

An Introduction to Anti-Corruption¹ Regulations in Japan

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Introduction

In the general election 1993, the so-called ‘political reform’ was the biggest issue not only for electorates but also for politicians. Particularly, it was how the purpose of political funds became more transparent that electorates were largely focusing on. The term, ‘political reform’, is a broad and vague concept including not only the regulation of political money but also other political issues such as political regime, party system, and ideologies etc. But, at that time, in Japan, the ‘political reform’ was regarded as the transparency of political funds.

The reason was that criticism about political scandals by politicians and bureaucrats reached a peak in the General Contractor scandal² in 1993. Since the

¹ As Nye points out, the definition of corruption pose a serious problem. The term, political corruption, is vague, broad, and changeable by scholars’ perspectives. Hence, this essay employs a narrower definition of political corruption that can be made operational: Political corruption is behaviour, which violates or distorts existing laws, orders, or ordinances on private behalf. J., Nye (1967) *Corruption and Political Development: A Cost-Benefit Analysis*, in E., Heidenheimer and M., Johnston ed (2002) *Political Corruption: Concepts and Contexts Third Edition*, Transaction Publisher, p.284.

² When the former vice president of Liberal Democratic Party, *Shin Kanemaru*, was apprehended for tax evasion in 1993, through the investigation, the Tokyo District Public Prosecutor’s Office (TDPPO) discovered a batch of evidence that some large construction firms bribed not only politicians but also governors and a mayor. Consequently, 31 were found guilty. T., Murobushi (2000) *Nihon Oshoku Zenshi* (The History of Japanese Corruption), Sekai Shoin, pp. 276-278.

Lockheed scandal³ in 1976, for example, political scandals such as the Recruit scandal⁴ in 1986 and the *Tokyo Sagawa Kyubin* scandal⁵ in 1992, repeatedly occurred despite the fact that laws relating to the regulation of political funds were rigidly revised time and time again. Moreover, the Miyazawa government, which tried to change not only political donation system but also electoral system in response to strong public pressure of combating political corruption, failed to carry out political reform due to the objection to the introduction of single-seat constituency system from inner members of *Jiyu Minshu To* (Liberal Democratic Party, LDP). Repeated political scandals and the failure of political reform convinced electorates that the long-term LDP government caused the abuse of political power and lost the ability to fight against corruption. Consequently, LDP lost a majority of *Shugiin* (the House of Representatives) and instead a new coalition government was formed by 8 parties excluding LDP and *Nihon Kyosan To* (Japan Communist Party, JCP)⁶.

The new government led by PM *Morihiro Hosokawa* set to revise the Political Funds Control Law for making political money more transparent. The core of the revision was to fully ban donations toward politicians and political parties from corporations and associations. However, the proposal of the revision was disapproved in *Sangiin* (the Senate) and the Hosokawa government had to decline it for a compromise with LDP. As a result, the revised Political Funds Control Law, which did not prohibit

³ In the US Senate committee testimony 1976, Karl Cotchian, who was a vice-president of Lockheed, revealed that huge amount of backdoor money was paid to power holders and companies in Japan for selling new aircrafts named L-1011 TriStar. In this scandal, politicians including former PM *Kakuei Tanaka*, All Nippon Airways' (ANA) executives, *Yoshio Kodama*, who was an intermediate between Lockheed and Japanese corporations such as *Marubeni* and *Kokusai Kogyo*, and so on were apprehended for bribery. *Tanaka* allegedly received 500 million yen through *Marubeni* and *Kokusai Kogyo* from Lockheed. But, the *Tanaka's* trial finished as he died in 1993 before sentenced at the Supreme Court. T., Murobushi, op cit., pp.237-247.

⁴ In 1989, *Hiromasa Ezo*, who was the vice president of Recruit, was arrested for offering unlisted insider's stocks of an affiliate company (Recruit Cosmos), which were sure to greatly rise in future, to politicians, bureaucrats, journalists, and scholars. T., Murobushi, op cit., pp.265-269.

⁵ TDPPPO apprehended four executive members of *Tokyo Sagawakyubin* (a transportation company) for suspicion of aggravated breach of trust in 1992. They allegedly gave huge amount of money (about 2.1 billion yen) to politicians. However, only *Kanemaru* was dealt summarily with for the violation of Political Funds Control Law at Tokyo Summery Court and paid 200 thousand yen as a fine.

⁶ The 8 parties were *Nihon Shakai To* (The Social Democratic Party of Japan), *Komei To* (*Komei* Party), *Shinsei To* (Japan Renewal Party), *Nihon Shinto* (Japan New Party), *Minsha To* (Democratic Socialist Party), *Shinto Sakigake* (New Party *Sakigake*), *Shakai Minshu Rengo* (Social Democratic Federation), *Minshu Kaikaku Rengo* (Democratic Reform Party).

political donations from companies and organisations but regulated the ways of receiving them, passed in both houses in 1994. The so-called 'political reform' boom was over without substantially sorting out the issue of politics and money.

Furthermore, after the boom, politicians and bureaucrats committed political scandals as if they learnt nothing from previous lessons. In 1998, for instance, the MOF (the Ministry of Finance) scandal occurred. In the scandal, mega banks' officers, who were responsible to gain highly-confidential information on new bank regulations, repeatedly entertained MOF's or the Bank of Japan's bureaucrats at shady places providing a kind of sexual services in order to receive the facilities such as leaks of pre-opened information and inspection dates into banks. In the end, 7 public officers were found guilty of a bribery charge and 54 got discrepancy sanctions⁷.

In addition to this bureaucratic scandal, corruption cases such as the *Yamarin* scandal in 2002⁸, the scandal of mishandling the aide salaries in 2000 and 2003⁹, the matter of politicians' office expense in 2007¹⁰ were exposed. One of characteristics of corruption after the 'political reform' boom is that politicians do not collect off-the-book funds from corporations but misappropriate public spending for secretaries' salaries and politicians' daily activities. This is due to the fact that various laws regulating political donations from companies and organisations have been enacted since 1993. But, it is nothing more than a superficial effect as pointed out in the following clauses.

⁷ In addition to this, 58 were subject to punishment, which is not regarded as official discrepancy sanctions. The punishment is occasionally criticized as being mere crocodilian performance since it does not have any fatal influence in promotion.

⁸ In 1998, a lumber firm named *Yamarin* received administrative punishment, which banned the participation in public bidding to cut down trees in national forests without permission. *Yamarin* attempted to preferentially accept Forest Agency's public works projects in order to regain economic loss during administrative punishment and requested former MP *Muneo Suzuki* to press the agency. He allegedly received 5 million yen in total from *Yamarin* and was sentenced to 2 years in prison from the Supreme Court in 2010. See http://www.47news.jp/news/2010/12/post_20101202190621.html [retrieved in December 9, 2012]

⁹ In 2000 former MP *Jyoji Yamamoto* and in 2003 MP *Kiyomi Tsujimoto* were arrested for the embezzlement of aide salaries disbursed from national budget.

¹⁰ Many politicians rent several offices used as hubs for daily political activities in Tokyo and their hometown. They are obliged to open not the detail but the total of operation expense including *Jimushohi* (office expense) every year. Consequently, they reported the costs, which they do not want to disclose, as operation expense and as if they paid office cost despite the fact that their offices were located in the rent-free Diet members office building. This is highly likely to fall under the Fake Statement in Political Funds Control Law. Although no politicians were apprehended in this matter, the former Minister of Agriculture, Forestry, and Fisheries *Toshikatsu Matsuoka*, who was suspicious of misstatement of operation expense, killed himself in 2007. However, the truth will never uncover.

Hermann Heller says that democracy is like a barometer to assess maturity of the state¹¹. Democracy was introduced as one of components of modern state in order that political power was not monopolized by specific persons such as in the period of absolute state. The monopolization of political power is highly likely to offer greater incentives and more opportunities for political corruption. It is a major impediment to not only the development of democracy but also various activities such as environmental conservation and business. In the worst case, corruption causes a conflict like in Congo. For the development of democracy, it is significant to build institutions and rules, which permit the fair distribution of wealth and social benefits and to embed watchdogs and ombudspersons in the decision making process.

According to “*Corruption Perception Index 2013*” by Transparency International (TI)¹², Japan places 18th out of 177 countries and territories. The Japan’s rank seems to be high in total. But, it is not highly evaluated within developed countries. TI recommends that Japan should address the issue of corruption from 3 approaches: law enforcement, the conceptualization of what political corruption is, and greater disclosure of information and an awareness-raising campaign¹³. For the achievement of corruption free society, as TI suggests, it is vital not only to contextually and functionally improve legislation but also to create an appropriate environment, which enables people to continuously have an interest in legislation about anti-corruption and public officers’ activities.

This essay is designed to briefly deal with how Japan addresses the political corruption issue through introducing Japanese anti-corruption regulations from judicial, political, and social dimensions.

2. Law Enforcement relating to Anti-Corruption

There are various laws relating to anti-corruption in the corpus juris of Japan. But, as mentioned above, Japan does not have an anti-corruption law covering any types of corruption such as UK bribery act 2010. Depending on sorts of cases, therefore, Japanese prosecutors indict suspects, who have committed corruption, by adequate laws. This clause focuses on cardinal acts punishing corrupt behaviour.

¹¹ H., Heller, S., Yasu translated (1971), *Kokkagaku* (Staatslehre), Miraisha, p.261.

¹² Transparency International (2013) *Corruption Perception Index 2013*, <http://www.transparency.org/cpi2013/results> [retrieved on December 9th, 2013].

¹³ M., Ouchi (2007) *Japan*, in Transparency International ed., *National Integrity Systems in East and Southeast Asia 2006*, Transparency International, p.38.

2-a the Penal Code

The penal code ordains a charge of abuse of power by politicians and public officers, and the crime of bribery in the Chapter 25 (the article 193 to 198). In particular, the article 197 defines political corruption in 7 types; Acceptance of Briberies, Acceptance upon Request, Acceptance in Advance of Assumption of Office, Passing of Briberies to a Third Party, Aggravated Acceptance, Acceptance after Resignation of Office, Acceptance for Exertion of Influence¹⁴.

'Acceptance of Briberies' punishes a public officer, who receives, solicits, or promises to accept a bribe in relation to his/her duties. The punishment is up to 5-year sentence. 'Acceptance upon Request' is to receive, solicit, or promise to accept a bribe as a reward to realise a request for a person who funds a public officer. The difference between the former crime and the latter is whether he/she has agreed to perform an act in response to a request for a person who funds him/her. A public officer, who commits a crime of 'Acceptance upon Request', is sentenced to imprisonment of up to 7 years. The rescue aircraft scandal in 1998 is an example of 'Acceptance upon Request'.

An aircraft maker, *Fujjyuko*, which also manufactured automobiles as 'Subaru', requested, to the parliamentary vice-minister of defense, *Yojiro Nakajima*, that the Defense Agency selected it as a company to make main parts of a rescue aircraft, and gave him 5 million yen as a bribe. He was apprehended for a charge of 'Acceptance upon Request' in 1998. In this scandal, he was punished for 'Acceptance upon Request' as the fact that he pressed the Defense Agency to choose *Fujjyuko* as a maker of main parts of the aircraft for reward to the bribe was recognized by the Tokyo District Court.

'Acceptance in Advance of Assumption of Office' is to receive, solicit, or promise to accept a bribe in return to a funder's request before taking a public post. But, this crime is not realised unless he/she becomes a public officer in charge of the request. The punishment is imprisonment of up to 5 years.

'Passing of Briberies to a Third Party' is a criminal act, in which a public officer does not directly receive a bribe but asks a funder to pay it to a third party relating to him/her. 'A Third party' is estimated to be societies such as a politician's fund-management organisation and an extragovernmental body. For example, a charge of 'Passing of Briberies to a Third Party' is recognized if a funder pays a bribe not to a

¹⁴Japanese Law Translation, *The Penal Code: Article 197 in Chapter XXV Crimes of Corruption*, <http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=01&dn=1&co=01&x=16&y=19&ky=%E6%B1%9A%E8%81%B7%E3%81%AE%E7%BD%AA&page=1> [retrieved in December 17, 2012]

politician, who distorts laws and official decision or leaks confidential information in return to illegal donation, but to his/her political fund-management organisation, or if a corrupt public officer requests to pay a bribe to an extragovernmental body. The punishment is the same as 'Acceptance in Advance of Assumption of Office'.

If a public officer carries out an illegal act that mentioned above, it is regarded as 'Aggravated Acceptance'. The crucial point of this criminal is to perpetrate an illegal behaviour although, in 'Acceptance upon Request', 'Acceptance in Advance of Assumption of Office', and 'Passing of Briberies to a Third Party', a public officer is punished just by receiving a request from a person, who funds him/her. However, if actually not committing the requested crime, at least, he/she is not apprehended for 'Aggravated Acceptance'. Furthermore, if receiving, soliciting, or promising to accept a bribe in the exercise of his/her duty, he/she is also punished for this. The punishment is imprisonment of up to 1 year. This is largely used as the consolidated punishment with others.

The article 197-3 of the penal code explains 'Acceptance after Resignation of Office' as follows:

When a person who resigned from the position of a public officer accepts, solicits, or promises to accept a bribe in connection with having acted illegally or having refrained from acting the exercise of his or her duty with agreement thereof in response to a request, the person shall be punished by imprisonment with work for not more than 5 years¹⁵.

By prohibiting a public officer from receiving, soliciting, or promising to accept a bribe after his/her retirement, this law attempts to curb any public officers' incentives to commit corruption. If a public officer, who promises to receive a bribe in office, dose so after his/her resignation, a charge of this crime is consolidated with 'Aggravated Acceptance'.

A public officer's act is regarded as 'Acceptance for Exertion of Influence' if, in return to a bribe, he/she presses another public officer to do something illegal for a person, who funds him/her. In other crimes mentioning above, whether a public officer, who receives, solicits, or promises to accept a bribe, has the authority to execute the duty is a significant point to be punished. In other words, if a public officer in charge of long-life learning is offered a bribe and requested to change a project about bin collection, it may be difficult to apprehend him/her for 'Acceptance upon Request' as

¹⁵ Ibid. [retrieved in December 17 2012]

he/she does not have power to influence the project. However, if he/she is a politician, it would be possible to press another public officer by using his/her superior bargaining position. In this case, offered a bribe in return to mediation, he/she is arrested for 'Acceptance for Exertion of Influence'.

2-b Political Funds Control Law

In 1948, the Diet passed the Political Funds Control Law (PFCL)¹⁶. It was a rule opening political donation toward politicians and persons, who were thinking to run for public office. In other words, the purpose of the law was not to control political funds for political parties and organisations¹⁷. However, in 1975, it was radically revised by Takeo Miki, who took over the premiership from Kakuei Tanaka.

The 1975 PFCL capped the total of political donation, regulated the mediation of it, disclosed details of politicians' incomes, and introduced the tax exemption for political funders. Since then, the law was changed several times. In particular, the 1994 PFCL, which was a kind of a fruit of the Political Reform boom, confined a fund-management organisation, through which a politician and a person thinking to run for public office could receive political donation from companies and lobbies. The law permits them to have one organisation¹⁸.

Electorates, as personal donation, can give up to 20 million yen to a political party and a political fund organisation¹⁹ in one year. In addition, individuals can donate up to 10 million yen to politicians and their political organisations. But it is impossible to donate more than 150 thousand yen to a politician in the year. Although companies and lobbies are allowed to fund political parties and political fund organisations, as mentioned above, they cannot give money directly to politicians and their fund-management organisations. Interrupting financial connections between politicians and companies and lobbies is one of important ways to control political funds²⁰.

The so-called 'vicious triangle' among politicians, bureaucrats, and business is

¹⁶ Ministry of Internal Affairs and Communications, *Seiji Shikin Kisei Ho no Aramashi* (An Introduction to the Political Funds Control Law), (Internet) http://www.soumu.go.jp/main_content/000174716.pdf [retrieved in December 17th 2012].

¹⁷ K., Kato (2009) *Gikaiseiji no Kenpogaku* (A Constitutional Study on Parliamentary Politics), Nihon Hyoron Sha, p.224.

¹⁸ The 1994 PFCL included a supplementary provision, which would forbid the fund-management organisation to receive political donation from companies and lobbies, in 5 years. In 1999, it came in effect.

¹⁹ The political fund organisation is established by a political party to receive donation from individuals, companies and lobbies.

²⁰ K., Kato, op cit., p.228.

said to be a characteristic of Japanese politics since 1955. Politicians press bureaucrats in return for financial and elective support by business. Bureaucrats, who have been pressed by politicians, attempt to act on behalf of business by exercising their discretionary power, deciding the allocation of subsidies and budget, and divulging secrets about public projects and public bids. Moreover, bureaucrats ask politicians to smoothly pass bills made by them, and protect (or increase) ministries' interests called '*Shoeki*'. Companies and lobbies accept retired bureaucrats and pay high salaries to them. The ends are to make broad connections with various ministries and to gain inside information regarding new public policies and regulations earlier than others. The so-called 'Career *Kanryo* (a top-level bureaucrat)', who has passed the exam for being a high rank public officer, moves to several corporations and organisations deeply relating to a ministry, at which he/she has worked, in a few years, and receives a high severance payment after retirement. This is called '*Amakudari* (Golden Parachute)²¹'. The three parties enjoyed this cozy relationship under the LDP's reign and caused many political scandals. The 1994 PFCL was designed to limit the financial contribution to politicians by corporations and lobbies, and to break up the vicious triangle.

2-c Illegal Proceeds from Mediation

In Japan, LDP had never lost the seat of power from 1955 to 1993. Consequently, as mentioned above, the so-called 'vicious triangle' among politicians of the ruling party, bureaucrats, and private companies took a significant role of decision making. To strongly influence the redistribution of benefits by bureaucrats, politicians attempted to pressure them in various ways.

For example, a politician often introduces his/her supporters to bureaucrats, whose ministries are supervising the supporters' companies or organisations. Of course, only an introduction is not the violation of laws. True purposes are to show a deep connection between the politician and the supporter and to implicitly pressure the bureaucrat to prioritise the supporter's company in public biddings and the distribution of subsidies. In return to the introduction, the politician receives financial rewards such

²¹ M., Ouchi, op cit, p.39. The National Public Service Act prohibits a retired bureaucrat from working at a company and an organisation, with which he/she has had a direct working relationship for 5 years till he/ she quits his/her position. However, the prohibition is lifted if 2 years have passed after retirement. Or, even if the prohibition period does not expire, it is possible to move to the company, when the Prime Minister permits him/her to do so. The National Public Service Act (Internet) <http://law.e-gov.go.jp/htmldata/S22/S22HO120.html#10000000000030000000080000000> [retrieved in December 17th 2012]

as political donations from the supporters.

Under the 1955 party system, the so-called '*Zokugiin* (politicians with close ties to special interests)' played a central role with bureaucrats and private companies in a decision making process. The main roles of '*Zokugiins*' in the process were not to make bills but to claim opinions for industry segments such as Japan Agricultural Cooperatives (JA), Japan Medical Association (JMA), and Japan Bankers Association (JBA) in LDP's party meetings called '*Bukai*'²², to reconcile the relationship of bureaucrats and industry segments, and to pressure bureaucrats into implementing new policies that industry segments need. Hence, *Zokugiins* tend to establish the deep connection with specific industry segments relating to their *Bukais*. It caused many political scandals as mentioned above.

However, with the rise of public opinion that the politicians' proceeds from mediation should be illegalised, the Diet approved the Illegal Proceeds from Mediation (IPM) in 2000.

IPM punishes a MP, a state-funded secretary, a local councilor, and a governor who, in response to a request from a funder, attempt to gain any proceeds by asking a public officer in charge of a contract or an administrative penalty to make or change a decision, or not to do so. The difference between IPM and the Penal Code, particularly 'Acceptance upon request', is that, in IPM, it is possible to criminate a public officer, who asks another public officer to do a legal act in return to a funder's request. On the other hand, 'Acceptance upon Request' punishes a public officer, who has requested another public officer to distort proper rules or decisions in return to a bribe²³. In other words, IPM is broadly covering legal mediation as a criminal act unlike the Penal Code.

The punishment is the imprisonment of up to 3 years in the MP, the local councilor, and the governor, and of up to 2 year in the state-funded secretary.

²² LDP's *Bukais* consist of 13 divisions under the policy research council. In a case of the LDP's decision making process, firstly *Bukais*' consents are necessary to submit measures to Diet. Secondly the measures are examined in the policy research council and in the general council. If the three institutions agree with them, LDP determines to approve the measures as a party. *Bukai* takes a crucial role in the first step of the decision making process. *Bukai* employs the unanimity rule. Therefore, bureaucrats need to persuade all of *Bukai's* members to consent the measures. Bureaucrats are often asked to attend *Bukais* for hearing details of government policies. The relationship of politicians and bureaucrats of ministries relating to LDP's *Bukais* is deepened through this process. T. Inoguchi and H. Iwai (1987) *Zokugiin no Kenkyu* (a study of *Zokugiin*), Nihon Keizai Shimbunsha, pp.19-29.

²³ S., Sakurai (2002) *What is Illegal Proceeds from Mediation?*, (Internet) <http://www.yonekawa-lo.com/legal/backnumber2/assen.htm>, [retrieved in December 17th 2012].

2-d Legislation to Punish Corruption toward Foreign Officers

The Japanese Diet approved the conclusion of OECD Anti-Bribery Convention, which criminalized bribery of foreign public officials in international business transactions²⁴, in 1998.

The global market is spreading with the rise of developing countries such as Brazil, Russia, India, and China. On the other hand, as OECD points out, corruption is deeply rooted in those countries and undermines the base of the fair competition in international business. Therefore, OECD asserts that fighting corruption is a responsibility, which all countries must share to establish good governance and economic development²⁵.

The Japanese central government, which accepted OECD Anti-Bribery Convention in 1998, amended the Unfair Competition Prevention Act (UCPA) and forbade bribery of an international public officer in international business transactions. The reason why the Japanese government did not enact a new anti-bribery law but changed UCPA in order to build the Anti-Bribery Convention in the national laws was that Japanese penal code could not punish a juristic person. In addition, the purpose of bribery of the international public officer is to distort fair international business transactions for obtaining greedy benefits. It comes not from betrayal of the public but from the unfairness of business activities. Therefore, the government decided to change UCPA, which was allowed to punish the juristic person and illegal business²⁶.

UCPA says that, if a business person pays a bribe to a foreign public officer for receiving a contract, he/she will be sentenced to the 5-year imprisonment or a fine of not more than 5 million yen. In addition, his/her corporation also must pay a fine of not more than 300 million yen²⁷.

²⁴ OECD, *Bribery in International Business*, (Internet) <http://www.oecd.org/daf/bribery/internationalbusiness/oecdantibriberyconvention.htm>, [retrieved in December 17th 2012].

²⁵ OECD (2011) *Convention on Combating Bribery of Foreign Public Officials in International Business Transaction and Related Document*, (Internet) <http://www.oecd.org/daf/bribery/internationalbusiness/anti-briberyconvention/38028044.pdf>, p.6 [retrieved in December 17th 2012]. Of course, this statement is open to discuss 'what good governance is' and 'who really enjoys benefits by curbing corruption: people or business persons?'

²⁶ T., Umeda (2011) *Gaikoku Komuin Zowai Boshi Taisei no Kenkyu* (Combating Bribery of Foreign Public Officials in International Business Transactions), Reitaku University Press, pp.26-29.

²⁷ Ministry of Economy, Trade, and Industry, *Bribery Prevention of Foreign Officer in International Business*, (Internet) http://www.meti.go.jp/policy/external_economy/zouwai/index.html, [retrieved in December 17th 2012].

Moreover, the Ministry of Economy, Trade, and Industry (METI) sets 'Guidelines to Prevent Bribery of Foreign Officials'²⁸ and has opened an exclusive office in charge of the prevention of bribery of foreign public officers. The guidelines introduce measures for the prevention of bribery of foreign public officers that companies should aim for (Chapter 2), punishable acts under UCPA (Chapter 3), and the basic information on relevant issues in and outside Japan (Chapter 4)²⁹.

Since the amendment of UCPA in 1998, two cases have been prosecuted for a charge of bribery of international public officials. Two company members of Kyudenko, which was an electric contractor in the Kyushu area, were arrested for having sent 800 thousand yen worth of a golf set to a public officer of Philippine National Bureau of Investigation. To get a contract of the fingerprint recognition system, they violated UCPA and were sentenced to fines of 500 thousand yen and 200 thousand yen in 2007. In other case, in 2009, Pacific Consultant International (PCI) and its executives were pronounced guilty for paying a bribe to a Vietnamese public servant in return to a contract of Official Development Assistance (ODA). Although there are a few cases punished for the violation of UCPA at this moment, large-scale bribery cases of international public officers may occur in Japan like in the US and the UK. Japanese companies must pay more attention to their international business transactions since the world regards corruption as one of the biggest barriers not only for economic development but also for political democracy.

3. Parliamentary Institutions for the Investigation of Political Corruption

MPs of Japan have an administrative investigation right defined in the article 62 of The Constitution of Japan. It enables MPs to investigate and research various matters relating to state affairs. Hence, when political scandals, which may have been committed by MPs of a ruling party, happen, counter parties often request the chair of the Budget Committee (BC) to investigate illegal conducts by the MPs in the committee. The reason why a public hearing on the political scandals in BC is requested is that the committee is the most widely dealing with various issues.

BC discusses and determines the way of using annual national budget. It includes annual salaries for MPs. Therefore, investigations on the scandals in BC are

²⁸ METI (2010), *Guidelines to Prevent Bribery of Foreign Public Officials*, (Internet) http://www.meti.go.jp/policy/external_economy/zouwai/pdf/Guidelines%20to%20Prevent%20Bribery%20of%20Foreign%20Public%20Officials.pdf, [retrieved in December 17th 2012].

²⁹ In Chapter 4, other domestic laws relating to the prevention of bribery of international public servants are explained, such as Whistleblower Protection Act, the Organised Crime Punishment Act, the Corporate Code and so on.

requested on the ground that it is a national affair if MPs gaining incomes from national budget have committed illegal activities.

The investigations on political scandals in BC are made by interviewing 'unsworn' potential suspects and by summoning 'sworn' witnesses. In 'unsworn' Diet testimonies, a person, who is asked to speak about a political scandal, is not charged with perjury. On the other hand, in a case of 'sworn' Diet testimonies, if rejecting appearance to the Diet and oaths without due reasons, or, if lying about the scandal, the witness is accused of perjury.

In the 'sworn' testimony for the Douglas Grumman scandal³⁰ in 1978, a scene, in which a witness put his signature to an oath by a shaky hand, was televised. Thereafter, LDP complained a way of broadcasting the sworn Diet testimonies by reason that it was like people's court and a human-rights abuse. Consequently, Diet Testimony Law revised in 1988 prohibited televising and recording the 'sworn' Diet testimonies except for the first few minutes. However, televised enquiries were allowed in 1998 on the condition of consent by committee members³¹.

The sworn or unsworn Diet testimony has been criticized as a political performance. In the testimonies, the length of question time is about two or three hours in total. Each party obtains the allocation of the question time in proportion to the number of seats. Therefore, minor parties such as Japan Communist Party and Social Democratic Party have to ask a witness questions in only five or ten minutes. Can a political scandal be sufficiently investigated in five minutes? The answer is "impossible". Although the minor parties ask the chair of BC to hold the sworn Diet testimony again, it is very rare for ruling parties to accept the request. The Diet testimony is like a ritual to return from political deadlock to a normal deliberation.

In addition, MPs' investigative abilities are relatively limited despite the fact that the administrative investigation right is enforceable. The reason is that many of MPs do not have enough specific staff to scrutinise political scandals. Three state-funded secretaries basically work for each MP. In addition to them, some MPs employ private secretaries as a messenger for their local electorates. However, it is quite hard for three or four persons to inspect political scandals like a prosecutor's office. Tokyo SID, for example, consists of 40 prosecutors, 2 assistant prosecutors, and 90

³⁰ US Security and Exchange Commission (SEC) unrevealed that an American aircraft company, McDonnell Douglas Corporation, bribed Japanese politicians via a trading company, *Nissho Iwai*, for selling Douglas' airborne early warning aircrafts (E-2C) to Japan. However, only three former executives of *Nissho Iwai* were pronounced guilty.

³¹ A witness can tell his/her will about a way of a sworn testimony to the chair of BC. But, even if he/she requests a closed testimony, the consent of BC members can decide to hold it in public.

prosecutor's officers. Hence, the Diet testimonies often become a pre-established harmony as MPs tend to grill witnesses by using news sources from mass media. This is the reason that the Diet testimonies are said to be a kind of 'political show'.

Political Ethic Hearing Committee (PEHC) is established in both houses of Representatives and Councilors as the permanent committee to investigate the violation of the code of conduct by MPs. Unlike the sworn Diet testimony, MPs facing allegations can request to hold PEHC for explaining their scandals. It is held in camera basically. But, if suspicious MPs accept an open hearing, it is disclosed to specific MPs and mass media. For example, a former MP *Makiko Tanaka*, who was suspected of the embezzlement of her secretaries' salaries in 2002, consented the open hearing and explained her scandal in front of mass media.

PEHC is a committee not to condemn political scandals but to hear MPs' explanations. Therefore, it does not have a right to accuse suspicious MPs of perjury like the sworn Diet testimony. Furthermore, if not attending the hearing at PEHC as former PM *Yukio Hatoyama*³² did in 2009, they are neither accused of some crimes nor enforced to resign from the Diet³³.

Both chambers have research offices in secretariat divisions. The missions of the research offices include analysing various issues relating to national and foreign affairs, and publishing pamphlets on details of bills for MPs' legislative investigations. As mentioned above, it is quite hard for MPs to fully scrutinise political scandals with 3 public secretaries and some private secretaries due to the fact that their main duties are not to expose politicians' corruptive activities but to make bills and to check the effectiveness of governmental policies. In doing so, the research offices take a ministerial role to help MPs' policy-making and investigative activities.

However, like MPs' secretaries, the research offices have few specialists, who can investigate and analyse political scandals. Consequently, hearings in PEHC tend to be a kind of a political ritual for suspicious politicians to perform ablutions since questioners, particularly of counter parties, investigate the violation of the code of conduct with poor news source.

³² The reason why *Hatoyama* was requested to explain his scandals at PEHC was that his secretary managing political funds made false political fund reports in order to conceal the sources of *Hatoyama's* political funds. In particular, he received about 900 million yen from his mother from 2004 to 2009. However, his secretary falsely reported that the donations were given by his supporters. Some of them already passed away before 2004.

³³ PEHC can recommend suspending MPs and resigning parliamentary posts on a two-thirds majority. But, the committee has never made recommendations since it was set up in 1985.

To improve PEHC's investigative functions, in 2002, the former chairperson of the House of Representatives *Tamisque Watanuki* suggested holding the sworn Diet testimony at PEHC, changing it to a permanent or special committee, and empowering research officers³⁴. But, his suggestion remains to be pending

4. Anti-Corruption Activity in the Grass-Roots level – A Case of TI-J

To curb corruption, as mentioned above, it is necessary not only to empower independent investigation agencies such as a prosecutor's office, a taxation office, and Japan Fair Trade Commission through enacting various acts of anti-corruption but also to involve people in anti-corruption activities. Public officers' law-abiding minds may become loose unless people keep awareness of anti-corruption. Continuous participation in politics by not specific interest groups but many people stimulates politicians' and bureaucrats' daily activities and weakens their incentives for corruption.

Transparency International Japan (TI-J) was founded in 2005 as a chapter of Transparency International (TI) located in Berlin. The current president of TI-J is *Toru Umeda*³⁵ and the vice president is *Minoru Ouchi*³⁶. Although they are from academic fields, TI-J's members are widely consisted not only of academicians but also lawyers, tax accountants, and civic activists. Its daily activities are mainly supported by voluntary staff members.

The purpose of the establishment of TI-J is to make a big wave of anti-corruption through civic networks and information media in the grass-roots level for changing the world to corruption-free society³⁷. To achieve the goal, TI-J sets up four main active principles: social enlightenment, dispatch of information, policy recommendations, and policy feedbacks.

TI is not a counter body hostile to existing stake holders but a suggestive organisation, which proposes anti-corruption policies with politicians, bureaucrats, and private companies. TI's guideline principle says that "As coalition-builders, we will work cooperatively with all individuals and groups, with for-profit and not-for-profit

³⁴ M., Takeda and M., Yamamoto (2006) *Omona Kokkai Kaikaku to Sono Ronten* (Chief Congressional Reforms and their Discussion Points), in *Reference* (November 2006), National Diet Library, p.102.

³⁵ *Umeda* mainly studies briberies of foreign public officials and corporate ethics. See *Umeda* (2011), op cit.

³⁶ *Ouchi* is the authority of a study of political corruption in Japan. He has published various writings about political corruption, hitherto. See M., Ouchi (1977) *Fuhai no Kozo* (the Structure of Corruption), Diamond Sha. M., Ouchi(1995) *A Study of Corruption*, in *Yachiyo Journal of International Studies*, Yachiyo International University.

³⁷ (Internet) <http://www.ti-j.org/about.html> [retrieved on December 20th 2013].

corporations and organisations, and with governments and international bodies committed to the fight against corruption, subject only to the policies and priorities set by our governing bodies”³⁸. TI-J also abides by the principle.

The reason why TI has decided to become a coalition-builder is that there have been already various counter-corruption groups all over the world when TI has been founded in the 1990s. Most of them have employed a confrontational approach, which exposes and criticizes abuse of power holders. Hence, TI's founding members did not think to set up a new anti-governmental group. In addition, in their view, the confrontation approach tended to cause brutal crashes with and rebellions against the government³⁹. Current Thailand and Egypt are good examples to explain this idea. TI's unique strategy has been broadly accepted not only by governments in the world but also by international organisations such as OECD and IMF.

TI-J also employs a cooperative approach as well as TI. For example, TI-J dispatches anti-corruption specialists as a lecturer to companies, central or local governments, and universities. Furthermore, TI-J holds symposiums, conferences, and reading clubs⁴⁰ in collaboration with public or private bodies. With the rise of awareness of anti-corruption among citizens, TI-J is expected to play a significant role to combat political corruption.

Tentative Conclusion

The opinion that political corruption was a kind of lubricant for smooth political or administrative procedures, particularly in developing countries, was broadly accepted by the so-called functionalists such as S., P., Huntington and C., J., Friedrich. It is true that some scholars still regard facilitation payments as effective in street-level administrative procedures of developing countries. But, as recent experiences in the Middle East indicate, political corruption gradually undermines an existing political regime regardless of its scale and induces anti-political attitude among people.

In a case of Japan, as mentioned above, the abuse of power by politicians and bureaucrats is partly regulated or monitored by laws, the Diet committees, and NPO. In particular, it can be said that various laws such as the penal code, the political fund

³⁸ (Internet) http://www.transparency.org/whoweare/organisation/mission_vision_and_values [retrieved on December 21st 2013].

³⁹ F., Galtung (2001) *Transparency International's Network to Curb Global Corruption*, in G., E., Caiden ed., *Where Corruption Lives*, Kumarian Press, pp.198-199.

⁴⁰ TI monthly reading club is held from November 2013 to March 2014. In this event, participants read and discuss assigned-reading books about political corruption in order to learn theory and practice for anti-corruption. The British Embassy is supporting the event. See <http://www.ti-j.org/reading.html>

control law, and the law of prohibition of illegal proceeds from mediation, to some extent, have improved the collusive relationship of politicians, bureaucrats, and companies, and have transparentised politicians' source of political fund. However, its effectiveness is limited.

For instance, political reform in 1994 was not able to broadly ban political donations from companies and organisations to politicians. In current PFCL, the direct corporate donations to politicians and their political fund bodies are illegalised. But, it is possible for companies to financially support specific politicians through indirectly donating to parties, their political fund bodies, or their local branches. Of course, political parties have their discretion to use political donations regardless of donors' intentions. However, in fact, the donations are given to politicians, who donors are supporting, as the head office of political parties knows they donate with purpose.

Furthermore, in parties' local branches, branch chiefs of political parties are largely politicians elected in the districts. Therefore, even if politicians are prohibited to directly receive financial supports from companies, as a branch chief of a political party, they can use branch's money for their political activities. These are a kind of loopholes of PFCL.

As Eshima (2001) points out, tightening the restriction on donations and promoting transparency might substantially bring about the decrease in corporate donations and might provide a good opportunity to reconsider company donations among the companies and political parties in Japan⁴¹.

Political corruption severely damages the credibility of the government and the confidence of democracy⁴². In Japan, a lot of political scandals have brought about apathy among people. To break the rigid political system underpinned by the vicious triangle, for instance, electorates gave *Minshuto* (DPJ) more than 300 seats in the general election 2009. But, it turned out that DPJ's MPs such as *Hatoyama*, and *Seiji Maehara*⁴³ were also involved into political fund scandals. Consequently, DPJ lost people's trust and stepped down from the government in the general election 2012. These scandals accelerate political apathy and undermine political legitimacy. In the worst case, political corruption may cause insurgence like China, Thailand, and Middle Eastern countries.

⁴¹ A., Eshima (2001) *Three Models for Tackling Political Corruption An Appraisal of the Japanese Political Reform of 1994*, in *Meiji Daigaku Tankidaigaku Kiyō*, No. 69, Meiji Daigaku Tankidaigaku, p.33.

⁴² G., E., Caiden (2001) *Corruption and Democracy*, in G., E., Caiden, op cit., p.235.

⁴³ LDP's MP *Masashi Nishida* exposed *Maehara* received political donations from foreign residents living in his constituency in the Budget Committee of Senate in 2011. Financial supports from foreigners are illegalised by PFCL.

Moreover, the rise of political apathy will bring about much more political corruption. Politicians and bureaucrats may lose restraint of the abuse of power unless electorates severely and continuously monitor their activities⁴⁴. As a result, the more political scandals occur, the more electorates walk away from politics. This is a sort of a 'corruption spiral'. Therefore, the best way to beat the spiral is continuous participation in political process by electorates.

⁴⁴ G., E., Caiden, *op cit.*, p. 242.