

[Working Paper Series: Systems of Political Finance Across Asian Democracies]

Campaign Finance in Taiwan

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Historical Background

Often hailed as a successful model of economic development and democratization, Taiwan experienced tremendous success in economic development and democratization in the late twentieth century. The authoritarian ruling party announced political liberalization in 1986, which lifted martial law and allowed for the organization of political parties and the issuance of newspapers. In 1992, Taiwan held its first general election for members of parliament, which marked the beginning of democracy. In the year 2000, it passed the two party-turnover test of democratic consolidation suggested by Samuel Huntington.

Along with political openness, money politics unfolded (Chu 1992). When election expenses are huge and political parties or candidates have insufficient funds, politicians and parties can only rely on substantial donations from enterprises. In order to obtain preferential policies from the government, some companies donate substantially to political parties. In some cases, companies that have financial problems still donate to political parties and candidates to ask for their help to survive.

During the late 1990s, both parties strongly endorsed the enactment of the Political Donations Act. Many drafts were then proposed in the Legislative Yuan, but the legislators could not reach a consensus. After the DPP came to power, it implemented a series of reform policies, including strict bribery investigation, prosecuting elected leaders and civil representatives involved in corruption, and accelerating the speed of investigation. The Political Donations Act was finally promulgated during the Chen Shui-bian administration right before the presidential election of 2004, eighteen years after the beginning of the country's political liberalization.

Regulatory Framework

The Political Donations Act is the most important law regulating the political finance system in Taiwan. The basic legal framework was set up in accordance with the proposals submitted by the Executive Yuan (the executive) and then passed by Legislative Yuan (the parliament) in 2004, after which it was amended multiple times. The Ministry of Interior is responsible for drafting and amending the law. The Control Yuan (the ombudsman) is responsible for donation account registration and accounts approval. Individuals, political parties, civil organizations, and companies can make contributions to parties and individuals through designated accounts after being approved

by the Control Yuan (Control Yuan 2020). Political donations should be deposited into the designated account within 15 days of being accepted. The law regulates campaign contributions for all layers of elections. Due to space limits, this article focuses only on presidential and legislative elections. All of the laws described here are based on the Laws & Regulation database of the Republic of China.

The Political Donations Act also specifies the period during which contributions can be accepted. For presidential candidates, this period begins one year before the end of the current president's tenure and lasts until one day before the election. Political donations can be made to parliamentary candidates beginning from ten months before the end the legislator's tenure up until one day before the election. Compared to the US, where a politician can receive political donations at any time, the period allowed is relatively short in Taiwan.

The act also imposes a cap on the amount of money individuals, for-profit businesses, and civil associations can contribute to candidates, parties, and political associations. Individuals can donate up to NT \$300,000 and civil associations and for-profit businesses can donate up to NT \$2,000,000 and NT \$3,000,000 respectively to parties and political associations. In recent years, thirty Taiwan Dollars are roughly equal to one US Dollar. The law also sets upper limits on the total amount of donations individuals, associations, and companies can contribute to different political parties or political associations. This clause is to reduce the overall influence of wealthy donors. Individuals can donate up to NT \$600,000, and civil associations and for-profit businesses can donate up to NT \$6,000,000 and NT \$4,000,000 respectively.

For individual candidates, individuals can donate up to NT \$100,000 and civil associations and for-profit businesses can donate up to NT \$500,000 and NT \$1,000,000 respectively. The law also sets upper limits on the total amount of donations individuals, associations, and companies can contribute to different candidates. Individuals can donate up to NT \$300,000, and civil associations and for-profit businesses can donate up to NT \$1,000,000 and NT \$2,000,000 respectively. This clause is to reduce the overall influence of wealthy donors. Parties are also allowed to donate money to candidates. The upper limits of such donations are 25 million TWD for presidential candidates, 2 million TWD for legislative candidates, and 2 million TWD for governors of municipalities or counties.

Some enterprises are barred from making donations. These include (1) public enterprises or the civil enterprises in which the government holds no less than 20 percent of the capital; (2) manufacturers that have signed large government procurement contracts or investment contracts for important public construction and are currently performing the contract; (3) profit-seeking businesses in accumulative deficit that has not been made up in accordance with relevant provisions; (4) manufacturers that have signed large procurement contracts with companies operated by or invested in by political parties, and that are currently performing the contract; and (5) businesses operated by or invested in by political parties. The law also prohibits religious associations from making campaign donations. In addition, people who live in Taiwan but have not acquired citizenship (the right of suffrage) are also not allowed to make campaign contributions.

The law additionally prohibits foreign actors from making campaign donations. Since influence and threats from abroad (especially from the People's Republic of China) is immense and imminent, donations from abroad are banned by the Political Donations Act. These foreign forces include "citizens, juridical persons, associations, or other institutions in foreign countries, the People's Republic of China, Hong Kong, and Macau." In addition, juridical persons, associations, or other

institutions comprising people mainly from foreign countries, the People's Republic of China, Hong Kong, or Macau are barred from making political donations.

As an oversight mechanism, the law stipulates that the Control Yuan should receive the accounting reports of a political party or political associations within five months of each year's end and individual candidates should submit their reports within three months of election day. The Control Yuan will then publicize the reports on the internet within six months of the declaration deadline.

The Political Donations Act stipulates the punishment for infringements. Donors may be imprisoned for not more than three years and be fined a sum between NT \$200,000 and NT \$1,000,000 if they open a donation account without permission from the Control Yuan. For donations that surpass the specified upper limits, the donation recipient shall be fined a sum double the amount of the donation accepted. The donors who make illegal contributions shall be fined a sum less than double the amount of the donation they made. If someone uses their official power or employment relationship to arrange or hinder political donations, he or she may be fined a sum of not less than NT \$200,000 and not more than NT \$1,200,000. If a profit-seeking business, manufacturer, association, institution, juridical person or individual evades or refuses an audit, they shall be fined a sum of not less than NT \$60,000 and not more than NT \$1,200,000.

Political parties and candidates shall be fined a sum of no less than NT \$60,000 and not more than NT \$1,200,000 for violating the reporting procedure. Such behaviors include failing to deposit accepted political donations into the designated account, failing to issue receipts or vouchers for political donations accepted, failing to declare, follow the proper declaration procedure, or intentionally make a false declaration, failing to set up an account book of income and expenditures or compile or publish an accounting report, and so on. The law states that "no one may contribute donations in the name of others or contribute secret donations of more than NT \$10,000." To be able to track the donation, the law also stipulates that "donations in cash of more than NT \$100,000 shall be paid by check or bank transfer."

A candidate who receives political donations from foreign countries, Mainland China, Hong Kong, or Macau and does not hand in the money to the authorities within the designated time allowed to do so is subject to a maximum five-year sentence. For foreign donations, the Anti-Infiltration Act (反滲透法) passed by the Legislative Yuan in 2020 further tightens the regulations on campaign donations from China. The law stipulates that anyone who receives orders or money from China and then makes an election campaign contribution or donates money for a referendum campaign will be punished with up to five years in prison and fined up to ten million NTD.

To guide the public, the Political Donation Act is available online in both Chinese and in English. The Control Yuan has posted clear instructions and a Q&A on their website. The law clearly specifies that those who hold a designated campaign account are required to submit accounting reports to the Control Yuan. They should also comply with any investigation requests issued by the Control Yuan. Following the government's open data commitment, the Control Yuan has published the data including the names of the owners of the designated accounts, the names of the donors to these accounts, and the amount they contributed on its website (<https://ardata.cy.gov.tw/home>). The public can search campaign contributions by recipient, party, individual, company, or specific election. While the Control Yuan does not formally publish an overall compliance review, it regularly publishes the "Clean Politics Special Issue" (廉政專刊) which features cases of rule violations and the fines and penalties that were issued (Control Yuan, various years).

The law imposes a cap on the total amount of money that individual donors can contribute, but it does not set an upper limit on the total amount that candidates, parties, and political groups can receive. The law also does not regulate what specific items political donations can be spent on as long as the money received is spent on campaign activities or other politics-related activities. Moreover, the law does not set a limit on the total amount candidates or parties can spend in elections. Any unspent contributions can be used to finance post-election expenses, donated to a candidate's party, donated to "educational, cultural, public interest, charity institutions or associations," or be kept for a future election campaign. The money, however, should be spent within four years of having been declared. Once the deadline passes, the candidate or party should deposit any unused money in the national treasury.

Implementation and Deficiencies

Failure to Correctly File Donations

According to a report by Commonwealth Magazine (天下雜誌) in 2021, although the law prohibits businesses from donating over 1 million NTD to the same person, corporations have been skirting the rules by contributing under the varied names of their many subsidiaries. This workaround allows a single corporation to make contributions which surpass the allowable limit. This happens when a corporation manages to bet on both political parties, which is roughly equivalent to purchasing insurance to make sure that no matter which party wins, it will not enact policies that disfavor the company.

The SOGO case¹ reveals that many companies and businessmen do not donate money through government-designated accounts. They use other financial maneuvers to transfer money to politicians under the table. For some people, cash delivery is still the preferred mode of transferring money, which leaves the authorities with little evidence to track.

Some minor violations of campaign donation law are frequent, as the Control Yuan reveals. A review of past years of the Control Yuan's Clean Politics Special Issue finds that typical cases involve failure to file campaign donations on time, failure to issue receipts, companies with accumulated deficits making donations, and individuals making contributions that exceed the upper limit. Still, the total number of minor violations has been decreasing over the years.

In Taiwan, politicians and political parties only face fine and are required to return the illegally obtained money if they commit the behaviors of failing to deposit the political donations accepted into the designated account in designated time, do not make declaration, make false declaration. In some countries like Japan, politicians who commit the above behaviors will be asked to resign.

Quid Pro Quo

According to the government reports, a large share of the violations of the Campaign Donation Act concerned the recipients. There are few cases of convictions for minor violations such as incorrect filing and failure to file on time. The more complicated cases involve quid pro quos. The Political Donations Act stipulates that political donors may not ask the recipient, candidate, or party to deliver

¹ In order to regain control rights of the SOGO department store chain, businessman Lee Heng-lung bribed several members of the Legislative Yuan to push for an amendment to the Company Act which would have favored him in his pursuit.

undue benefits. Otherwise, they shall be fined up to a sum double the amount of the donation accepted. This clause essentially suggests that the law already regulates quid pro quo behavior. It is natural for donors to ask politicians for favors. The issue becomes in what situation does doing so violate the law?

Because of the complexity of quid pro quo relationships, it is crucial to closely examine the actual implementation of law enforcement agencies. Nevertheless, proving quid pro quo is a hard task for judges. Judges need to prove the causal relationship between the receipt of money and taking measures that favor the donors. MPs are tasked with asking the executive branch to answer concerns about their decisions, pass laws, and pass a budget. They do not directly enforce the law by issuing licenses, distributing money, or inking construction contracts. In practice, it is difficult to prove quid pro quo from the behavior of MPs. It is relatively easier to prove whether elected officials and legislators in local governments are abusing their power.

Judges in Taiwan have established a precedent that clarifies a few issues. If a political donation involves donating money to a candidate long before the election period begins, giving a large sum of money through a middleman, or clearly asking for a policy favor from a politician, this type of behavior can be considered bribery rather than a political campaign donation.

Because it is difficult to prove quid pro quo, several cases have involved donations from occupational associations to a group of legislators. The judicial process takes years, and nearly all those accused were ultimately acquitted. Two notable cases involved donations from the Chinese Medicine Association and Dentist Association to several parliament members. Since the judges did not have enough evidence to prove a quid pro quo, the legal battle has dragged on for 20 years without a final verdict. To prove the existence of quid pro quo, the prosecutors sometimes eavesdrop on bribery suspects. In the Taipei Twin Star BOT case, a big development project near the Taipei main station, the prosecutors wiretapped Su-Ru Lai, a Taipei City Councilor and a rising star within KMT, and found evidence that she had received money and promised to help the company to get construction permits in exchange.² In the SOGO bribery case, prosecutors raided the offices of several legislators and seized boxes of communication details. Several legislators have been prosecuted for receiving bribes from Lee Heng-lung.

Taiwan's weak lobbying law further complicates the issue of bribery and legal donations. Since its promulgation in 2007, the Lobbying Act has not been amended. Individuals, associations, and companies are allowed to lobby. Those government officials and organizations that can be lobbied include (1) the president and vice president; (2) legislators of representative bodies at various levels, and; (3) the mayor and deputy mayor of special municipalities, counties/cities and townships/cities. The law stipulates that "A lobbied person shall, after receiving lobbying materials, inform the agency's responsible unit within seven days of the following items: (1) the lobbyists; (2) the lobbying time, place and method, and; (3) the content of the lobbying."

A great majority of lobbyists choose not to register, instead hiding their lobbying behaviors. They prefer to contact legislators under the table and sometimes hand over a suitcase of cash behind closed doors. The SOGO case in 2020 revealed that a businessman secretly visited lawmakers without legally registering with authorities. Although the Lobbying Act requires lobbyists to register with the

² Ex-KMT Taipei City Councilor Su-Ru Lai received 1 million NTD in exchange for supporting Taipei Gateway International Development to win the bid for a skyscraper building project. Although Lai claimed that the money was legally donated, she did not deposit it into the designated account and the act of quid pro quo made the donations illegal.

lobbied government agency, in practice very few lobbyists do so. Until 2020, only 427 registered lobbying cases since the act was passed in 2007, according the government record.

The law also states that lobbyists shall not offer, promise, or give a bribe or other improper benefit to a lobbied party. With these clauses in the Lobbying Act and the prohibition of donations with “expectation of undue benefits” in the Political Donations Act, lobbyists who seek special favors from the government often find it difficult to operate. Therefore, lobbyists tend to contact legislators behind closed doors. Legislators also do not want to leave records of endorsing or making deals with interest groups. In fact, since the promulgation of the Lobbying Act, the government has not issued any fines against those who violate the law. ■

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This series of reports was compiled as a part of Asia Democracy Research Network's joint research project on System of Political Finance Across Asian Democracies. The research for these reports was conducted entirely by EAI and its partner think tanks in Asia, including Pakistan Institute for Legislative Development and Transparency, Indonesian Institute of Sciences, Academia Sinica Asian Barometer, Institute for Democracy and Economic Affairs.

This program was funded in part by the National Endowment for Democracy (NED).

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979-11-6617-132-1 95340

Date of Issue: 28 May 2021

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