



Campaign Funds

Canada • France • Italy • Japan

August 1999

LL File No. 1999-2739
LRA-D-PUB-002109

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CANADA

Canada's system for reimbursing both political parties and individual candidates for a portion of their election expenses has not changed since the previous report was prepared. However, a general election was held in June of 1997. That election resulted in the Liberal majority being reduced to 156 seats and the Reform Party being elevated to the status of the Official Opposition with 59 seats.

The Post-Election Report prepared for Parliament by the Chief Electoral Officer indicates that the election expenses limit for a party that ran a candidate in each of the 301 electoral districts was Can\$11,358,749.* Since running a candidate in all electoral districts is rare, actual figures for all but the majority party were less. The political parties reported election expenses of approximately Can\$35 million, and candidates reported expenses of approximately Can\$40 million.

As a result of the 1997 general election, those of Canada's registered political parties that qualified for a reimbursement received a total of approximately Can\$7.5 million. Individual candidates qualifying for a reimbursement received a total of approximately Can\$16.5 million. These figures indicate that the Canadian system aims primarily at supporting candidates, but that support for political parties is a very important secondary component.

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August 1999

*[Http://www.elections.ca/gen_info/finance](http://www.elections.ca/gen_info/finance).

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FRANCE

ADDENDUM TO REPORT 97-1552 ON CAMPAIGN
FINANCING OF NATIONAL ELECTIONS

Since the publication of the 1997 report, only minor modifications have been made to provisions concerning campaign financing. The most significant is the decree of December 22, 1997,¹ which provides that ceilings for campaign expenditures be multiplied by a 1.05 coefficient (with the exception of the ceiling for the election of the deputies of the National Assembly). Therefore, this report will primarily supplement an earlier report on campaign finance auditing procedures.

To give more weight to campaign reform, the legislature established a rigorous system of control. The 1990 law created a special committee, the *Commission nationale de contrôle des comptes de campagne et des financements politiques* [hereinafter CCEPI] to audit candidates' campaign accounts in the above elections [substitute "national elections"?] with the exception of the presidential election.² In the latter case, the audit is performed directly by the *Conseil Constitutionnel*.

Auditing the accounts is only the first step. The committee is an administrative body and, as such, cannot impose sanctions. This task is left to the *Conseil d'Etat*³ and the *Conseil Constitutionnel*. They are the main players, although other jurisdictions (civil and criminal) may be involved. This report reviews the composition and the role of the CCFP and then discusses the extent of the control by the councils.

Composition and Role of the CCFP

The CCFP is composed of nine members designated by decree for five years: three members are from the *Conseil d'Etat*, three members are from the *Cour de Cassation*,⁴ and three members are from the *Cour des comptes* (State Audit Court). The committee has a

¹ J.O., December 24, 1997 at 18767.

² The *Conseil Constitutionnel* (Constitutional Council) is composed of nine members whose term of office is nine years (non-renewable); three are appointed by the President of the Republic, three by the President of the National Assembly, and three by the President of the Senate; in addition, former presidents of the Republic are, by right, life members. The council's main function is to examine the constitutionality of laws. One of its additional functions is to oversee the fairness and the regularity of presidential and parliamentary elections.

³ France has a dual system of courts: judicial (civil and criminal) courts and administrative courts. The judicial courts are headed by the *Cour de Cassation* and the administrative courts by the *Conseil d'Etat* (Council of State).

⁴ See note 2.

permanent secretary's office, comprised of 30 to 40 persons, made available by the departments of Justice, Interior, and Finance. In addition, the committee calls on approximately 160 judges from either the judicial or the administrative courts to investigate accounts.

Within two months following each election, candidates must file their campaign accounts, accompanied by all the necessary justifications, with the prefecture⁵ of their domicile. These accounts must be reviewed by the committee within six months from the filing date in uncontested cases, or two months from the expiration date of the filing delay in cases when the election is contested before the Conseil d'Etat or the Conseil Constitutionnel.

The CCFP is an administrative authority, and not a court. Therefore, its decisions do not in any way prejudice the rulings of either council. The committee may render the following types of decisions:

- Notice of a candidate's failure to file his or her campaign account with the prefecture on time and notification of the candidate that the delay might result in his/her ineligibility.
- Approval of the account. Approval is granted when a candidate strictly adheres to the law or when a candidate's irregularities are judged to be minor and not to alter the truthfulness of the accounting or suggest a willingness to circumvent the law.
- Reassessment of the account. Usually the committee reassesses the expenditures, modifying the classifications made by the candidate, and taking out expenditures it judges should not be part of the campaign account. After it is reassessed, the account may be approved or it may be rejected if it shows a negative balance. If the account shows a surplus, the surplus is distributed either to an association for the financing of a political party that has been approved by the CCFP or to an institution serving the public interest.
- Rejection of the account when the committee finds that one or several dispositions of the Code Electoral have been violated.

The candidates are notified of the committee's decisions and the grounds upon which these decisions are based. In addition, the CCFP also ensures the publication (in a simplified form) of campaign accounts in the official gazette.

Control of the Conseil Constitutionnel and of the Conseil d'Etat

The *Conseil Constitutionnel* has exclusive jurisdiction over the elections of the President of the Republic and the members of the National Assembly. The *Conseil d'Etat* covers the election

⁵ France is divided into 96 *départments*. Each department has a prefecture that represents the central government and is responsible for most central government functions within the department.

of French representatives to the European Parliament. Since the reform, the councils have a dual role. They not only oversee the regularity and the fairness of the elections, but, in addition, they decide whether the candidates have complied with all the regulations concerning campaign accounts. They act upon a claim from either a voter or another candidate, or upon a request from the CCFP. The CCFP must notify the appropriate council of any account that is rejected and of a candidate's failure to file his or her account or to file it on time. The councils have the discretion to declare a candidate ineligible for one year or, if elected, declare his/her election null and void.

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August 1999

ITALY

On April 30, 1999, a request for a popular referendum aimed at amending Italian electoral legislation was filed.¹ Through the referendum, voters would decide whether or not to eliminate the 25% proportional quota for the election of the members of Parliament in the Chamber of Deputies. Should this proposal be approved, the mixed system introduced by the 1993 legislation would cease to exist, and the single-member/majority system would govern the election of all members of the Chamber. No date has yet been set for the vote.

On June 3, 1999, Law No. 157, containing new provisions regulating the reimbursement of electoral expenses, was enacted.² This new law eliminated a scheme of financing of political parties introduced by Law No. 2 of 1997, which allowed taxpayers to assign 0.4% of their taxes for party financing purposes. According to Law No. 2/97 funds would have started flowing to parties beginning in January 1998, based on tax returns filed in 1997. It was calculated that a mere 15% of returns granting the contributions under Law No. 2 would have been sufficient to reach the limit of 110 billion *lire* [1,700 *lire* =US\$ 1] of contributions, per year, set by this law.

The scheme did not go as planned, as Italian taxpayers demonstrated their displeasure with it by abstaining from filing the necessary forms. Law No. 2/97, it was generally felt, did not allow taxpayers to choose either the political group to finance or the amount of the financing. The popular attitude toward the political party public financing system previously in existence should have been known. That system was abrogated by an overwhelming majority of votes in a referendum in 1993.³

Law No. 157/99 assigns to political parties or political formations a reimbursement for electoral expenses sustained for the renewal of both Chambers of Parliament, of the European Parliament, and of Regional Councils. Such contributions, equal to 4 thousand *lire* for each of the 45 million citizens entitled to vote for the election of the Chamber of Deputies and collected in four separate funds, are distributed according to the same criteria applicable to the distribution of other funds regulated by Law No. 515/1993 discussed in the chapter on direct funding of the Italian chapter in the Law Library Report for Congress LL 97-1552. However, the limit of a minimum of 3% of the valid votes in the single-member districts—which was necessary to qualify for the distribution of funds for the election of the Chamber of Deputies—has now been reduced to 1%.

In addition, Law No.157/99 established a special fund not to exceed 5 billion *lire* per year, to

¹ GAZZETTA UFFICIALE DELLA REPUBBLICA ITALIANA [official law gazette of Italy, GU] No. 101 of March 5, 1999.

² GU, No. 129 of June 4, 1999.

³ See LA REPUBBLICA [daily newspaper] on Dec. 2, 1998; and March 2, 4, 13, 23, and 24, 1998.

be distributed among groups promoting popular referenda, under the condition that the quorum for the validity of each referendum be reached.

Under the new legislation, the deduction of 22% of income tax for physical persons and for companies and commercial enterprises for contributions offered to political organizations or parties, introduced by Law No.2/97, now applies to amounts between 100 thousand and 200 million *lire*, instead of 500 thousand and 50 million *lire*, as was previously the case. The Law further exempted political parties from stamp tax, registration tax, and from the tax on inheritance and gifts.

Under Law No. 157, political parties are required to reserve 5% of the new funds that the Law established, for the purpose of enhancing women's participation in the political process.

Finally, perhaps aware of a certain lack of clarity regarding the legislation on campaign financing at this juncture, the legislature has delegated to the executive branch the responsibility of compiling a consolidated text of the provisions allegedly in force on the subject. Such consolidation act should come to life within 120 days from June 5, 1999, the date Law No. 157 entered into force.

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August 1999

JAPAN

Introduction

The Japanese government consists of three branches: the Diet, the Cabinet, and the judiciary. The Diet is a bicameral legislature composed of an upper house (the House of Councillors) and a lower house (the House of Representatives). Executive power is vested in the Cabinet, which consists of the Prime Minister and other ministers. Under the Constitution,¹ the Prime Minister is to be elected by the House of Representatives. The Cabinet is empowered to dissolve the lower house and call for general elections. It is obliged to resign upon a vote of no confidence taken by the House of Representatives. Judicial power is vested in the judiciary, consisting of the Supreme Court and lower courts. The Emperor performs only those acts specified by the Constitution and has no legal right to rule the country.

Currently, there are eight political parties in Japan: two ruling parties - the Liberal Democratic Party (LDP) and the Liberal Party and six opposition parties - the Democratic Party, the New Komeito, the Communist Party, the Social Democratic Party (SDP), the New Sakigake Party, and Independents/Minor Parties.² The LDP, which had been in power since 1955, lost its exclusive hold in July 1993. A coalition government, composed of the LDP, the SDP, and Sakigake, was formed in June 1994, with a Socialist leader (Tomiiichi Murayama) as Prime Minister for the first time in 47 years. After 18 months in office, Murayama resigned in January 1996 and Ryutaro Hashimoto, president of the LDP, became the Prime Minister. He in turn was succeeded by Keizo Obuchi of the LDP in July 1998. The present government was formed on the basis of the LDP-Liberal Party alliance.³

In regard to elections to the lower house, legislation in 1994 abolished the 129 multi-member electoral districts, in which from three to five representatives were elected, and reduced the number of House seats from 511 to 500. Of the 500 legislators, 300 are to be elected in single-member districts, while the remainder are to be chosen according to a party's proportional share of the vote in 11 new electoral regions. A party must win at least 2% of the regional vote to qualify for a proportional representation seat. Members serve four-year terms, unless the Prime Minister dissolves the lower house and calls a general election earlier than normally scheduled or the lower house passes a no-confidence motion. Each voter will cast two votes: one for a single-seat candidate and another for a party in the nationwide proportional representation system.⁴

For upper house elections, the 252 seats are divided into 100 seats elected through a national

¹ Promulgated on Nov. 3, 1946; came into force on May 3, 1947.

² JEI Report, No. 20B (May 21, 1998), at 5.

³ *Id.* at 6.

⁴ ASAHI SHINBUN, Nov. 22, 1994.

(proportional representation) constituency system (from 1983), under which voters write the name of a political party rather than a candidate on their ballots, and 152 seats elected by local districts. Every three years, one-half (126 seats) of the total membership is elected: 50 members by the national constituency system and 76 members by the prefecture-wide districts.⁵

The public campaign costs of the 1993 election for the lower house defrayed by the government totaled 42.9 billion *yen* (about US \$429 million, at 100 *yen* to \$1.00), of which 29 billion *yen* (\$290 million) were spent for general expenses and 13.9 billion *yen* (\$139 million) for indirect funding (such as free transportation, advertisements, broadcasting, etc.), or 14 million *yen* per candidate.⁶ The amount of private monies expended in 1993 election is unavailable at this time (for campaign costs for earlier elections, *see below*, under Conclusion).

Regulatory statutes

Political funds and election campaigns are regulated by two major statutes, the Political Funds Control Law of 1948⁷ and the Public Office Election Law of 1950.⁸ The former regulates political contributions (*seiji kenkin*) and spending and specifically requires the public reporting of such matters by political organizations. The latter regulates in detail all election campaign activities, including the formal accounting, reporting, and publication of campaign fund expenditures by candidates and organizations designated by the candidates, as well as indirect government funding of elections.

After forming a seven-party coalition government in August 1993, Prime Minister Morihiro Hosokawa put political reform at the top of his agenda.⁹ The four political reform bills proposed by Hosokawa were passed into law on January 29, 1994. With the passage of supplementary bills on November 21, 1994, political reform legislation came into force on January 1, 1995.¹⁰

The four-part political reform package contains the revised Public Election Law and the revised Political Fund Control Law, which were intended to overhaul the election system for the lower house and impose more stringent regulations on political fund-raising. The other two laws included are: the Law Concerning Financial Assistant to Political Parties,¹¹ which provides direct

⁵ H. Baerwald, *Japan's House of Councillors Election*, 29 ASIAN SURVEY 837 (Sept. 1989).

⁶ This information was provided by Mr. Shuichi Takano, Embassy of Japan, Washington, D.C.

⁷ Law No. 194, July 29, 1948, as last amended by Law No. 47, May 6, 1998 (Political Funds Control Law).

⁸ Law No. 100, Apr. 15, 1950, as last amended by Law No. 54, May 8, 1998 (Public Office Election Law).

⁹ For more information, *see* 47 HORITSU NO HIROBA 4-47 (June, 1994); 1045 JURISUTO 35-49 (June 1, 1994); Jichisho (Ministry of Home Affairs), SEIJI KAIKAKU KANREN SHIHO NO ARAMASHI (Outline of Political Reform Legislation) (Tokyo, Akarui Senkyo Suishinkai, 1995).

¹⁰ *Supra* note 4.

¹¹ Law No. 5, Feb. 4, 1994, as amended by Law No. 136, Dec. 20, 1995 (Asst. to Parties Law).

government funding to the political parties for the first time, and the Law Establishing the Electoral Redistricting Committee of the Lower House¹² (came into force on December 25, 1994), which authorizes the creation of an independent committee to draw up the new electoral boundaries for the 300-single seat districts.

Direct funding

The Law Concerning Financial Assistance to Political Parties of 1994 authorizes public financing of the total income reported by a party in the previous year. The amount of public financing is payable in April, July, October and December of each year. In order to qualify for government subsidies, a party must have more than five incumbent members in either house of the Diet or must have won more than 2% of the total vote in the previous general election. The total amount of public financing would be limited to 30.9 billion *yen* (\$300.9 million), which is 250 *yen* (\$2.50) per citizen. Monies are to be distributed to qualified parties in proportion to the number of Diet seats each has and the percentage of votes each garners.¹³

Under the Law Granting Legislative Expenses to the Respective Parliamentary Groups in the National Diet,¹⁴ the Government subsidizes partial expenses for legislative research undertaken by inter-parliamentary party affiliations known as *kaiha*. The legislative activities of both houses are carried out on the basis of these *kaiha*, which must be established by resolution of the Management Committees of each house.¹⁵ In order to qualify for the funds, each group must register as a political organization under article 6, paragraph 1, of the Political Funds Control Law. Hence, such legislative funds may be regarded as a part of political funds, in a broader sense.¹⁶

Indirect funding

Under the provisions of the Public Office Election Law, the Government has attempted to reduce the cost of elections by subsidizing campaign costs.

Transportation

Any candidate who uses an automobile for an election campaign under a contract with the operator of a passenger transport business or others (except the candidate's relatives) will be

¹² Law No. 3, Feb. 4, 1994, as amended by Law No. 11, Mar. 11, 1994.

¹³ *Supra* note 11, arts. 2 & 7.

¹⁴ Law No. 52, July 7, 1953, as last amended by Law No. 17, Apr. 5, 1986.

¹⁵ K. Matsuzawa, GIKAIHO (Parliamentary Law) 285-292 (Tokyo, 1987) (Gendai Gyosei Hogaku Zenshu, 11).

¹⁶ M. Matsuura & K. Otake, SEIJI SHIKIN (Political Funds) 7 (Tokyo, 1984).

reimbursed by the Government for the cost of using such a vehicle, provided that the deposit¹⁷ required for candidacy is not forfeited. During the campaign period for 12 days, 15 free tickets for the use of public transportation are issued to a candidate for the member of the lower house (single-member districts) and the member of the upper house (local districts).¹⁸

Mailings and postings

Each candidate for membership in the lower house (single-member districts) is allowed to mail up to 35,000 postcards free of charge. For the election of members of the upper house (local districts only), this number may be increased, depending on the size of the electoral district. Similarly, within certain limits, the making of handbills and posters is allowed and the candidate will be reimbursed for the cost.¹⁹

Advertisements

The Government will pay for a certain number of political advertisements that every candidate is allowed to make. Thus, in elections for members of the lower house (single-member districts) and the upper house (local districts), each candidate is allowed to place five newspaper advertisements of a specified length, which may appear in any newspaper of the candidate's choosing during the campaign period.²⁰

In the election for members of the lower house to be chosen by proportional representation or of members of the upper house to be chosen by the national constituency, the number of advertisements allowed for each candidate varies according to the number of the candidates running. Each qualified party is also allowed to run newspaper advertisements at government expense according to the number of candidates. However, the advertisements can be used only to publicize the party's policies; discussion of an individual's candidacy is illegal.²¹ Except for advertisements funded by the government, candidates are not allowed to buy space in newspapers or magazines.

Each qualified party, on behalf of its members in the lower house and upper house (national constituency), and each candidate for membership in the upper house (local districts), is allowed to broadcast its political views by using the facilities of the Japan Broadcasting Corporation (Nippon

¹⁷ Each candidate is required to make a deposit of a specified amount when he registers.

¹⁸ *Supra* note 8, art. 176.

¹⁹ *Id.* art. 142 & art. 143, ¶ 14.

²⁰ *Id.* art. 149, ¶ 1, 4.

²¹ *Id.* art. 149, ¶ 2, 3. See also Chikujo kaisetsu koshoku senkyoho [Article-by-Article Commentary on the Public Office Election Law] 915 (Tokyo, Jichisho, 1996).

Hoso Kyokai, NHK) and any privately owned radio and/or television stations free of charge during the campaign period. The number of TV and radio broadcasts allowed for political views varies according to the number of the candidates as spelled out in the Regulation for Broadcasts of Candidates' Political Views and Biographical Statements.²²

NHK also makes radio broadcasts of candidates' biographical statements free of charge, about 10 times per candidate for the lower house (single-member districts) seats and five times per candidate for the upper house (local districts) seats. NHK also makes one free television broadcast per candidate.²³ Unlike candidates for election in the United States, candidates in Japan spend nothing on media advertising, as they are not allowed to buy time on television or radio.

Election Management Commissions provide the following free services: establishment of official sign boards for posters, arrangement of public meeting places where candidates can give speeches, and publication of election bulletins that contain the name, personal history, and political views of the candidate. Indirect subsidies for each of the above activities--including transportation, mailings and postings, and advertisements--are spelled out in the Law Concerning Standards for the Election Expenses of National Diet Members.²⁴ Indirect funding is prepared on a large scale. As mentioned earlier, for elections to the lower house in July 1993, the total sum of indirect funding amounted to 13,867 million *yen*, or 14 million *yen* per candidate.

Tax benefits

Under the Income Tax Law²⁵ and the Special Taxation Measures Law,²⁶ qualified political contributions made by an individual in amounts that exceed 10,000 *yen* in one year may be deducted from the person's total income (ordinary, retirement, and forestry income) for the taxable year, not to exceed 25% of the individual's total income, or provided with 30% of tax credits as an option.

In order to qualify as political contributions, the contributions must be made to political parties, political fund-raising organizations, political support organizations, or fund management bodies designated by particular candidates, or candidates must be reported as required under the Political Funds Control Law²⁷ or the Public Office Election Law.²⁸ Unless the required reports are

²² Notice No. 165 of the Ministry of Home Affairs, Nov. 29, 1994, as last amended by Notice No. 150, July 12, 1996.

²³ *Id.* arts. 1 & 2, Tables 1 & 2; *supra* note 8, art. 151..

²⁴ Law No. 179, May 15, 1950, as last amended by Law No.47, May 16, 1998.

²⁵ Law No. 33, Mar. 31, 1965, as last amended by Law No. 117, June 15, 1998, art. 78, ¶1. *See also* art. 32-2, Political Funds Control Law.

²⁶ Law No. 26, Mar. 31, 1957, as last amended by Law No. 107, June 15, 1998, Feb. 4, 1994, art. 41-17.

²⁷ *Supra* note 7, art. 19, ¶ 2.

²⁸ *Supra* note 8, art. 189.

filed with the Election Management Commission or the Minister of Home Affairs, no tax credits are allowed.²⁹

The contributions received by a candidate from either an individual or a corporation (through a fund management organization) are exempt from taxation if the candidate reports them as political contributions to the Election Management Commission. Other than the tax credits and exemptions mentioned above, no funds are used to encourage voting or to explain voting procedures to the electorate.

Non-Government funding

Prohibitions against certain types of contributions

Under the Public Office Election Law, any candidate for public office or any person intending to be a candidate is banned from making contributions (of money, goods, or other items of monetary value) to his own electoral district. A support organization is also banned from making contributions, except to activities or projects authorized by the organization's stated objectives. Even if it may fall within the scope of contributions authorized by the organization's objectives, the presentation of wreaths, flowers, obituary offerings, or wedding gifts is banned. Likewise, any corporation or association in which a given candidate serves as a director, auditor, or other responsible officer or any company or association that uses the candidate's name or is presumed to use his name is banned from making the above-mentioned types of contributions to his candidacy.³⁰

Under the Political Funds Control Law, a corporation or juridical person who receives subsidies, grants, or loans from the government or who is a party to a government contract is banned from making or receiving political contributions within one year from the time when the corporation or juridical person is notified of the government's approval of such subsidies or grants, regardless of whether there is an election or not. Any corporation operating at a loss for more than three years, any person who promises a good office in return for a political contribution, or any anonymous persons are expressly prohibited from making or receiving political contributions, regardless of whether an election is to be held or not.³¹

²⁹ T. Yamamoto, SHOKAI SEIJI SHIKIN KISEIHO (Commentary on the Political Funds Control Law) 339 (Tokyo, 1976).

³⁰ *Supra* note 8, arts. 199-2 to 199-5.

³¹ *Supra* note 7, arts. 22-3, 22-4, & 22-6.

Limits on the amount of political contributions

The Political Funds Control Law requires all political organizations³²--including political parties, political fund-raising organizations, fund management organizations, political factions, and political support organizations--to register with the local Election Management Commission³³ of To, Do, Fu, or Ken [the Tokyo Metropolis, Hokkaido, or an urban or rural prefecture] or with the Ministry of Home Affairs within seven days from the day of establishment of such an organization. No contribution will be accepted and no payment will be made by a political organization, under any circumstances whatsoever, until registration has been completed.

Corporations, labor unions, or other groups are allowed to donate an annual maximum amount ranging from 7.5 million *yen* (\$75,000) to 100 million *yen* (\$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, or 3.75 million to 50 million *yen* (\$37,500 to \$500,000) to various factions and support organizations. Contributions to any single political faction or support organization are limited to 1.5 million *yen* (\$15,000),³⁴ but this restriction does not apply to contributions made to any single political party or political fund-raising organization.

Annual contributions (except testamentary gifts) made by individual citizens to political parties or political fund-raising organizations are to be restricted to 20 million *yen*; to political factions or support organizations, 10 million *yen*; and to any single fund management body, political faction, or support organization, 1.5 million *yen*.

Under the revised Political Fund Control Law of 1994, an individual candidate is in principle not allowed to receive donations directly from corporations, labor unions, or other groups, but only from a fund management body designated by such candidate up to 500,000 *yen* (\$5,000) per year. This special measure will be reviewed in five years.

Limits on campaign expenditures

The Public Office Election Law sets a ceiling on the amount that a candidate is legally allowed to spend on one election. For lower house elections, the allowable limit is computed as follows:³⁵

³² As of 1992, 5,303 organizations were registered. See T. Inoue, *Heisei yonnenbun seiji shikin shushi hokokusho* (Outline of Financial Report of Political Funds for 1992) 46 SENKYO 22 (Nov. 1993).

³³ In addition to the Central Election Management Commission, which is attached to the Ministry of Home Affairs and manages the election of members of the House of Councillors in the national constituency, there are 47 local Election Management Commissions that manage the election of members of the House of Representatives and the House of Councillors in local districts [*supra* note 8, art. 5].

³⁴ *Supra* note 7, art. 21-2.

³⁵ *Supra* note 8, art. 194; art. 127 of the Enforcement Order of the Public Office Election Law.

(1) For lower house elections (single-member districts)

No. of registered voters
in election district x 15 *yen* + 19,100,000 *yen*

(2) For upper house elections (local districts)

No. of registered voters
in election district x 13 *yen* (or 20 *yen*) + 23,700,000 *yen*
 No. of seats in election district

This spending limit applies only to the formal campaign period for 12 days. There is no spending limit placed on candidates for election to membership in the upper house through the national constituency.³⁶ Virtually all candidates for seats in the lower house have reported exact expenditures that are substantially lower than the limit allowed. Although any violator of the expenditure limit is subject to penal sanction, no Diet member has as yet been reported to have been prosecuted or denied a seat on these grounds.³⁷

Regulation of foreign campaign contributions

Foreign campaign contributions are prohibited under article 22-5 of the Political Funds Control Law. It provides that no one may receive political contributions from a foreigner, a foreign corporation, or a group or organization primarily composed of foreigners or foreign corporations.

Disclosure procedures for campaign financing

Under the Political Funds Control Law, the treasurer of a political organization is required to keep track in the organization's office financial records of all sources of income, including party dues, membership fees and contributions, and all expenditures. In addition, the treasurer must submit the following particulars to the Minister of Home Affairs or the local Election Management Commission: (1) the total number and the total amount of party dues or membership fees received and (2) the name, address, and/or profession of any contributor, and the amount and date of the contribution, if the total amount contributed by said person to either the political party, a political fund-raising organization, a fund management body, a political faction, or a support organization exceeds 50,000 *yen* (about \$500). The same disclosure requirements apply to any person who purchases tickets from a fund-raising party in excess of 200,000 *yen*. The treasurer must retain a

³⁶ Y. Akiyama, *SENKYO SEIJI KATSUDO HO* (Election and Political Activities Law) 291 (Tokyo, 1984).

³⁷ R. J. Hrebenar, *The Money Base of Japanese Politics*, *THE JAPANESE PARTY SYSTEM* 62 (Boulder, Co., Westview Press, 1986).

copy of the report for a three-year period after it has submitted the original to the local Election Management Commission or the Minister of Home Affairs.³⁸

The Minister of Home Affairs or the Chairman of the local Election Management Commission, upon receiving the treasurer's financial report, must announce the gist of the report in the Official Gazette or the local official gazette, respectively, and retain the report for a three-year period after the official announcement of its contents, to be presented for public perusal upon demand. If the Minister of Home Affairs or the Local Election Management Commission considers the financial statement and accompanying documents submitted to be insufficient or incorrect, he may order them to be supplemented or corrected. A similar requirement applies to the candidate himself. The treasurer of the designated organization must report these political contributions to the Minister of Home Affairs or the local Election Management Commission.³⁹

Under the Public Office Election Law, a similar disclosure requirement is applicable when a candidate receives campaign contributions. The candidate must appoint an accountant responsible for revenue and expenditures relating to the election campaign or, in certain cases, must serve as the accountant himself. The accountant must keep the account books and report the candidate's financial statement to the local Election Management Commission. The Law expressly requires, among other things, that the accountant specify in writing the maximum amount he is authorized to spend.⁴⁰ Except for stipulating that penal sanctions apply to violators of the disclosure requirement (*see below*, under Penalties), the Law does not provide for any kind of government auditing.

Penalties

The punishments outlined in the Political Funds Control Law and the Public Office Election Law range from fines to imprisonment. They are as follows:

The Political Funds Control Law⁴¹

Imprisonment not to exceed five years or a fine not to exceed one million *yen* (\$10,000). This penalty applies to unauthorized acceptance or expenditure of contributions prior to the registration of a political organization, failure to make a financial statement, or positing a false financial statement.

Imprisonment not to exceed three years or a fine not to exceed 500,000 *yen* (\$5,000). Acts

³⁸ *Supra* note 7, art. 9, ¶ 1, item 1; art. 12, ¶ 1, item 1; & art. 16.

³⁹ *Id.* arts. 19 to 19-8, 20, 31.

⁴⁰ *Supra* note 8, art. 180-197.

⁴¹ *Supra* note 7, arts. 23-28.

to which this penalty applies are the failure to maintain and preserve account books and the making of false entries in account books; failure to present a detailed financial statement; failure to observe an order to correct a financial statement; failure to observe the duty to hand over business to another treasurer; violation of the contribution limit imposed on companies that are subsidized by the government, companies operating at a loss, foreign nationals, and anonymous persons. These penalties are applicable not only to the treasurer of the candidate's political organization or the organization designated by the candidate to do the accounting but also to an accountant appointed by the candidate as set forth in the Public Office Election Law.

A fine not to exceed 500,000 *yen* (\$5,000) is to be imposed on any fund-raising party who makes or receives political contributions in excess of contribution limits; any corporation operating at a loss that makes political contributions; or any person who receives contributions from a corporation operating at a loss.

The Public Office Election Law⁴²

Imprisonment not to exceed three years or a fine not to exceed 500,000 *yen* applies to any person who coerces a candidate into making a contribution or any person who solicits or demands such contributions from a candidate with the intent to cause him to lose the election or his right to be elected.

Imprisonment not to exceed one year or a fine not to exceed 300,000 *yen* is imposed on any candidate or any person intending to be a candidate who makes contributions to his own electoral district or makes contributions in connection with an election or in excess of the normal degree of social intercourse or on any person who coerces a person other than a candidate into making a contribution or demands or solicits such a contribution. Moreover, once punished, the candidate will be deprived of his right to serve as a public official.

A fine not to exceed 500,000 *yen* is applicable to contributions made by a corporation with which a candidate has a special relationship; contributions made by a corporation that uses the candidate's name; or contributions made by a support organization.

The Public Office Election Law invalidates election results if campaign managers, campaign accountants, relatives, secretaries of the candidate or the prospective candidate were convicted of misusing campaign funds by committing such crimes as vote-buying and punished with a fine or heavier penalty. In addition, the candidate will be banned from becoming a candidate or holding public office in the same electoral district for five years.⁴³

⁴² *Supra* note 8, arts. 221 to 249-5.

⁴³ *Id.* art. 211.

Cases

One test case of the legality of political contributions by corporations was the suit brought in 1961 by a shareholder in Yawata Iron and Steel Company against two of the company's directors. The suit alleged that the 3.5 million *yen* donation given in 1960 to the Liberal Democratic Party was illegal, because it violated the Commercial Code and Yawata's articles of incorporation. The donation was an activity, it was argued, well outside the scope of the corporation's normal and legitimate activities and thus contravened the Code. The company defended itself by arguing that political donations were customary. The Tokyo District Court decided against the company in 1963. Reversing the lower court's decision, the Tokyo High Court held in 1966 that Yawata's contribution was legal. The decision was subsequently upheld by the Supreme Court on June 24, 1970. The Supreme Court opinion stated that "a corporation, like a natural person, has the freedom to engage in political activities by supporting, promoting, or opposing particular policies of the government and political parties. Indeed, a political contribution is part of that freedom...." Thus, the Supreme Court has recognized the right of Japanese corporations to contribute to political parties.⁴⁴

The most recent prominent case of campaign financing abuse is the Recruit scandal.⁴⁵ The Recruit conglomerate consisted of job placement magazines, a communications network, financing companies, and real estate investments. The President, Hiromasa Ezoe, made extensive campaign contributions in various forms from 1984 to 1989 (totalling 1.3 billion *yen*) to senior politicians, primarily from the Liberal Democratic Party. In addition to such traditional forms of contribution as buying large numbers of tickets to *hagemasukai* (support rallies) and giving money to *koenkai* (support organizations), he discovered a new method of contribution: he gave shares of Recruit Cosmos at a bargain price, before their listing on the stock exchange to politicians and provided low- or no-cost financing to those who wanted to purchase additional shares. Once the stocks were listed on the Tokyo Stock Exchange, a \$5,000 investment reaped as much as \$50,000. In return, Ezoe demanded favors such as building variances and the bending of various regulations that affected Recruit ventures. The 76 well known political figures, including 44 Diet members, the Prime Minister, and several key ministers, were implicated and the courts are still dealing with the case.⁴⁶

On August 27, 1992, Shin Kanemaru, then vice president of the ruling LDP, was reported to have illegally received political contributions in the amount of 500 million *yen* (\$5 million) from the president of Sagawa Transportation Co. Kanemaru was charged with violating the provisions of the

⁴⁴ 24 MINSHU 625 (1970); T. Nonaka, *Kaisha no seiji shikin* (Corporate Political Contribution) 451 44 BESSATSU JURISUTO 200 (June, 1974).

⁴⁵ I. Asano, *Rikuruto no seiji kenkin o meguru hoteki shomondai* (Various Problems Arising from Political Contributions by the Recruit Company) 947 JURISUTO 50 (Dec. 15, 1989). Before the Recruit scandal, there were seven famous cases involving campaign financing abuse: the Showa Denko Scandal (1948), the Shipbuilding Scandal (1954), the Black Mist Scandal (1967), the Premier Tanaka Scandal (1974), the Lockheed Scandal (1976), and the Douglas-Gramann Scandal (1979). For more information about these scandals, see, for example, T. Murofushi, *OSHOBU NO KOZO* (The Framework of Official Corruption) (Tokyo, 1982).

⁴⁶ Asano, *id.* at 50-51; Baerwald, *supra* note 5, at 834-35.

Political Funds Control Law, which banned politicians from receiving political contributions of more than 1.5 million *yen* per year from a company or a private person. Under this law as it stood at the time, any politician who received more than one million *yen* was required to report the fact to the appropriate election committee.⁴⁷

Conclusion

Japanese election campaigns, including campaign financing, are governed by a set of comprehensive laws that are the most restrictive among democratic nations. Although the Political Funds Control Law was revised in 1975 to better control political contributions and to restrict the amounts candidates could spend on campaigns, election campaigns in Japan remain extraordinarily expensive. It is not unusual for some LDP candidates to spend more than a million dollars to finance their campaigns.⁴⁸ In the 1984 elections, a total of over 116 billion *yen* in political funds was reportedly spent.⁴⁹ In 1987, the total amount of contributions climbed to over 144 billion *yen*, but represented a decline of 13.9% from the 167 billion *yen* spent in 1986.⁵⁰ The situation was exacerbated by Japan's multi-member single vote system, under which candidates from the same party often compete with one another, resulting in each spending huge amounts of money on their individual election campaigns.

In recent years, politicians and political organizations have tended to hold large fund-raising parties, which have now become a major source of income, especially since corporations usually buy up blocks of tickets to such parties. Although "party earnings" obtained through these fund-raisers are supposed to be reported as income, the cost to companies of buying the tickets is treated as a business expense rather than a political contribution, thereby providing a loophole for the legal ceiling on corporate contributions.⁵¹ Moreover, under the law, profits from a politician's sale or purchase of stocks at bargain prices, prior to their listing on the stock exchange (e.g., as happened in the Recruit case), are regarded not as political contributions but as individual income. Hence, the politicians are not required to report them.⁵²

The government has not adopted any auditing procedures for political contributions and campaign contributions. The Minister of Home Affairs and the Election Management Commission

⁴⁷ R. Shiratori, *Political Finance and Scandal in Japan*, in *COMPARATIVE POLITICAL FINANCE AMONG THE DEMOCRACIES 199-200* (Boulder, Co., Westview Press, 1994).

⁴⁸ G. L. Curtis, *THE JAPANESE WAY OF POLITICS* 176 (New York, 1988).

⁴⁹ Hrebenar, *supra* note 37, at 56. The author notes that the 1984 total was the second-highest recorded up to that point; it represented "a 20.7 percent decline from when three major elections set the [then] all-time record of 147.2 billion yen."

⁵⁰ N. Washisaka, *Seiji shikin no bunseki* (1) (Analysis of Political Funds (1)) 64 *JICHI KENKYU* 56 (Dec. 1988).

⁵¹ Curtis, *supra* note 48, at 186. See also *ASAHI SHINBUN*, July 30, 1988.

⁵² Asano, *supra* note 45, at 55. See also *ASAHI SHINBUN*, Sept. 7, 1988.

are allowed to examine the financial reports presented to them, but penalties imposed on false reports are inadequate. Nor is there any way for them to look into whether or not contributions have been fully reported. While the treasurer of a political organization will be punished for acts that fail to comply with the Political Funds Control Law stipulations, a candidate will not be, unless (with certain exceptions) he has made contributions to his own electoral district.

Although the revised Public Office Election Law of 1975 increased indirect public funding of election campaigns, this failed to reduce the high cost of the campaigns. There was a movement to adopt a system of public management of elections initiated by former Socialist Premier Katayama (1947-1948) and a member of the upper house. Their plan aimed at reducing campaign costs, insuring fair elections, and combating political corruption. The entire cost of a campaign was to be funded by the government, augmented by contributions collected in advance from each candidate. In 1979, former Prime Minister Miki proposed a Special Measures Law for Cleaning Up Elections. Instead of passing this bill, the government revised the Public Office Election Law in 1981.⁵³

The final passage of a package of bills in 1994 providing for changes in the election system of the lower house, stronger regulation of political funding, and public financing of political parties was the culmination of reform efforts begun in 1991 in the wake of the Recruit and Kanemaru scandals. Although the legislative intent was to eliminate corruption and money politics, especially by introducing a single-member constituency system, the effectiveness of the political reform remains to be seen. Some commentators have said that the improvement of Japanese politics is expected to be achieved only through the reform of politicians, improved education of the public, and a highly developed mass media in Japan.⁵⁴

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August 1999

⁵³ GENDAI YOGO NO KISO CHISHIKI (Fundamental Knowledge of Modern Terminology) 334 (Tokyo, 1990).

⁵⁴ Shiratori, *supra* note 47, at 203; *see also* K. Wada, *Seiji kaikau kanrenho no seiritsu - naiyo to kadai* (Enactment of the Political Reform Legislation - Its Contents and Problems) 47 HORITU NO HIROBA 13 (June 1994).