and their numbers and sizes are regulated.<sup>17</sup> Candidates and political parties can place advertisements in papers in a specific manner. For example, a candidate in a lower house district election can place five advertisements of a specified length in a newspaper that he chose.<sup>18</sup>

#### B. Broadcasting

In lower house district and proportional representation elections, and upper house proportional representation elections, candidates may not broadcast their political views. Instead, each qualified party is allowed to broadcast its political views.<sup>19</sup> Candidates in the upper house district elections can broadcast their political views, however.<sup>20</sup> The maximum number of TV and radio broadcasts, total length of broadcasts, and maximum length of each broadcast for political views are specified by law and regulation, depending on the number of candidates that

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<sup>8</sup> *Id.* art. 31, para. 4.

<sup>9</sup> *Id.* art. 32, para. 3.

<sup>10</sup> *Id.* art. 137-2.

<sup>11</sup> *Id.* art. 138.

<sup>12</sup> Senkyo seido kenkyūkai [Election System Research Group], ed., *Jitsumu to kenshū no tame no wakari yasui kōshoku senkyo hō* [Easy Public Election law for practitioners and researchers], 175 (12<sup>th</sup> ed. 2001).

<sup>13</sup> *Id.* art. 141.

<sup>14</sup> *Id.* art. 141-3.

<sup>15</sup> *Id.* art. 142.

<sup>16</sup> *Id.* art. 142-2.

<sup>17</sup> *Id.* art. 143.

<sup>18</sup> *Id.* art. 149.

<sup>19</sup> *Id.* art. 150, paras. 1 and 3.

<sup>20</sup> *Id.* art. 150, para. 3.



each political party has.<sup>21</sup> Qualified parties and candidates must use the same facilities to record expressions of their political views.<sup>22</sup> In addition, both houses' district candidates' biographical information is broadcast ten times for radio and once for television.<sup>23</sup>

#### IV. Campaign Financing

Because campaign methods are heavily regulated and partially subsidized by the government, and a ceiling on spending is set by law, the campaign finance issue is not as important as in the United States. Also, it is not so clear what campaign financing is versus the ordinary financing of politicians and political parties, because ordinary financing can be carried over into the campaign period. This section addresses funding regulations in ordinary times.

##### A. Ceiling on Spending

The Public Office Election Law sets a ceiling on the amount that a candidate is legally allowed to spend on one election.<sup>24</sup> For lower house district elections, the allowable limit is computed as follows: the number of registered voters in the election district H 15 *yen* + 19,100,000 *yen*.<sup>25</sup> For upper house district elections, the allowable limit is basically computed as follows: the number of registered voters in the election district ) the number of seats in the election district H 13 *yen* or 20 *yen* (depending on the number of seats) + 23,700,000 *yen*. The spending limit on candidates for the upper house proportional representation system is 53 million *yen* (US\$530,000).<sup>26</sup>

##### B. Government Funding

The Law Concerning Financial Assistance to Political Parties authorizes public financing to a party that has more than five incumbent members among both houses of the Diet, or has won more than two percent of the total vote in the previous general election.<sup>27</sup> The total amount of public financing is limited to the following amount: 250 *yen* (US\$2.50) H the country's population.<sup>28</sup> Japan's population was approximately 128 million as of 2005,<sup>29</sup> so that the total

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<sup>21</sup> *Id.* art. 150; Kōshoku senkyo hō shikō rei [Public Election Law Enforcement Order], Order No. 89 of 1950, as amended, art. 111-4; Seiken hōsō oyobi keireki hōsō jisshi kitei [Regulation on implementation of broadcasts of political views and biographical statements], Ministry of Home Affairs Notification No. 165 of 1994 (Nov. 29, 1994), as amended by Ministry of Internal Affairs and Communications Notification No. 543 of 2008 (Sept. 30, 2008), arts. 1-3.

<sup>22</sup> Public Election Law, Law No. 100 of 1950, *amended by* Law No. 86 of 2007, art. 150, paras. 4 and 5.

<sup>23</sup> *Id.* art. 151.

<sup>24</sup> *Id.* art. 194.

<sup>25</sup> *Id.*; Public Office Election Law Enforcement Order, Order No. 89 of 1950, *as amended*, art. 127.

<sup>26</sup> Public Office Election Law, Law No. 100 of 1950, *as amended*, art. 194; Public Office Election Law Enforcement Order, Order No. 89 of 1950, *as amended*, art. 127.

<sup>27</sup> Seitō jōsei hō [Law Concerning Financial Assistance to Political Parties] Law No. 5, Feb. 4, 1994, *as amended*, arts. 2 and 3.

<sup>28</sup> *Id.* art. 7, para. 1.

amount in 2005 was approximately 32 billion *yen* (US\$ 320 million). The amount is distributed to qualified parties in proportion to the number of Diet seats that each party has and the percentage of votes that each garners.<sup>30</sup>

The Government also subsidizes a portion of campaign costs, including the publication of election bulletins,<sup>31</sup> broadcasting of political views of political parties and candidates,<sup>32</sup> newspaper advertisements,<sup>33</sup> rental fees of cars with loudspeakers,<sup>34</sup> and postcards.<sup>35</sup> Also, during the campaign period, 15 free tickets for the use of public transportation are issued to each candidate for the lower house (single-member districts) and the upper house (local districts), and six tickets to each candidate for the upper house under the proportional representation system.<sup>36</sup>

### C. Political Fund-raising

The law sets contribution limits, depending on the contributors. In addition to contributions, fund-raising parties held by politicians and political organizations are major sources of income. The law sets a limit of 1.5 million *yen* (US\$ 15,000) on the amount of party entrance fees one person can pay.<sup>37</sup>

There are no limits on individuals' contributions to politicians specifically for campaign activities separate from contributions to their fund management organizations. Otherwise, annual contributions, except for testamentary gifts, made by individuals to political parties or their political fund-raising organizations are restricted to 20 million *yen* (US\$200,000);<sup>38</sup> to political factions or support organizations, to 10 million *yen* (US\$100,000);<sup>39</sup> and to any single fund management body, political faction, or support organization, to 1.5 million *yen* (US\$15,000).<sup>40</sup> An anonymous person or a person using another person's name is expressly prohibited from making or receiving contributions, regardless of whether an election is to be held or not (with the exception of a contribution of less than 1,000 *yen*).<sup>41</sup>

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<sup>29</sup> Statistic Bureau, Ministry of Internal Affairs and Communications, Jinkō sōsū, available at <http://www.stat.go.jp/data/kokusei/2005/kihon1/00/01.htm> (last visited Oct. 28, 2008).

<sup>30</sup> Law Concerning Financial Assistance to Political Parties, Law No. 5 of 1994, *as amended*, art. 7.

<sup>31</sup> Public Office Election Law, Law No. 100 of 1950, *as amended*, art. 167, para. 1.

<sup>32</sup> *Id.* art. 150, paras. 1-3.

<sup>33</sup> *Id.* art. 149, para. 6.

<sup>34</sup> *Id.* art. 141, para. 7.

<sup>35</sup> *Id.* art. 142, para. 5.

<sup>36</sup> *Id.* art. 176.

<sup>37</sup> Seiji shikin kisei hō [Political Funds Control Law], Law No. 194, July 29, 1948, *as amended*, art. 22-8.

<sup>38</sup> *Id.* art. 21-3, para. 1.

<sup>39</sup> *Id.* art. 21-3, para. 3.

<sup>40</sup> *Id.* art. 23, para. 2.

<sup>41</sup> *Id.* art. 22-6.

Corporations, labor unions, or other groups are allowed to donate an annual maximum amount ranging from 7.5 to 10 million *yen* (US\$75,000 to US\$1 million) to political parties and their fund-raising organizations, in accordance with the sum of capital issued by the corporation or the number of members of the union or group.<sup>42</sup> Corporations, labor unions, or other groups can make donations to political parties or their fund-raising organizations, but not to factions within political parties, politicians, or their fund management organizations.<sup>43</sup>

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<sup>42</sup> *Id.* art. 21-3, paras. 1 and 2.

<sup>43</sup> *Id.* art. 21, para. 1.