

Overall Score:

83 - Strong

Legal Framework Score:

91 - Very Strong

Actual Implementation Score:

76 - Moderate

Category I. Civil Society, Public Information and Media

I-1. ⁸⁸Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

Freedom to assemble into groups promoting anti-corruption or good governance is protected by the Constitution of Japan, regardless of political ideology, religion or objectives.

References:

Article 21 of the Constitution: Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated."

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

Anti-corruption/good governance civil service organizations (CSOs) face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. However, it is still extremely difficult for anti-corruption CSOs to raise funds.

References:

Interviews with a board member of Transparency International, Japan.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | **NO**

Comments:

No such public disclosure requirement exists except for reports of activities, BS/PL statements and names of directors and others.

References:

Interviews with a board member of Transparency International Japan.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

83

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

Civil service organizations (CSOs) focused on promoting good governance or anti-corruption can freely organize with no interaction with the government, other than voluntary registration. However, the government does not support these CSOs at all.

References:

Interviews with a board member of Transparency International Japan.

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

Civil service organizations (CSOs) are willing to articulate opinions on political matters, but they have little access to decision makers. Their financial base is so weak that they cannot hire any paid staff, and their power is limited to some extent.

References:

Interviews with a board member of Transparency International Japan.

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

No civil service organization (CSO) has ever been shut down by the government or forced to cease operations because of their work on corruption-related issues.

References:

Interviews with a board member of Transparency International Japan.

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

67

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

Two civil service organization (CSO) activists were arrested in June 2008 on suspicion of theft when they allegedly secured whale meat as evidence of embezzlement of the meat by whaling vessel crew.

References:

Interviews with a board member of Transparency International Japan.

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

There is no documented case of assault on civil service organization (CSO) activists who are working on uncovering corruption.

References:

Interviews with a board member of Transparency International Japan.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

There is no documented case of the killing of civil service organization (CSO) activists because of their work in uncovering corruption.

References:

Interviews with a board member of Transparency International Japan.

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

100

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

Trade unions are allowed by the Constitution of Japan, regardless of political ideology, religion or objectives.

References:

Article 28 of the Constitution: The right of workers to organize and to bargain and act collectively is guaranteed.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Trade unions are common and are an important part of the political process and political discourse.

References:

Interviews with a board member of Transparency International Japan.

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

Freedom of the media is guaranteed by the Constitution.

References:

Article 21 of the Constitution: Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated."

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

Freedom of speech is guaranteed by the Constitution.

References:

Article 21 of the Constitution: Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated."

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

100

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

There is no governmental barrier to publishing newspapers or magazines.

References:

Media report, http://www.j-magazine.or.jp/guide_001.html.

<http://www.pressnet.or.jp/english/index.htm>.

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

Although there is no licensing requirement for print media, if for any reason they are banned or suspended, print media can appeal under the Administrative Proceeding Complaint Judgment Act.

References:

Administrative Proceeding Complaint Judgment Act. <http://www.houko.com/00/01/S37/160.HTM>.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no license requirement for citizens forming print media.

References:

media report http://www.j-magazine.or.jp/guide_001.html.

<http://www.pressnet.or.jp/english/index.htm>.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no license requirement for citizens forming print media.

References:

media report http://www.j-magazine.or.jp/guide_001.html.

<http://www.pressnet.or.jp/english/index.htm>.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

81

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

Registration is required to form a broadcast media entity. Registration is through the Ministry of Internal Affairs and Communications. It is based upon the availability of bandwidths, not on political considerations.

References:

Media report, Telecommunication Business Law

http://www.soumu.go.jp/joho_tsusin/eng/Resources/laws/TBL/TBL-index.html.

Broadcast Law

http://www.soumu.go.jp/joho_tsusin/eng/Resources/Legislation/BroadcastLaw/BroadcastLaw.pdf.

Radio Law

http://www.soumu.go.jp/joho_tsusin/eng/Resources/laws/radiolaw2003/RL-index.html.

Cable TV Broadcast Law

http://www.soumu.go.jp/joho_tsusin/eng/Resources/Legislation/CATVlaw/CATVlaw.pdf.

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

If registration is denied or revoked, broadcast media can appeal under the Administrative Proceeding Complaint Judgment Act.

References:

Telecommunication Business Law

http://www.soumu.go.jp/joho_tsusin/eng/Resources/laws/TBL/TBL-index.html.

Broadcast Act

http://www.soumu.go.jp/joho_tsusin/eng/Resources/Legislation/BroadcastLaw/BroadcastLaw.pdf.

Radio Law

http://www.soumu.go.jp/joho_tsusin/eng/Resources/laws/radiolaw2003/RL-index.html.

Cable TV Broadcast Law

http://www.soumu.go.jp/joho_tsusin/eng/Resources/Legislation/CATVlaw/CATVlaw.pdf.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It takes at least four months for local broadcasting stations to get permission for a broadcast license, including a three-month preliminary permission period.

References:

Interview with an official of the local broadcasting department of the ministry.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

An application fee costs about US\$780. It costs about US\$3,600 for an inspection fee to open a local broadcasting station.

References:

Interview with an official of the local broadcasting department of the ministry.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

The government does not censor online content. As a result, harmful content sometimes causes social trouble. The most notorious website is called 2 Channel. Currently, the government is introducing the Information Communication Law, which is said to include content censorship.

References:

Media report, <http://it.nikkei.co.jp/internet/news/index.aspx?n=MMIT26000013072007>.

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

The government does not censor online content. As a result, harmful content sometimes causes social trouble. The most notorious website is called 2 Channel. Currently, the government is introducing the Information Communication Law, which is said to include content censorship.

References:

Media report, <http://it.nikkei.co.jp/internet/news/index.aspx?n=MMIT26000013072007>.

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or

pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

75

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

It is legal to report accurate news no matter who is the target. However, sometimes accuracy is questioned especially that of tabloid newspapers or certain weekly magazines. Cases of libel litigation do take place.

References:

Media report.

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories. There is an industry-wide, self-censorship organization called Broadcasting Ethics & Program Improvement Organization (BPO), which claims independence from outside parties.

However, the problem in Japan is the weakness of journalists, most of whom do not engage in investigative journalism.

References:

<http://ja.wikipedia.org/wiki/%E8%A1%A8%E7%8F%BE%E3%81%AE%E8%87%AA%E4%B8%BB%E8%A6%8F%E5%88%B6>

<http://www.bpo.gr.jp/>

Interview with Mr. Sugawara, an independent journalist.

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

In practice, there is no prior government restraint (pre-publication censorship) on publishing corruption-related stories

However, there was one unofficial, but very conspicuous, allegation that very powerful right-wing politicians pressed the NHK (National Broadcasting Company) hard in 2005 to modify documentary news concerning World War II comfort women.”

References:

Media report, <http://www.azusawa.jp/genron/nhk-01.html>.

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

95

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

Comments:

Under the Corporate Law, public and private companies, including print media companies, are required to disclose their major owners.

References:

Corporate Law.

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

Comments:

Under the Corporate Law, public and private companies, including print media companies, are required to disclose their major owners.

Some of the major broadcasting companies are publicly listed.

References:

Corporate Law.

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

Broadcast companies established the BPO (Broadcasting Ethics & Program Improvement Organization) an independent, self-censorship institution whose existence is, in a sense, evidence of loose reporting practices. Press clubs, exclusive journalistic organizations whose expenses are paid by the government and where press conferences are held, are said to be used to promote a cozy relationship between politicians and the major press outlets.

References:

media report <http://www.jnpc.or.jp/section4/outline.html>.

<http://www.bpo.gr.jp/bpo/index.html>.

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

Political parties or independent candidates received fair media coverage during the most recent (Upper House) election. But, because election coverage is one of the most exciting events for the media, they sometimes make overheated and wrong predictions and this has caused trouble. Therefore, the government asked broadcasting companies to tone down their reporting.

References:

<http://www2.asahi.com/senkyo2007/index.html>

<http://www.nikkei.co.jp/senkyo/200707/>

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

Political parties and candidates are assured by law to have equitable access to NHK's National Broadcasting Corporation, a state-owned media outlet.

References:

Article 1 of Broadcasting Law: The purpose of this law is to regulate broadcasting for the public welfare, and to strive for the sound development thereof, in accordance with the principles as stated below; 1) to secure the maximum availability and benefits of broadcasting to the people; 2) assure the freedom of expression through broadcasting by guaranteeing impartiality, integrity, in broadcasting and its autonomy; 3) to make broadcasting contribute to the development of sound democracy."

Article 45 of Broadcast Law. In this, case NHK allows all candidates for an elective office to broadcast their political views or make a campaign speech with their own facilities.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

There is no report of the imprisonment of journalists investigating corruption in Japan in the past year. However, there was a very well-known case in 1972 when a newspaper journalist reported a confidential agreement between Japan and the United States about the treatment of Okinawa, which led to his arrest on an unrelated charge. The truth was revealed when the U.S. Government released related official documents. The journalist brought his case to the courts in 2007 but the courts rejected his appeal.

References:

Media

report, <http://ja.wikipedia.org/wiki/%E6%94%BE%E9%80%81%E5%80%AB%E7%90%86%E3%83%BB%E7%95%AA%E7%B5%84%E5%90%91%E4%>

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

There is no report of physical harm being done to an investigative journalist covering corruption stories in Japan.

References:

Media report.

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

There is no report of an investigative journalist being killed while covering corruption issues in Japan. However, one Japanese journalist was shot dead by military police in Myanmar (Burma).

References:

media report, <http://mainichi.jp/select/50news07/news/20071205org00m040071000c.html>.

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

93
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

There is a formal right to access government documents, but there is an argument if this is constitutionally guaranteed or not. Exceptions are made for reasons of national security, individual privacy and business secrecy.

References:

The Information Disclosure Act of 1999: Concerns access to information held by administrative organs).

A similar Act of 2001: Concerns information held by independent administrative enterprises.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

There are two formal processes of appeal for rejected information requests. One is to appeal to the Judging Committee in the Central Government Cabinet Office. The other is to bring the case to court. Both processes can be pursued simultaneously.

References:

Articles 18 and 36 of The Information Disclosure Act.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

There is a mandatory government mechanism/institution within ministries or agencies through which citizens can access government records available under the Information Disclosure Act.

References:

Article 21 of the Information Disclosure Act.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

85

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It takes around one month to obtain the records. Some additional delays may be experienced in a few specified ministries like the Ministry of Foreign Affairs. Politically sensitive information may be withheld at times without sufficient justification.

References:

Article 10 of the Information Disclosure Act stipulates that the decision of disclosure must be done within 30 days after receipt of the application.

Interview with board member of the Freedom of Information Citizen Center.

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are available for 300 yen (US\$3) per application and photocopying costs.

Obtaining records by mail or online has not become very popular yet.

References:

Article 16 of The Information Disclosure Act stipulates that charges must be within the actual costs.

Interview with a board member of the Freedom of Information Citizen Center.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The agency/entity acts on appeals quickly, but with some exceptions. Some appeals may take more than one year to resolve. The Ministry of General Affairs reports the condition of implementation of the Information Disclosure Act once a year, according to Article 39 of the Act.

References:

Interview with a board member of the Freedom of Information Citizen Center.

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In some cases, the appeals mechanism is costly and may not be an affordable option to middle-class citizens seeking to challenge an access-to-information determination.

References:

Interview with a board member of the Freedom of Information Citizen Center.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

The government usually discloses reasons for denying an information request to the requester.

References:

Interview with board member of the Freedom of Information Citizen Center.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁸⁷ Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

Article 15 of the Constitution of Japan.

Article 9 of the Public Offices Election Act (POEA).

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

In the case of the upper house, members serve terms of six years. Elections for half of the members takes place every three years.

The term of house of representative members is four years. However, the term could be shortened by the dissolution of the house.

References:

Articles 45 and 46 of the Constitution of Japan.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

100

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

Under Article 7 of Labor Basic Act, when an employee needs to vote during work hours, the employer cannot forbid it. However, since election day is held on Sunday, this article has not been enforced.

References:

Article 7 of the Labor Basic Act.

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

The Japanese voters have full confidence in the secrecy and the equal protection of ballots.

References:

Article 15 of the Constitution of Japan.

Article 52 of Public Offices Election Act (POEA).

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

It is in the culture of the Japanese people to be punctual and adhere to a regular schedule. There are no cases of elections not being held on a regular schedule.

References:

Article 129 of POEA.

Interview with the chair of Transparency International Japan, who has many experiences as an election observer.

Interview with government official of MIC

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

90

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

Under Article 3, paragraph 2, of The Political Fund Control Act (PFCA), a political party could be formed by a minimum of at least five parliamentarians, or by winning 2 percent of the ballots cast in the previous national election.

References:

Article 3, paragraph 2 of The Political Fund Control Act (PFCA).

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

All citizens can run for office. However, the reality is that one-third of Diet members of the Liberal Democratic Party (LDP) are junior Diet members, as they inherit constituent body of his/her senior Diet members.

References:

Asahi Shinbun, newspaper (Aug, 16, 2008).

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens who wish to form political parties need supporters and a financial background.

References:

Interview with Mrs. Masako Oowaki, former chairwoman of the Socialist Democratic Party's Research Council.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

In practice, a system of supporters and a financial background in the citizen's respective constituency is necessary.

References:

Interview with Mrs. Masako Oowaki, former chairwoman of the Socialist Democratic Party's Research Council.

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

References:

Interview with Mrs. Masako Oowaki, former chairwoman of the Socialist Democratic Party's Research Council.

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

90

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

As far as the Central Election Management Council (CEMC) is concerned, its five members are elected from non-Diet members by Diet decision, and, afterwards, confirmed by the prime minister. From this, it is presumed that the CEMC is free from political interference.

In the case of the Local Election Management Council (LEMC), four members are elected in Local Diet but two of them cannot belong to the same political party or political organization. This is to protect against political interference.

References:

2 of Article 5 of the Public Offices Election Act (POEA).

Article 181 No.4 of Local Autonomy Act.

Interview with Ms..Atsuko Fukui, staff member in charge of the Ministry of Internal Affairs and Communications.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Sometimes an ex-diet member who had been defeated in the election becomes a member of the Local Election Management Council (LEMC).

References:

Interviewed with Mr. Shu Sugawara, a distinguished free journalist.

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Staff members of an Election Department of the Ministry of Public Management, Home Affairs, Post, and Telecommunications (or Ministry of General Affairs: MGA) do its full-time work.

Staffs of the Central Election Management Council (CEMC) are officials of Ministry of Internal Affairs and Communication (MIC) and staffs of the Local Election Management Council (LEMC) are officials of local governments.

In Japan national and local officials are adopted through fair and severe examination without any nepotism. We believe that they are adequate staff for these agencies.

References:

Staff members of an Election Department of the Ministry of Public Management, Home Affairs, Post, and Telecommunications (or Ministry of General Affairs: MGA) do its full-time work.

Staffs of the Central Election Management Council (CEMC) are officials of Ministry of Internal Affairs and Communication (MIC) and staffs of the Local Election Management Council (LEMC) are officials of local governments.

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

Under Article 108, the Central Election Management Council (CEMC) and the Local Election Management Council (LEMC) are required to report to the Diet immediately after the election.

References:

Article 108 of Public Offices Election Act (POEA).

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

In the General Election for Diet members of the House of Representatives in November 2003, campaign agents and/or private secretaries of three candidates were apprehended by the police and then prosecuted for violating the Public Offices Election Act (POEA). In general, the candidates themselves are rarely arrested.

References:

Nihon Keizai Shinbun, (Dec. 7, 2003).

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

83

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

Voter registration in Japan is based on residence registration. Registered residences are automatically reregistered as voters.

References:

Article 42 of the Public Offices Election Act (POEA).

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

In law, any claim against result of election is to appeal first to the Local Election Management Council (LEMC). In case there is a complaint about the first decision of LEMC, a second claim is secured to bring an action to Higher Court.

Simple violations of the Public Offices Election Act (POEA) such as bribing voters, disturbance of the election and other violations are investigated by the police and, where arrests are made, then transferred to prosecutors as are other criminal cases.

References:

Chapter 3 of Public Offices Election Act (POEA).

Interviewed with Ms. Atsuko Fukui, staff member in charge of Ministry of Internal Affairs and Communication (MIC).

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Because the Japanese judicial system is clean, a claim regarding election results can be effectively appealed.

References:

Articles 216 and 217 of Public Offices Election Act (POEA).

Interview with Mr. Shu Sugawara, a distinguished independent journalist.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

Under Article 9, Japan has no military force. The defense force that exists in place of the military force is politically powerless.

References:

Article 9 of the Constitution of Japan.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | **NO**

Comments:

Domestic election observers are allowed, while international observers are not. It is common sense that international election observers in Japan are not necessary.

References:

Article 62 of Public Offices Election Act (POEA).

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

Citizens have full confidence in the monitoring of the ballot box and in ballot counting. Members of the press also play a watchdog roll, even taking pictures of the process.

References:

Articles 35 through 41 of the Public Offices Election Act (POEA).

Interviews with officials of Ministry of Internal Affairs and Communication (MIC).

Interview with board member of the Freedom of Information Citizen Center.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. Is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

There are two types of election managing council: The Central Election Management Council (CEMC) and the Local Election Management Council (LEMC).

References:

Article 5 of the Public Offices Election Act (POEA).

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

91
II-3. Political Financing

20. Are there regulations governing the financing of political parties?

86

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

The Political Fund Control Act (PFCA) stipulates a rule regarding political funds for parties and other organizations.

References:

Political Fund Control Act (PFCA).

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to political parties.

YES | NO

Comments:

Individual donation to the political parties and political organizations are restricted to 20 million yen (US\$206,424) annually.

References:

Article 2-3 bis 1. Article 22 of Political Fund Control Act (PFCA).

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | NO

Comments:

Political donations by corporations, labor unions and the other organizations are restricted to 7.5 million yen to 30 million yen (US\$77,421 to US\$309,666), with specific ceilings for organizations that are determined by the amount of capital, number of union members and other factors.

References:

Article 21-3, bis 2.3 of Political Fund Control Act (PFCA).

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

Comments:

There are no limits on total party expenditure.

References:

Interview with Mr.Yoichi Sawada, the staff member in charge of Ministry of Internal Affairs and Communication (MIC).

YES: A YES score is earned if there are any limits in size on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

Comments:

Political parties and political organizations should present financial reports of donations to the Ministry of General Affairs (MGA) or the Local Election Management Council (LEMC) once a year on a case-by-case basis. The MGA or the LEMC disclose the financial reports in their respective gazettes.

References:

Article 12 of Political Fund Control Act (PFCA).

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | NO

References:

Article 14 of Political Fund Control Act (PFCA): The internal audit by the staff in charge of internal audit of the party should be attached to the financial report of the political party should be attached.

Article 22f: in regard to received political party subsidies, an Audit Certificate of the party's revenue and expenditures, by a Certified Public Accountant, should be attached.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

Comments:

From Transparency International's National Integrity System Report: The political parties are required to disclose their incomes and expenses once a year and to present their reports to the Minister of General Affairs or the Election Control Commission (Article 12, Political Funds Control Act), attaching the internal audit..The treasurer of the political party is required to report the party s income and expenses from subsidies annually to the Minister of General Affairs, attaching an opinion letter issued by a certified public accountant (Articles 14 19, Political Party Subsidies Act)."

References:

Japan: 2006. National Integrity System Report. Transparency International. http://www.transparency.org/policy_research/nis/regional/asia_pacific

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are there regulations governing the financing of individual political candidates?

83

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | NO

Comments:

Individual political candidates can raise funds by holding fundraisers through their own political organizations and/or political fundraising organizations such as Association for the Election of Mr. Candidate X." Private annual contributions to individual candidates are limited 1.5 million yen (US\$15,497).

References:

2 of Article 8, 8 of Article 22 of Political Fund Control Act (PFCA).

Interviews with staff members of the Ministry of Internal Affairs and Communication (MIC).

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to individual political candidates.

21b. In law, there are limits on individual donations to political candidates.

YES | NO

Comments:

Individual donations to a single candidate are restricted to 1.5 million yen (US\$15,497) annually.

References:

Article 21-3 1, bis1, Political Fund Control Act (PFCA).

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES | NO

Comments:

Individual political candidates cannot receive corporate donations as a general rule. However, they can hold a fundraiser through their own fundraising organization. For a fundraiser, the top ticket price that can be charged is restricted to 1.5 million yen (US\$15,497) per single-party participant — the participant could be an individual or a corporation.

References:

8 of Article 22 of Political Fund Control Act (PFCA)

Interview with staff members of the Ministry of Internal Affairs and Communication (MIC).

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

Comments:

Individual political candidates are required to disclose donations through their own political organization and/or political fundraising organization. An annual donation of over 5 million yen (US\$51,663) should be listed by donor's name, domicile, profession, amount donated and the date of donation in the annual report of revenue and expenditure of these organizations.

References:

12 1, 5 of Article 19 of Political Fund Control Act (PFCA).

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | NO

Comments:

Revenue and expenditure reports regarding campaign finance should be presented to the Local Election Management Council (LEMC) by an authorized cashier under an oath of integrity and transparency. However, independent auditing for that purpose does not exist.

References:

Article 189 of the Public Offices Election Act (POEA).

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

Comments:

Under this article, when received the report of 21e. The Local Election Management Council (LEMC) should publish its resume through gazette, leaving public monitoring.

References:

Article 192 of Public Offices Election Act (POEA).

Interview with staff of the Ministry of Internal Affairs and Communication (MIC).

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

22. Are the regulations governing the political financing of parties effective?

46

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Neither the Ministry of Internal Affairs and Communication (MIC) nor the Local Election Management Council (LEMC) has the ability to analyze, examine and inspect the received report. Hence, even they cannot assess whether the limits are effective or not. As stated in 20b, the annual limit of individual donation to a political party is restricted to 20,000,000 yen (US\$206,775) and is thought to provide enough support. Those who can donate this much money are rare.

References:

Article 20 of Political Fund Control Act (PFCA).

Interviewed with Mr. Yoichi Sawada, staff member in charge of the Ministry of Internal Affairs and Communication (MIC)

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The Ministry of Internal Affairs and Communication (MIC) or the Local Election Management Council (LEMC) cannot assess if the limits on donations are effective or not.

The ceiling for corporation donations was raised recently from 30 million yen to 100 million yen (US\$310,278 to US\$1,034,012). For example, the donations of corporation to Liberal Democratic Party in 2007 were 20 million to 30 million yen (US\$310,278 to US\$310,161), except for a 64 million yen (US\$661,911) donation made by Toyota. All these donations were under the ceiling.

References:

Article 20 of Political Fund Control Act (PFCA).

Confirmed through interview with staff of Ministry of Internal Affairs and Communication (MIC).

Article, Mainichi Newspaper, (Sept. 13, 2008).

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

There is no article that puts limits on total party expenditures in the Political Fund Control Act (PFCA).

References:

Interview with staffs of the Ministry of Internal Affairs and Communication (MIC).

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Ministry of Internal Affairs and Communication (MIC) or the Local Election Management Council (LEMC) cannot initiate investigations. What they can do is to publish their results through their gazette and on their website, and keep it on file for five years, making inspection or investigation of the report the responsibility of civil society. However, citizens and civil organizations are indifferent except for a few citizen ombudsmen and a few journalists. If some civil service organization (CSO) wants to initiate an investigation independently, they can do so.

References:

Article 31 of PFCA.

Interview with staff members of the Ministry of Internal Affairs and Communication (MIC).

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, thought limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Those who file financial reports that violate the Political Fund Control Act (PFCA) face a penalty of up to 3 years imprisonment or a fine of up to 500,000 yen US\$5,179).

However, we do not know of a case where such penalties were actually imposed. No one knows who would uncover the violation. The Ministry of Internal Affairs and Communication (MIC) staff members are not aware of any such case.

References:

Article 24 of the Political Fund Control Act (PFCA).

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

Regarding the annual political party subsidies, a political party should present its financial report annually to the Ministry of Internal Affairs and Communication (MIC) along with an attached Audit Certificate certified by a certified public accountant. Except for the Japanese Communist Party, all parties receive this Subsidy.

References:

Article 19 of Political Party Subsidies Act (PPSA).

100: Political party finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

40

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

Individual contributions to individual candidates are limited to 1.5 million yen (US\$15,533) annually. But there are other ways for candidates to get campaign funding such as from the political party to which they belong.

The political parties annually receive political party subsidies from government of about 31 billion yen (US\$321,030,110), to be distributed to candidates. In that case, it is very difficult to judge if the limits are low or high.

References:

Article 193 of the Public Offices Election Act (POEA).

Interview with staff of the Ministry of Internal Affairs and Communication (MIC).

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

Individual candidates can not directly receive corporation donation. However, they may receive corporation donation indirectly through the party ticket or through the political party to which they belong. It is difficult to count how much candidates receive indirectly through corporate donations.

References:

Interview with staff of Ministry of Internal Affairs and Communication (MIC).

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Neither the Local Election Management Council (LEMC) nor the Ministry of Internal Affairs and Communication (MIC) can legally initiate an investigation. However, a civil society organization (CSO) or a citizen ombudsman organization can initiate investigations independently, since the assessment is left to civil society. However, the civil society tends to be indifferent to campaign financing issues.

References:

Article 193, Public Offices Election Act (POEA).

Interview with staff of the Ministry of Internal Affairs and Communication (MIC).

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Immediately after an election campaign, the media reports on cases of vote bribery and disturbances of the election. However, there are no known cases regarding the financing of individual campaigns. The Ministry of Internal Affairs and Communication (MIC) staff members do not know of cases where a penalty was imposed for these kinds of violations.

References:

Interview with staff members of the Ministry of Internal Affairs and Communication (MIC).

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no law regarding the auditing of the financial record of individual candidates' campaigns, nor is it done in practice.

References:

Interviewed with Ms. Atsuko Fukui.

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

100

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The financial reports of political parties' expenditures received by the Ministry of General Affairs (MGA) or the Local Election Management Council (LEMC) are required to be offered for public inspection within a proper time.

References:

Article 20 of the Political Fund Control Act (PFCA).

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

Comments:

The financial reports of political parties received by the Ministry of Internal Affairs and Communication (MIC) or the Local Election Management Council (LEMC) are to be offered for public inspection by them through their gazette in proper time and kept on file for three years. Any citizen can access it.

References:

Article 20 of the Political Fund Control Act (PFCA).

Outline of Political Finance (Third Revision), edited by Political Finance Control Act Study Group, National Politics Information Center (Tokyo, 2006).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

Comments:

The financial reports of political parties received by the Ministry of General Affairs (MGA), or the Local Election Management Council (LEMC), are to be offered for public inspection by the organizations for three years at no cost. Citizens can access the financial records through gazettes and on websites.

References:

Article 20-2 of the Political Fund Control Act (PFCA).

Article 31 of the Political Party Subsidies Act (PPSA).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25. Can citizens access records related to the financing of individual candidates' campaigns?

92

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Each individual candidate should present to the the Local Election Management Council (LEMC) the report of the revenue and expenditure during the election within 15 days after the election.

Candidates used to disclose this information within that time.

References:

Article 189 of the Public Office Election Act (POEA).

Interview with staff of the Ministry of Internal Affairs and Communication (MIC).

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Local Election Management Council (LEMC) should disclose the results of the received financial records of individual candidates through gazettes and on websites and keep the reports on file it for three years so it can be inspected by citizens at any time.

References:

Article 192 of Public Offices Election Act (POEA).

Interviews at the Ministry of Internal Affairs and Communication (MIC).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access the financial records of individual candidates by buying a gazette at low cost or getting them free on the

website.

However, citizens are generally indifferent about this issue except for a few journalists and a few citizen ombudsman.

References:

Article 192 of the Public Offices Election Act (POEA).

It is confirmed through interview with staffs of the Ministry of Internal Affairs and Communication (MIC).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ⁷⁴Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

69

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The chief executive and/or cabinet ministers usually give explanations of policy, but not always in a timely or complete way.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The scope of judicial review covers the actions of the executive.

References:

Article 81 of the Constitution: The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary does not effectively review executive policy. The judiciary may make legal judgments in some cases but do not enforce them and just leave them to political interpretation.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

In some cases, the chief executive relies on executive orders to implement policies and regulations. Some executive orders may be overly broad in scope and designed to circumvent legal requirements for legislative action or approval.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

The heads of state and government can be investigated, charged or prosecuted for criminal allegations. Years ago, former Prime Minister Kakuei Tanaka was found guilty and sentenced for corruption. Recently, many municipal governors were arrested and prosecuted for bid riggings and other crimes.

References:

Case Law.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

Ministerial-level officials, or their equivalents, can be investigated, charged or prosecuted for criminal allegations.

References:

Case Law.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

72

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

The disclosure of the cabinet ministers' assets including the prime minister's, was institutionalized in 1983 and has since been established as a practice. The Asset Disclosure Act of Members of Parliament of 1992 requires the disclosure of assets if the heads of government are Members of Parliament. The governors of local governments usually disclose their assets according to the Municipal Ordinance of Assets Disclosure.

References:

The Asset Disclosure Act of Members of Parliament.

The Municipal Asset Disclosure Ordinances.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

The disclosure of the cabinet ministers' assets was made law in 1983 and has since been established in practice. The Asset Disclosure Act of Members of Parliament of 1992 requires ministerial level officials to disclose their assets if they are members of parliament.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

There are formal regulations for gifts and hospitality that are offered to members of the executive branch of government.

References:

Article 6 of The National Public Service Ethics Act.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | **NO**

Comments:
There are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures. However, the media are very keen on monitoring asset disclosure.

References:
Interview with the adviser of the Kawasaki Citizen Ombudsman.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

Comments:
There are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

References:
Article 103 of the National Public Service Act.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | **75** | 50 | 25 | 0

Comments:
The regulations are generally enforced although some exceptions exist. In certain areas, heads of state/government or ministers are known to regularly take jobs through a circuitous route in the private sector and/or semi-governmental entities that entail directly lobbying or seeking to influence their former government colleagues. Cooling-off periods are short and sometimes practically ignored.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch rarely accept gifts or hospitality above the limit allowed.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

Executive branch asset disclosures are not audited officially, but media and civil ombudsman sometimes monitor them.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

92

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

The heads of states have to file asset disclosure forms that are, by ordinance, accessible to the public.

The heads of government have to disclose their assets, by ordinance, in a form accessible to the public.

References:

Article 5 of Assets Disclosure Ordinance.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records are usually accessible in a reading room when the office is open.

References:

Interview with Board Member of the Freedom of Information Citizen Center.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are free to read, but accessing them may require a visit to a specific office, such as a regional or national capital.

References:

Interview with Board Member of the Freedom of Information Citizen Center.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. Can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

Citizens can receive compensation or redress through the courts for civil rights violations committed by the government, such as detaining suspected criminals for too long because of failure to follow due process.

References:

Article 4 of the Administrative Proceeding Complaint Judgment Act of 1962.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

75

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, plus other circumstances.

References:

Interview with Board Member of the Freedom of Information Citizen Center.

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

83

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

Article 81 of the Constitution: The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Japan adopted the American-type incidental approach to judging regarding unconstitutionality, therefore judgment is passively made, based upon specific cases. In fact there are few cases where the Supreme Court has judged a law to be unconstitutional. Moreover, the legislature tends to ignore or act very slowly when laws are judged to be unconstitutional.

References:

Media

reports, <http://ja.wikipedia.org/wiki/%E9%81%95%E6%86%B2%E7%AB%8B%E6%B3%95%E5%AF%A9%E6%9F%BB%E6%A8%A9>.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

Other than the privilege of being exempt from apprehension while the Diet is in session, ministers of parliament are subject to criminal proceedings.

References:

Article 50 of the Constitution: Except in cases provided by law, members of both Houses shall be exempt from apprehension while the Diet is in session, and any members apprehended before the opening of the session shall be freed during the term of the session upon demand of the House."

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

29

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

The law requiring filing of an asset disclosure form was promulgated in 1992. All ministers must file within 100 days of taking their seat. There is no penalty for false disclosure.

References:

<http://law.e-gov.go.jp/htmldata/H04/H04HO100.html>.

Members of Parliament Assets Disclosure Act.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

There is no restriction for national legislators on entering the private sector after leaving the government. In fact, ministers can even have private sector jobs while they are in public service.

References:

Article 39 of The Diet Law prohibits having other public jobs.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

Every time scandals involving ministers are exposed, the Act for the Regulation of Political Funds is modified. However, it is said that this law is always full of loopholes.

References:

The Act for the Regulation of Political Funds.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

Comments:

The auditor is not required to be a qualified or independent accountant.

References:

The Act for the Regulation of Political Funds.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

As there is no regulation restricting post-government private sector employment for national legislators, there is no practice restricting this conduct that applies to ministers.

References:

No legal requirements.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off¹⁰ period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

The National Public Service Ethics Law describes rules and regulations regarding gifts and hospitality given to general public officials, but special public officials, such as the prime minister and cabinet members are excluded from them.

References:

Media reports, <http://www.jinji.go.jp/rinri/eng/index.htm>.

<http://www.jinji.go.jp/rinri/eng/index.htm>.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Article 19 of the Political Party Subsidy Act.

<http://www.houko.com/00/01/H06/005.HTM>.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

34. Can citizens access the asset disclosure records of members of the national legislature?

83

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

Comments:

The Political Fund Regulation Act allows citizens to view the asset disclosure records and the Freedom of Information Act guarantees citizens the right to demand this access. However, the Political Fund Disclosure Act is notorious for being full of loopholes.

References:

<http://www.pref.osaka.jp/senkan/dantai/joseihou.html>.

<http://www5.sdp.or.jp/central/topics/kiseihou.html>.

http://www.soumu.go.jp/senkyo/seiji_s/naruhodo01.html#chapter4.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Legislative asset disclosure records are disclosed in an official gazette. They are available for review by citizens at the Ministry of Internal Affairs and Communications (MIC) for five years. In most cases, the information is available online.

References:

Media reports, http://www.soumu.go.jp/senkyo/seiji_s/data_seitou/index.html.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | **75** | 50 | 25 | 0

Comments:

Legislative asset disclosure records are disclosed in an official gazette. The records are available for review by citizens at the Ministry of Internal Affairs and Communications (MIC) for five years. In most cases, the information is available online.

References:

Government studies, http://www.soumu.go.jp/senkyo/seiji_s/data_seitou/index.html.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

35. Can citizens access legislative processes and documents?

100

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

Thanks to the Freedom of Information Act, citizens can access records of legislative processes and documents.

References:

<http://www.soumu.go.jp/gyoukan/kanri/mainpoint1.htm>.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records of legislative processes and documents are mostly available online.

References:

Government studies, <http://www.soumu.go.jp/gyoukan/kanri/mainpoint1.htm>.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The records of legislative processes and documents are mostly available online.

References:

Government studies, <http://www.soumu.go.jp/gyoukan/kanri/mainpoint1.htm>.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

Chief judge of Supreme Court is appointed by the Emperor based upon designation by the Cabinet, while other judges (there are currently 13) are appointed by the Cabinet.

References:

Article 79 of the Constitution. The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet. The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter. In cases mentioned in the foregoing paragraph, when the majority of the voters favors the dismissal of a judge, he shall be dismissed. Matters pertaining to review shall be prescribed by law. The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law. All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.”

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Except for a few of the appointed judges of Supreme Court, who may be a lawyer (of which there are four), prosecutor (two), ex-high official, ex-ambassador or scholar (all combined, one), all judges have to pass a very competitive national bar examination.

References:

Academic, policy or professional studies.

Japan NIS, http://www.transparency.org/policy_research/nis/regional/asia_pacific <http://www.ilc.gr.jp/saikousai/saibankan.html>.

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

Although Supreme Court judges are subject to review by the voters, no judges have been recalled by this process because of a lack of public concern.

References:

Article 79 of the Constitution. The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet. The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter. In cases mentioned in the foregoing paragraph, when the majority of the voters favors the dismissal of a judge, he shall be dismissed. Matters pertaining to review shall be prescribed by law. The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law. All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office."

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

37. Can members of the judiciary be held accountable for their actions?

96

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

Article 82 of the Constitution: Trials shall be conducted and judgment declared publicly. Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly."

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

Though the judiciary always give reasons for their decisions, they seldom make them based on unconstitutionality. The most important decision they have made was regarding the apportionment of ministers of parliament. However, the government has not taken action on this decision.

References:

Academic, policy or professional studies.

Japan NIS, http://www.transparency.org/policy_research/nis/regional/asia_pacific <http://www.cc.matsuyama-u.ac.jp/~tamura/ikennhannketunojirei.htm>

Article 335 of the Criminal Procedure Law of 1948.

Article 253 of the Civil Procedure Law of 1996.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

There is a law allowing for the impeachment of judges and to open the court of impeachment.

The court of impeachment consists of 14 ministers of parliament. However, the court has been opened only for seven cases, of which three judges later recovered their qualification to be judges.

References:

<http://www.dangai.go.jp/lib/lib1.html>.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

As judges tend to avoid making serious decisions about unconstitutionality, all of the past seven cases regard issues of judges' personal misconduct.

References:

Chapter XVI. Impeachment Court of the Diet Law.

Article 125. Impeachment of a judge shall be heard by the Impeachment Court which is composed of members elected in equal number in each House from among its Members. The President of the Impeachment Court shall be elected by the members of the Court from among themselves.

Article 126. Removal proceedings against a judge shall be instituted by the Indictment Committee which is composed of members elected in equal number in each House from among its Members. The Chairman of the Indictment Committee shall be elected by its members from among themselves.

Article 127. A Member of the Impeachment Court may not become concurrently a member of the Indictment Committee.

Article 128. When the members of the Impeachment Court or of the Indictment Committee are elected in each House, their reserves shall also be elected.

Article 129. Matters relating to the Impeachment Court and the Indictment Committee other than those provided for in this Law shall be prescribed by a separate law.

Impeachment of Judges Law.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

According to the Impeachment Court of the Diet Law an impeachment court can be opened when ordered at the request of an impeachment committee consisting of 20 Ministers of Parliament (MPs).

References:

Media reports.

Academic, policy or professional studies.

<http://www.dangai.go.jp/>.

<http://www.dangai.go.jp/lib/lib1.html>.

Impeachment Court of the Diet Law.

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

As Chapter XVI of the Impeachment Court of the Diet Law requires, the impeachment court has dismissed those judges they have found guilty. There have been 7 cases in the past, out of which 5 cases proved judges guilty. Two of those judges were later readmitted.

There have been no impeachment cases of judges for political reasons.

References:

Media reports.

Government studies.

<http://www.dangai.go.jp/>.

<http://www.dangai.go.jp/lib/lib1.html>.

Chapter XVI, Impeachment Court of the Diet Law.

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

18

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | **NO**

Comments:

Judges are not subject to the National Public Service Act nor of the National Public Service Ethics Law, but they are subject to the Judges Status Law, which does not require judges to disclose their personal assets. Although answer is no, judges are regarded as having the cleanest reputation among public officers.

References:

Japan NIS, http://www.transparency.org/policy_research/nis/regional/asia_pacific.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | **NO**

Comments:

Although it looks peculiar that there is no specific law, order or ordinance that governs gifts or hospitality to judges while other public officials are subject to the National Public Servant Ethics Act. Judges have been, and still are, regarded as being the cleanest public officials.

"The Ethics Law was enacted in response to many scandals between ministerial officials and interested industries while judiciary has been immune from bribery.

"Although answer is no regarding regulation of gifts to judges, judges are regarded as being the cleanest among public officers."

References:

http://www.ron.gr.jp/law/law/saiba_bu.htm

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | **NO**

Comments:

It is almost regarded as common sense among the Japanese that while politicians are very corrupt and so, therefore, require asset-disclosure laws, judges are much less corrupt.

References:

As there is no law to order judges to file their assets, there is no audit requirement.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

Comments:

Judges are free to enter into the private sector, but there has been no scandal reported. In fact, judges are regarded as the least flexible of officials and therefore, the least useful employees for private sector. Although answer is no, judges are regarded as the being the least corrupt among public officers.

References:

Saibankan Bungenhou (Judges Status Law).

<http://law.e-gov.go.jp/cgi-bin/idxselect.cgi?>

[IDX_OPT=2&H_NAME=&H_NAME_YOMI=%82%b3&H_NO_GENGO=H&H_NO_YEAR=&H_NO_TYPE=2&H_NO_NO=&H_FILE_NAME=S22HO127&L](http://law.e-gov.go.jp/cgi-bin/idxselect.cgi?IDX_OPT=2&H_NAME=&H_NAME_YOMI=%82%b3&H_NO_GENGO=H&H_NO_YEAR=&H_NO_TYPE=2&H_NO_NO=&H_FILE_NAME=S22HO127&L)

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | **50** | 25 | 0

Comments:

There are no regulations restricting post-government private sector employment for national-level judges, but judges are regarded as the least corrupt among public officers. In fact, judges are regarded as the least flexible officials and therefore are not useful employees in the private sector. As judges are guaranteed to work until they are 65 or 70 years old and enjoy lucrative pensions, many of them live in happy retirement.

References:

<http://ja.wikipedia.org/wiki/%E8%A3%81%E5%88%A4%E5%AE%98#E8.A3.81.E5.88.A4.E5.AE.98.E3.81.AE.E7.8B.AC.E7.AB.8Bhttp://www.kyudan.co>

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

Judges are regarded as the least corrupt of public officers.

References:

<http://www.cas.go.jp/seisaku/hourei/data/nps.pdf>

<http://www.cas.go.jp/seisaku/hourei/data/npsea.pdf>

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

However, judges are regarded as the least corrupt among public officers.

References:

<http://ja.wikipedia.org/wiki/%E8%B3%87%E7%94%A3%E5%85%AC%E9%96%8B%E5%88%B6%E5%BA%A6>.

There is no law to order judges to file their assets (Asset disclosure is only required for National Parliament members and head of municipalities) and so, there is no audit requirement.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

Comments:

Judges are regarded as the least corrupt among public officers; therefore, citizens are not as focused on them as they are on politicians.

References:

There is no law to order judges to file their assets, so citizens have no way to access judges asset records.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Judges are regarded as the least corrupt among public officers; therefore, citizens are not as focused on them as they are on politicians.

References:

There is no law to order judges to file their assets, so citizens have no way to access judges' asset records.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Judges are regarded as the least corrupt among public officers; therefore, citizens are not as focused on them as they are on politicians.

References:

There is no law to order judges to file their assets, so citizens have no way to access judges' asset records.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

100

40a. In law, the legislature can amend the budget.

YES | NO

Comments:

The Diet Law prescribes the rules for amending the budget for the central government.

Local Autonomy Law prescribes the rules for amending the budget for local government.

References:

Chapter V-II, Article 57 of Diet Law (Law No.1, 2, and 3 of 1947): <http://www.sangiin.go.jp/eng/law/diet/index.htm>.

Article 115 of Revised Local Autonomy Law (Law No.2 of 1947): <http://nippon.zaidan.info/seikabutsu/1999/00168/contents/035.htm>.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

Based on the laws, all Japanese public expenditures require legislative approval.

For the central government, in order for a motion for budgetary amendment to be taken up in a plenary sitting, it must be supported by at least fifty Members in the House of Representatives or at least twenty in the House of Councilors.

For local government, any motion to modify a bill must be initiated by one-twelfth or more of the total members to be placed on the agenda of the assembly.

References:

Chapter V-II, Article 57 of Diet Law (Law No.1, 2, and 3 of 1947): <http://www.sangiin.go.jp/eng/law/diet/index.htm>.

Article 115 of Revised Local Autonomy Law (Law No.2 of 1947): <http://nippon.zaidan.info/seikabutsu/1999/00168/contents/035.htm>.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

Usually, the Ministry of Finance creates the budget bill before it is deliberated on in the Diet.

References:

Board of Audit of Japan Home Page: <http://www.jbaudit.go.jp/engl/index.htm>.

Nakabayashi Mieko, "Japan's Budget Process," Economic Currents, No.28. <http://www.rieti.go.jp/en/papers/contribution/nakabayashi/01.html> (2003).

Budget Process: <http://www.mof.go.jp/english/budget/brief/2003/2003-05.htm>.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

75

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

Governments discloses information about the national budgetary process on the Internet. People can access most of the official minutes of the proceedings.

References:

Nakabayashi Mieko, "Japan's Budget Process," Economic Currents, No.28, <http://www.rieti.go.jp/en/papers/contribution/nakabayashi/01.html> (2003).

Budget Process: <http://www.mof.go.jp/english/budget/brief/2003/2003-05.htm>.

E-government Japan (Japanese Only): <http://www.e-gov.go.jp/>.

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

There is a right in the law for public participation in the budget process, but, in reality, it is restricted because of limitations of space.

References:

Budget Process: <http://www.mof.go.jp/english/budget/brief/2003/2003-05.htm>.

Public Finance Law (Law No.34 of 1947). <http://www.mof.go.jp/english/budget/brief/2002/2002-35.htm>.

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

Citizens are fairly able to access the information of the itemized budget allocations. However, as usual, the bureaucratic procedure incurs delays.

References:

Ministry of Finance Home Page: <http://www.mof.go.jp/english/index.htm>.

Board of Audit of Japan Home Page: <http://www.jbaudit.go.jp/engl/index.htm>.

E-government Japan (Japanese Only): <http://www.e-gov.go.jp/>.

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

67

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

In Japan, the Committee on Audit and Oversight of Administration, formed by a member of the Diet, has an important role on overseeing the account settlements of administration.

The Cabinet Legislation Bureau examines legislative bills, drafts Cabinet orders and drafts treaties that are to be brought before Cabinet meetings. Communication takes place several times between committee and the top of the government. But as usual, the report to the head is just for verification because it has already been coordinated between the legislative committee.

References:

The Committee on Audit and Oversight of Administration: http://www.shugiin.go.jp/itdb_english.nsf/html/statics/guide/committe.htm.

The Cabinet Legislation Bureau: <http://www.clb.go.jp/english/about.html>.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

Since the committee members are appointed by each political party, the decisions of committee members are usually influenced by their respective parties.

References:

The Committee on Audit and Oversight of

Administration: http://www.shugiin.go.jp/itdb_english.nsf/html/statics/guide/committe.htm.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

With the help of Board of Audit of Japan, the committee is able to enforce the oversight regarding financial irregularities. The Board of Audit of Japan is an independent institution that plays the role of watchdog.

References:

Board of Audit of Japan Home Page: <http://www.jbaudit.go.jp/engl/index.htm>.

The Committee on Audit and Oversight of

Administration: http://www.shugiin.go.jp/itdb_english.nsf/html/statics/guide/committe.htm.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. Is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

Because the Board of Audit of Japan has an independent status from the Cabinet, they are able to effectively monitor the budget process.

References:

The Board of Audit Law: <http://www.jbaudit.go.jp/eng/law/index.htm>.

Board of Audit of Japan Home Page: <http://www.jbaudit.go.jp/eng/index.htm>.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ⁷⁵Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Articles 14 and 15a of the Constitution of Japan, 1946

Article 27 of the National Public Service Act of 1947 (NPSA).

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

Articles 15a of the Japanese Constitution, and

Articles 96,74, 46 and 33 of the National Public Service Act of 1947 (NPSA).

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

The National Public Service Ethics Law is one of the notorious laws in Japan. It has many loopholes and therefore has been modified several times after scandals relating to it were revealed. Civil servants and applicants for the civil service can seek grievance regarding civil service management actions.

References:

Articles 15a of the Japanese Constitution.

Articles 96,74, 46 and 33 of the National Public Service Act of 1947 (NPSA).

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

There is no clear-cut provision as such, but, in practice, civil servants convicted of corruption are often prohibited from future government employment.

References:

No specific provision in the National Public Service Act of 1947.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

69

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants are typically independent, yet they are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government or other forms of influence.

The Permanent Vice-Minister of the Self Defense Ministry was forced to resign from office due to policy differences with the Minister in Charge, Ms. Komiya, under the Koizumi Government.

Similarly, the Vice-Minister of Foreign Affairs did not go along with the then-Foreign Minister, Ms. Tanaka, in connection with the Suzuki Muneo case (He was one of the most influential members of the Diet in regard to the Foreign Ministry and became involved in a scandal). Ms. Tanaka attempted to force the Vice-Minister to step down, but failed. Mr. Koizumi intervened in the dispute and both sides had to resign their posts.

References:

Media reports.

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

News Media.

Articles 27-2, 33, 36, 37, 57, and 72 of National Public Service Act of 1947 (NPSA).

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

Promotion within ministries is not always merit-based. While nepotism, cronyism and patronage are discouraged, exceptions do exist.

References:

News Media.

Articles 33, 36, 37, 57 and 72 of National Public Service Act of 1947 (NPSA).

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

The act is modeled on U.S. Law, but it has never been practiced due to the difference in administrative culture.

Civil servants do not have clear job descriptions. Jobs are described in a general way, which allows flexibility in dealing with newly emerging tasks.

References:

Position Classification Act of 1947.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

Civil servant bonuses constitute a handsome fraction of total pay as bonuses cover as much as four and one-half months salary. (Though there may be some disagreement whether such a bonus is substantial or not.)

References:

Hearing from the National Personnel Authority.

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

The government regularly publishes civil service position lists.

References:

The National Personnel Authority Act of 1947(NPSA).

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

Redress is effective except for the issues of a political nature. During 2005, appeals related to adverse action amounted to 32 cases; 23 of them were withdrawn or rejected.

References:

Articles 13-1 and 13-2 of the National Public Service Act Regulations.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

No civil servants have been paid late in the past.

References:

The White Paper on National Public Service.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

There is no such system to keep civil servants convicted of corruption from being employed again by the government, but, in practice, it seems to be working that way.

References:

News media.

Interview with an official (whose name must be kept anonymous), National Personnel Authority (June 2008).

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

69

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

References:

Article 8 of the National Civil Servant Ethics Act.

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

In practice, however, there is a tendency for a civil servants to recuse themselves from policy decisions. Despite that, there is not a written provision as such in the National Public Service Act of 1947 (NPSA) or other acts and regulation.

References:

No specific provisions in acts, but Articles 3, 4 and Section 5 of National Public Service Ethics Act implicitly address this issue. Interrelated articles are found in Articles 102 and 103 of National Public Act of 1947.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

References:

National Public Service Act (NPSA): Permanent public employees must, for a period of two years after leaving the service, obtain approval from the NPA if they seek to serve in opposition with a profit-making enterprise with which they had close connections in the five years prior to their leaving the service.

NPA Profile of National Public Employees" (2007).

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:
The National Public Service Ethics Act, Chapter 3 (Articles 6 through 9).

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

References:
The National Public Service Ethics Act, Articles 7 and 8.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:
The regulations restricting post-government private sector employment for civil servants are rarely enforced. There are few cases where National Police Agency prohibits a public servant taking a job in the private sector. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. In practice, however it is gradually becoming effective and civil servants seem to be now more conscious of the people's criticism on their behavior

References:
The National Public Service Ethics Act.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations governing gifts and hospitality given to civil servants are generally applied, though exceptions exist. Since the National Public Service Ethics Act and the National Public Service Ethics code took effect in April 2000, positions of Assistant Director-level or higher at the office of each ministry are mandated to start reporting the receipt of gifts and others goods, including the exchange of stocks, income and other material, to the Ethics Board and the Ethics Supervisory Officer. But there are exceptions, as with the Moriya case.

References:

News Media.

Interview with NPA officials. (Interviewees request that their names be kept anonymous.)

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is a growing tendency, thanks to civil ombudsman activities and media reports, for civil servants to be more conscious of public opinion. Because of this, the promotion of personal interest has become more difficult.

References:

News Media.

Interview with a Civil ombudsman activists, including Mr. T. Kuroda, President of Transparency Japan.

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

I have never seen nor heard about the auditing or disclosure of civil servant assets. In practice, this happens seldom, if at all.

References:

News Media.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

50

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

Citizens may invoke the Freedom of Information Act for the disclosure of assets of senior civil servants.

References:

Freedom of Information Act.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

I have never come across such a case.

In most cases, their demands for the disclosure of assets of senior civil servants are declined in the name of protection of privacy or the non-existence of assets.

References:

News media.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

I have never come across such a case. If anything, it is very difficult for citizens to access asset disclosure records of senior civil servants. This is not because of a problem with cost.

References:

New Media

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

63

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

There is no Act that specifically protects public sector whistle-blowers. They are in principle treated and protected the same as other workers. However, there are some exceptions for public sector servants and, in some cases, the National Public Service Act, the Self-Defense Forces Official Ethics Act, and others can have priority over the general Whistle-Blowers Act.

References:

The Whistle-Blower Protection Act of 2004 (enforced in 2006).

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

The Whistle-Blowers Protection Act does not seem to have been firmly established in the public sector. Public sector whistleblowers seem to face substantial negative consequences, such as losing their jobs, being relocating to less prominent positions, or some other forms of harassment.

References:

Interview with a Board Member of the Freedom of Information Citizen Center.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

The Whistle-Blower Protection Act of 2004 (enforced in 2006).

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

The Whistle-Blowers Protection Act does not seem to have been established in the private sector. Private sector whistle-blowers seem to face substantial negative consequences, such as losing their jobs, being relocated to a less prominent position, or some other forms of harassment.

References:

Interview with a Board Member of the Freedom of Information Citizen Center.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

38

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency/entity for reporting public sector corruption seems to have a limited staff that hinders its ability to fulfill its basic mandate.

References:

Interview with a Board Member of the Freedom of Information Citizen Center.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency/entity for reporting public sector corruption seems to have a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget.

References:

Interview with Board Member of the Freedom of Information Citizen Center.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The agency/entity for reporting public sector corruption does not always seem to act on complaints within a reasonable time period.

References:

Interview with Board Member of the Freedom of Information Citizen Center.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The agency/entity for reporting public sector corruption does not seem to initiate investigations properly.

References:

Interview with Board Member of the Freedom of Information Citizen Center.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

There is a mechanism, or multiple mechanisms, in multiple national government agencies through which civil servants can report cases of graft, misuse of public funds, or corruption, but it does not seem to be working yet.

References:

The Whistle-Blower Protection Act of 2004.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

67
IV-3. Procurement

51. Is the public procurement process effective?

70

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

There are series of strict laws that prohibit Japan's government procurement officer from pursuing their own interests. Particularly, both the National Public Ethics Act and the National Public Service Act (NPSA) prescribe the ethical standards of procurement officers. All of the referred laws and regulations are consistent with the provisions of the World Trade Organization (WTO) Agreement on Government Procurement since Japan is the member of the WTO.

References:

The Accountancy Law (Law No.67 of 1947).

Cabinet Order concerning the Budget, Settlement of Account and Accounting (Imperial Ordinance No. 165 of 1947).

The Local Autonomy Law (Law No.67 of 1947).

Act Concerning Elimination and Prevention of Involvement in Bid Rigging etc. (Law No.101 of 2002): http://www.jftc.go.jp/e-page/legislation/ama/elimination_bidrigging.pdf.

The National Public Service Ethics Act (Act No. 129 of 1999).

The National Public Service Act (Act No.120 of 1947): <http://www.kl.i.is.nagoya-u.ac.jp/told/s22a12001en.1.0.txt>.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

Government procurement in Japan is conducted by each procurement entity in a decentralized manner. Each procurement entity (e.g., the Ministry of Defense) has its own general training courses. In short, professional training of each procurement officer depends on what entity they belong to.

In addition, Article 20 of the Bidding Correction Law states that the government should make efforts to provide for a general education and training program for public procurement officials in charge of bidding and contracts. However, the law is not compulsory.

References:

There are no specific trainings for procurement officer: http://www1.oecd.org/daf/ASIAcom/pdf/trpp_japan.pdf.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

The media's scrutiny of the government helps deter crime by procurement officers. But, in reality, there are many cases where the ex-procurement official is reemployed by the private companies (usually bidders) after two years have passed. These reemployed officials become coordinators in bid-rigging.

References:

Media reports, Academic, policy or professional studies, Government studies, International organization studies.

ADB/OECD Anti-Corruption Initiative for Asia and the Pacific (2005). Thematic Review on Provisions and Practices to Curb Corruption in Public Procurement: Self-Assessment Report Japan": http://www1.oecd.org/daf/ASIAcom/pdf/trpp_japan.pdf.

Japanese Government Procurement (prepared by JETRO): <http://www.jetro.go.jp/en/matching/procurement/procurement.html>.

Article, Mainichi Daily News (Apr. 12, 2006).

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

Both the National Public Service Ethics Act and the National Public Service Act serve to enhance public procurement officials own self-discipline. But there are no specific mechanism that monitors their assets, incomes and spending habits because it is considered a violation of their privacy.

References:

There is no such law.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

References:

Article 29 of Accountancy Act (Law No. 1, 2, 3 of 1947).

Article 167 of the Local Autonomy Law.

Regarding tendering

classification: http://www.apecsec.org.sg/content/apec/apec_groups/committees/committee_on_trade/government_procurement/resources/japan.html.

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

Before the tendering, it is possible for potential bidders to agree on collusive agreements, such as bid-rigging (Dango" in Japanese,). The limits on sole sourcing is related to the Act on the Private Monopolization and Maintenance of Fair Trade.

References:

The Accounts Law (Law No.67 of 1947).

Cabinet Order concerning the Budget, Settlement of Account and Accounting (Imperial Ordinance No. 165 of 1947).

The Local Autonomy Law (Law No.67 of 1947).

Act Concerning Elimination and Prevention of Involvement in Bid Rigging etc. (Law No.101 of 2002).
The National Public Service Ethics Act (Act No. 129 of 1999).

The National Public Service Act (Act No.120 of 1947).

Article 3, Chapter 2 of Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No.54 of 14 April 1947):http://www.jftc.go.jp/e-page/legislation/ama/amended_ama.pdf.

Article 99 of Ordinance on Budget and Final Accounts of the Expenditures and Revenues.

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

The Accounts Law (Law No.67 of 1947).

Cabinet Order concerning the Budget, Settlement of Account and Accounting (Imperial Ordinance No. 165 of 1947).

The Local Autonomy Law (Law No.67 of 1947).

Act Concerning Elimination and Prevention of Involvement in Bid Rigging etc. (Law No.101 of 2002).

The National Public Service Ethics Act (Act No. 129 of 1999).

The National Public Service Act (Act No.120 of 1947).

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

Since the Government Procurement Review Board (GPRB) was established in 1995, it has filed five complaints and resolved many cases through consultation.

References:

The Accounts Law (Law No.67 of 1947).

Cabinet Order concerning the Budget, Settlement of Account and Accounting (Imperial Ordinance No. 165 of 1947).

The Local Autonomy Law (Law No.67 of 1947).

Act Concerning Elimination and Prevention of Involvement in Bid Rigging etc. (Law No.101 of 2002)
The National Public Service Ethics Act (Act No. 129 of 1999).

The National Public Service Act (Act No.120 of 1947).

Article 3, Chapter 2 of Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No.54 of 14 April 1947):http://www.jftc.go.jp/e-page/legislation/ama/amended_ama.pdf.

Article 99 of Ordinance on Budget and Final Accounts of the Expenditures and Revenues.

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

At the local level, there are blacklists of companies guilty of major violations of procurement regulations. Government (local or central) prohibits them from bidding for certain periods, but after their term of prohibition, depending on the degree of their violation, offenders can recover their right to bid on public procurement.

References:

Article 198 of the Penal Code (Act No.45 of 1907).

Article 96-3 of the Penal Code (Act No.45 of 1907).

Japanese Fair Trade Commission: <http://www.jftc.go.jp/e-page/index.html>.

Act Concerning Elimination and Prevention of Involvement in Bid Rigging etc. (Law No.101 of 2002).

Article 3, Chapter 2 of Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No.54 of 14 April 1947).

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

As a matter of fact, offenders can rejoin public procurement bidding after the termination of their punishment.

References:

96-3 of the Penal Code (Act No.45 of 1907).

Japanese Fair Trade Commission: <http://www.jftc.go.jp/e-page/index.html>.

Act Concerning Elimination and Prevention of Involvement in Bid Rigging etc. (Law No.101 of 2002).

Article 3, Chapter 2 of Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No.54 of 14 April 1947).

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

92

52a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

The law states that citizens can access the information of procurement regulations held by every entity.

References:

Act on Access to Information Held by Administrative Organs (Act No.42 of 1999).

Administrative Procedure Act (Act No. 88 of 1993).

Government Policy Evaluation Act (Act No.86 of 2001).

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Act for Promoting Proper Tendering and Contracting for Public Works (Act No.127 of 2000): <http://www.mlit.go.jp/sogoseisaku/const/tekiseikahou/tentative-translation.htm>.

Government website for integrated procurement information (Japanese only): <http://www.i-ppi.jp/>.

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The law states that citizens can access public procurement regulations without problems.

References:

Act for Promoting Proper Tendering and Contracting for Public Works (Act No.127 of 2000).

Act on Access to Information Held by Administrative Organs (Act No.42 of 1999).

Administrative Procedure Act (Act No. 88 of 1993).

Government Policy Evaluation Act (Act No.86 of 2001).

http://www.apecsec.org.sg/content/apec/apec_groups/committees/committee_on_trade/government_procurement/resources/japan.html.

ADB/OECD Anti-Corruption Initiative for Asia and the Pacific (2005). Thematic Review on Provisions and Practices to Curb Corruption in Public Procurement: Self-Assessment Report Japan":

http://www1.oecd.org/daf/ASIAcom/pdf/trpp_japan.pdf.

Japanese Government Procurement (prepared by JETRO): <http://www.jetro.go.jp/en/matching/procurement/procurement.html>.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to these reports and laws, the public can access the information within reasonable cost, which cover such administrative expenses as photocopying.

References:

ADB/OECD Anti-Corruption Initiative for Asia and the Pacific (2005). Thematic Review on Provisions and Practices to Curb Corruption in Public Procurement: Self-Assessment Report Japan":

http://www1.oecd.org/daf/ASIAcom/pdf/trpp_japan.pdf.

Japanese Government Procurement (prepared by JETRO): <http://www.jetro.go.jp/en/matching/procurement/procurement.html>.

Act for Promoting Proper Tendering and Contracting for Public Works (Act No.127 of 2000).

Act on Access to Information Held by Administrative Organs (Act No.42 of 1999).

Administrative Procedure Act (Act No. 88 of 1993).

Government Policy Evaluation Act (Act No.86 of 2001).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

At local levels, such as prefectures, citizens can access the tendering information electronically. Furthermore, electronic data in the official gazette is also available.

References:

Act for Promoting Proper Tendering and Contracting for Public Works (Act No.127 of 2000).

Act on Access to Information Held by Administrative Organs (Act No.42 of 1999).

Administrative Procedure Act (Act No. 88 of 1993).

Government Policy Evaluation Act (Act No.86 of 2001).

The Local Autonomy Law (Law No.67 of 1947).

ADB/OECD Anti-Corruption Initiative for Asia and the Pacific (2005). Thematic Review on Provisions and Practices to Curb Corruption in Public Procurement: Self-Assessment Report Japan": http://www1.oecd.org/daf/ASIAcom/pdf/trpp_japan.pdf.

Japanese Government Procurement (prepared by JETRO): <http://www.jetro.go.jp/en/matching/procurement/procurement.html>.

Information of bidding service (Japanese Only): <http://www.i-ppi.jp/>.

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

At local levels, information about the results of tenderings is provided for free.

References:

Government Policy Evaluation Act (Act No.86 of 2001).

ADB/OECD Anti-Corruption Initiative for Asia and the Pacific (2005). Thematic Review on Provisions and Practices to Curb Corruption in Public Procurement: Self-Assessment Report Japan": http://www1.oecd.org/daf/ASIAcom/pdf/trpp_japan.pdf.

Japanese Government Procurement (prepared by JETRO): <http://www.jetro.go.jp/en/matching/procurement/procurement.html>.

Information on bidding service (Japanese Only): <http://www.i-ppi.jp/>.

The Local Autonomy Law (Law No.67 of 1947).

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

75

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

Privatization in Japan is being carried out by IPO (Initial Public Offering), not by bidding. Namely, the government transforms a government-owned enterprise into a joint stock company owned by the government. Afterward, the stocks are gradually to be sold in the stock market to many unspecified parties. In Japan, disposal of government properties is not discussed in the privatization reference book.

References:

Yoichi Ishii, Who Will Gain by Privatization-International Comparison," Editorial, Heibonsha (2007).

"Handbook of Postal Service Privatization" edited by Postal Service.

Privatization Handbook, 2006.

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

Recently some local governments announced plans to privatize their gas industries, hospitals, city traffic controls and other activities by bidding because of the financial difficulties they face. According to media reports, private companies are reluctant to bid because profit-seeking and the common good are sometimes incompatible principles.

References:

Recently some local governments announced plans to privatize their gas industries, hospitals, city traffic controls and other activities by bidding because of the financial difficulties they face. According to media reports, private companies are reluctant to bid because profit-seeking and the common good are sometimes incompatible principles.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

The article reports that Sendai City Government is planning to privatize the public gas industry for reason of financial difficulties in 2010. Tokyo Gas Co. Oil Developing Co. and Tohoku Electric Co. are planning to establish a joint venture in order to be the bidder. The bidding will be carried out in 2009, for which perhaps a special ordinance will be passed and promulgated in the Sendai City Diet where a conflict-of-interest clause may be included. Presently, there is no other bidder. For local government bidding the local Diet decides. The central government does not interfere.

The question here on privatization is based on the premise that privatization is to be carried out through bidding, but in Japan, privatizations are done by Initial Public Offering (IPO). Because of this the indicator is not very relevant to the Japanese process and hard to score.

In Tokyo City Government, there is no privatization case. Finding the text of local ordinances in Tokyo is not easy. The reason why local governments face financial difficulties is that many companies are moving their factories to China and Vietnam in search of lower wages. The remaining small Japanese farmers are not competitive, so tax revenues of local governments are decreasing.

References:

Article, Nikkei Newspaper (Aug. 21, 2008).

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

100

54a. In law, citizens can access privatization regulations.

YES | NO

Comments:

Citizens can access the contents of each privatization act by reading the above respective privatization acts, plus other ordinances and gazettes of local governments, through newspaper reports and on websites.

References:

National Railway Privatization Act

NTT Privatization Act.

National Post Services Act.

Other acts.

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Privatizations are effectively advertised through the local official gazette and local media in general. National privatization are advertised through the security company, which tells when and how government-owned stocks are to be sold on the market.

References:

Privatizations are effectively advertised through the local official gazette and local media in general. National privatization are advertised through the security company, which tells when and how government-owned stocks are to be sold on the market.

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

Privatization decisions are publicly announced as required by the respective Privatization Act. Local government ordinances are announced through their gazette.

References:

Privatization decisions are publicly announced by the respective Privatization Act. Local government ordinances are announced through their gazette.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Generally, local citizens can access privatization regulations through the official gazette and local media within a reasonable time period.

References:

Generally, local citizens can access privatization regulations through the official gazette and local media within a reasonable time period.

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Each privatization ordinance by a local government is accessible through media, the gazette and on websites where local citizens can access it without cost.

References:

Each privatization ordinance by a local government is accessible through media, the gazette and on websites where local citizens can access it without cost.

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

56. Is the national ombudsman effective?

66

56a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

In the municipal ordinance, municipal ombudsman is nominated by the governor. The nomination is then confirmed by the assembly and the approved ombudsman is treated as a subordinate part of the local government. Through this process they are formally protected from political interference.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The municipal ombudsman is supposed to be independent, but sometimes they are influenced in their work by the municipal governors' intentions. In the ordinance, the purpose of the ombudsman is to handle citizens' complaints, not to watch out for corrupt conduct by officials.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The head of the municipal ombudsman serves a defined term but there is no guarantee in the ordinance against removal without a significant justification. However, in practice, no head or director has ever been removed without a significant justification.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The municipal ombudsman office has enough full-time staff to fulfill its basic mandate, but they are not professionals. They are reorganized every several years, according to the officials' relocating plan.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Appointments to the director of municipal ombudsman are made based on professional qualifications. Individuals appointed are usually free of conflicts of interest connected with personal loyalties, family connections or other biases.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The municipal ombudsman has a predictable source of funding that is fairly consistent from year to year.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The municipal ombudsman makes public reports, usually once a year to the legislature and directly to the public.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The municipal ombudsman usually does not conduct investigations on its own or cooperates in other agencies' investigations.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The municipal ombudsman is not authorized to penalize offenders.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The municipal Ombudsman reports are given only superficial attention. The reports do not very often lead to policy changes.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | **75** | 50 | 25 | 0

Comments:

The municipal ombudsman can resolve simple complaints quickly. Serious abuses may not be responded to.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

75

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

The ordinance stipulates that the municipal ombudsman make its report available to the public once a year.

References:

Municipal Ombudsman Ordinance.

Interview with the adviser of the Kawasaki Citizen Ombudsman.

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Reports are made available to the public usually once a year.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports are distributed in a free booklet to any citizen who wants one.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

0

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

There is no national ombudsman or equivalent national agency/agencies. However, about 30 cities out of about 2,000 local governments employ a municipal ombudsman.

References:

Interview with the adviser of the Kawasaki Citizen Ombudsman.

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

100

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

Based on Article 90 of Constitution, the Board of Audit (BA) monitors the annual revenues and expenditures of the government. The government is required to present an annual financial statement to the Diet with the certificate of assessment of the BA. This requires that the BA be protected from interference of the government.

Moreover, Article 1 of the Board of Audit Act (BAA) provides the board with independent status from the government.

References:

Article 90 of the Constitution of Japan.

Article 1 of the Board of Audit Act (BAA).

Interview with Mr. Mihara, ex-Secretary General of the Board of Audit (BA).

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Commissioners serve for seven years and cannot be removed without a relevant justification.

References:

Article 5, 6 and 8 of the Board of Audit Act (BAA).

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Board of Audit (BA) consists of three commissioners, one of whom is president. The board employs about 1,300 full-time staff.

References:

BA," Publicity Magazine, Vol 18 (2005).

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The commissioners are appointed by the cabinet with the consent of both Houses of Diet and final approval by the Emperor.

References:

Article 4 of Board of Audit Act (BAA).

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Because it is a governmental agency, the Board of Audit (BA) receives the necessary funding from the annual national budget. The annual budget of each governmental institution depends on its negotiations with the Ministry of Finance. The BA receives its regular funding through the Ministry of Finance.

References:

Interview with Mr. Hidetaka Mihara, ex-Secretary General of the Board of Audit (BA).

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The annual final accounts of the expenditures and revenues of the State are to be audited by the Board of Audit (BA) and submitted to the Diet, together with the Statement of the BA.

References:

Article 90 of the Constitution of Japan.

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

If a cashier or an administrator loses money or assets in his charge, the Board of Audit (BA) is competent to examine whether it was intentional wrongdoing and to determine whether the official should reimburse the damage.

References:

Article 31 and 32 of the Board of Audit Act (BAA).

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

Not only does the Board of Audit (BA) perform necessary audits but they also perform optional audits that it conducts at its discretion.

References:

Article 23 of Board of Audit Act (BAA).

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

100

60a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

There is no specific article in Board of Audit Act (BAA) concerning the right of citizen access. However, citizen can purchase the Board of Audit (BA) reports at Government Publishing Center outlets across the nation.

References:

Interviewed with Mr.Hidetaka Mihara, ex-Secretary General Of the Board of Audit (BA).

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The audit is also accessible online.

References:

Interviewed with Mr.Hidetaka Mihara, ex-Secretary General Of the Board of Audit (BA).

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The annual audit report is many pages and very thick. It is not sold at a reasonable price.

References:

Interviewed with Mr.Hidetaka Mihara, ex-Secretary General Of BA.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

Article 90 of the Constitution of Japan.

The Board of Audit (BA).

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

100
V-3. Taxes and Customs

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The National Tax Agency (NTA) was established in 1949 as an independent organization of the Ministry of Finance in order to assess and collect national tax.

The NTA website contains detailed information about the agency's organizational structure.

References:

National Tax Collage Web Page: <http://www.ntc.nta.go.jp/english/about/index.html>.

National Tax Agency (NTA) website: http://www.nta.go.jp/foreign_language/report2003/text/04/01-06.htm.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The National Tax Agency (NTA) has always been funded by the General Account Budget.

References:

NTA Web Page: http://www.nta.go.jp/foreign_language/report2003/text/01/01.htm#a-3.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Japan Customs and the National Tax Agency (NTA) have a special institute for training their staff. Since their missions are highly professional, both agencies always have well-trained professional staffs. In particular, since Japan Customs has a good reputation, it plays one of the leading roles in custom integrity and administration in the Asian region.

References:

Japan Customs Training Institute website: http://www.customs.go.jp/cti/top_eng.htm.

National Tax College website: <http://www.ntc.nta.go.jp/english/index.htm>.

Asian Development Bank (ADB) Central Asia Regional Economic Cooperation (CAREC) Regional Trade Facilitation Program: <http://www.adb.org/Projects/TradeFacilitation/>.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

Comments:

The central Customs administration is an internal bureau of the Ministry of Finance (MOF). Japan Customs is funded from the National Budget.

References:

Ministry of Finance (MOF) Functions: <http://www.mof.go.jp/english/others/mof01.htm>.

Japan Customs' Organization: http://www.customs.go.jp/english/zeikan/k-kikou_e.htm.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

Comments:

The National Tax Agency (NTA) was established in 1949 as an independent organization of the Ministry of Finance (MOF) in order to assess and collect the national tax. For

The NTA website contains detailed information on the agency's organizational structure.

References:

National Tax Agency (NTA) website: http://www.nta.go.jp/foreign_language/index.htm.

http://www.nta.go.jp/foreign_language/report2003/tab/tab01.htm.

Minute Explanation of the Ministry of Finance (MOF) Functions: <http://www.mof.go.jp/english/others/mof01.htm>.

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. Are tax laws enforced uniformly and without discrimination?

75

63. In practice, are tax laws enforced uniformly and without discrimination?

Comments:

Generally speaking, Japanese tax laws are impartial. For example, there is the administrative appeal system that allows a taxpayer to protest against tax authority decisions. Furthermore, if the problem is not resolved, a taxpayer can appeal to the National Tax Tribunal.

In practice, voluntary compliance with tax law often causes a questionable nation-wide tax gap among the people. People in Japan feel that 90 percent of the income of salaried employees has been captured in the tax system although self-employed people only declare about 60 percent and farmers 40 percent. It is called the 9-6-4 problem.”

References:

NTA website: http://www.nta.go.jp/foreign_language/report2003/text/01/01.htm.

MOF website: <http://www.mof.go.jp/english/tax/tax.htm>.

National Tax Tribunal website (only available in Japanese): <http://www.kfs.go.jp/>
ASG Tax Corporation (2007). 2007 Tax Reform. Japan tax bulletin No 9 January 2007: <http://www.gjapan.com/cgi-bin/newsletter/214.pdf> (Japanese tax system reform).

Vicki L. Beyer (1994). “Tax Administration in Japan.” Revenue Law Journal 4:2, 144-159: <http://epublications.bond.edu.au/rfj/vol4/iss2/3/>.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

Comments:

Japan Customs collect customs duty, consumption and other taxes on imported goods. On the other hand, the National Tax Agency (NTA) collects excise taxes domestically.

References:

Japan Customs Web Page: <http://www.customs.go.jp/english/index.htm>.

MOF Web Page: <http://www.mof.go.jp/english/others/mof01.htm>.

NTA Web Page: http://www.nta.go.jp/foreign_language/index.htm.

The National Tax Law (1962) and the National Tax Collection Law (1960)
Custom Law, Custom Tariff Law and Temporary Tariff Measures Law: <http://www.customs.go.jp/english/law/relatedlaws.htm>.

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. Are customs and excise laws enforced uniformly and without discrimination?

100

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Since Japan Customs keeps well-trained, highly integral professionals, they seldom engage in impartial treatment. Strict penal laws and media scrutiny also help to deter corrupt, impartial treatment.

References:

Japan Customs Web Page: Japan Customs Web Page: <http://www.customs.go.jp/english/index.htm>.

Yoichiro Tachi (2001). An Overview of the Japanese Criminal Justice Legislation," 3rd Annual Conference of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific, Tokyo, November 2001: <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019156.pdf>.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

75

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

Comments:

These agencies are vulnerable to political pressure. Since the special corporations are dependent on the objectives of government, the agencies have no choice but to abide by political intervention.

For recent academic research, the Carpenter book is very comprehensive

References:

Article 4, item 15 of the Act for Establishment of the Ministry of Internal Affairs and Communications (Act No.91 of 1999).

Registration Order for Incorporated Administration Agency (Act No.28 of 1964).

The Act on General Rules of Incorporated Administrative Agencies (Act No.103 of 1999).

Carpenter, Susan, Special Corporations and the Bureaucracy: Why Japan Can't Reform." New York: Palgrave Macmillan (2003).

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Most employees are recruited from the public. As usual, retired bureaucrats from ministries are re-employed as upper management in the special corporations. Under the control of ministry, these ex-bureaucrats will operate these special corporations in cooperation with the ministry's objectives. Generally speaking, these bureaucrats do not have work-related skills, but they have general skills because of routine on-the-job training they received in their ministry.

References:

Carpenter, Susan, Special Corporations and the Bureaucracy: Why Japan Can't Reform," New York: Palgrave Macmillan (2003).

Colignon, Richard A. and Chikako Usui, "Amakudari: The Hidden Fabric of Japan's Economy," New York: Cornell University Press (2003).

The Act on General Rules of Incorporated Administrative Agencies (Act No.103 of 1999).

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The government subsidizes each special corporation. Since the business of special corporations is not profitable (in most cases they operate at negative profit), most of them face operational difficulties without proper funding.

References:

Carpenter, Susan, Special Corporations and the Bureaucracy: Why Japan Can't Reform," New York: Palgrave Macmillan (2003).

The Act on General Rules of Incorporated Administrative Agencies (Act No.103 of 1999).

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The jurisdiction's ministry will investigate their controlled state-owned enterprises. Also Board of Audit (BA) of Japan is responsibility for checking their account balance.

References:

Carpenter, Susan, *Special Corporations and the Bureaucracy: Why Japan Can't Reform*, New York: Palgrave Macmillan (2003).

The Act on General Rules of Incorporated Administrative Agencies (Act No.103 of 1999).

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Since special corporations are under the jurisdiction of each ministry, they are impacted by the decisions of that ministry. If the special corporations commit an offense, the ministry imposes penalties on them.

References:

Carpenter, Susan, *Special Corporations and the Bureaucracy: Why Japan Can't Reform*, New York: Palgrave Macmillan (2003).

The Act on General Rules of Incorporated Administrative Agencies (Act No.103 of 1999).

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

50

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

Based on the Law Concerning the Disclosure of Information Held by Independent Administrative Institutions, etc. (Law No.140 of 2001), Japanese citizens can request the information on financial records of state-owned companies. But there are still difficulties in accessing it, especially for foreign nationals since not all the information is translated. Some information is accessible at the last website listed in Sources.

References:

Carpenter, Susan, *Special Corporations and the Bureaucracy: Why Japan Can't Reform*, New York: Palgrave Macmillan (2003).

Law Concerning the Disclosure of Information Held by Independent Administrative Institutions, etc. (Law No.140 of 2001): http://www.soumu.go.jp/gyoukan/kanri/low0404_1.htm.

Ministry of Internal Affairs and Communications "The Promotion of information disclosure for Independent Administrative institution" (in Japanese only): <http://www.soumu.go.jp/gyoukan/kanri/990707e.htm>.

Sakae Kitazawa, "Public Enterprise: the Hidden Sanctuary of Bureaucracy" (Koueki Houzin: Kakusareta Kan no Seiki). Tokyo Iwanami Syoten (2003).

(In Japanese Only): <http://www.e-gov.go.jp/link/iais.html>.

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

There are still some corporations that disclose their information to the public. Recently, they started disclosing their financial records because of the information disclosure act and public pressures. The Information Clearing House, an NGO, is one example where the government discloses the financial records. Some of them can be accessed at the last website listed in Sources. :

References:

Carpenter, Susan, *Special Corporations and the Bureaucracy: Why Japan Can't Reform*, New York: Palgrave Macmillan (2003).

Law Concerning the Disclosure of Information Held by Independent Administrative Institutions, etc. (Law No.140 of 2001): http://www.soumu.go.jp/gyoukan/kanri/low0404_1.htm.

Ministry of Internal Affairs and Communications "The Promotion of Information Disclosure for Independent Administrative Institution" (in Japanese only): <http://www.soumu.go.jp/gyoukan/kanri/990707e.htm>.

Sakae Kitazawa, "Public Enterprise: the Hidden Sanctuary of Bureaucracy" (Koueki Houzin: Kakusareta Kan no Seiki). Tokyo Iwanami Syoten (2001).

<http://www.e-gov.go.jp/link/fais.html>.

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Most special corporations are not satisfied with the international standard of auditing because the supervision of these corporations is under the control of each ministry. The government subsidizes most of them, despite their huge deficits. The amount of their account balance is very unclear to the public.

References:

Carpenter, Susan, *Special Corporations and the Bureaucracy: Why Japan Can't Reform*, New York: Palgrave Macmillan (2003).

Sakae Kitazawa, "Public Enterprise: the Hidden Sanctuary of Bureaucracy" (Koueki Houzin: Kakusareta Kan no Seiki). Tokyo Iwanami Syoten (2001).

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Accessing the financial records of state-owned companies involves somewhat cumbersome procedures. Most of the financial records cannot be copied because of confidentiality. Citizens can only look at the book.

References:

Carpenter, Susan, *Special Corporations and the Bureaucracy: Why Japan Can't Reform*, New York: Palgrave Macmillan (2003).

Sakae Kitazawa, "Public Enterprise: the Hidden Sanctuary of Bureaucracy" (Koueki Houzin: Kakusareta Kan no Seiki). Tokyo Iwanami Syoten (2001).

Act on Access to Information Held by Administrative Organs (Act No.42 of 1999).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | **75** | 50 | 25 | 0

Comments:

The cost to access the information regarding the financial records of state-owned companies is reasonable and involves photocopying, costs of travel and other costs.

References:

Carpenter, Susan, *Special Corporations and the Bureaucracy: Why Japan Can't Reform*, New York: Palgrave Macmillan (2003).

Sakae Kitazawa, *"Public Enterprise: the Hidden Sanctuary of Bureaucracy"* (Koueki Houzin: Kakusareta Kan no Seiki). Tokyo Iwanami Syoten (2001).

Act on Access to Information Held by Administrative Organs (Act No.42 of 1999).

Law Concerning the Disclosure of Information Held by Independent Administrative Institutions, etc. (Law No.140 of 2001).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

There are also special corporations (in addition to Independent Administrative Institutions) funded by Fiscal Investment Loan Program (FILIP). After World War II, the Japanese Government established these special corporations in order to facilitate the recovery of Japan's economic infrastructure. The Ministry of Internal Affairs and Communication oversees the establishment, registration and abolishment of special corporations. Nevertheless, the objectives of special corporations are based on the jurisdictions of each ministry. Under the supervision of each ministry, these special corporations contribute towards their own objectives such as the reconstruction of roads, etc.

Officially, ministries do not have any responsibility to manage their special corporations but in practice, ministries post their high-ranked retired officials to upper management positions.”

References:

Article 4, item 15 of the Act for Establishment of the Ministry of Internal Affairs and Communications (Act No.91 of 1999).

Registration Order for Incorporated Administration Agency (Act No.28 of 1964).

The Act on General Rules of Incorporated Administrative Agencies (Act No.103 of 1999).

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

75
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

88

70a. In law, anyone may apply for a business license.

YES | NO

Comments:

Japanese business license administration depends on the category of business. Applicants must apply to the proper ministry in order to acquire a business license.

References:

The Administrative Procedure Act (Act No.88 of 1993): <http://www.kl.is.nagoya-u.ac.jp/told/h05a08801en.1.0.txt>

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

If the application is rejected, applicants can appeal through the Administrative Procedure Act.

References:

Index of Economic Freedom (Japan): http://www.heritage.org/research/features/index/contry_cfm?id=Japan

<http://www.htm.co.jp/Bcostofbureaucracy.htm>

Djankov, S., R., L. Porta, F. Lopezde-Silanes, and A. Shleifer, "The Regulation of Entry," Quarterly Journal of Economics, 117, 1-37 (2002).

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Index of Economic Freedom (Japan): <http://www.heritage.org/Index/>

<http://www.htm.co.jp/Bcostofbureaucracy.htm>

Djankov, S., R., L. Porta, F. Lopezde-Silanes, and A. Shleifer (2002), "The Regulation of Entry," Quarterly Journal of Economics, 117, 1-37.

The Doing Business Report 2008: <http://www.doingbusiness.org/>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

As usual, applicants for business licenses should submit certified documents made by an administrative scrivener. The documentation preparation fee is quite reasonable.

References:

Index of Economic Freedom (Japan): <http://www.heritage.org/research/features/index/contry.cfm?id=Japan>

Japan Federation of Administrative Scriveners' Association Web Page (Japanese only): <http://www.gyousei.or.jp/>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

Japanese public health standards are high. The public has accessibility to health information. Public health is under the jurisdiction of the Ministry of Health, Labor and Welfare.

References:

Industrial Safety and Health Act (Act No.57 of 1972): <http://www.kl.is.nagoya-u.ac.jp/told/s47a057011en.1.0.txt>

Japan International Center for Occupational Safety and Health News
Letter: http://www.jicosh.gr.jp/english/publication/news_letter/

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

The Japanese government also adheres to several agreements on international environmental standards, such as the Kyoto Protocols.

References:

The Basic Environmental Law (Law No.91 of 1993): <http://www.env.go.jp/en/laws/policy/basic/index.html>

Assorted Environmental Laws by Ministry of the Environment: <http://www.env.go.jp/en/laws/>

Japan Chemical Industry Ecology-Toxicology & Information Center: http://www.jetoc.or.jp/english_index.html

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

Public safety is under the jurisdiction of the Ministry of Health, Labor and Welfare.

References:

Industrial Safety and Health Act (Act No.57 of 1972): <http://www.kl.is.nagoya-u.ac.jp/told/s47a057011en.1.0.txt>

Japan International Center for Occupational Safety and Health Legislation: <http://www.jniosh.go.jp/icpro/jicosh-old/english/topics/OSHLegislation.html>

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

83

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

For example, Japanese government took measures to cope with the bird-flu situation very quickly.

References:

CIA: The World Fact Book (Japan): <http://www.cia.gov/library/publications/the-world-factbook/geos/ja.html>

Industrial Safety and Health Act (Act No.57 of 1972): <http://www.kl.is.nagoya-u.ac.jp/told/s47a057011en.1.0.txt>

Japan International Center for Occupational Safety and Health: <http://www.jniosh.go.jp/icpro/jicosh-old/english/index.html>

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Under the Basic Environmental Law and several other government regulations, Japanese firms are forced to maintain high public

environmental standards.

References:

The Basic Environmental Law (Law No.91 of 1993): <http://www.env.go.jp/en/laws/policy/basic/index.html>

Assorted Environmental Laws by Ministry of the Environment: <http://www.env.go.jp/en/laws/>
METI Environment Policy: http://www.meti.go.jp/english/policy/index_environment.html

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Foreign nationals working legally in Japan are covered under the labor standards and other related laws. However, there exist a large number of illegal foreign laborers, especially in the manufacturing industry. Therefore, these manufacturers cannot meet the public health standards outlined in these government guidelines.

References:

Industrial Safety and Health Act (Act No.57 of 1972): <http://www.kl.is.nagoya-u.ac.jp/told/s47a057011en.1.0.txt>

Japan International Center for Occupational Safety and Health Legislation: <http://www.jniosh.go.jp/icpro/jicosh-old/english/topics/OSHLegislation.html>

The 16th GISPRI Symposium (2006). How the 21st Century Japanese Society Accepts Foreigners," Tokyo, UN University: <http://www.gispri.or.jp/Annual/2006-10.html>

Ministry of Health, Labor and Welfare Web Page: <http://www.mhlw.go.jp/english/index.html>

"For Foreign Nationals Wishing to Work in Japan": <http://www.mhlw.go.jp/english/org/policy/dl/p43a.pdf>

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

73. Is there legislation criminalizing corruption?

89

73a. In law, attempted corruption is illegal.

YES | NO

Comments:

The Criminal Act includes attempted corruption where the actual risk occurs.

References:

Article 197 of the Penal Code.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

Comments:

The Criminal Act includes extortion. Extortion is defined as demanding favorable treatment (such as a bribe) in exchange for withholding a punishment.

References:

Article 197 of the Penal Code.

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

Offering a bribe is illegal.

References:

Article 198 of the Penal Code.

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

Receiving a bribe is illegal.

References:

Article 197 of the Penal Code.

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

Bribing a foreign official is illegal.

References:

Article 18 of the Unfair Competition Prevention Act.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

Comments:

Using public resources for private gain is illegal.

References:

Article 3 of the National Public Service Ethics Act.

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

Using confidential state information for private gain is illegal.

References:

Article 100 of the National Public Service Act.

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

Comments:

Money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

References:

Article 10 of the Organized Crime Punishment Act.

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

Conspiracy to commit a crime is not illegal at this writing, but the amendment to the relevant acts to make conspiracy to commit some crimes across the border illegal has been presented to the National Diet and will become effective in the near future.

References:

Interview with board member of Transparency International Japan.

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

The Federal Trade Commission (FTC) has some formal organizational or operational independence from the government. It is set up with a partisan staff as an organization separate from the Cabinet Office.

References:

Article 31 of the Anti-Monopoly Act.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Fair Trade Commission (FTC) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government.

References:

Interview with board member of Transparency International Japan.

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The directors cannot be removed without significant justification and through a formal process, such as impeachment for abuse of power.

References:

Interview with a board member of Transparency International Japan.

Article 31 of the Anti-monopoly Act.

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Appointments to the Federal Trade Commission (FTC) are made with the consent of the Diet based on professional qualifications. Individuals appointed are free of conflicts of interest involving personal loyalties, family connections or other biases. The Act stipulates that directors of the FTC must be selected based on professional criteria.

References:

Interview with a board member of Transparency International Japan.

Article 29 of the Anti-Monopoly Act.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Fair Trade Commission (FTC) has about 740 officials as of March 2007, which is not enough to fulfill its mandate. An increase in staff is needed.

References:

Interview with board member of Transparency International Japan.

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Federal Trade Commission (FTC) has a predictable source of funding that is fairly consistent from year to year. The yearly funding for 2005 was about 8 billion yen (US\$68 million).

References:

Interview with a Board Member of Transparency International Japan.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Federal Trade Commission (FTC) does not always make regular reports available to the public. They announce an annual report to the public once a year and explain the details of some big issues that have occurred in the past year.

References:

Interview with board member of Transparency International Japan.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The Federal Trade Commission (FTC) also questions suspects, orders arrests and brings suspects to trial.

References:

Interview with a Board member of Transparency International Japan.

Article 74 of the Anti-monopoly Act: The Federal Trade Commission (FTC) must refer crimes to the Public Prosecutor-General.

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

When irregularities are discovered, the Federal Trade Commission (FTC) is aggressive in investigating the business or government entity involved.

References:

Interview with board member of Transparency International Japan.

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

88

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Federal Trade Commission (FTC) acts on complaints quickly with some exceptions — some backlog is expected and inevitable. Complaints are usually acknowledged promptly and investigations into serious abuses move steadily towards resolution.

References:

Interview with board member of Transparency International Japan.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

Whistle-blowers are expected to be able to report abuses of power without fear of negative consequences. The Fair Trade Commission (FTC) adopts a leniency program of immunity from or reductions in the surcharge payment for whistle-blowers of bid rigging.

References:

Interview with board member of Transparency International Japan.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

In Japan, there is not only one agency dedicated to fighting corruption, but many agencies make it part of their work to fight corruption. For example, the National Police Agency, the Fair Trade Commission (FTC), National Tax Administration Agency and others. The FTC will be discussed here because this is set up only to enforce the so-called Anti-Monopoly Act to prevent

unreasonable restraint of trade and unfair business practices such as bid rigging. This agency is staffed by partisans and has some formal organizational or operational independence from the government in practice.

References:

Article 27 of the Anti-Monopoly Act.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

93
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

83

77a. In law, there is a general right of appeal.

YES | NO

References:

The Criminal Procedure Act, Articles. 372-470.

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It used to take years to resolve appeals in the past, but recently public opinion pressure to expedite the processes is mounting up.

References:

Casual references in news media.

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Usually, the appeal process is an expensive enterprise for citizens.

References:

The Criminal Procedure Act, Chapter 2, (Complaint) Articles 372-404.

The Criminal Procedure Act, Chapter 3 (Appeal) Articles 405-418.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

100

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Rule of law is a mandatory norm in the court of law.

This is rather commonly known in Japan, though precedent cases are also referred to.

References:

This is rather commonly known in Japan, though precedent cases are also referred to.

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. Are judicial decisions enforced by the state?

75

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Judicial decisions are not necessarily enforced by the state. There are many verdicts with suspended sentences. The Minister of Justice is authorized to use his discretionary power to suspend the execution of the verdict.

References:

Newspaper reports.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

100

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:

It is generally believed that the judiciary in Japan has been able to maintain independence because the status of a judge is guaranteed by the Constitution and other laws and with full and sufficient emoluments. Generally, judges are respected in the Japanese society.

References:

Article 76-3 of the Constitution of Japan: All judges shall be independent in the exercise of their conscience and shall be bound only by the Constitution and the laws."

Article 78 of the Constitution of Japan: "Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency."

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

References:

Article 79 of the Constitution of Japan: "... all the Supreme Court Judges excepting the Chief Judge shall be appointed by the Cabinet."

Article 79 2 of the Constitution of Japan: "The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten years, and in the same manner thereafter."

Article 79 3 of the Constitution of Japan: "In cases when the majority of the voters favors the dismissal of a judge, he shall be dismissed."

Article 79 6 of the Constitution of Japan: "All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office."

Article 80 of Constitution of Japan: "The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law. The judges of the inferior courts shall receive at regular stated intervals, adequate compensation which shall not be decreased during their terms of office."

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

There may be cases where there is no transparency and objectivity in distributing cases to national-level judges because the entry of personal elements involving ideological biases into the picture cannot be totally denied.

References:

The Court Act of 1947, Part 2 (Supreme Court), Part 3, Chapters 15-22 (High Court), Chapters 23-31 (District Courts), Chapter 3 (Family Courts), Chapter 4 (Summary Courts).

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

The Constitution of Japan, Article 80.

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

There have been no reports in the Japanese news media of judges being harmed.

References:

News media.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

No such cases of judges being killed have ever been reported.

References:

News media.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

There is no room for racial or ethnic bias in judicial decisions.

References:

This is a too common sense to us.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

However, some women are too weak or poor to engage in lengthy court proceedings.

References:

The Constitution of Japan of 1946, Articles 11 and 14.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Article 37-3 of Japanese Constitution.

Criminal Procedure Act, Articles 36, 76, 77, and 289.

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

Protection of human rights of a defendant is one thing, but ordinary citizen sometimes wonder why a criminal suspect should be so well protected at taxpayers' expense.

References:

Article 37-3 of Japanese Constitution.

Criminal Procedure Act, Articles 36, 76, 77, and 289.

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Though it is an expensive process, citizens earning the medium yearly income can afford to bring a legal suit.

References:

This is common sense to us. I have never heard of an opposite case.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

A small retail businessman can usually afford to bring a legal suit if it is not a lengthy case.

References:

The Constitution of Japan, Article 14.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

The Constitution of Japan, Article 14, and Article 32.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Professional criteria are the only and most important basis of appointments.

References:

The Police Act of 1954 (e.g. Articles 41,49,50,55 and 56).

The Court Act of 1947 (e.g. Articles 66-68 and 40-42).

The Public Prosecutor Act of 1974, Article 23.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

The Police Act of 1954, Article 37.

The Court Act of 1947, Article 83.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

A 1954 investigation into some influential politicians of the ruling party by the Tokyo District Public Prosecutor's office in connection with a ship-building scandal was suspended because of the intervention by the Minister of Justice who was only looking for his political party's interest.

References:

The Police Act of 1954.

The Court Act of 1947.

The Public Prosecutor Agency Act of 1947, Articles 23 and 25.

The Protection of the Status of Judge Act of 1947, Article 1.

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

88

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

In addition to complaints about police action, the citizen's ombudsmen also receives complaints about the municipal government. After surveying the complaints objectively, ombudsman advises the appropriate municipal organizations of those complaints that require attention.

References:

The Constitution of Japan of 1946, Articles 15, 36, 37, and 40.

The Citizen's Ombudsman Ordinance of Kawasaki City, Article 1,3,and 4.

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, there is sometimes an independent mechanism for citizen complaints about a law enforcement agency (e.g. The Citizen Ombudsman movement). In those cases, for example, a Public Prosecutor’s Decision Reexamination Board is set up for the re-examination of the decision taken by the public prosecutor.

References:

The Public Prosecutor’s Decision Re-examination Act.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

The National Police Agency, and Prefectural Police Headquarters are equipped with their own internal supervisory entities which investigate and prosecute corruption within the police organization.

The Public Prosecutor Office and supervise the behavior of public prosecutors.

There is a body called Kansatsu" within a police organization that is entitled to investigate and prosecute corruption.

References:

Articles 7, and 23.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

In theory it is possible for the agency/entity to independently initiate investigations, but in practice, it is rare. One exception, which took place in recent years, is the case against an ex-public prosecutor who informed against the public prosecutor office which had allegedly misappropriated public money (slush fund) for its own use. The public prosecutor’s office, in retaliation, indicted this ex-prosecutor for his dubious behavior during his own term in office.

Both police force and public prosecutor’s office have the power to investigate a criminal case. It seems that there is a certain sense of rivalry between the two over jurisdiction sometimes. Whether they will independently take the initiative depends on the case and the availability of investigators.

References:

In theory it is possible for the agency/entity to independently initiate investigations, but in practice, it is rare. One exception, which took place in recent years, is the case against an ex-public prosecutor who informed against the public prosecutor office which had allegedly misappropriated public money (slush fund) for its own use. The public prosecutor's office, in retaliation, indicted this ex-prosecutor for his dubious behavior during his own term in office.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

Under the rule of law, no law enforcement officials are exempted from criminal proceedings.

References:

The Constitution of Japan, Article 14.

The Criminal Code, Articles 197-1 through 197-5.

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

No one, regardless of profession, is immune from criminal proceedings.

References:

Occasional reports by news media about police involvement in corruption.

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
