

# AN OVERVIEW OF PROBLEMS CONCERNING POLITICAL DONATIONS IN JAPAN

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## I. INTRODUCTION

In Japan, there has been increased scrutiny of companies' general participation in the political process, in particular political campaign contributions. Over the past decade, Japan has placed new restrictions on companies' political giving and has required greater disclosure of campaign contributions. Increasingly, shareholders are seeking to hold companies accountable for their campaign contributions.

However, political activities generally require substantial funds and the situation in Japan is no different. Consequently, political activities require donations from corporations and individuals. In Japan the challenge to the ruling Liberal Democrats, and the broader political crisis, in the 1990s and early 2000s centered on a series of scandals involving payments to politicians for their huge election expenses.

Political donations are classified by donor into two groups: corporate donations and personal donations.<sup>1</sup> Under current law, corporate donations are often viewed as collusion between business entities and politicians. Therefore, donations to individual politicians are prohibited, unless the donation is to a single fund raising group managed by a particular politician.<sup>2</sup> An individual politician can appoint only one organization as a single fund managing organization through which he can accept political donations from individuals.<sup>3</sup> This exception is applicable only to personal donations.<sup>4</sup>

Donations to political parties can be divided into two categories: (1) those made directly to political parties; and, (2) those made to political funding organizations controlled by political parties.<sup>5</sup> Corporations and individuals may donate money to either institution.<sup>6</sup> However there is a limit on the political donations of corporations: corporations that have lost money over three consecutive years cannot make any political donations.<sup>7</sup> Political donations made under such adverse circumstances may be considered to have unhealthy and unsound purposes; further, shareholders may not approve of such contributions.

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<sup>1</sup> *Seijishikin Kisei Hō* [Political Donation Control Law], Law No. 194 of 1948, art. 3 and 21 and 22-6.

<sup>2</sup> *Id.*, art. 6 and 21 and 22-9.

<sup>3</sup> *Id.*, art. 19(1).

<sup>4</sup> *Id.*, art. 21-3 and 22.

<sup>5</sup> *Id.*, art. 6 and 21 and 22.

<sup>6</sup> *Id.*, art. 21(1).

<sup>7</sup> *Id.*, arts. 21-3 and 22-4.

## II. GOVERNMENT REGULATION OF POLITICAL DONATIONS IN JAPAN

In 2003, political parties and political organizations collected a total of 319.6 billion yen, most of which came from corporations.<sup>8</sup> Over the past decade, as the overall participation of companies in the political process has faced increased scrutiny, the Japanese government<sup>9</sup> has placed new restrictions on political giving and required greater disclosure of campaign contributions. Shareholders have sought to hold companies accountable for their campaign contributions as well as other forms of political involvement, such as lobbying, support of trade associations, and issue advocacy campaigns. The lack of transparency and the ineffectiveness of enforcement mechanisms have led to many lawsuits, such as the Yawata Steel Shareholders' Derivative Suit<sup>10</sup> and the Kumagaigumi Shareholders' Derivative Suit.<sup>11</sup>

The Japanese regulatory regime relevant to political contribution consists of three laws: 1) The Political Donation Control Law;<sup>12</sup> 2) The Political Party Subsidy Law;<sup>13</sup> and, 3) The Public Office Election Law.<sup>14</sup> The most important is the Political Donation Control Law (PDCL), which placed various restrictions on political giving and required disclosure of campaign contributions.<sup>15</sup> The Political Party Subsidy Law defines the system of distributing public funds to political parties.<sup>16</sup> The Public Office Election Law helps regulate the use of political funds during election periods (see Exhibit 1).<sup>17</sup>

### A. Contribution Limits

The PDCL sets quantitative controls through Articles 21 and 22.<sup>18</sup> Article 3 of the PDCL deals with the contributor and recipient aspects of donations: the categories of contributors and recipients are

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<sup>8</sup> *Enhancing Transparency of Political Funds*, Yomiuri Online, Jan. 7, 2007, <http://www.yomiuri.co.jp/kyoiku/learning/editorial/20050107/>.

<sup>9</sup> The relevant division is the Ministry of Internal Affairs and Communications.

<sup>10</sup> *Arita v. Yawata Steel*, 330 Hanrei Jihō 29 (Tokyo D. Ct., Apr. 5, 1960).

<sup>11</sup> *Kumagaigumi Kabunushi Daihyō Soshō* [Kumagaigumi Shareholders' Derivative Suit], Hanrei Jihō No.1814, p.151 (Fukui D. Ct., Feb. 12, 2003).

<sup>12</sup> *Seijishikin Kisei Hō* [Political Donation Control Law], Law No. 194 of 1948, art. 3 and 21 and 22-6.

<sup>13</sup> *Seitō Josei Hō* [Political Party Subsidy Law], Law No. 5 of 1994.

<sup>14</sup> *Kōshoku Senkyo Hō* [Public Office Election Law], Law No. 100 of 1950.

<sup>15</sup> *Seijishikin Kisei Hō* [Political Donation Control Law], Law No. 194 of 1948.

<sup>16</sup> *Seitō Josei Hō* [Political Party Subsidy Law], Law No. 5 of 1994.

<sup>17</sup> *Kōshoku Senkyo Hō* [Public Office Election Law], Law No. 100 of 1950.

<sup>18</sup> *Seijishikin Kisei Hō* [Political Donation Control Law], Law No. 194 of 1948.

divided into different groups, with the quantitative limits imposed on different kinds of contributors and recipients varying considerably, as described below:<sup>19</sup>

Case 1 – for individual politicians

Individuals can make political contributions of up to 1.5 million yen each year to individual politicians.<sup>20</sup> The limit on individual donations through fund-raising groups set up by individual politicians is ten million yen each year.<sup>21</sup> Companies and labor unions are not allowed to contribute to individual politicians even through fund raising groups set up by individual politicians.<sup>22</sup> Political parties, however, are an exception, and can make contributions to individual politicians, with no specific time limit on their contributions.<sup>23</sup>

Case 2 – for political parties

Individuals, companies, and labor unions are allowed to make contributions to political parties and political fund groups set up by political parties, subject to certain limitations.<sup>24</sup> Individuals may contribute a maximum of 20 million yen;<sup>25</sup> companies and labor unions can contribute from 7.5 million yen to 100 million yen, depending on the company's capitalization.<sup>26</sup>

The least restricted route of money flow is that originating from political organizations, especially political parties themselves.<sup>27</sup> Only during the election period are individuals allowed to donate to individual politicians without going through a single fund raising group.<sup>28</sup> However, political parties can donate to individual politicians and other political organizations, including individual fund raising groups, regardless of whether the transaction takes place during the election period.<sup>29</sup> Political parties are thus largely treated as exceptions from an otherwise rigid regulatory regime.<sup>30</sup> This treatment of political parties is the most serious flaw of the current regime, because political parties are now able to appoint only one fund raising political organization and must register it at the Ministry of Internal Affairs and Communications.<sup>31</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*, art. 21.

<sup>21</sup> *Id.*, art. 21 – 3.

<sup>22</sup> *Id.*, art. 21.

<sup>23</sup> *Id.*, art. 21–3.

<sup>24</sup> *Id.*, art. 21–3.

<sup>25</sup> *Id.*, art. 21–3(1)(i).

<sup>26</sup> *Id.*, art 21–3(1)(ii)(iii)(iv) and art. 21–3(2).

<sup>27</sup> *Id.*, art. 3.

<sup>28</sup> *Id.*, art. 19.

<sup>29</sup> *Id.*, art. 21–2.

<sup>30</sup> *Id.* Art 21-2(2).

<sup>31</sup> See, *Id.*, art. 6–2.

There are only a few qualitative control restrictions on who can make contributions for political purposes, and they are minor. For example, under the current regime, foreigners and companies in deficit or receiving government subsidies are not allowed to make political contributions.<sup>32</sup> Section 22 also stipulates that political contributions cannot be made anonymously or under someone else's name.<sup>33</sup>

### B. Disclosure

Articles 9 and 10 of the PDCL set out the procedures for disclosing financial statements relating to political financing.<sup>34</sup> There is no requirement that individual politicians file financial statements outlining the political contributions they have received, invested or used.<sup>35</sup> Political organizations, on the other hand, are required by Section 12(1)(i)(c) of the PDCL to make an annual report listing the names and addresses of all contributors who made donations of more than 50,000 yen that year and the names and addresses of the recipients to whom the organization made a payment that year of more than 50,000 yen. They must also report various assets, such as movable property, savings, valuable securities, loans, and debts that exceed one million yen.<sup>36</sup>

The PDCL stipulates that political organizations must file a formatted report on the earnings made in fundraising events.<sup>37</sup> According to Article 12, the names and addresses of those who made a payment of more than 200,000 yen in return for services at a particular event must be disclosed.<sup>38</sup> Article 20-2 of the PDCL stipulates that the major points of political organizations' annual financial statements be publicized in either the public register (*Kanpō*) or the prefectural bulletin (*Kōhō*).<sup>39</sup> Section 20 also stipulates that these statements be publicly viewable at the prefectural Election Administration Committee (*Senkyo Kanri Iinkai*) or at the Ministry of Home Affairs for a period of three years.<sup>40</sup> With the enactment of the Administrative Information Disclosure Act, the right to view these financial statements now includes the right to photocopy

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<sup>32</sup> *Id.*, art 22-3, art. 22-4 and art. 22-5.

<sup>33</sup> Seijishikin Kisei Hō [Political Donation Control Law], Law No. 194 of 1948.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* art. 12(1)(i)(c).

<sup>37</sup> *Id.* art. 12.

<sup>38</sup> *Id.* art. 12(1)(i)(g).

<sup>39</sup> *Id.* art. 20.

<sup>40</sup> *Id.* art 20-2(2).

them.<sup>41</sup> Criticisms have been raised, however, that these reporting requirements are inconsistent and insufficient. The major criticism has been the difficulty in confirming the accuracy of reported numbers.<sup>42</sup> Under the current law, a politician is not required to report the receipt of contributions from a single corporation as long as the amount paid to the politician's political organization amounts to less than 50,000 yen per year for each group.<sup>43</sup> Under the same law, a political organization files different contribution reports for politicians in different prefectures, and multiple reports with the Ministry, depending upon the location of the source and the usage of political contributions.<sup>44</sup> This makes it difficult for a third party to reconstruct a complete picture of the money flow. Many politicians have reportedly tried to hide money received from companies by having each company pay in small sums so that none of the amounts have required reporting to the authorities.<sup>45</sup> This method, whereby corporations make contributions in small amounts to a number of political and fundraising organizations, all for a single politician, is a standard Japanese political practice.<sup>46</sup>

### III. POLITICAL CORRUPTION IN JAPAN

There has been a spate of political corruption cases in Japan over the past two decades, some of which have involved senior politicians.<sup>47</sup> This problem highlights the near incestuous relationship between politicians and the construction industry with regard to public works

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<sup>41</sup> Gyoseikikan No Hoyusuru Jyoho No Koukai Nikansuru Houritsu [Administrative Information Disclosure Act], Law No. 102 of 2005, art. 14.

<sup>42</sup> The list of criticisms includes those presented by: 1) The Democratic Party of Japan (available at <http://www.dpj.or.jp/news/dpjnews.cgi?indication=dp&num=10179> (last visited Nov. 13, 2007)) and 2) New Kōmei Party (available at <http://www.komei.or.jp/> (last visited Nov. 13, 2007)). To secure transparency, both parties are claiming that the names of the recipients to whom the organization made a payment of more than one yen must be disclosed. Sanyo News Paper, Sept. 20, 2007, <http://www.sanyo.oni.co.jp/newsk/2007/09/20/20070920010007201.html> (last visited Apr. 28, 2008).

<sup>43</sup> Seijishikin Kisei Hō [Political Donation Control Law], Law No. 194 of 1948, art. 12.

<sup>44</sup> *Id.*

<sup>45</sup> Editorial, "Debate on Political Donations, Transparency Needed", Sanyo Shimbun Web News, Nov. 3, 2007.

<sup>46</sup> Editorial, "Political Donation- Keidanren's Position Goes Against the Times", Asahi Shimbun, Sep. 24, 1993, at p.2.

<sup>47</sup> For example, in 2003, Yoshihiko Tsuchiya, president of the House of Councilors from 1988 to 1991 was suspected of violating the Political Donation Control Law. See *supra* note 30. Another example is Muneo Suzuki, the Deputy Chief Cabinet Secretary to the Prime Minister Obuchi who pressured the Foreign Ministry to fund the "Japanese-Russia Friendship House," which became a scandal in 2002. See *supra* note 32.

projects. The following case studies exemplify this corruption and help define the current and central problems of the laws, regulations and court decisions on this issue.

In 2003, Yoshihiko Tsuchiya, president of the House of Councilors (the upper house of the Diet) from 1988 to 1991, and governor of Saitama Prefecture from 1992 to 2003, was suspected of violating the Political Donation Control Law. He escaped indictment, but his daughter, who was in charge of his political fund management organization, was arrested and pled guilty to misappropriating 116 million yen from the organization to prop up her own failing businesses. She also had sought, if not extorted, millions of yen from local firms, such as construction firms, often trying to hide it by requesting that the donations be given in units smaller than the 50,000 yen limit.<sup>48</sup> Although he claimed to have known nothing of his daughter's activities, Governor Tsuchiya resigned his position.<sup>49</sup>

In 1999, while Muneo Suzuki was the Deputy Chief Cabinet Secretary to then Prime Minister Obuchi, he pressured the Foreign Ministry to fund the "Japanese-Russia Friendship House," which became a scandal in 2002.<sup>50</sup> This case revealed an appalling pattern of politico-bureaucratic corruption. In 1999, Suzuki, as Deputy Chief Cabinet

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<sup>48</sup> For the details of this incident, see *Ex-Saitama gov. escapes indictment, daughter charged*, JAPAN POLICY & POLITICS, August 4, 2003, [http://findarticles.com/p/articles/mi\\_m0XPQ/is\\_2003\\_August\\_4/ai\\_106218800](http://findarticles.com/p/articles/mi_m0XPQ/is_2003_August_4/ai_106218800) (last visited Apr. 28, 2008). For further details of the case, see *Saitama Gov. Tsuchiya resigns, election set for Aug. 31*, JAPAN POLICY & POLITICS, July 22, 2003, [http://findarticles.com/p/articles/mi\\_m0XPQ/is\\_2003\\_July\\_22/ai\\_105676145](http://findarticles.com/p/articles/mi_m0XPQ/is_2003_July_22/ai_105676145) (last visited Apr. 28, 2008).

<sup>49</sup> *Id.*

<sup>50</sup> *Shady Politico-Bureaucratic Ties*, The Japan Times, Mar. 6, 2002, [http://www.japantimes.co.jp/shukan-st/english\\_news/editorial/2002/ed20020322.htm](http://www.japantimes.co.jp/shukan-st/english_news/editorial/2002/ed20020322.htm) (last visited Apr. 28, 2008). The report concluded that it is abnormal for a member of the Diet to get involved with such details by using his influence and this is impermissible in light of commonly accepted norms. For this case see also, Richard Hanson, *Suzuki Arrest Offers Welcome Sideshow*, Online Asia Times, Jun. 20, 2002, <http://www.atimes.com/japan-econ/DF20Dh02.html> (last visited Apr. 28, 2008). For further details on the Tokyo District Court sentencing him to two years in prison and forcing him to pay an 11 million yen fine for four charges, including two counts of taking bribes from two Hokkaido companies in exchange for favors, see Japan Policy & Politics, *Muneo Suzuki Gets 2-Year Prison Term*, 11 Mil. Yen Fine, FindArticles, Nov. 8, 2004, [http://findarticles.com/p/articles/mi\\_m0XPQ/is\\_2004\\_Nov\\_8/ai\\_n6343796](http://findarticles.com/p/articles/mi_m0XPQ/is_2004_Nov_8/ai_n6343796) (last visited Apr. 28, 2008). For the 1999 construction of the Japan-Russia Friendship House, an evacuation facility on Kunashiri Island in which Muneo Suzuki was allegedly involved in bid-rigging see, Japan Policy & Politics, *Ministry's Affiliate For Russian-Held Islands Not Functioning*, FindArticles, Mar. 4, 2002, [http://findarticles.com/p/articles/mi\\_m0XPQ/is\\_2002\\_March\\_4/ai\\_84260652](http://findarticles.com/p/articles/mi_m0XPQ/is_2002_March_4/ai_84260652) (last visited Apr. 28, 2008).

Secretary, intervened in a construction project for a public lodging facility (“Japan–Russia Friendship House,” commonly known as “Muneo House”) on Kunashiri Island, one of the Russian-held islands known as the Northern Territories.<sup>51</sup> He requested that the ministry invite tender offers only from companies from his constituency, Hokkaidō's Nemuro district.<sup>52</sup> The ministry then decided to limit eligible bidders to “those who have building experience in Nemuro.”<sup>53</sup> Although the decision was made in consultation with the Assistance Committee, the implementing body for aid projects in the Northern Territories, Suzuki involved himself deeply in determining bidding qualifications.<sup>54</sup> In 2004, he was sentenced to two years for accepting bribes from two Hokkaido companies. His secretary, Akira Miyano, was convicted of bribery in July 2003 and given an 18 month suspended sentence for violating the Political Donation Control Law by not reporting 100 million yen in donations.<sup>55</sup> Suzuki and Miyano also helped fix a 400 million yen public works projects for friendly construction firms.<sup>56</sup>

In 1988, the Recruit corruption scandal led to the forced resignation of many prominent Japanese politicians.<sup>57</sup> Recruit is a Tokyo-based real estate and telecommunications company. Its former founder and chairman, Hiromasa Ezoe, offered a number of shares in a Recruit subsidiary, Cosmos, to business leaders and senior politicians shortly before Cosmos went public in 1986. Cosmos's share price skyrocketed after the public offering and the individuals involved in the scheme saw average profits of 66 million yen each.<sup>58</sup> Although only seventeen

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<sup>51</sup> *Id.*

<sup>52</sup> *Shady Politico-Bureaucratic Ties*, The Japan Times, Mar. 6, 2002, <http://search.japantimes.co.jp/cgi-bin/ed20020306a1.html> (last visited Apr. 28, 2008); Yumi Wijers-Hasegawa, *Suzuki Fined, Handed Two-Year Term*, The Japan Times, Nov. 6, 2004, <http://search.japantimes.co.jp/cgi-bin/nn20041106a1.html> (last visited Apr. 28, 2008).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Japan Policy & Politics, *Top Court Rejects Lawmaker's Appeal in Bribery Case*, FindArticles, Oct. 25, 1999, [http://www.findarticles.com/p/articles/mi\\_m0XPQ/is\\_1999\\_Oct\\_25/ai\\_57163161](http://www.findarticles.com/p/articles/mi_m0XPQ/is_1999_Oct_25/ai_57163161). The politicians involved in the scandal were Prime Minister Noboru Takeshita, former Prime Minister Yasuhiro Nakasone, and Chief Cabinet Secretary Takao Fujinami. William R. Doerner, *Japan A Scandal That Will Not Die*, Time, Apr. 24, 1989, <http://www.time.com/time/magazine/article/0,9171,957517,00.html> (last visited Apr. 28, 2008).

<sup>58</sup> Japan Policy & Politics, *Top Court Rejects Lawmaker's Appeal in Bribery Case*, FindArticles, Oct. 25, 1999, [http://www.findarticles.com/p/articles/mi\\_m0XPQ/is\\_1999\\_Oct\\_25/ai\\_57163161](http://www.findarticles.com/p/articles/mi_m0XPQ/is_1999_Oct_25/ai_57163161) (last visited Apr. 28, 2008).

members of the Diet were involved in insider trading, another thirty were later found to have received special favors from Recruit.<sup>59</sup> Among the politicians involved in the scandal was Prime Minister Noboru Takeshita.<sup>60</sup> As a result, Takeshita's cabinet was forced to resign.<sup>61</sup> After thirteen years, the Tokyo District Court finally made its decision in 2003, giving Ezoë, the former Recruit chairman, a three-year suspended prison term.<sup>62</sup> These incidents reveal that the existing Japanese laws and regulations concerning the regulation of political contribution are not effective.

#### IV. RECENT TRENDS IN JAPAN CONCERNING POLITICAL DONATIONS

Despite public outrage over incidents of political corruption, Japan's influential corporate sector champions political donations as a means to strengthen participatory democracy.<sup>63</sup> On September 25, 2003, *Keidanren*<sup>64</sup> published an opinion paper titled, "*Yūsenkadai to Kigyōseijikenkin no Jūyōsei*," ("On Preferential Policy Matters and the Significance of Political Donations by Corporations") (hereinafter referred to as "Preferential Policy Matters").<sup>65</sup> This paper is a summary of opinion polls Keidanren conducted, canvassing 1,600 major Japanese corporations as well as independent professionals, and is supposed to represent the most widely-held opinions of Japanese economic circles. Prior to that, on May 12, 2003, Keidanren published a statement entitled "*Seisakuhoni no Seijinimuketa Kigyō to Dantai Kifu no Sokushin nitsuite*" ("Promotion of Donations by Corporations/Organizations Keyed Toward Policy-Oriented Politics"),<sup>66</sup> in which Keidanren expressed its policy for promoting voluntary political donations by corporations and

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Keidanren* (The Japanese Federation of Economic Organizations) consists of 1,623 companies and other organizations, including 91 companies with foreign capital affiliations and 1,306 representative Japanese companies. It is the strongest interest group in Japan and applies pressure on the government as well as overseas organizations by collecting opinions from throughout the business community on, e.g., economic, industrial, and labor issues. Keidanren Home Page, <http://www.keidanren.or.jp> (last visited Nov. 7, 2007).

<sup>64</sup> *Id.*

<sup>65</sup> *The Keidanren Vision 2007: The Land of Hope, Japan*, Keidanren, Jan. 10, 2007, <http://www.keidanren.or.jp/english/policy/2007/vision.pdf> (last visited Apr. 28, 2008).

<sup>66</sup> *Promotion of Donations by Corporations/Organizations Keyed Toward Policy-Oriented Politics*, Keidanren, May 12, 2003, <http://www.keidanren.or.jp/japanese/policy/2003/040.html> (last visited Apr. 28, 2008).

organizations based on their own evaluations of the policies of political parties. Based on this policy, Keidanren compiled “Preferential Policy Matters” as a yardstick for policy evaluation.

The list of policies in “Preferential Policy Matters” consists of urgent and important items necessary for realizing an autonomous economic society led by the private sector. Keidanren’s goal is that organizations will use these policies to evaluate political parties on their own, and then act accordingly.<sup>67</sup> In conjunction with compiling “Preferential Policy Matters,” *Keidanren* evaluated the philosophy of political donations among member corporations.<sup>68</sup> The result revealed that political donations by corporations are extremely important in the following three ways:

1. *Policy-Oriented Politics*. As the process of globalization continues, industries are strenuously trying to strengthen their international competitiveness. Meanwhile, institutional reforms, such as regulatory reform, tax reform and foreign trade agreements need to be implemented by politicians to provide incentives to private industries. Corporate donations and contributions based on policy evaluations should increase the competition among political parties and contribute to the realization of politics based on the selection of policies.

2. *Healthy Development of Parliamentary Democracy*. Parliamentary democracy is a cost-effective system that funnels people’s ideas through a broad communication channel, with the private sector bearing the cost. This applies especially to corporations, which are expected to bear a reasonable share of this social responsibility as good corporate citizens. Since the introduction of the public funding system for political parties, most of the parties expect more from public funding. Corporations need to remember that donations from the private sector, including corporations, help secure the independence and autonomy of political parties, two rights which form the basis of democracy.

3. *Maintaining Transparency of Political Funds*. Donations to political parties that do not induce individual profit are considered the most transparent among all of the political fund sources at the moment. Enrichment of such donations can contribute to the transparency of the entire political fund. This can be further improved by asking that

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<sup>67</sup> The Keidanren Vision 2007: The Land of Hope, Japan, Keidanren, Jan. 10, 2007, <http://www.keidanren.or.jp/english/policy/2007/vision.pdf> (last visited Apr. 28, 2008).

<sup>68</sup> Promotion of Donations by Corporations/Organizations Keyed Toward Policy-Oriented Politics, Keidanren, May 12, 2003, <http://www.keidanren.or.jp/japanese/policy/2003/040.html> (last visited Apr. 28, 2008).

corporations' political donations be used specifically for the planning and promotion of policies.<sup>69</sup>

## V. LEADING POLITICAL DONATION LAWSUITS IN JAPAN: A COMPARISON OF THE *YAWATA STEEL* AND THE *KUMAGAIGUMI* DECISIONS

A continuing legal question in Japan is whether a company is entitled to freely undertake political activities. Is the donation of political funds one aspect of this freedom, even if such actions will exert influence over political trends? The two leading Japanese cases on these issues, (1) the Supreme Court Decision, *Yawata Steel* (June 24, 1970),<sup>70</sup> and (2) the Fukui District Court Decision, *Kumagaigumi* (February 12, 2003) conflict.<sup>71</sup>

### A. *The Yawata Steel Decision*

The current leading case in Japan concerning the issue of a corporation's political donation is *Yawata Steel*. *Yawata Steel* was a shareholders' lawsuit brought under Commercial Law, Article 267 (Shōhō [Commercial Code], Law No. 48 of 1890). A group of shareholders of Yawata Steel Co., Ltd. (now *Shin Nippon Steel*) claimed the directors acted outside the business purpose specified in the articles of incorporation and violated the directors' fiduciary duty as defined in the Commercial Law, Article 254-2 (now Article 254-3).<sup>72</sup>

The first trial court, the Tokyo District Court, divided the corporation's actions into transactional operations (business operations) and non-transactional operations (non-profit operations).<sup>73</sup> The non-transactional operations "are operations that essentially are not anticipated by any consideration, so that they are to be considered operations that are against the purpose of profit-making, therefore . . . all non-transactional operations are outside the business purposes, being contrary to profit-making," and exceptions were made for corporate donations: (1) to rescue funds for natural disasters; and (2) for scholarship programs, since these

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<sup>69</sup> *Id.*

<sup>70</sup> *Arita v. Yawata Steel*, 330 Hanrei Jihō 29 (Tokyo D. Ct., Apr. 5, 1960).

<sup>71</sup> *Kumagaigumi Kabunushi Daihyō Soshō* [Kumagaigumi Shareholders' Derivative Suit], Hanrei Jihō No.1814, p.151 (Fukui D. Ct., Feb. 12, 2003).

<sup>72</sup> *Arita v. Yawata Steel*, 330 Hanrei Jihō 29 (Tokyo D. Ct., Apr. 5, 1960).

<sup>73</sup> *Id.*

two are non-business purposes.<sup>74</sup> However, management must garner agreement from all shareholders to make these donations.<sup>75</sup>

The court concluded that “because a political party assumes the existence of an opposing political party under a democratic political system, it can never be that all the people involved will unanimously feel that a political donation to a certain political party is socially responsible.”<sup>76</sup> The court consequently decided that the donation to the political party in this case was like a donation to a religious organization and could not possibly be considered a social obligation by all shareholders. The directors were found liable for damages.<sup>77</sup>

The Supreme Court later reversed this ruling, stating that a corporation is:

a social being similar to a natural person . . . it can certainly respond to expectations and requests so long as those expectations and requests for the corporation are within the boundary of socially accepted notions even if a certain act is seemingly unrelated to the objects of its articles of incorporation . . . [and is] an indispensable element that supports parliamentary democracy. . . It is expected and understandable for a corporation to cooperate in the promotion of healthy development of, including donations of political funds to [a political party].<sup>78</sup>

There are several distinctive features of the Supreme Court’s judgment in *Yawata Steel*. Although the central issue in the original action involved a violation of the directors’ fiduciary duties, an issue specific to the Commercial Law, the Supreme Court discussed the legal capacity theory of corporations using the issues of a person’s political freedom and the public voting right, which essentially belongs to public laws. As a result the Supreme Court concluded: i) a corporation is a social being that can constitute a unit of society similar to a natural person; ii) a corporation can respond to the expectations and requests of society; and iii) it is permissible for a corporation to donate to a political party.<sup>79</sup> The Court further stated that within the framework of the legal

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Arita v. Yawata Steel*, 24-6 Minshū 625 (Sup. Ct., June 24, 1970).

<sup>79</sup> *Id.*

capacity theory, a corporation has the freedom to engage in political actions and make political donations.<sup>80</sup>

In this sense, the case established a new theory – that corporations can act within the bounds of socially accepted objectives even if a certain act seems unrelated to its articles of incorporation. Because of this, corporate management garnered more flexibility to make political donations.

### B. *The Kumagaigumi Decision*

*Kumagaigumi* exposed the cozy relationship between politicians and businesses, particularly public works contractors.<sup>81</sup> In this case, a group of shareholders of Kumagaigumi brought a shareholders' lawsuit based on the Commercial Law claiming that under Article 267,<sup>82</sup> Kumagaigumi's donations to "*Kokumin Seiji Kyōkai*" ("The People's Political Association"),<sup>83</sup> a political fund group,<sup>84</sup> were: against public order and morality, outside the boundary of the purpose of the corporation, a violation of the Public Office Election Law<sup>85</sup> (Article 199, Section 1);<sup>86</sup> a violation of the Political Donation Control Law<sup>87</sup> (Article

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<sup>80</sup> *Id.*

<sup>81</sup> Kumagaigumi Kabunushi Daihyō Soshō [Kumagaigumi Shareholders' Derivative Suit], Hanrei Jihō No.1814, p.151 (Fukui D. Ct., Feb. 12, 2003).

<sup>82</sup> It provides:

1. Any shareholder who has held a share continuously at least for the last six months may demand, in writing, of the company to institute an action to enforce the liability of directors.

2. In case the company has failed to institute such action within 30 days from the date on which the demand mentioned in the preceding paragraph may institute such action on behalf of the company.

3. In case irreparable damage may be caused to the company by the expiration of the period provided for in the preceding paragraph, the shareholder mentioned in paragraph 1 may immediately institute the action mentioned in the preceding paragraph, notwithstanding the provisions of the preceding two paragraphs.

4. When shareholder has instituted an action mentioned in the preceding two paragraphs, the Court may, at the request of the defendant, order him to furnish adequate security.

5. The provisions of Article 106 paragraph 2 shall apply *mutatis mutandis* to the request mentioned in the preceding paragraph.

<sup>83</sup> This is the political donation receiving organization for the Liberal Democratic Party, Japan. For the details, see its homepage, <http://www.kokuseikyō.or.jp/jimin/> (last visited November 7, 2007).

<sup>84</sup> *Seijishikin Kisei Hō* [Political Donation Control Law], Law No. 194 of 1948, art. 21 and 22.

<sup>85</sup> *Kōshoku Senkyō Hō* [Public Office Election Law], Law No. 100 of 1950.

<sup>86</sup> The article provides that donations from companies competing for or receiving public works orders must be banned.

<sup>87</sup> *Seijishikin Kisei Hō* [Political Donation Control Law], Law No. 194 of 1948.

22-4, Section 1),<sup>88</sup> and a violation of the fiduciary duty of care as good managers under Article 298<sup>89</sup> of the Civil Code.<sup>90</sup> The plaintiffs demanded damages in accordance with Commercial Law, Article 266, Section 1-5 and an injunction of the political donations based on the Commercial Law, Article 272.<sup>91</sup>

The five issues facing the Fukui District Court on February 12, 2003 were:

- 1) Is the political donation in question against public order and morality?<sup>92</sup>
- 2) Does the political donation in question reside within the objects of the articles of incorporation?<sup>93</sup>
- 3) Does the political donation in question violate the Public Office Election Law?<sup>94</sup>
- 4) Does the political donation in question violate the PDCL?<sup>95</sup>
- 5) Does the political donation in question violate the fiduciary duties of the directors?<sup>96</sup>

The court decided that since the political donations in question were executed without the company rigorously examining the appropriateness, scope, amount, timing and effect on current losses of the donation, and without considering the alternate benefits of dividend payment to the

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<sup>88</sup> The article prohibits donations from companies that have run deficits for three or more consecutive years.

<sup>89</sup> It provides: (1) a person having a right of retention shall keep the thing retained with the care of a good manager, (2) a person having a right of retention may not, without the consent of the obligor, use or lease the thing retained or give it as security: however, this shall not apply to such use of the thing as is necessary for its preservation, and (3) if a person having a right of retention contravenes the provisions of the preceding two paragraphs, the obligor may demand the extinction of the right of retention.

<sup>90</sup> Minpō [Civil Code], Law No. 89 of 1896, art. 298.

<sup>91</sup> It provides: When a director performs an act that is not within the scope of the objectives of the company, or an act against any law or ordinance or the articles of incorporation, and thereby gives rise to fear of irreparable damages done to the company, any shareholder who has held a share continuously at least for the last six months may demand the director to stop such act on behalf of the company. The part of Corporation in the Commercial Law was amended in June 2005 and the new Companies Act was enacted on July 26, 2005 (Law No. 77). Art. 272 of the Commercial Law is now Art. 360 under the new Companies Act. Kumagaigumi Kabunushi Daihyō Soshō [Kumagaigumi Shareholders' Derivative Suit], Hanrei Jihō No.1814, p.151 (Fukui D. Ct., Feb. 12, 2003).

<sup>92</sup> Kumagaigumi Kabunushi Daihyō Soshō [Kumagaigumi Shareholders' Derivative Suit], Hanrei Jihō No.1814, p.151 (Fukui D. Ct., Feb. 12, 2003).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

shareholders, the judgment was wantonly made and the directors violated their fiduciary duties.<sup>97</sup>

This judgment entered by the Fukui District Court is notable because it is the first decision to find such a donation illegal since *Yawata Steel* in 1970. The decision that the management wantonly made political donations and that the directors violated their fiduciary duties is important because it went against the parts of *Yawata Steel* case that said it is permissible and useful for a corporation to donate to a political party. The holding did not explicitly refute the *Yawata Steel* judgment, however.

The Appeals Court (the Kanazawa Branch of Nagoya High Court), however, overturned the first trial decision by the Fukui District Court.<sup>98</sup> Explaining the Appeals Court's decision, one of the judges noted: "the directors were trying to improve the management and financial status of the company."<sup>99</sup> Discussing the violation of the fiduciary duty of care by the directors, the judge stated:

[T]here was a danger that, unless they accommodate the donation request by the industry association, the company would have lost the trust of the market and the stock price could have plummeted. The amount of the donation was within a reasonable range judging from the sales and the operating performance of Kumagaigumi.<sup>100</sup>

While the decision by the Nagoya Appeals Court overturned the first trial decision by the Fukui District Court, finding that the directors did not violate the fiduciary duty of care since the amount of the donation was within a reasonable range, the case is significant because it highlights the arguments against political donations by corporations.<sup>101</sup> Strong criticisms exist of political donations by corporations in Japan.<sup>102</sup> People seem to be seeking to increase the transparency of funds and journalists are supporting these efforts.<sup>103</sup> Critics have called the donations a form of bribery, relying on the first trial decision by the Fukui District Court in

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<sup>97</sup> *Id.*

<sup>98</sup> Kumagaigumi Kabunushi Daihyō Soshō Kōsoshin [Kumagaigumi Shareholders' Derivative Suit], Hanrei Jihō No.1814, p.151 (Nagoya D. Ct., Jan. 11, 2006).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* The defendants took the case to the Supreme Court on January 13, 2006. The case is still pending. For the details, see, *Kumagaigumi Case Jōkoku*, Mainichi Shimbun Newspaper, Jan. 14, 2006, at p.1.

<sup>101</sup> Kumagaigumi Kabunushi Daihyō Soshō Kōsoshin [Kumagaigumi Shareholders' Derivative Suit], Hanrei Jihō No.1814, p.151 (Nagoya D. Ct., Jan. 11, 2006).

<sup>102</sup> See, e.g., Political Donation Ombudsman, *Corporate Donations Should Be Ended*, "Criticism against Amendment of PDCL by the Party in Office," Oct. 27, 2004, <http://homepage2.nifty.com/~matsuyama/0041.html> (last visited Apr. 28, 2008).

<sup>103</sup> *Id.*

*Kumagaigumi* as the legal basis for their claims, without minding the decision of the appellate decision.<sup>104</sup>

## VI. THE SUPREME COURT'S DECISION IN *SOUTHERN KYUSHU ASSOCIATION OF ACCOUNTANTS*

In *Southern Kyushu Association of Accountants* (1998), the Supreme Court found a political donation unlawful.<sup>105</sup> Southern Kyushu Association of Accountants is a public interest entity to which all the accountants in the delinrated area of Southern Kyushu are obligated to join.<sup>106</sup> In the case, a member of the association objected to the association's decision to collect, as a special member fee, funds intended for political donation to the Liberal Democratic Party to promote a political movement toward the revision of the Accountant Law. This member refused to pay the special member fee and sued the association for violation of freedom of thought.<sup>107</sup>

In the case, the Supreme Court: (1) explicitly cited the argument that appeared in the *Yawata Steel* political donation case with reference to the definition of the rights of a legal person based on the Civil Law, Article 43;<sup>108</sup> (2) stressed the difference between a corporation, which is a legal for-profit entity, and the association of accountants, which is a legal entity for public interest with compulsory membership;<sup>109</sup> (3) construed the latter's action within the scope of object more restrictively;<sup>110</sup> and (4) concluded that political contributions to a political organization, such as a political party, fall outside of the boundary of the object of incorporation.<sup>111</sup> The court found that the mandatory fee for a political donation was outside the scope of the association.<sup>112</sup>

Compared to *Yawata Steel* which found political donations by companies to be lawful, the scope of object of incorporation according to Civil Law, Article 43, was construed more restrictively in *Southern Kyushu* because the issue was freedom of thought and the association of

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<sup>104</sup> *Id.*

<sup>105</sup> Minamikyūshū Zeirishikai Seijikenkin Soshō Saikōsai Hanketsu [South Kyushu Association of Tax Accountants], 50-3 Minshū 615 (Sup. Ct., Mar. 19, 1998).

<sup>106</sup> Minamikyūshū Zeirishikai Seijikenkin Soshō Saikōsai Hanketsu [South Kyushu Association of Tax Accountants], 50-3 Minshū 615 (Sup. Ct., Mar. 19, 1998).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

accountants is a compulsory organization.<sup>113</sup> *Yawata Steel*, however, discussed the political donations of a company and noted that the shareholders could leave the company at any time just by selling their shares.<sup>114</sup> The court stated in *Southern Kyushu* that each member should be able to make an individual decision regarding corporate donations.<sup>115</sup> This recognition was central to distinguishing the case from *Yawata Steel*.

*Kumagaigumi* stated that a political donation by a company is unlawful.<sup>116</sup> The court in *Southern Kyushu* took this same position but based its argument on different reasoning. It found that because of the limited scope of the association relative to the broad freedom of members' thoughts and beliefs, there is a limit to what the association can ask its members to do.<sup>117</sup> In *Kumagaigumi*, the court stated that a corporation's donation is enormously more influential than the political donation of an individual citizen so one cannot deny the possibility of infringing upon the voting rights of individual citizens, whether they are shareholders or non-shareholders.<sup>118</sup> *Southern Kyushu* focused on the infringement of the rights of members of an association that is compulsory in nature; the court emphasized that members are unable to exit if they disagree with the donations of the association.<sup>119</sup>

## VII. A FUTURE CAMPAIGN FINANCE ISSUE

In Japan, there is a move toward the legalization of political donation by foreign sources. This year, the Liberal Democratic Party plans to submit to the Diet a bill amending the PDCL to allow domestic companies with foreign capital to make political donations. The bill proposes that any Japanese company listed on a stock exchange and headquartered in Japan should be able to make political donations, regardless of the percentage of foreign-held shares.<sup>120</sup>

<sup>113</sup> *Id.*

<sup>114</sup> *Arita v. Yawata Steel*, 24-6 Minshū 625 (Sup. Ct., June 24, 1970).

<sup>115</sup> *Id.*

<sup>116</sup> *Kumagaigumi Kabunushi Daihyō Soshō* [Kumagaigumi Shareholders' Derivative Suit], Hanrei Jihō No.1814, p.151 (Fukui D. Ct., Feb. 12, 2003).

<sup>117</sup> *Minamikyūshū Zeirishikai Seijikenkin Soshō Saikōsai Hanketsu* [South Kyushu Association of Tax Accountants], 50-3 Minshū 615 (Sup. Ct., Mar. 19, 1998).

<sup>118</sup> *Kumagaigumi Kabunushi Daihyō Soshō* [Kumagaigumi Shareholders' Derivative Suit], Hanrei Jihō No.1814, p.151 (Fukui D. Ct., Feb. 12, 2003).

<sup>119</sup> *Id.*

<sup>120</sup> *LDP wa Gaishi no Kenkin Kanwa Kentō, Seisakueno Kenen Hirogaru* [LDP Plans to Change Law to Enable Political Donations from Foreign Capital, Spread Concerns], Nishinippon Newspaper, February 15, 2006, p.2, <http://www.nishinippon.co.jp/news/wordbox/display/3617/>. See, also, *Gaishi Kisei Kanwa, Uraganai to Ieruka?* [Foreign Capital Can Make Political Donations, What is the Real Intent?], Kochi News Paper, December 19, 2006, p.2, <http://www.kochinews.co.jp/0612/061219editor.htm>.

Under the current law, foreigners, foreign companies, and other organizations comprised mainly of foreigners or foreign companies, are prohibited from making political donations in order to prevent Japanese politics and elections from being influenced by foreign countries.<sup>121</sup> The law has been interpreted as barring donations from entities whose outstanding shares are more than fifty percent owned by foreign nationals in addition to corporations incorporated outside of Japan.<sup>122</sup>

None of the major political contribution scandals in Japan discussed *supra* involved foreign companies. Possible reasons for this include:

1. The role Japanese politicians play in the Japanese political and administrative decision-making process is not easy for foreign companies to follow. Consequently, foreign companies may not understand how to effectively direct their political donations.<sup>123</sup>
2. Japanese politicians still present themselves as representatives of their constituency, and thus, do not usually develop an international profile.<sup>124</sup>
3. Key industries in which bribery scandals concentrate include aviation, oil/energy, and defense. In these sectors, the Japanese economy is either still very strongly regulated or the market is closed to foreign firms.<sup>125</sup>

Due to the internationalization of the Japanese economy, more foreign companies can be expected to enter the Japanese market. However, foreign firms' access to the Japanese market has been and remains difficult. Market access and the participation of foreign firms in large public works bidding processes have been highly political issues. As a result, in these areas, foreign companies would be at a competitive disadvantage. Therefore, more political funding activities from foreign firms in the future in order to boost their influence on Japanese industries seems likely, which would in turn likely increase Japanese politicians' fundraising activities among foreign corporations.

Behind the move toward the legalization of political donations by foreign entities are the wishes of both the LDP, which wants to increase

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<sup>121</sup> Seijishikin Kisei Hō [Political Donation Control Law], Law No. 194 of 1948, art. 22 – 5.

<sup>122</sup> Acknowledged on December 13, 2006. *Minutes of Ad Hoc Committee on the Establishment of Political Ethics and the Change of the Public Election Law.*, No.5, Dec. 1, 2006, <http://kokkai.ndl.go.jp/SENTAKU/syugiin/165/0071/16512010071005c.html>

<sup>123</sup> *LDP ha Gaishi no Kenkin Kanwa Kento, Seisakueno Kenen Hirogaru [LDP Plans to Change the Law so that Foreign Capital to Make Political Donations and Concerns are Spread]*, Nishinippon Newspaper, Feb. 15, 2006, p.2

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

political funds,<sup>126</sup> and the business community, led by Keidanren, which desires a greater say in national politics.<sup>127</sup> Keidanren intends to increase its political influence through donations.<sup>128</sup> The bill might provide opportunities for foreign corporations to play a more influential role in the political decision-making process. At the same time, critics voice concerns that a political party might depart from a strict adherence to national interests in after receiving a donation from a foreign-held firm.<sup>129</sup>

### VIII. CONCLUSION

As long as the powerful mix of money and politics remains loosely regulated, democracy will continue to be undermined because the potential for corrupt or undesirable influence in Japanese politics will continue. This has led the Japanese government to impose restrictions on fundraising sources in the hope of eliminating perceived undue influence by money interests. In Japan, political and business accountability and transparency is on the rise.

For corporate political donations, there are differing views on what is legal and what types of corporate donations to politicians and political parties are acceptable; even court decisions are divided. The legality and appropriateness of these corporate donations, however, have been justified in Japan by the belief that a corporation, like a natural person, has the freedom to engage in political actions.<sup>130</sup>

For foreign donations, the law (PDCL) is to be changed since political donations are falling and corporate money, in particular, is dwindling fast. Japanese companies have only recently shaken off the effects of a prolonged economic slump. Shady corporate funding and past corruption linked to political donations contributed to the drop in political contributions.<sup>131</sup>

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<sup>126</sup> *Id.*

<sup>127</sup> Behind the move toward legalization of political donations by foreign entities is Keidanren's intention to beef up its influence on the political scene through donations. When Fujio Mitarai, the chairman of Canon Inc., was officially elected as the new chairman of Keidanren in January 2006, he stated: "Canon, whose foreign investors own more than 50 percent is prevented from legally making any political contributions under the current law" and "such a law logically contradicts the trend of the times." Editorial, "Mitarai is to be the next chairman for Keidanren", *Yomiuri Shimbun*, Nov. 8, 2005, <http://www.yomiuri.co.jp/atmoney/mnews/20051108mh10.htm>

<sup>128</sup> *Id.*

<sup>129</sup> *LDP ha Gaishi no Kenkin Kanwa Kento, Seisaku no Kenen Hirogaru [LDP Plans to Change the Law so that Foreign Capital to Make Political Donations and Concerns are Spread]*, *Nishinippon Newspaper*, Feb. 15, 2006, p.2.

<sup>130</sup> *Arita v. Yawata Steel*, 24-6 Minshū 625 (Sup. Ct., Jun. 24, 1970).

<sup>131</sup> *Id.*

Assuming the new rules take effect, about 40 listed companies that are more than 50 percent owned by foreign investors would be free to make political donations.<sup>132</sup> However, not all companies are jumping at the chance to donate. Some find the current donation process sufficiently transparent, while others worry that foreign contributions allowed under the new rules could allow foreign companies to influence Japanese politics.<sup>133</sup> Even with the proposed revision, Japan's rules on corporate political donations are still restrictive in light of the internationalization of Japan's economy and politics. The proposed restrictions are that, regardless of shareholder makeup, only companies listed on a stock exchange in Japan and headquartered in Japan should be permitted to make political contributions.<sup>134</sup> However, the government would do well to go further, to allow any company with operations in Japan to make political contributions in Japan. For example, foreign investment banks such as Morgan Stanley, although they are not listed on the Japanese stock market and their headquarters are in the U.S., have sizable operations in Japan. It is difficult to see why they should not be allowed to make political contributions even under the new law. Still, in its current form, the new law reflects the changing structure of Japan and is testament to how the Japanese business community has opened its doors to foreign investment.

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<sup>132</sup> *Tokyo Stock Exchange, Study of Shareholders Distribution, October 1, 2007*, [http://www.tse.or.jp/market/data/examination/distribute/h18/distribute\\_h18a.pdf](http://www.tse.or.jp/market/data/examination/distribute/h18/distribute_h18a.pdf)

<sup>133</sup> *Kiseiho no Kaisei*, [Proposed Changes on Political Donation Control Law], *Nishi Nippon Newspaper*, Feb. 15, 2006, <http://www.nishinippon.co.jp/wordbox/display/3617/?autnum=3617>.

<sup>134</sup> *Id.*

IX. APPENDIX

**Exhibit 1: Political Donation System in Japan**

**Recipient: Individual Politician** (through the creation of a Fund Raising Group)

Donor	Allowed to Donate to Recipient?	Limit
Individual	Yes	10 Million Yen
Political Party	Yes	
Corporation	No	N/A

**Recipient: Political Party and/or Fund Raising Group**

Donor	Allowed to Donate to Recipient?	Limit
Individual	Yes	20 Million Yen
Corporation	Yes	7.5 Million Yen – 1000 Million Yen (depending on the amount of capital the corporation has)

