

REGULATION OF FOREIGN  
INVOLVEMENT IN  
ELECTIONS





# Regulation of Foreign Involvement in Elections

Australia • Brazil • Canada • France • Germany  
Great Britain • India • Israel • Japan  
Singapore • South Africa  
Sweden • Turkey

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# Comparative Summary

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This report by the foreign law research staff of the Law Library of Congress's Global Legal Research Directorate includes surveys of thirteen major democratic foreign jurisdictions on laws and policies addressing foreign involvement in elections.

Reports of foreign interference in recent elections in the United States and elsewhere have prompted responses in several countries. For example, Australia enacted a new law in 2018 imposing limits on foreign donations to parties and candidates, and also prohibited other political actors from using foreign donations to fund political expenditures. Australia also adopted a Foreign Influence Transparency Scheme, which requires persons undertaking political activities for foreign principals to meet registration and disclosure requirements. Australia also legislated new criminal offenses involving foreign interference, including the offense of "intentional foreign interference," which provides for imprisonment for up to 20 years for covert or deceptive conduct on behalf of a foreign principal intended to influence a political or governmental process.

Canada also enacted a new law in 2018. The Elections Modernization Act provides that only Canadian citizens or permanent residents can contribute to parties or candidates, and that third parties may not use funds for a partisan purpose during a pre-election period if the source of the funds is a foreign entity. The new law creates offenses prohibiting foreign actors from unduly influencing an election and Canadians from colluding with foreign actors for this purpose.

In France, effective January 1, 2018, only French citizens or residents may make contributions to political parties or to an electoral campaign.

South Africa enacted a new law on political party funding in 2019, which generally bars parties from accepting foreign donations, although there is an exception for foreign donations for training of party members and policy development. Permissible donations above a specified level are subject to disclosure requirements.

Most of the other countries surveyed in this report similarly have laws prohibiting foreign donations. Donations typically are defined broadly to include all forms of support having monetary value, including provision of services.

Thus, in Japan, political contributions from foreign persons and entities are prohibited. Singapore prohibits political associations and candidates from accepting donations from foreigners, and prohibits foreigners from conducting election activities and publishing election advertising.

In Germany, political parties and individual members of the Bundestag may not accept donations above a threshold amount from sources outside Germany, with certain permissible exceptions. In Great Britain, donations above a threshold amount are allowed only from "permissible donors," which only include United Kingdom persons and entities. Third-party campaigners that spend above a specified amount are subject to spending limits and reporting requirements.

In Israel, political parties and blocs are prohibited from receiving foreign contributions. Foreign contributions to individual candidates are not prohibited, but donations to candidates from any source are capped. In addition, Israel requires “foreign political entities,” which include foreign governments and nonprofit organizations financed or controlled by foreigners, to disclose their funding and to display on advertisements and publications that they are so funded.

In India, parties and candidates are prohibited from accepting foreign contributions (although there has been legislation and litigation over what constitutes a foreign corporation for this purpose).

Brazil’s Constitution prohibits political parties from receiving financial assistance from foreign entities or governments. A law provides that, if a political party is determined to have received foreign financial assistance, its status as a registered party will be canceled.

Turkey prohibits foreign donations of any kind to political parties, although it appears there is a gap in the law concerning the financing and expenditures of individual candidates in municipal elections and national elections below the presidential level.

Unlike the other surveyed countries, Sweden focuses on mandating transparency in political party financing. Sweden does not make foreign donations illegal, except with respect to donations offered by a foreigner on behalf of a foreign government where the recipient intends to disseminate propaganda in Sweden. Sweden prohibits anonymous donations above a small threshold amount.

The surveys for two of the countries note that educational efforts have been undertaken to thwart foreign interference. In France, government agencies responsible for election integrity and cybersecurity undertook efforts to prevent foreign interference with the 2017 election, including working with the candidates’ campaigns on cybersecurity, alerting the media regarding false information, and immediately launching enforcement actions in response to the release of leaked candidate emails. Similarly, in Sweden, a government agency was tasked with increasing awareness among Swedish residents of the threats associated with misinformation and influence campaigns, and prepared a manual for identifying, understanding, and countering information influence activities by foreign powers seeking to undermine democratic processes.

# Australia

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**SUMMARY** Australia has recently made amendments to its campaign finance legislation in order to place restrictions on campaign donations from foreign donors. The amendments also introduced a new category of political campaigners, being nonparty entities that incur a significant amount of campaign expenditures, which are subject to foreign donation obligations. Third parties, which engage in lower levels of campaigning, are also subject to certain restrictions with respect to such donations. Certain activities of foreign entities, such as providing services free of charge, constitute a gift for the purposes of the legislation. In addition, foreign persons and entities may be prosecuted for breaching the restrictions, including with respect to the receipt of foreign donations for campaign purposes.

Separate from the campaign finance law, the Foreign Influence Transparency Scheme also recently came into effect, requiring persons undertaking certain activities on behalf of a foreign principal to meet registration and disclosure obligations. Such activities include political and parliamentary lobbying, communications activity, and disbursement activity for the purposes of political or government influence.

In addition, amendments to national security legislation passed in 2018 introduced new offenses related to foreign interference in Australia's political or government processes.

## I. Introduction

Australia's federal campaign finance law, contained in Part XX of the Commonwealth Electoral Act 1918 (Cth),<sup>1</sup> previously imposed no limits on either the private contributions received or the amounts spent by political parties and candidates during federal election campaigns. The rules primarily focus on disclosure requirements applicable to the financial returns that must be submitted to the Australian Electoral Commission (AEC) by relevant political actors.<sup>2</sup> However, legislation passed in November 2018, the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018 (Cth), introduced limits on foreign donations to parties and candidates and also prohibited other regulated political actors from using donations from foreign sources to fund political expenditures.<sup>3</sup>

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<sup>1</sup> Commonwealth Electoral Act 1918 (Cth) pt XX, <https://www.legislation.gov.au/Details/C2019C00103>, archived at <https://perma.cc/7AXH-H69E>.

<sup>2</sup> See generally *Financial Disclosure*, AUSTRALIAN ELECTORAL COMMISSION (AEC), [https://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/index.htm](https://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/index.htm) (last updated June 3, 2019), archived at <https://perma.cc/W47N-BTGE>.

<sup>3</sup> Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018 (Cth), <https://www.legislation.gov.au/Details/C2018A00147>, archived at <https://perma.cc/928M-BYHQ>. See also *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2018*, PARLIAMENT OF AUSTRALIA,

Other features of the current campaign finance system for federal elections in Australia include partial public or direct funding for political parties and candidates, in the form of reimbursement for campaign expenditures, calculated based on the total number of “first preference” votes received and on a set funding rate per vote;<sup>4</sup> the regulation of nonparty entities that participate in election campaigns, including charities;<sup>5</sup> requirements for donors to disclose information about donations that exceed a certain threshold;<sup>6</sup> and a “Transparency Register” containing various details about “political parties, candidates, political campaigners, associated entities, third parties and donors registered with or recognised by the AEC.”<sup>7</sup>

The legislative changes made in 2018 with respect to foreign donations and transparency were in response to concerns about foreign influence in politics and government in Australia. They followed a report by the Joint Standing Committee on Electoral Matters, in March 2017, that recommended banning foreign donations to political actors.<sup>8</sup>

Australia has also instituted the Foreign Influence Transparency Scheme (FITS), following the passage of the relevant legislation in July 2018.<sup>9</sup> Under this legislation, persons undertaking particular activities on behalf of a foreign principal are required to register and disclose certain information, with specific disclosure requirements applying during elections.<sup>10</sup> In addition,

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[https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=s1117](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1117) (last visited June 4, 2019), archived at <https://perma.cc/B6XM-AGHQ>; *Funding, Disclosure and Political Parties*, AEC, [https://www.aec.gov.au/Parties\\_and\\_Representatives/index.htm](https://www.aec.gov.au/Parties_and_Representatives/index.htm) (last updated May 31, 2019), archived at <https://perma.cc/LD4H-6Y2Z>.

<sup>4</sup> *Election Funding*, AEC, [https://www.aec.gov.au/Parties\\_and\\_Representatives/public\\_funding/index.htm](https://www.aec.gov.au/Parties_and_Representatives/public_funding/index.htm) (last updated May 13, 2019), archived at <https://perma.cc/C8PE-URMD>; Commonwealth Electoral Act 1918 (Cth) pt XX div 3.

<sup>5</sup> See *Charities Electoral Expenditure and Disclosure*, AEC, [https://www.aec.gov.au/Parties\\_and\\_Representatives/charities.htm](https://www.aec.gov.au/Parties_and_Representatives/charities.htm) (last updated Jan. 30, 2019), archived at <https://perma.cc/3NAZ-68D8>.

<sup>6</sup> See *Donors*, AEC, [https://aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/guides/donors/index.htm](https://aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/donors/index.htm) (last updated June 3, 2019), archived at <https://perma.cc/WVG3-QMXD>.

<sup>7</sup> *Transparency Register*, AEC, [https://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/transparency-register/](https://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/transparency-register/) (last updated May 31, 2019), archived at <https://perma.cc/32FC-CBUZ>; Commonwealth Electoral Act 1918 (Cth) pt XX div 1A subdiv C.

<sup>8</sup> JOINT STANDING COMMITTEE ON ELECTORAL MATTERS, SECOND INTERIM REPORT ON THE INQUIRY INTO THE CONDUCT OF THE 2016 FEDERAL ELECTION: FOREIGN DONATIONS ix, 39–40 (Mar. 2017), [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024053/toc\\_pdf/Secondinterimreportontheinquiryintotheconductofthe2016federalectionForeignDonations.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024053/toc_pdf/Secondinterimreportontheinquiryintotheconductofthe2016federalectionForeignDonations.pdf;fileType=application%2Fpdf), archived at <https://perma.cc/3WUK-HZ2U>.

<sup>9</sup> Foreign Influence Transparency Scheme Act 2018 (Cth), <https://www.legislation.gov.au/Details/C2019C00133>, archived at <https://perma.cc/VFQ6-AMZD>.

<sup>10</sup> See Kelly Buchanan, *Australia: Bills Containing New Espionage, Foreign Interference Offenses, and Establishing Foreign Agent Registry Enacted*, GLOBAL LEGAL MONITOR (Aug. 21, 2018), <https://www.loc.gov/law/foreign-news/article/australia-bills-containing-new-espionage-foreign-interference-offenses-and-establishing-foreign-agent-registry-enacted/>; *Foreign Influence Transparency Scheme*, ATTORNEY-GENERAL’S DEPARTMENT, <https://www.ag.gov.au/Integrity/foreign-influence-transparency-scheme/Pages/default.aspx> (last visited June 4, 2019), archived at <https://perma.cc/44NS-YHKA>.

reforms to the country's national security legislation, also passed in July 2018, included the introduction of new foreign interference offenses, among various other changes.<sup>11</sup>

This report focuses on Australia's federal legislation restricting the political activities of foreign actors. We note, however, that the campaign finance legislation in three Australian states (New South Wales, Victoria, and Queensland) also contain restrictions on foreign donations, as well as regulating nonparty political actors.<sup>12</sup>

## II. Regulated Entities

In addition to political entities (parties, candidates, and Senate groups), the Commonwealth Electoral Act 1918 (Cth), as amended by the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018 (Cth), imposes campaign finance and transparency rules on the following entities:

### A. Associated Entities

An entity must register with the AEC as an associated entity if any of the following apply:

- (a) the entity is controlled by one or more registered political parties;
- (b) the entity operates wholly, or to a significant extent, for the benefit of one or more registered political parties;
- (c) the entity is a financial member of a registered political party;
- (d) another person is a financial member of a registered political party on behalf of the entity;
- (e) the entity has voting rights in a registered political party;
- (f) another person has voting rights in a registered political party on behalf of the entity.<sup>13</sup>

An entity that is required to be registered for a financial year must not incur any electoral expenditure in the financial year unless it is registered.<sup>14</sup>

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<sup>11</sup> National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018 (Cth), <https://www.legislation.gov.au/Details/C2018C00506>, archived at <https://perma.cc/XCN3-4HHP>; Buchanan, *supra* note 10.

<sup>12</sup> See Damon Muller, *Election Funding and Disclosure in Australian States and Territories: A Quick Guide*, AUSTRALIAN PARLIAMENTARY LIBRARY (updated Nov. 28, 2018), [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1819/Quick\\_Guides/ElectionFundingStates](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1819/Quick_Guides/ElectionFundingStates), archived at <https://perma.cc/9EMG-SAUK>.

<sup>13</sup> Commonwealth Electoral Act 1918 (Cth) s 287H(1). See also *Associated Entities*, AEC, [https://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/guides/associated-entities/index.htm](https://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/associated-entities/index.htm) (last updated May 31, 2019), archived at <https://perma.cc/A2EU-9AL4>.

<sup>14</sup> Commonwealth Electoral Act 1918 (Cth) s 287H(3). See also *Who Needs to Register?*, AEC, [https://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/who-needs-to-register.htm](https://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/who-needs-to-register.htm) (last updated May 17, 2019), archived at <https://perma.cc/5JZT-XQ8N>.

## B. Political Campaigners

A person or entity, other than a party, candidate, or member of Parliament, is required to register with the AEC as a political campaigner in a financial year if

- (a) the amount of electoral expenditure incurred by or with the authority of the person or entity during that or any one of the previous 3 financial years is \$500,000 or more; or
- (b) the amount of electoral expenditure incurred by or with the authority of the person or entity:
  - (i) during that financial year is \$100,000 or more; and
  - (ii) during the previous financial year was at least two-thirds of the revenue of the person or entity for that year.<sup>15</sup>

This new category of entity is “required to provide annual financial disclosure returns to the AEC in the same way that political parties currently do.”<sup>16</sup>

## C. Third Parties

A person or entity is considered to be a “third party” if

- (a) the amount of electoral expenditure incurred by or with the authority of the person or entity during the financial year is more than the disclosure threshold; and
- (b) the person or entity is not required to be, and is not, registered as a political campaigner under section 287F for the year.<sup>17</sup>

The current disclosure threshold, applicable until June 30, 2019, is AU\$13,800 (about US\$9,620). The threshold is indexed effective from July 1 each year based on increases in the consumer price index.<sup>18</sup> Third parties are not required to register with the AEC, but are subject to certain disclosure requirements and to restrictions on foreign donations, as outlined below.<sup>19</sup>

## D. Charities

The AEC provides specific guidance on campaign expenditure and disclosure for charities that are registered entities under the Australian Charities and Not-for-profits Commission Act 2012 (Cth).<sup>20</sup> Such entities that incur expenditure at or above the disclosure threshold to influence voters in a federal election are subject to the requirements of the Commonwealth Electoral Act

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<sup>15</sup> Commonwealth Electoral Act 1918 (Cth) s 287F(1).

<sup>16</sup> *Funding, Disclosure and Political Parties*, *supra* note 3.

<sup>17</sup> Commonwealth Electoral Act 1918 (Cth) s 287. See also *Third Party Electoral Expenditure and Disclosure*, AEC, [https://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/guides/third-parties/index.htm](https://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/guides/third-parties/index.htm) (last updated June 3, 2019), archived at <https://perma.cc/JW4Z-CZ5Y>.

<sup>18</sup> *Disclosure Threshold*, AEC, [https://www.aec.gov.au/Parties\\_and\\_Representatives/public\\_funding/threshold.htm](https://www.aec.gov.au/Parties_and_Representatives/public_funding/threshold.htm) (last updated May 28, 2019), archived at <https://perma.cc/CZ4D-HBPQ>.

<sup>19</sup> *Third Party Electoral Expenditure and Disclosure*, *supra* note 17.

<sup>20</sup> Australian Charities and Not-for-profits Commission Act 2012 (Cth), <https://www.legislation.gov.au/Details/C2016C00306>, archived at <https://perma.cc/X3XZ-BKGS>.

1918 (Cth), including complying with foreign donation restrictions if they qualify as either a third party or a political campaigner.<sup>21</sup>

### E. Definitions of “Electoral Expenditure” and “Electoral Matter”

The amended Act contains two key definitions that are relevant to how different entities are regulated and what their obligations are with respect to foreign donations:

- **Electoral expenditure** is expenditure incurred for the dominant purpose of creating or communicating electoral matter.
- **Electoral matter** will be defined to be matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in a federal election.<sup>22</sup>

The AEC explains that

[w]here expenditure is incurred to create or communicate electoral matter, in addition to other reasons, the dominant purpose of the expenditure must be considered.

In general, any expenditure incurred by a political entity, a member of the House of Representatives or a Senator in relation to an election will be electoral expenditure.

Communications that have the dominant purpose of educating their audience, raising awareness of, or encouraging debate on a public policy issue are not considered electoral matter.<sup>23</sup>

### III. Limits on Foreign Donations

The 2018 legislation inserted a new Division 3A into Part XX of the Commonwealth Electoral Act 1918 (Cth).<sup>24</sup> The “simplified outline” of the Division reads as follows:

This Division regulates gifts that are made to registered political parties, candidates, groups, political campaigners and third parties.

Gifts of over [AU]\$1,000 [about US\$700] to political entities (broadly, registered political parties, candidates and Senate groups) or political campaigners must not be made by foreign donors. A foreign donor is a person who does not have a connection to Australia, such as a person who is not an Australian citizen or an entity that does not have a significant business presence in Australia.

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<sup>21</sup> *Charities Electoral Expenditure and Disclosure*, *supra* note 5.

<sup>22</sup> *Funding, Disclosure and Political Parties*, *supra* note 3. See also Commonwealth Electoral Act 1918 (Cth) ss 4AA & 287AB.

<sup>23</sup> *Funding, Disclosure and Political Parties*, *supra* note 3. See also AEC, ELECTORAL MATTER AND ELECTORAL EXPENDITURE: UNDERSTANDING THESE TERMS (Jan. 2019), [https://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/files/electoral-matter-and-electoral-expenditure-fact-sheet.pdf](https://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/files/electoral-matter-and-electoral-expenditure-fact-sheet.pdf), archived at <https://perma.cc/QJK2-ZQVF>.

<sup>24</sup> Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018 (Cth) s 33.

Broadly, gifts must not be made to a political entity, political campaigner or third party by a foreign donor for the purpose of incurring electoral expenditure or creating or communicating electoral matter.

Anti-avoidance provisions apply to strengthen these requirements.

A person or entity may commit an offence or be liable for a civil penalty if the person or entity contravenes the requirements. There are some exceptions, such as when a gift is made in a personal capacity.<sup>25</sup>

The objectives of the Division are explicitly stated in the Act:

- (1) The object of the Division is to secure and promote the actual and perceived integrity of the Australian electoral process by reducing the risk of foreign persons and entities exerting (or being perceived to exert) undue or improper influence in the outcomes of elections.
- (2) This Division aims to achieve this object by restricting the receipt and use of political donations made by foreign persons or entities that do not have a legitimate connection to Australia.<sup>26</sup>

The Act contains the following definition of a “foreign donor”:

Each of the following is a foreign donor:

- (a) a body politic of a foreign country;
- (b) a body politic of a part of a foreign country;
- (c) a part of a body politic mentioned in paragraph (a) or (b);
- (d) a foreign public enterprise;
- (e) an entity (whether or not incorporated) that does not meet any of the following conditions:
  - (i) the entity is incorporated in Australia;
  - (ii) the entity’s head office is in Australia;
  - (iii) the entity’s principal place of activity is, or is in, Australia;
- (f) an individual who is none of the following:
  - (i) an elector;
  - (ii) an Australian citizen;
  - (iii) an Australian resident;
  - (iv) a New Zealand citizen who holds a Subclass 444 (Special Category) visa under the Migration Act 1958 (or if that Subclass ceases to exist, the kind of visa that replaces that Subclass).<sup>27</sup>

For the purposes of these provisions, “gift” is defined as “any disposition of property made by a person to another person, being a disposition made without consideration in money or money’s

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<sup>25</sup> Commonwealth Electoral Act 1918 (Cth) s 302A.

<sup>26</sup> *Id.* s 302C.

<sup>27</sup> *Id.* s 287AA.

worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration,” subject to specified exceptions.<sup>28</sup>

A fact sheet on foreign donations produced by the AEC explains the legislative restrictions on the receipt of such donations by political entities, political campaigners, and third parties. With respect to political entities and political campaigners, gifts in the amount of AU\$100 to \$999.99 (about US\$70 to \$700) cannot be accepted where

- the person or entity knows that the foreign donor intends the gift to be used to incur electoral expenditure, or the dominant purpose of creating or communicating electoral matter; or
- the gift is accepted with the intent of using it to incur electoral expenditure, or for the dominant purpose of creating or communicating electoral matter[.]<sup>29</sup>

As indicated above, such entities are prohibited from receiving donations of more than AU\$1,000 from a foreign donor.<sup>30</sup>

A third party must not receive a donation of \$100 or more if it knows the donor is a foreign donor and either knows that the foreign donor intends the gift be used to incur electoral expenditure (or the dominant purpose of creating or communicating electoral matter), or accepts the gift with the intent to incur such expenditure or use it for such a purpose. In addition, a third party is restricted from receiving donations equal to or more than the disclosure threshold (i.e., AU\$13,800) from a foreign donor if the donation is used for incurring electoral expenditure (or the dominant purpose of creating or communicating electoral matter).<sup>31</sup>

In terms of associated entities, the fact sheet clarifies that

[t]here are generally no restrictions on associated entities receiving gifts from foreign donors, however anti-avoidance provisions in the Electoral Act prevent the channelling of foreign gifts to a political party, candidate, Senate group political campaigner or third party via an associated entity.<sup>32</sup>

The Act enables entities to have a defense against any legal action related to the receipt of foreign donations if they have undertaken certain specified actions related to establishing that the donor is not a foreign donor.<sup>33</sup> The Act “establishes civil and criminal penalties for receiving prohibited foreign donations and not subsequently taking acceptable action in relation to the donation.”<sup>34</sup> Acceptable action means “either returning the gift, or an amount equivalent to the amount or

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<sup>28</sup> *Id.* s 287.

<sup>29</sup> AEC, FOREIGN DONATIONS 3 (Jan. 1, 2019), [https://aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/files/foreign-donations-fact-sheet-2019.pdf](https://aec.gov.au/Parties_and_Representatives/financial_disclosure/files/foreign-donations-fact-sheet-2019.pdf), archived at <https://perma.cc/8EMW-P3JM>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 4.

<sup>33</sup> *Id.* at 4–6.

<sup>34</sup> *Id.* at 7.

value of the gift, to the donor or transferring the gift or an amount equivalent to the amount or value of the gift, to the Commonwealth.”<sup>35</sup>

#### **IV. Restrictions on Foreign Participants**

There are no provisions in Australia that prohibit political entities or other regulated entities from employing or working with foreign individuals or entities. However, certain activities could give rise to foreign donation obligations under the amended Commonwealth Electoral Act 1918 (Cth). If, for example, a foreign advertising company provides services free of charge to a campaign group in relation to its communication of electoral matters, the value of the services would constitute a gift that is subject to the foreign donation restrictions under the Act.<sup>36</sup> A further example, contained in the explanatory memorandum to the 2018 bill, is set out below:

##### **Gifts from foreign donors earmarked for electoral expenditure**

###### **Example 1**

Dana is the agent for Kym, a candidate in the upcoming election. The Canadian Woodchipper’s Association donates \$200,000 to Kym’s campaign to help Kym publicise her policy of removing tariffs on timber imports. The Association also offers to send one of their senior communications officers to Australia to work for Kym during her campaign. Kym accepts the Association’s offer. The commercial value of the communication officer’s work is a gift from the Association to Kym.

###### **Example 1a**

Six weeks after the gifts are made, Dana contravenes subsection 302F(1) as:

- the gift value is greater than \$100, and she knows:
- the Association is a foreign donor:
- the Association intends the money to be used for Kym to incur electoral expenditure;
- the Association intends the professional services of the communications officer to be used to create and communicate electoral matter.

###### **Example 1b**

Two weeks after the gifts are made, Dana realises the gifts contravene section 302F. She returns the money to the Association, and arranges to pay the Association the commercial value of the communication officer’s work.

Dana has taken acceptable action, and so she does not contravene section 302F.<sup>37</sup>

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

<sup>36</sup> See House of Representatives, Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2018: Revised Explanatory Memorandum 18 (2018), [https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1117\\_ems\\_f09ebf30-3ea6-4959-b890-d7f1359a2a11/upload\\_pdf/690873.pdf;fileType=application/pdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1117_ems_f09ebf30-3ea6-4959-b890-d7f1359a2a11/upload_pdf/690873.pdf;fileType=application/pdf), archived at <https://perma.cc/7QNM-YKKT>.

<sup>37</sup> *Id.* at 59–60.

The provisions regarding political campaigners and third parties do not explicitly refer to such entities being solely Australia-based individuals or groups. In fact, several offenses related to the receipt, and giving, of foreign donations provide for extended geographical jurisdiction (i.e., extraterritorial jurisdiction), meaning that foreign persons and entities who either donate or receive money in breach of the relevant provisions may be subject to prosecution.<sup>38</sup> The relevant provisions refer to “extended geographical jurisdiction – category D,” as contained in section 15.4 of the Criminal Code Act 1995 (Cth). This section provides as follows:

If a law of the Commonwealth provides that this section applies to a particular offence, the offence applies:

- (a) whether or not the conduct constituting the alleged offence occurs in Australia; and
- (b) whether or not a result of the conduct constituting the alleged offence occurs in Australia.<sup>39</sup>

The Act also provides for the more limited extraterritorial application (extended geographical jurisdiction – category B) of an offense prohibiting the publication or distribution, during an election period, of “any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote.”<sup>40</sup>

In addition to the foreign donation provisions in the Commonwealth Electoral Act 1918 (Cth), the FITS registration system and the new foreign interference offenses that came into effect in 2018, discussed below, are intended to ensure transparency for the public with respect to the involvement of foreign entities in Australian elections, politics, and government.

## V. Foreign Influence Transparency Scheme

The Australian Attorney-General’s Department provides the following summary of the FITS:

The Foreign Influence Transparency Scheme commenced on 10 December 2018. Its purpose is to provide the public and government decision-makers with visibility of the nature, level and extent of foreign influence on Australia’s government and political process.

The scheme introduces registration obligations for persons and entities who have arrangements with, and undertake certain activities on behalf of, foreign principals. Whether a person or entity is required to register will depend on who the foreign principal is, the nature of the activities undertaken, the purpose for which the activities are undertaken, and in some cases, whether the person has held a senior public position in Australia.<sup>41</sup>

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<sup>38</sup> Commonwealth Electoral Act 1918 (Cth) ss 302F(4), 302G(3), 302H(4).

<sup>39</sup> Criminal Code Act 1995 (Cth) s 15.4, <https://www.legislation.gov.au/Details/C2019C00152>, archived at <https://perma.cc/65WG-Q5HN>.

<sup>40</sup> Commonwealth Electoral Act 1918 (Cth) s 329.

<sup>41</sup> *Foreign Influence Transparency Scheme*, ATTORNEY-GENERAL’S DEPARTMENT, <https://www.ag.gov.au/transparency> (last visited June 5, 2019), archived at <https://perma.cc/R9UC-7P53>.

The Foreign Influence Transparency Scheme Act 2018 (Cth) was recently amended in early April 2019 in order to clarify the scope of a number of key provisions and align some of the reporting obligations under the Act.<sup>42</sup>

Under the Act, the following are types of registrable activity: parliamentary lobbying, general political lobbying, communications activity, and disbursement activity. Lobbying “is deemed to be for the purpose of political or governmental influence if it is undertaken for the primary or substantial purpose of influencing” certain processes, decisions, or outcomes, including “a process relating to a federal election or referendum.”<sup>43</sup>

A person undertakes “communications activity” if he or she undertakes one of two types of activity:

The first is communicating or distributing information or material to the public or a section of the public. The second is producing information or material for the purpose of the information or material being communicated or distributed to the public or a section of the public.<sup>44</sup>

Any person who undertakes such an activity “must ensure they make a disclosure about the fact that the information or material is produced, communicated or disseminated on behalf of a foreign principal and is a registrable activity under the *Foreign Influence Transparency Scheme Act 2018*.”<sup>45</sup> The disclosure requirements for different types of communications activities are set out in the Foreign Influence Transparency Scheme (Disclosure in Communications Activity) Rules 2018 (Cth).<sup>46</sup>

With respect to “disbursement activity,” which “includes the distribution of money or things of value on behalf of a foreign principal,” such activity must be registered if the person, or recipient of the disbursement, is not otherwise required to disclose the activity under Part XX of the

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<sup>42</sup> *Id.*; Foreign Influence Transparency Scheme Amendment Act 2019 (Cth), <https://www.legislation.gov.au/Details/C2019A00032>, archived at <https://perma.cc/H7E4-9NT4>.

<sup>43</sup> Attorney-General’s Department, Foreign Influence Transparency Scheme: Factsheet 5 – Registrable Activities 1 (Feb. 2019), <https://www.ag.gov.au/Integrity/foreign-influence-transparency-scheme/Documents/fact-sheets/registrable-activities.pdf>, archived at <https://perma.cc/G2CN-23DS>. See also Foreign Influence Transparency Scheme Act 2018 (Cth) s 10.

<sup>44</sup> Attorney-General’s Department, Foreign Influence Transparency Scheme: Factsheet 10 – Disclosures in Communications Activities 1 (Apr. 2019), <https://www.ag.gov.au/Integrity/foreign-influence-transparency-scheme/Documents/fact-sheets/disclosures-in-communications-activities.pdf>, archived at <https://perma.cc/8V9C-9CFA>. See also Foreign Influence Transparency Scheme Act 2018 (Cth) s 13.

<sup>45</sup> Factsheet 10 – Disclosures in Communications Activities, *supra* note 43, at 2. See also Foreign Influence Transparency Scheme Act 2018 (Cth) s 38.

<sup>46</sup> Factsheet 10 – Disclosures in Communications Activities, *supra* note 43, at 2; Foreign Influence Transparency Scheme (Disclosure in Communications Activity) Rules 2018 (Cth), <https://www.legislation.gov.au/Details/F2019C00045>, archived at <https://perma.cc/68ZV-TKVV>.

Commonwealth Electoral Act 1918 (Cth) and if the activity is undertaken for the purposes of political or governmental influence.<sup>47</sup>

People and entities who are required to register under the Act “have specific obligations during voting periods (including election periods).”<sup>48</sup> These include

- reviewing registration information and confirming it is correct or updating the information
- reporting any registrable activities undertaken during the voting periods (if relating to the relevant vote or election).<sup>49</sup>

For example, a person must “report disbursement activities undertaken during the voting period within seven days of the value of disbursements reaching the electoral donations threshold or a multiple of the threshold.”<sup>50</sup>

## VI. Foreign Interference Offenses

The 2018 national security reforms added a new division into the Criminal Code Act 1995 (Cth) that contains several “foreign interference” offenses.<sup>51</sup> These include intentional and reckless foreign interference, preparing for a foreign interference offense, and foreign interference involving foreign intelligence agencies. For example, the provision establishing the offense of intentional foreign interference, which is subject to a maximum term of imprisonment of twenty years, states as follows:

- (1) A person commits an offence if:
  - (a) the person engages in conduct; and
  - (b) any of the following circumstances exists:
    - (i) the person engages in the conduct on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal;
    - (ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal; and
  - (c) the person intends that the conduct will:
    - (i) influence a political or governmental process of the Commonwealth or a State or Territory; or
    - (ii) influence the exercise (whether or not in Australia) of an Australian democratic or political right or duty; or
    - (iii) support intelligence activities of a foreign principal; or
    - (iv) prejudice Australia’s national security; and

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<sup>47</sup> Factsheet 5 – Registrable Activities, *supra* note 42, at 3. See also Foreign Influence Transparency Scheme Act 2018 (Cth) ss 10 & 12.

<sup>48</sup> Attorney-General’s Department, Foreign Influence Transparency Scheme: Factsheet 9 – Obligations During Voting Periods 1 (Apr. 2019), <https://www.ag.gov.au/Integrity/foreign-influence-transparency-scheme/Documents/fact-sheets/registrant-obligations-during-voting-periods.pdf>, archived at <https://perma.cc/C7Y6-VS6J>.

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

<sup>50</sup> *Id.* at 2. See also Foreign Influence Transparency Scheme Act 2018 (Cth) ss 36 & 37.

<sup>51</sup> Criminal Code Act 1995 (Cth) pt 5.2 div 92.

- (d) any part of the conduct:
  - (i) is covert or involves deception; or
  - (ii) involves the person making a threat to cause serious harm, whether to the person to whom the threat is made or any other person; or
  - (iii) involves the person making a demand with menaces.<sup>52</sup>

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<sup>52</sup> *Id.* s 92.2(1).

# Brazil

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**SUMMARY** The Constitution determines that, to be eligible to run for political office, a person needs to be affiliated with a political party. It prohibits parties from using financial resources received from foreign entities or governments and becoming subordinate to them. In addition, federal law details the situations where the prohibition is enforced, including restrictions on foreigners' participation in campaigns.

## I. Foreign Donations to Campaigns and Political Parties

### A. Constitutional Principles

Article 14 (§ 3)(V) of the Brazilian Constitution states that, according to the law, party affiliation is one of the conditions for elected office.<sup>1</sup> Article 17 provides for freedom in the creation, merger, incorporation, and dissolution of political parties, with due regard for national sovereignty, the democratic regime, multiplicity of political parties, and fundamental human rights, observing the following precept

II - prohibition of receipt of financial assistance from foreign entities or governments or subordination to them.<sup>2</sup>

### B. Law No. 9,096 of September 19, 1995

Law No. 9,096 of September 19, 1995, provides for political parties and regulates articles 17 and 14 (§ 3)(V) of the Constitution.

Article 28 of Law No. 9,096 determines that, after a final decision, the Superior Electoral Tribunal must cancel the civil registration and the status of a political party that has been shown to have received or is now receiving financial resources of foreign origin or to be subordinate to a foreign entity or government.<sup>3</sup>

The political party, through its national, regional, and municipal bodies, must maintain accounting records showing the origin of its revenues and the nature of its expenses.<sup>3</sup>

Article 31 forbids political parties from receiving financial or monetary contributions or assistance, directly or indirectly, in any form or pretext, including through publicity of any kind, from

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<sup>1</sup> CONSTITUIÇÃO FEDERAL [C.F.], art. 14(§ 3)(V), [http://www.planalto.gov.br/ccivil\\_03/Constituicao/Constituicao.htm#art14%C2%A73v](http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm#art14%C2%A73v), archived at <https://perma.cc/5WJR-TFN4>.

<sup>2</sup> *Id.* art. 17(II).

<sup>3</sup> *Id.* art. 30.

I - [a] foreign entity or government;

II - public entities and legal entities of any nature, subject to the appropriations referred to in article 38 of Law No. 9,096 and those from the Special Fund for Campaign Financing (Fundo Especial de Financiamento de Campanha);

III - (revoked);

IV - class entity or union; [and]

V - natural persons who exercise a public function or position of free appointment and exoneration, or position or temporary public employment, except those affiliated to a political party.<sup>4</sup>

According to article 38, the Special Fund for Financial Assistance to Political Parties (Fundo Partidário) consists of

I - fines and pecuniary penalties applied under the terms of the Electoral Code and related laws;

II - financial resources allocated to it by law, whether permanent or contingent;

III - donations of individuals or legal entities, made through bank deposits directly in the account of the special fund; [and]

IV - Union budget appropriations in an amount never lower, each year, to the number of registered voters on December 31 of the year prior to the budget proposal, multiplied by 35 cents of Real, in values of August 1995.<sup>5</sup>

### **C. Law No. 9,504 of September 30, 1997**

Article 24(I) of Law No. 9,504 of September 30, 1997, which establishes the norms for elections in the country, forbids, among other things, political parties and candidates receiving a donation in money or having a monetary value, directly or indirectly, including by publicity of any kind, from a foreign entity or government.<sup>6</sup>

## **II. Foreign Finance of Advertisements or Communications**

It seems that any type of financing with a foreign origin is prohibited by Law No. 9,096 of September 19, 1995, which states in article 31 that a political party is forbidden to receive financial or monetary contribution or assistance, directly or indirectly, in any form or pretext, including through publicity of any kind, that comes from a foreign entity or government.<sup>7</sup>

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<sup>4</sup> *Id.* art. 31.

<sup>5</sup> *Id.* art. 38.

<sup>6</sup> Lei No. 9.504, de 30 de Setembro de 1997, art. 24(I), [http://www.planalto.gov.br/ccivil\\_03/leis/L9504compilado.htm](http://www.planalto.gov.br/ccivil_03/leis/L9504compilado.htm), archived at <https://perma.cc/Z3SF-SAVY>.

<sup>7</sup> Lei No. 9.096, art. 31(I).

Furthermore, Law No. 9,504 of September 30, 1997, also prohibits a political party or candidate from receiving, directly or indirectly, a donation in money or having a monetary value, including by publicity of any kind, that comes from a foreign entity or government.<sup>8</sup>

### **III. Communications by Foreign Persons about Elections during Campaigns**

It seems that foreign persons or entities can communicate about elections during campaigns, provided that the comments are not electoral propaganda. Constitutional principles guarantee freedom of expression, and federal law regulates electoral propaganda and the free manifestation of thought (discussed below).

#### **A. Constitutional Principles**

According to article 5 of the Brazilian Constitution, everyone is equal before the law, with no distinction whatsoever, guaranteeing to Brazilians and foreigners residing in the country the inviolability of the rights to life, liberty, equality, security, and property, on the following terms

II - no one shall be compelled to do or refrain from doing something except by force of law;

IV - manifestation of thought is free, but anonymity is forbidden;

V - the right of reply is assured, in proportion to the offense, as well as compensation for pecuniary or moral damages or damages to reputation;

IX - expression of intellectual, artistic, scientific, and communication activity is free, independent of any censorship or license;

X - personal intimacy, private life, honor and reputation are inviolable, guaranteeing the right to compensation for pecuniary or moral damages resulting from the violation thereof;

XIII - exercise of any job, trade or profession is free, observing the professional qualifications that the law establishes; [and]

XIV - access to information is assured to everyone, protecting the confidentiality of sources when necessary for professional activity.<sup>9</sup>

Article 220 further determines that the expression of thoughts, creation, speech, and information, through whatever form, process or vehicle, must not be subject to any restrictions, observing the provisions of the Constitution.<sup>10</sup>

#### **B. Electoral Propaganda**

Law No. 9,504 of September 30, 1997, states that electoral propaganda is only allowed after August 15 of the election year (prior to the elections in October).<sup>11</sup> Any kind of paid political

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<sup>8</sup> Lei No. 9.504, art. 24(I).

<sup>9</sup> C.F. art. 5.

<sup>10</sup> *Id.* art. 220.

<sup>11</sup> Lei No. 9.504, art. 36.

advertising on radio and television is not allowed.<sup>12</sup> Article 36-A lists the acts that do not constitute advance electoral propaganda, provided that they do not involve an explicit request for a vote, mention of the alleged candidacy, or exaltation of the personal qualities of the pre-candidates, which may be covered by the media, including via the internet.<sup>13</sup>

Expression of thought is free, but anonymity on the internet is forbidden during an electoral campaign.<sup>14</sup> The right to make a response is guaranteed, according to the terms of article 58 (§ 3)(IV)(a)(b) and (c) and article 58-A of Law No. 9,504, and by other means of interpersonal communication by electronic message.<sup>16</sup>

#### **IV. Participation of Aliens in Campaigns**

The electoral legislation is silent regarding the participation of foreign persons in campaigns as employees or consultants. However, a foreigner would have to be allowed to do so according to Brazilian migration law, which states that a temporary visa may be granted to an immigrant who comes to Brazil to establish residence for a specified period of time to work.<sup>15</sup> Subject to the provisions set forth in the regulations, temporary work visas may be granted to immigrants who come to work in Brazil, with or without an employment relationship, provided that they show a job offer formalized by a legal entity active in the country.<sup>16</sup>

In addition, as mentioned above, both the Constitution and federal law forbid the receipt of money with a foreign origin. Therefore, it seems that for a foreigner to work as an employee or consultant, he or she would have to have a job offer, obtain a temporary work visa, and be paid with domestic resources. Presumably the undertaking of campaign or electioneering activities by persons employed by foreign entities would not be allowed.

#### **V. Reporting of Campaign Personnel Contacts with Foreign Persons**

The researched legislation does not make any reference to mandatory reporting of contacts with foreigners regarding donations of money, information, or services. The legislation, however, makes it very clear that the use of foreign financial resources is strictly prohibited. Notwithstanding the silence of the legislation, article 5 of Law No. 9,096 of September 19, 1995, states that a political party's action must be “national in character” and exercised in accordance with the statute and program, without subordination to foreign entities or governments.<sup>17</sup>

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<sup>12</sup> *Id.* art. 36 (§ 2). Article 77 of the Constitution states that the President and the Vice-President of the Republic shall be elected simultaneously on the first Sunday of October for the first round, and if there should be a second round, on the last Sunday of October of the year prior to the termination of the mandate of the current president. C.F. art. 77.

<sup>13</sup> *Id.* art. 36-A.

<sup>14</sup> *Id.* art. 57-D.

<sup>15</sup> Lei No. 13.445, de 24 de Maio de 2017, art 14, [http://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2017/lei/113445.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/113445.htm), archived at <https://perma.cc/P7BJ-QDR8>.

<sup>16</sup> *Id.* art. 14 (§ 5).

<sup>17</sup> Lei No. 9.096, art. 5.

# Canada

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**SUMMARY** The Canada Elections Act contains provisions on foreign influence in elections. In 2018, the Act was partly amended to prohibit foreign entities from spending money to influence elections. The amending legislation is expected to change the way in which parties and stakeholders interact in the periods leading up to the upcoming October 2019 general election. Only individuals who are Canadian citizens or permanent residents can make a contribution to a registered party, a registered association, a candidate, a leadership contestant, or a nomination contestant. Third parties are not permitted to use funds for a regulated activity (like advertising or survey expenses) if the source of funds is a foreign entity. The Act also prohibits foreign third parties from participating in elections and incurring expenses for regulated activities that take place during a pre-election period and the election period.

## I. Elections in Canada and Foreign Influence

The Canada Elections Act<sup>1</sup> regulates the conduct of federal general elections of members to the House of Commons. Contribution and spending limits are also regulated by the same Act.

In 2017, conservative lawmakers and activists raised concerns over the flow of foreign funds from leftist American advocacy groups, particularly to third party groups, during Canada's 2015 general elections. At the time, there was criticism of a loophole created by the law, which only prohibited "third parties from accepting non-Canadian funds if those contributions are earmarked for election advertising. If the money is collected by those Canadian-based groups more than six months before an election it is not subject to regulations, and it 'gets mingled with Canadian funds.'"<sup>2</sup>

In early June 2017, the Senate Committee on Legal and Constitutional Affairs expressed concern that the "[c]urrent law does not sufficiently protect Canadian elections from being influenced by foreign entities, whether through direct interference or by providing funding to third parties."<sup>3</sup>

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<sup>1</sup> Canada Elections Act, S.C. 2000, c. 9, <http://laws-lois.justice.gc.ca/eng/acts/E-2.01/FullText.html>, archived at <https://perma.cc/5J92-5QSH>.

<sup>2</sup> John Paul Tasker, *Tory Senator Wants to Close 'Troubling' Election Loophole on Foreign Funds*, CBC NEWS (May 31, 2017), <https://www.cbc.ca/news/politics/linda-frum-foreign-funds-election-1.4138155>, archived at <https://perma.cc/AX6R-AM4M>; J.J. McCullough, *Canada Shouldn't Let Concerns Over Foreign Funding Stifle Free Speech*, WASHINGTON POST (June 13, 2017), <https://www.washingtonpost.com/news/global-opinions/wp/2017/06/13/canada-shouldnt-let-concerns-over-foreign-funding-stifle-free-speech/>, archived at <https://perma.cc/ZCS2-HZZ8>.

<sup>3</sup> Press Release, Standing Senate Committee on Legal and Constitutional Affairs, *Voting law must be Strengthened to Block foreign Influence in Elections* (June 8, 2017), <https://sencanada.ca/en/newsroom/voting-law-must-be-strengthened-to-block-foreign-influence-in-elections/>, archived at <https://perma.cc/C92P-24AK>.

The Committee's findings were contained in a report titled *Controlling Foreign Influence in Canadian Elections*,<sup>4</sup> which resulted from "the committee's review of the Chief Electoral Officer's report on the October 19, 2015 federal election as well as Elections Canada's conduct of the election."<sup>5</sup>

In 2018, the government of Canada introduced amendments to "modernize the Canada Elections Act to address the realities facing Canadian democracy in 2019."<sup>6</sup> The Elections Modernization Act<sup>7</sup> received Royal Assent on December 13, 2018, and the government stated that "[t]he new legislation is part of a comprehensive plan to safeguard Canadians' trust in our democratic processes and increase participation in democratic activities."<sup>8</sup> Upon the enactment of the law, the government press release stated that

Canadians can feel confident that their elections are safe from foreign influence and cyber disruption. The *Elections Modernization Act* will help Canadians know where information is coming from, guard against misinformation and interference during an election period. Further, foreign entities will now be prohibited from spending to influence elections. The Government of Canada believes in a whole-of-government approach that will protect and defend Canada's democratic institutions from cyber threats and foreign interference.<sup>9</sup>

The amending legislation is expected to change the way in which parties and stakeholders interact in the periods leading up to the upcoming October 2019 general election.

## II. Foreign Influence on Elections

### A. Foreign Contributions to Elections

#### 1. Individual Contributions to Election Participants

Under the Canada Elections Act, only individuals who are "Canadian citizens or permanent residents of Canada can make a contribution to a registered party, a registered association, a

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<sup>4</sup> STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS, CONTROLLING FOREIGN INFLUENCE IN CANADIAN ELECTIONS (June 2017), [https://sencanada.ca/content/sen/committee/421/LCJC/reports/Election\\_Report\\_FINAL\\_e.pdf](https://sencanada.ca/content/sen/committee/421/LCJC/reports/Election_Report_FINAL_e.pdf), archived at <https://perma.cc/9AC6-H94X>.

<sup>5</sup> Press Release, Standing Senate Committee on Legal and Constitutional Affairs, *supra* note 3.

<sup>6</sup> Press Release, Government of Canada, Government of Canada Passes Elections Modernization Act (Dec. 14, 2018), <https://www.canada.ca/en/democratic-institutions/news/2018/12/government-of-canada-passes-elections-modernization-act.html>, archived at <https://perma.cc/7RZE-CSXE>.

<sup>7</sup> Elections Modernization Act, S.C. 2018, c. 31, [https://laws-lois.justice.gc.ca/eng/annualstatutes/2018\\_31/FullText.html](https://laws-lois.justice.gc.ca/eng/annualstatutes/2018_31/FullText.html), archived at <https://perma.cc/ZJ2D-2HK8>.

<sup>8</sup> Press Release, Government of Canada, Government of Canada Passes Elections Modernization Act *supra* note 6.

<sup>9</sup> *Id.*

candidate, a leadership contestant or a nomination contestant.”<sup>10</sup> Subsection 363(1) of the Act establishes this prohibition:

No person or entity other than an individual who is a Canadian citizen or is a permanent resident as defined in subsection 2(1) of the *Immigration and Refugee Protection Act* shall make a contribution to a registered party, a registered association, a nomination contestant, a candidate or a leadership contestant.<sup>11</sup>

A person or entity that contravenes subsection 363(1) is guilty of a hybrid offence, which may be prosecuted as a strict liability offence or as an offence requiring intent to be proved.<sup>12</sup> The punishment for a strict liability conviction is a fine of not more than CA\$2,000 (about US\$1,514) or imprisonment for a term of not more than three months, or both.<sup>13</sup> The punishment for an offence requiring intent is as follows:

(a) on summary conviction, to a fine of not more than \$20,000 [about US\$15,223] or to imprisonment for a term of not more than one year, or to both; or

(b) on conviction on indictment, to a fine of not more than \$50,000 [about US\$38,072] or to imprisonment for a term of not more than five years, or to both.<sup>14</sup>

## 2. Foreign Contributions to Third Parties and Prohibition on Foreign Third Parties

According to Elections Canada,

[i]ndividuals or organizations that participate in the democratic process, but do not seek election themselves, may want to continue their activism during elections to support certain parties or candidates. Because parties and candidates are limited in how much they can spend for elections, the Canada Elections Act (the Act) regulates others’ participation to ensure a level playing field in terms of spending. In the law, those who are regulated under these rules, whether they are corporations, groups, individuals or others, are called “third parties.”<sup>15</sup>

### a. Third Party Use of Foreign Funds

Third parties are not permitted to use funds for a regulated activity if the source of funds is a foreign entity:

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<sup>10</sup> ELECTIONS CANADA, POLITICAL FINANCING HANDBOOK FOR CANDIDATES AND OFFICIAL AGENTS (EC 20155) 22 (Feb. 2018), [https://www.elections.ca/pol/can/man/ec20155/2018-01\\_e.pdf](https://www.elections.ca/pol/can/man/ec20155/2018-01_e.pdf), archived at <https://perma.cc/6K2L-Q6P7>.

<sup>11</sup> Canada Elections Act, § 363(1).

<sup>12</sup> *Id.* § 497(1)(a) & 497(2)(a).

<sup>13</sup> *Id.* § 500(1).

<sup>14</sup> *Id.* § 500(5)(a)-(b).

<sup>15</sup> *New Requirements for Third Parties: Corporations, Unions, Groups and Individuals*, ELECTIONS CANADA, <https://www.elections.ca/content.aspx?section=pol&dir=thi&document=backgrounder&lang=e> (last updated June 14, 2019), archived at <https://perma.cc/M55L-B9HR>.

**Prohibition – use of foreign funds**

**349.02** No third party shall use funds for a partisan activity, for advertising, for election advertising or for an election survey if the source of the funds is a foreign entity.<sup>16</sup>

**Prohibition – circumventing prohibition on use of foreign funds**

**349.03** No third party shall

- (a) circumvent, or attempt to circumvent, the prohibition under section 349.02; or
- (b) act in collusion with another person or entity for that purpose.<sup>17</sup>

Every third party that contravenes subsections 349.02 or 349.03(a)-(b) is guilty of a hybrid offense, which is subject to the same punishments as those set out for subsection 363(1), above.<sup>18</sup>

b. Partisan and Election Expenditure During Pre-election and Election Period

The Canada Elections Act prohibits foreign third parties from participating in elections and incurring expenses for regulated activities that take place during a pre-election period and the election period. Section 349.4 of the Act deals with the pre-election period:

**Prohibition – spending by foreign third parties**

**349.4 (1)** A foreign third party shall not incur the following expenses:

- (a) partisan activity expenses in relation to a partisan activity that is carried out during a pre-election period;
- (b) partisan advertising expenses in relation to a partisan advertising message that is transmitted during that period; and
- (c) election survey expenses in relation to an election survey that is conducted during that period.<sup>19</sup>

**Definition of *foreign third party***

**(2)** In subsection (1), a *foreign third party* is a third party in respect of which

- (a) if the third party is an individual, the individual
  - (i) is not a Canadian citizen,
  - (ii) is not a *permanent resident* as defined in subsection 2(1) of the *Immigration and Refugee Protection Act*, and
  - (iii) does not reside in Canada;
- (b) if the third party is a corporation or entity,
  - (i) it does not carry on business in Canada, or its only activity carried on in Canada during a pre-election period consists of doing anything to influence electors during that period to vote or refrain from voting, or to vote or refrain

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<sup>16</sup> Canada Elections Act, § 349.02.

<sup>17</sup> *Id.* § 349.03.

<sup>18</sup> *Id.* §§ 495.21, 500(1) & 500(5)(a)-(b).

<sup>19</sup> *Id.* § 349.4(1).

from voting for a particular candidate or registered party, at the following election, and

- (ii) it was incorporated, formed or otherwise organized outside Canada; and
- (c) if the third party is a group, no person who is responsible for the group
  - (i) is a Canadian citizen,
  - (ii) is a *permanent resident* as defined in subsection 2(1) of the *Immigration and Refugee Protection Act*, or
  - (iii) resides in Canada.<sup>20</sup>

Every third party that contravenes subsections 349.4(1) is guilty of a hybrid offence that is subject to the same punishments set out above.<sup>21</sup>

Certain prescribed activities are also prohibited during an election period:

**Prohibition – spending by foreign third parties**

**351.1 (1)** A foreign third party shall not incur the following expenses:

- (a) partisan activity expenses in relation to a partisan activity that is carried out during an election period;
- (b) election advertising expenses in relation to an election advertising message that is transmitted during that period; and
- (c) election survey expenses in relation to an election survey that is conducted during that period.

The same punishments as above apply.<sup>22</sup>

**B. Undue Influence by Foreigners**

The Elections Modernization Act also established a new offense that prohibits foreign actors from unduly influencing electors and an offense of colluding with a foreign actor to unduly influence electors:

**Undue influence by foreigners**

**282.4 (1)** No person or entity referred to in any of paragraphs (a) to (e) shall, during an election period, unduly influence an elector to vote or refrain from voting, or to vote or refrain from voting for a particular candidate or registered party, at the election:

- (a) an individual who is not a Canadian citizen or a *permanent resident* as defined in subsection 2(1) of the *Immigration and Refugee Protection Act* and who does not reside in Canada;

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<sup>20</sup> *Id.* § 349.4(2).

<sup>21</sup> *Id.* §§ 495.3(1)-(2), 500(1) & 500(5)(a)-(b).

<sup>22</sup> *Id.* § 500(1) & 500(5)(a)-(b).

- (b) a corporation or entity incorporated, formed or otherwise organized outside Canada that does not carry on business in Canada or whose primary purpose in Canada during an election period is to influence electors during that period to vote or refrain from voting, or to vote or refrain from voting for a particular candidate or registered party, at the election;
- (c) a trade union that does not hold bargaining rights for employees in Canada;
- (d) a foreign political party; or
- (e) a foreign government or an agent or mandatary of a foreign government.

#### Meaning of unduly influencing

(2) For the purposes of subsection (1), a person or entity unduly influences an elector to vote or refrain from voting, or to vote or refrain from voting for a particular candidate or registered party, at an election if

- (a) they knowingly incur any expense to directly promote or oppose a candidate in that election, a registered party that has endorsed a candidate in that election or the leader of such a registered party;
- (b) one of the things done by them to influence the elector is an offence under an Act of Parliament or a regulation made under any such Act, or under an Act of the legislature of a province or a regulation made under any such Act.

#### Exceptions

(3) For greater certainty, subsection (1) does not apply if the only thing done by the person or entity to influence the elector to vote or refrain from voting, or to vote or refrain from voting for the particular candidate or registered party, consists of

- (a) an expression of their opinion about the outcome or desired outcome of the election;
- (b) a statement by them that encourages the elector to vote or refrain from voting for any candidate or registered party in the election; or
- (c) the transmission to the public through broadcasting, or through electronic or print media, of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news, regardless of the expense incurred in doing so, if no contravention of subsection 330(1) or (2) is involved in the transmission.

#### Collusion

(4) No person or entity shall act in collusion with a person or entity to whom subsection (1) applies for the purpose of contravening that subsection.<sup>23</sup>

Undue influence by foreigners and collusion are offenses that require intent<sup>24</sup> and are liable to

- (a) on summary conviction, to a fine of not more than \$20,000 [about US\$15,223] or to imprisonment for a term of not more than one year, or to both; or
- (b) on conviction on indictment, to a fine of not more than \$50,000 [about US\$38,072] or to imprisonment for a term of not more than five years, or to both.<sup>25</sup>

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<sup>23</sup> *Id.* § 282.4(1)-(4).

<sup>24</sup> *Id.* § 491.2 (1)(p)(q)-(2)(a)(b).

<sup>25</sup> *Id.* § 500(5)(a)-(b).

### C. Selling Advertising Space

Foreigners who unduly influence an elector cannot be sold advertising space:

#### **Selling advertising space**

**(5)** No person or entity shall sell any advertising space to a person or entity to whom subsection (1) applies for the purpose of enabling that person or entity to transmit an election advertising message or to cause an election advertising message to be transmitted.<sup>26</sup>

Selling advertisement space is an offense that requires intent and is subject to the same penalties as set out above for this type of offense.<sup>27</sup>

### D. Broadcasting Outside Canada

The Elections Modernization Act also added a prohibition on the use of broadcasting stations outside Canada to influence elections:

#### **Prohibition – use of broadcasting station outside Canada**

**330 (1)** No person shall, with intent to influence persons to vote or refrain from voting, or to vote or refrain from voting for a particular candidate or registered party, at an election, use a broadcasting station outside Canada, or aid, abet, counsel or procure the use of a broadcasting station outside Canada, during an election period, for the broadcasting of any matter having reference to an election.

#### **Exception**

**(1.1)** Subsection (1) does not apply in respect of any matter that is broadcast if the broadcasting signals originated in Canada.

#### **Prohibition – broadcasting outside Canada**

**(2)** During an election period, no person shall broadcast, outside Canada, election advertising with respect to an election.<sup>28</sup>

A person who willfully contravenes subsections 330(1) or (2) is liable on summary conviction to a fine of not more than CA\$50,000.<sup>29</sup>

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<sup>26</sup> *Id.* § 282.4(5).

<sup>27</sup> *Id.* §§ 491.2 (1)(r)-(2)(c) & 500(5)(a)-(b).

<sup>28</sup> *Id.* § 330(1)-(2).

<sup>29</sup> *Id.* §§ 495(4)(e) & 500(4).

# France

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**SUMMARY** The financing of political parties and political campaigns in France has become increasingly regulated since 1988. French political parties have access to two sources of financing: private financing and government subsidies. Private financing includes private donations and party membership dues, as well as the proceeds of commercial activities. Only natural persons can make contributions to a political party or group, and it is illegal for a corporate or nonprofit entity to do so. Donations to political parties are capped at €7,500 per year, and only French citizens, or persons residing in France, may contribute to a political party or group. Political parties and coalitions also depend heavily on government subsidies as a means of financing. Subsidies are allocated based on each party's results at the previous parliamentary elections, and on the basis of each party's share of seats in Parliament. Every party must appoint a representative or organization to be responsible for collecting funds and depositing them in a single bank account.

Electoral campaigns are bound by similar rules. Every candidate must appoint a financial representative through which all the campaign's funds and expenditures must go. A candidate may receive donations only from natural persons, political parties, or political coalitions, not from corporate and nonprofit entities. Only French citizens or persons residing in France may make contributions to an electoral campaign. Furthermore, there is a cap on how much candidates may spend on their campaigns. All candidates who obtained at least 5% of the votes in the first round of elections may be eligible to have up to 47.5% of their campaign spending reimbursed by the government.

Additionally, there are strict rules on media coverage during French elections. Broadcasters must be equitable in their coverage of an election's candidates and in the air time given to candidates. The dissemination of fake information during election campaigns is prohibited, and regulatory authorities may suspend the broadcasting authorization of an operator controlled by or under the influence of a foreign state if it broadcasts false information that could affect the election results.

Alleged Russian interference in the 2017 presidential elections was mostly unsuccessful due in part to French government actions to counter these efforts.

## I. Introduction

The regulation of foreign involvement in French politics rests principally on political finance laws. The financing of political parties and political campaigns in France has become increasingly

regulated since 1988.<sup>1</sup> Most of the legislation regarding the financing of political coalitions and parties is found in a 1988 law on financial transparency in politics.<sup>2</sup> This statute has evolved considerably since its enactment, as it has been amended several times in an effort to give France a more robust legal framework to regulate the financial activities of political parties.<sup>3</sup>

The legislation regarding the financing of political campaigns, to be distinguished from the financing of political parties, has mostly been incorporated into the Electoral Code, principally in its articles L52-3-1 to L52-17 and R39-1-A to R39-10-1.<sup>4</sup> Presidential elections are governed by a separate law, but the Electoral Code provisions discussed in this report are incorporated by reference into that separate law.<sup>5</sup>

The main enforcer of French campaign finance laws is an independent agency called the Commission nationale des comptes de campagne et des financements politiques (CNCCFP) (National Commission of Campaign Accounts and Political Financing).<sup>6</sup> The CNCCFP audits campaign accounts and party accounts, and may request the assistance of the national police if necessary.<sup>7</sup> The CNCCFP may apply certain administrative penalties itself, and it can refer penal infractions to the proper judicial authorities.<sup>8</sup>

In addition to finance laws, regulations on media coverage of elections can be used to limit foreign interference attempts.

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<sup>1</sup> *Lois sur le financement des campagnes* [Laws on Campaign Financing], VIE-PUBLIQUE.FR (French government website) (May 30, 2006), <http://www.vie-publique.fr/decouverte-institutions/institutions/approfondissements/lois-financement-campagnes.html>, archived at <https://perma.cc/TW6V-V57P>.

<sup>2</sup> Loi n° 88-227 du 11 mars 1988 relative à la transparence financière de la vie politique [Law No. 88-227 of Mar. 11, 1988, Regarding the Financial Transparency of Political Life], <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000321646>, archived at <https://perma.cc/E87N-CRGK>.

<sup>3</sup> *Id.*; *Lois sur le financement des campagnes* [Laws on Campaign Financing], VIE-PUBLIQUE.FR.

<sup>4</sup> C. ÉLECTORAL arts. L52-3-1 to L52-17, R39-1-A to R39-10-1.

<sup>5</sup> Loi n° 62-1292 du 6 novembre 1962 relative à l'élection du Président de la République au suffrage universel [Law No. 62-1292 of Nov. 6, 1962, Regarding the Election of the President of the Republic by Universal Suffrage], <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068219&dateTexte=20190705>, archived at <https://perma.cc/RS45-ZHWU>.

<sup>6</sup> C. ÉLECTORAL arts. L52-14 to L52-17.

<sup>7</sup> *Le rôle de la commission - campagnes électorales* [The Role of the Commission – Electoral Campaigns], CNCCFP, <http://www.cnccfp.fr/index.php?art=690> (last visited July 5, 2019), archived at <https://perma.cc/8PXC-QK9S>.

<sup>8</sup> *Id.*

## II. Financing of Political Parties

French political parties have access to two sources of financing: private financing and government subsidies.<sup>9</sup>

### A. Private Financing

Private financing includes private donations and party membership dues, as well as the proceeds of commercial activities (such as the sale of T-shirts or bumper stickers).<sup>10</sup> Only a natural person may make a donation to a political party, and it is illegal for corporate entities or nonprofits to make contributions to political parties.<sup>11</sup> As an exception to this rule, political parties or coalitions may make contributions to other political parties or coalitions.<sup>12</sup>

Since January 1, 2018, only French citizens or persons residing in France may make contributions to a political party or group.<sup>13</sup>

The most that any person can donate to a political party is €7,500 (approximately US\$8,525) per year.<sup>14</sup> Additionally, there are limits to the ability of political parties to obtain loans. A natural person may make a loan to a political party or group, but for a maximum term of five years.<sup>15</sup> Furthermore, a person may not give loans to a political party or group on a habitual basis.<sup>16</sup> Political parties may take out bank loans, but only from banks headquartered in the European Union or the European Economic Area.<sup>17</sup>

### B. Government Subsidies

Government subsidies were put in place in 1988 and have become the largest source of financing for political parties.<sup>18</sup> In 2018, the French government gave a total of approximately €125.82 billion

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<sup>9</sup> *Le financement de la vie politique* [The Financing of Political Life], SENAT.FR (French Senate website), [https://www.senat.fr/role/fiche/financ\\_vie\\_pol.html](https://www.senat.fr/role/fiche/financ_vie_pol.html) (last visited July 1, 2019), archived at <https://perma.cc/5SE3-KS7A>.

<sup>10</sup> *Id.*

<sup>11</sup> Loi n° 88-227 du 11 mars 1988, art. 11-4.

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

<sup>13</sup> *Id.* art. 11-4; Loi No. 2017-1339 du 15 septembre 2017 pour la confiance dans la vie politique [Law No. 2017-1339 of Sept. 15, 2017, for Trust in Political Life], art. 25, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000035567974&categorieLien=id>, archived at <https://perma.cc/9EG7-XQ6J>.

<sup>14</sup> Loi n° 88-227 du 11 mars 1988, art. 11-4.

<sup>15</sup> *Id.* art. 11-3-1.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* art. 11-4.

<sup>18</sup> Le financement de la vie politique, *supra* n. 9 ; Fiche de synthèse n°15: Le financement de la vie politique: partis et campagnes électorales [Summary Factsheet No. 15: The Financing of Political Life: Parties and Electoral Campaigns], ASSEMBLEE-NATIONALE.FR (NATIONAL ASSEMBLY (lower house of the French Parliament) WEBSITE), <http://www2.assemblee-nationale.fr/decouvrir-l-assemblee/role-et-pouvoirs->

(about US\$143 billion) to over 40 political parties or coalitions.<sup>19</sup> The total amount of government funding is determined in each year's appropriations law, and is allotted to parties on the basis of two criteria: Half of the funds is distributed on the basis of each party's results at the previous parliamentary elections, and half is distributed on the basis of each party's share of seats in Parliament.<sup>20</sup> Any party which presented candidates in at least 50 electoral districts, or in at least one *département* (France's principal type of territorial subdivision), and obtained at least 1% of the votes qualifies for a share of the first half of the funds.<sup>21</sup>

As an incentive for equal representation of men and women in French political institutions, the amount of subsidies that a political party is entitled to is reduced if there is an imbalance of more than 2% among that party's male and female candidates.<sup>22</sup>

### C. Party Financial Representative

Every party must appoint a financial representative (*mandataire financier*) or a nonprofit financing organization (*association de financement*) to receive all of the party's income.<sup>23</sup> The financial representative or financing organization must open a single deposit account in which all the party's financial resources are to be deposited.<sup>24</sup>

## III. Financing of Electoral Campaigns

### A. Sources of Funding

A candidate's campaign may be funded by the following means: the candidate's personal assets, reimbursement of campaign costs by the government, private donations, contributions from political parties, services or in-kind contributions, advertising income, or the sale of objects and services.<sup>25</sup>

### B. Campaign Financial Representative

Candidates for a presidential, parliamentary, regional, or municipal election must appoint a financial representative, no later than the date on which they officially declare their candidacy.<sup>26</sup>

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[de-l-assemblee-nationale/le-depute/le-financement-de-la-vie-politique-partis-et-campagnes-electorales](https://perma.cc/R6EM-KSVN) (last visited on July 1, 2019), archived at <https://perma.cc/R6EM-KSVN>.

<sup>19</sup> Fiche de synthèse n°15: Le financement de la vie politique: partis et campagnes électorales.

<sup>20</sup> Loi n° 88-227 du 11 mars 1988, arts. 8, 9.

<sup>21</sup> Id. art. 9; Fiche de synthèse n°15: Le financement de la vie politique: partis et campagnes électorales, *supra* n. 18.

<sup>22</sup> Loi n° 88-227 du 11 mars 1988, art. 9-1.

<sup>23</sup> Id. art. 11.

<sup>24</sup> Id. art. 11-2.

<sup>25</sup> Jérôme Grand d'Esnon et Philippe Blanchetier, *Campagnes Electorales, Financement et Communication* [Electoral Campaigns, Financing, and Communication] (2007), 18.

<sup>26</sup> C. ÉLECTORAL art. L52-4.

This financial representative may either be a person or a nonprofit organization, but candidates may not be the financial representative for their own campaigns.<sup>27</sup> All of a campaign's funds and expenditures must go through the financial representative.<sup>28</sup> The financial representative must open a single deposit account to which all of the campaign's financial operations can be traced.<sup>29</sup> All candidates who obtained at least 1% of the votes in an election are required to submit their campaign accounts to the CNCCFP for auditing.<sup>30</sup>

### C. Private Donations

A candidate may only receive donations from natural persons, political parties, or political coalitions.<sup>31</sup> Apart from political parties and political coalitions, a candidate may not receive any donations, whether they be monetary or in-kind, from corporate entities or nonprofits.<sup>32</sup> Furthermore, since January 1, 2018, only French citizens or persons residing in France may make contributions to an electoral campaign.<sup>33</sup> However, there does not appear to be any restriction on foreigners being employed by a campaign.

A donor may not contribute more than €4,600 (approximately US\$5,160) to a candidate or candidates in an election.<sup>34</sup> This limit applies to the combined total, so that if an individual donor wishes to contribute to several candidates running in an election, the total of all contributions to these candidates combined must not exceed €4,600.

Candidates may also obtain loans, but under the same restrictions that apply to political parties: If the loan is from an individual, the maximum term is five years, and the individual may not loan habitually; if the loan is from a bank, it must be from a bank headquartered in the European Union or in the European Economic Area.<sup>35</sup>

### D. Spending Limits

Every candidate's campaign spending is capped at an amount that is set principally according to the type of election and the number of inhabitants in the district.<sup>36</sup> For elections to the National Assembly, the current spending cap for each candidate is €38,000 (approximately US\$42,660), plus €0.15 (approximately US\$0.17) per inhabitant

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<sup>27</sup> C. électoral art. L52-4; Grand d'Esnon et Blanchetier, *supra* n. 25, at 29.

<sup>28</sup> C. ÉLECTORAL art. L52-4.

<sup>29</sup> *Id.* arts. L52-5, L52-6.

<sup>30</sup> Fiche de synthèse n°15: Le financement de la vie politique: partis et campagnes électorales, *supra* n. 19; C. ÉLECTORAL art. L52-12.

<sup>31</sup> C. ÉLECTORAL art. L52-8.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* art. L52-8.

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

<sup>35</sup> *Id.* arts. L52-7-1, L52-8.

<sup>36</sup> *Id.* art. L52-11.

in the candidate's district.<sup>37</sup> For the 2017 presidential elections, the spending cap for each candidate was set at €16.851 million (about US\$18.92 million) for the first round, and €22.509 million (about US\$25.27 million) for the second round.<sup>38</sup>

### E. Government Reimbursement of Campaign Expenses

If a candidate obtained at least 5% of the votes in the first round of elections, that candidate may be eligible to have up to 47.5% of their campaign spending reimbursed by the government.<sup>39</sup> This reimbursement will only be paid if the CNCCFP, upon auditing the campaign accounts, is satisfied that all campaign finance rules were followed.<sup>40</sup>

## IV. Regulations on Media Coverage During Elections

The Conseil supérieur de l'audiovisuel (CSA) (National Council on Audiovisual), France's main regulatory agency for radio and television broadcasting, regulates the coverage of election campaigns by radio and television broadcasters.<sup>41</sup> According to the CSA's directives, broadcasters must be equitable in their coverage of an election's candidates and in the air time given to candidates.<sup>42</sup> Apart from presidential elections, for which candidates are offered equal air time, equity does not necessarily mean equality. Rather, equity is to be determined based on the candidates' or parties' previous election results and the campaigns' own efforts to gain public attention and support.<sup>43</sup>

Additionally, the CSA may suspend the broadcasting authorization of an operator controlled by or under the influence of a foreign state if, during the three months before an election, it broadcasts false information that could affect the election results.<sup>44</sup> Furthermore, French law provides that, during the three months preceding an election, a judge may order "any proportional and necessary measure" to stop the "deliberate, artificial or automatic and massive"

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

<sup>38</sup> *Présidentielle 2017: les comptes de campagne des candidats validés par la CNCCFP* [2017 Presidential Elections: The Candidates' Campaign Accounts Approved by the CNCCFP], VIE-PUBLIQUE.FR (Feb. 13, 2018), <https://www.vie-publique.fr/actualite/alaune/presidentielle-2017-publication-comptes-campagne-candidats.html>, archived at <https://perma.cc/FFA9-VG67>.

<sup>39</sup> *Id.* art. L52-11-1.

<sup>40</sup> Fiche de synthèse n°15: Le financement de la vie politique: partis et campagnes électorales, *supra* n. 19.

<sup>41</sup> *Pendant une élection* [During an Election], CONSEIL SUPERIEUR DE L'AUDIOVISUEL [SUPERIOR COUNCIL ON AUDIOVISUAL], <https://www.csa.fr/Protger/Garantie-des-droits-et-libertes/Protger-le-pluralisme-politique/Pendant-une-election> (last accessed on July 10, 2019), archived at <https://perma.cc/TK83-ZGL3>.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Létard) [Law No. 86-1067 of 30 September 1986 Regarding Freedom of Communication (Létard Law)], art. 33-1-1, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000512205&dateTexte=20190617>, archived at <https://perma.cc/67FR-KBF6>.

dissemination of fake or misleading information online.<sup>45</sup> A public prosecutor, candidate, political party or coalition, or any person with standing may file the motion, and the court must rule within 48 hours.<sup>46</sup>

Furthermore, French law prohibits any campaigning during election day, and during the day preceding election day.<sup>47</sup> This prohibition applies not only to the candidates and their campaigns, but also to journalists, commentators, and any person or institution which could be seen as a direct or indirect proxy.<sup>48</sup> As a result, the media in France must refrain from publishing any political commentary during election day and the preceding day.<sup>49</sup> This period is referred to as the *période de réserve* (period of silence).<sup>50</sup>

## V. Reaction to Foreign Interference Attempts in 2017 French Presidential Election

There have been strong indications that Russia attempted to interfere with the French presidential elections of 2017.<sup>51</sup> These alleged interference efforts include the last-minute release of a massive amount of leaked emails from the campaign of then-candidate Emmanuel Macron, among which were embedded fake emails.<sup>52</sup> However, it does not appear that foreign interference had any substantial impact on the election results. A key factor in countering foreign intervention efforts appears to have been the active role of two government agencies: the Commission Nationale de Contrôle de la Campagne électorale en vue de l'Élection Présidentielle (CNCCEP) (National Commission for the Control of the Electoral Campaign for the Presidential Election), and the Agence nationale de la sécurité des systèmes d'information (ANSSI) (National Cybersecurity

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<sup>45</sup> C. ELECTORAL, art. L163-2.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* arts. L48-2, L50.

<sup>48</sup> *Propositions du Conseil supérieur de l'audiovisuel relatives à l'application du principe de pluralisme politique dans les médias audiovisuels en période électorale* [Proposals of the Superior Council on Audiovisual Regarding the Application of the Principle of Political Pluralism in Audiovisual Media during Elections], CONSEIL SUPÉRIEUR DE L'AUDIOVISUEL [SUPERIOR COUNCIL ON AUDIOVISUAL] (Sept. 2015), p. 13, <https://www.csa.fr/content/download/207860/553562/version/4/file/Propositions%20CSA%20campagnes%20C3%A9lectorales.pdf>, archived at <https://perma.cc/FNZ3-E7RP>.

<sup>49</sup> Charlotte Belaich, «Période de réserve» : de quoi peut-on parler ce week-end ? [“Period of Silence”: What Can We Discuss this Weekend ?], LIBERATION (Apr. 21, 2017), [https://www.liberation.fr/politiques/2017/04/21/periode-de-reserve-de-quoi-peut-on-parler-ce-week-end\\_1564254](https://www.liberation.fr/politiques/2017/04/21/periode-de-reserve-de-quoi-peut-on-parler-ce-week-end_1564254), archived at <https://perma.cc/65QT-SJ7W>.

<sup>50</sup> *Id.*

<sup>51</sup> James Masters, *Fears of Russian Meddling as France Prepares to go to the Polls*, CNN (Apr. 28, 2017), <https://www.cnn.com/2017/04/28/europe/french-election-russia/index.html>, archived at <https://perma.cc/SPJ4-BM28>.

<sup>52</sup> Alex Hern, *Macron hackers linked to Russian-affiliated group behind US attack*, THE GARDIAN (May 8, 2017), <https://www.theguardian.com/world/2017/may/08/macron-hackers-linked-to-russian-affiliated-group-behind-us-attack>, archived at <https://perma.cc/6X2L-6MSP>; Megha Mohan, *Macron Leaks: the anatomy of a hack*, BBC (May 9, 2017), <https://www.bbc.com/news/blogs-trending-39845105>, archived at <https://perma.cc/U99V-NHCU>.

Agency).<sup>53</sup> These agencies worked with the presidential candidates' campaigns to educate them on cybersecurity and warn them of specific threats and attacks.<sup>54</sup> Additionally, the CNCCEP issued a press release, shortly after the above-mentioned data leak, asking the media not to publish the content of the leaked emails and reminding them that disseminating false information is a criminal offense.<sup>55</sup> Furthermore, law enforcement authorities reacted immediately to the leak, opening a criminal investigation within a few hours of its occurrence.<sup>56</sup>

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<sup>53</sup> Jean-Baptiste Jeangène Vilmer, *Successfully Countering Russian Electoral Interference*, CSIS BRIEFS (June 2018), [https://csis-prod.s3.amazonaws.com/s3fs-public/publication/180621\\_Vilmer\\_Countering\\_russian\\_electoral\\_influence.pdf](https://csis-prod.s3.amazonaws.com/s3fs-public/publication/180621_Vilmer_Countering_russian_electoral_influence.pdf), archived at <https://perma.cc/8EMG-QP65>.

<sup>54</sup> *Id.* at 3.

<sup>55</sup> *Id.* at 5.

<sup>56</sup> *Id.* at 4.

# Germany

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**SUMMARY** Political parties in Germany fund their activities mostly through public funding, membership fees, and donations. They may generally accept donations without a limit, however, they are generally forbidden from accepting donations from foreign sources and anonymous donations that exceed €500. The rules for illegal donations generally also apply to members of the German Bundestag and members of state parliaments. However, individual members are allowed to accept benefits of monetary value to, among other things, foster interparliamentary and international relations. The rules do not apply to candidates who are running for office but are not currently holding office.

So-called party sponsoring, where a business or other entity bears costs related to certain political activities in exchange for some form of publicity, is not regarded as a donation, but as taxable income from events and other income-related activities. It has to be declared in the annual statement of accounts, but it is not subject to the prohibitions on donations.

Germany has been repeatedly criticized by the Group of States Against Corruption of the Council of Europe for not implementing recommendations to enhance the transparency of party funding.

## I. Overview of Party Funding in Germany

Political parties in Germany receive government funds to partially finance the functions incumbent upon them under the German Basic Law, the country's Constitution.<sup>1</sup> Campaigning is one of these functions.<sup>2</sup> All parties that have obtained at least 0.5% of the vote in the latest federal or European election, or 1% in the latest state election in one of the German states, have a right to receive funding.<sup>3</sup> The more votes a party has received, the more funding it will get.<sup>4</sup> There

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<sup>1</sup> Gesetz über die politischen Parteien [Parteiengesetz] [PartG] [Act on Political Parties] [Political Parties Act], Jan. 31, 1994, BUNDESGESETZBLATT [BGBl.] [FEDERAL LAW GAZETTE] I at 149, § 18, para. 1, <http://www.gesetze-im-internet.de/partg/PartG.pdf>, archived at <https://perma.cc/VF2A-6RDJ>, unofficial English translation available at [https://www.bundeswahlleiter.de/en/dam/jcr/bceaa8ef-5c4c-40f7-ae27-63c5f2e0aea6/parteiengesetz\\_engl.pdf](https://www.bundeswahlleiter.de/en/dam/jcr/bceaa8ef-5c4c-40f7-ae27-63c5f2e0aea6/parteiengesetz_engl.pdf) (English version updated through Sept. 24, 2009), archived at <https://perma.cc/GDV5-5NJQ>; GRUNDGESETZ [GG] [BASIC LAW], May 23, 1949, BGBl. I at 1, as amended, art. 21, <http://www.gesetze-im-internet.de/gg/GG.pdf>, archived at <https://perma.cc/8UJX-HC4T>, unofficial English translation available at [http://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.pdf](http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.pdf), archived at <https://perma.cc/R94W-YBZ3>.

<sup>2</sup> BUNDESVERFASSUNGSGERICHT [BVERFG] [FEDERAL CONSTITUTIONAL COURT], 85 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] [DECISIONS OF THE FEDERAL CONSTITUTIONAL COURT] 264, 285, <http://www.servat.unibe.ch/dfr/bv085264.html>, para. 88, archived at <https://perma.cc/54NB-16IQ>.

<sup>3</sup> Political Parties Act, § 18, para. 4.

<sup>4</sup> *Id.* § 18, para. 3.

is a maximum upper limit of €190 million (about US\$214 million) of public funding for all parties.<sup>5</sup> In addition, a political party may not receive more public funding than the sum of its annual income.<sup>6</sup>

## II. General Rules for Donations to Political Parties

Another way for parties to fund their activities are donations. Section 25, paragraph 1 of the Political Parties Act provides that a political party may generally accept donations without a limit.<sup>7</sup> A donation is defined as any revenue that the political party receives in excess of recurring membership fees and additional recurring payments by party members beyond their membership fees.<sup>8</sup> Donations include all kinds of benefits of monetary value.<sup>9</sup> The German Federal Constitutional Court has held that examples include “providing material resources, personnel, or established organizational structures free of charge” or “organizing free events or taking measures to campaign for the party.”<sup>10</sup> A party member who receives a donation on behalf of the party must immediately forward it to the member in charge of the party’s finances.<sup>11</sup>

Paragraph 3 lists accounting requirements for donations. Donations must be declared in the annual statement of accounts, which the political party must submit to the President of the German Bundestag (parliament).<sup>12</sup> Furthermore, donations from one source exceeding €10,000 (about US\$11,281) in a single calendar year must be listed separately with the name and address of the donor.<sup>13</sup> Donations exceeding €50,000 (about US\$56,404) must be reported immediately to the President of the Bundestag, who will publish the amount of the donation and the name and address of the donor in a parliamentary report.<sup>14</sup>

## III. Donations to Political Parties from Foreign Sources

In general, political parties may not accept donations from sources outside of Germany.<sup>15</sup> An exception applies if

- the donor is a German citizen, is from an European Union (EU) member state, or is a company headquartered in the EU or at least 50% owned by a German or EU citizen;

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<sup>5</sup> *Id.* § 18, paras. 2 & 5.

<sup>6</sup> *Id.* § 18, para. 5.

<sup>7</sup> *Id.* § 25, para. 1, sentence 1.

<sup>8</sup> *Id.* § 27, para. 1, sentence 3.

<sup>9</sup> *Id.* § 27, para. 1, sentence 4.

<sup>10</sup> BVerfG, *supra* note 2, para. 167.

<sup>11</sup> Political Parties Act, § 25, para. 1, sentence 2.

<sup>12</sup> *Id.* §§ 23, 24.

<sup>13</sup> *Id.* § 25, para. 3, sentence 1.

<sup>14</sup> *Id.* § 25, para. 3, sentences 2, 3.

<sup>15</sup> *Id.* § 25, para. 2, no. 3.

- the donor belongs to a national minority from a country that borders Germany and the donation goes to a political party representing that minority; or
- the donation from a foreigner does not exceed €1,000 (about US\$1,128).<sup>16</sup>

The explanatory memorandum to the Political Parties Act states that the exception for foreign donations of less than €1,000 was enacted because the chance of foreign influence is low in these cases due to the small amount.<sup>17</sup>

Furthermore, the Political Parties Act prohibits accepting anonymous donations in excess of €500 (about US\$564).<sup>18</sup>

A political party that receives donations from a prohibited source must forward the donation without undue delay to the President of the Bundestag, or at the latest with the submission of the annual statement of accounts for the year in question.<sup>19</sup> If a party accepts an illegal donation and does not forward it to the President of the Bundestag, the party is liable to pay three times the amount of the illegal donation.<sup>20</sup>

#### IV. Donations to Individual Members of the German Bundestag

The Rules of Procedure of the German Bundestag contain rules on donations received by individual members of the Bundestag that the donor wants to go to the member and not the party.<sup>21</sup> The rules provide that the prohibitions for party donations and the obligation to forward illegal donations to the President of the Bundestag are applicable, *mutatis mutandis*, to donations given to members of the German Bundestag.<sup>22</sup> Individual members of the Bundestag are therefore also generally prohibited from accepting foreign donations.

However, it should be noted that the rules of procedure make an explicit exception for benefits of monetary value that a member receives.<sup>23</sup> Unlike political parties, individual members are allowed to accept benefits of monetary value from otherwise illegal sources to, among other things, foster interparliamentary and international relations. They may therefore accept

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<sup>16</sup> *Id.*

<sup>17</sup> DEUTSCHER BUNDESTAG: DRUCKSACHEN UND PROTOKOLLE [BT-DRS.] 14/8778, at 16, <http://dipbt.bundestag.de/doc/btd/14/087/1408778.pdf>, archived at <https://perma.cc/778S-VTHY>.

<sup>18</sup> Political Parties Act, § 25, para. 2, no. 6.

<sup>19</sup> *Id.* § 25, para. 4.

<sup>20</sup> *Id.* § 31c, para. 1.

<sup>21</sup> Verhaltensregeln für Mitglieder des Deutschen Bundestages (Anlage 1 der Geschäftsordnung des Deutschen Bundestages [BTGO1980Anl 1]) [Code of Conduct for Members of the German Bundestag (Annex 1 to the Rules of Procedure of the German Bundestag)] [Code of Conduct], June 25, 1980, BGBl. I at 1237, 1255, as amended, [http://www.gesetze-im-internet.de/btgo1980anl\\_1/BTGO1980Anl\\_1.pdf](http://www.gesetze-im-internet.de/btgo1980anl_1/BTGO1980Anl_1.pdf), archived at <https://perma.cc/3XLZ-S8FH>.

<sup>22</sup> *Id.* § 4, para. 4.

<sup>23</sup> *Id.* § 4, para. 5.

invitations from foreign governments and institutions to “represent parliament externally.”<sup>24</sup> Members are only obligated to notify the President of the German Bundestag, who will publish the information in the Official Handbook of the German Bundestag and on the website of the German Bundestag.<sup>25</sup> This exception does not mean that they are allowed to accept such benefits in exchange for representing foreign interests in Parliament.<sup>26</sup> The prohibitions codified in the Act on the Members of the Bundestag still apply.<sup>27</sup>

Members who violate the rules in the Code of Conduct will be reprimanded by the President of the Bundestag if they acted negligently.<sup>28</sup> In all other cases, the President will inform the Bureau (*Präsidium*) and the heads of the parliamentary groups. The Bureau will give the member the possibility to make a statement and then decide whether to impose sanctions. The determination that a member has violated the Code of Conduct will be published in a parliamentary report without prejudice to other penalties according to the Members of the Bundestag Act.<sup>29</sup>

It should be noted that the Code of Conduct only applies to sitting members of the German Bundestag.<sup>30</sup> It is not applicable to politicians who are running for office and have not held office yet.

## V. Lawsuit to Obligate Parliament to Release Internal Information on Donations

In 2017, the organization Parliament Watch filed a Freedom of Information Act request asking the German parliament to release internal information and documents in connection with donations declared in the 2013 and 2014 annual statement of accounts submitted by the political parties. The goal of the request was to review how diligently the parliamentary administration checks the statements or is able to check the statements and whether they follow up on

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<sup>24</sup> BT-DRS. 13/834, at 5 et seq., <http://dipbt.bundestag.de/doc/btd/13/008/1300834.pdf>, archived at <https://perma.cc/DB7J-QSE6>; FRANK SOBOLEWSKI & FRANK RAUE, WISSENSCHAFTLICHE DIENSTE. DEUTSCHER BUNDESTAG. INFOBRIEF. GELDWERTE ZUWENDUNGEN AN ABGEORDNETE. RECHTSLAGE NACH DEM ABGEORNETENGESETZ UND DEN VERHALTENSREGELN [PARLIAMENTARY RESEARCH SERVICES. GERMAN BUNDESTAG. INFORMATION LETTER. CONTRIBUTIONS OF MONETARY VALUE TO PARLIAMENTARIANS. LEGAL SITUATION ACCORDING TO THE MEMBERS OF THE BUNDESTAG ACT AND THE CODE OF CONDUCT] 6 (2014), <https://www.bundestag.de/resource/blob/294932/da77f9e63b7c3c6d4ae86a39be666c4d/Geldwerte-Zuwendungen-an-Abgeordnete-data.pdf>, archived at <https://perma.cc/6E6Z-U8DS>.

<sup>25</sup> Political Parties Act, § 4, para. 5.

<sup>26</sup> SOBOLEWSKI & RAUE, *supra* note 24, at 6.

<sup>27</sup> Gesetz über die Rechtsverhältnisse der Mitglieder des Deutschen Bundestages [Abgeordnetengesetz] [AbgG] [Members of the Bundestag Act], Feb. 21, 1996, BGBL. I at 326, as amended, § 44a, para. 2, sentence 2, <https://www.gesetze-im-internet.de/abgg/AbgG.pdf>, archived at <https://perma.cc/LG3A-2ROG>, unofficial English translation available at [https://www.gesetze-im-internet.de/englisch\\_abgg/englisch\\_abgg.pdf](https://www.gesetze-im-internet.de/englisch_abgg/englisch_abgg.pdf), archived at <https://perma.cc/8KLU-4J6N>.

<sup>28</sup> Code of Conduct, *supra* note 21, § 8, para. 2.

<sup>29</sup> *Id.*; Members of the Bundestag Act, § 44a.

<sup>30</sup> State parliaments have comparable rules.

questionable donations. After the German parliament refused to comply with the request, Parliament Watch filed suit.<sup>31</sup>

On January 27, 2017, the Administrative Court of Berlin ruled in favor of Parliament Watch and obligated the German parliament to release the requested information and documents.<sup>32</sup> It held that the Political Parties Act only regulates mandatory disclosures in the annual statement of accounts but does not block releases of information on the basis of the general Freedom of Information Act. The Political Parties Act is not *lex specialis* to the Freedom of Information Act, because they do not regulate the same subject matter.<sup>33</sup>

The German Bundestag appealed the ruling to the Higher Regional Court Berlin-Brandenburg. In April 2018, the Court of Appeals confirmed the decision of the lower court and ruled against the German Bundestag.<sup>34</sup> The Bundestag has again appealed this ruling on questions of law to the highest administrative court, the Federal Administrative Court.<sup>35</sup> A decision is still pending.

## VI. Party Sponsoring

So-called party sponsoring is not regarded as a donation, but as taxable income from events and other income-related activities.<sup>36</sup> Party sponsoring is understood as “a business or other entity bearing costs related to certain political activities, in exchange for some form of publicity.”<sup>37</sup> It has to be declared in the annual statement of accounts, but it is not subject to the prohibitions for

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<sup>31</sup> Martin Reyher, *Urteil: Bundestag muss abgeordnetenwatch.de interne Dokumente zu Parteispenden herausgeben* [Court Decision: Parliament has to Release Internal Information on Party Donations to abgeordnetenwatch.de] (Feb. 8, 2017), <https://www.abgeordnetenwatch.de/blog/2017-02-08/urteil-bundestag-muss-abgeordnetenwatchde-interne-dokumente-zu-parteispenden>, archived at <https://perma.cc/XW43-2WR3>.

<sup>32</sup> VERWALTUNGSGERICHT BERLIN [VG BERLIN] [ADMINISTRATIVE COURT OF BERLIN], Jan. 26, 2017, docket no. 2 K 292.16, ECLI:DE:VGBE:2017:0126.2K292.16.00, [http://www.gerichtsentscheidungen.berlin-brandenburg.de/jportal/portal/t/z98/bs/10/page/sammlung.psml?pid=Dokumentanzeige&showdoccase=1&js\\_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdoctodoc=yes&doc.id=JURE170041710&doc.part=L&doc.price=0.0&doc.hl=1#focuspoint](http://www.gerichtsentscheidungen.berlin-brandenburg.de/jportal/portal/t/z98/bs/10/page/sammlung.psml?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdoctodoc=yes&doc.id=JURE170041710&doc.part=L&doc.price=0.0&doc.hl=1#focuspoint), archived at <https://perma.cc/95A9-2WM6>, and VG Berlin, Jan. 26, 2017, docket no. 2 K 69.16, ECLI:DE:VGBE:2017:0126.2K69.16.0A, [http://www.gerichtsentscheidungen.berlin-brandenburg.de/jportal/portal/t/zcp/bs/10/page/sammlung.psml?pid=Dokumentanzeige&showdoccase=1&js\\_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdoctodoc=yes&doc.id=JURE170028412&doc.part=L&doc.price=0.0&doc.hl=1#focuspoint](http://www.gerichtsentscheidungen.berlin-brandenburg.de/jportal/portal/t/zcp/bs/10/page/sammlung.psml?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdoctodoc=yes&doc.id=JURE170028412&doc.part=L&doc.price=0.0&doc.hl=1#focuspoint), archived at <https://perma.cc/X66V-ZCBV>.

<sup>33</sup> *Id.*

<sup>34</sup> OBERVERWALTUNGSGERICHT BERLIN-BRANDENBURG [OVG BERLIN-BRANDENBURG] [HIGHER REGIONAL COURT BERLIN-BRANDENBURG], Apr. 26, 2018, docket no. OVG 12 B 7.17, ECLI:DE:OVGBEBB:2018:0426.12B6.17.00, archived at <https://perma.cc/J32G-WSR2>.

<sup>35</sup> BUNDESVERWALTUNGSGERICHT [BVERWG] [FEDERAL ADMINISTRATIVE COURT], docket no. BVerwG 7 C 20.18, decision still pending.

<sup>36</sup> Political Parties Act, § 24, para. 4, no. 7, GRECO, COMPLIANCE REPORT ON GERMANY 11, para. 52 (Dec. 9, 2011), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c6365>, archived at <https://perma.cc/CC5X-HLKK>.

<sup>37</sup> GRECO, THIRD EVALUATION ROUND. EVALUATION REPORT ON GERMANY ON TRANSPARENCY OF PARTY FUNDING (THEME II) 24, para. 109 (Dec. 4, 2009), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c6362>, archived at <https://perma.cc/BHY6-6L9A>.

donations, for example, the prohibition on accepting donations from foreign sources. It has been criticized as a way to circumvent the transparency rules.<sup>38</sup> A motion by the Green Party to regulate party sponsoring was not taken up by the German Bundestag.<sup>39</sup>

In April 2019, the party Alternative for Germany (AfD) was fined €402,900 (about US\$454,653) by the Administration of the German Bundestag for accepting illegal donations in two cases.<sup>40</sup> A Swiss advertising agency had provided support for the state election campaigns in 2016 and 2017 in the form of posters, flyers, and advertisements for an amount equivalent to €89,800 (about US\$ 101,335). The Administration of the German Bundestag classified this support as an illegal donation from a foreign source. The AfD stated that it will contest the fines, because the advertisements were not illegal donations but party sponsoring and, therefore, taxable income.<sup>41</sup>

## VII. Transparency of Party Funding

Germany has also been repeatedly criticized by the Group of States Against Corruption (GRECO) of the Council of Europe for not implementing recommendations to enhance the transparency of party funding. The most recent addendum to the GRECO report stated that

GRECO is disappointed by the low level of progress achieved. Some clarifications, e.g. that political parties are prohibited from taking anonymous donations (except in regard of small amounts) are to be welcomed, but other considerations made have not resulted in much progress, even if some recommendations have been met partly. GRECO notes a clear lack of political will to enhance the system, ever since the adoption of the Evaluation Report more than nine years ago and, as a consequence, this system falls short of European standards.<sup>42</sup>

GRECO criticized, among other things, the lack of transparency regulations regarding donations to political candidates and the ineffectiveness of the sanctions regarding infringements of the Code of Conduct of Parliamentarians.

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<sup>38</sup> Christina Deckwirth, *Parteisponsoring im Bundestag: Union muss Blockadehaltung aufgeben!* [Party Sponsoring in the Bundestag: The Union Must Abandon Its Obstructive Approach!], LOBBYCONTROL (Dec. 1, 2016), <https://www.lobbycontrol.de/2016/12/parteisponsoring-im-bundestag-union-muss-blockadehaltung-aufgeben/>, archived at <https://perma.cc/7M93-2F2S>.

<sup>39</sup> BT-DRS. 18/10476, <http://dipbt.bundestag.de/dip21/btd/18/104/1810476.pdf>, archived at <https://perma.cc/36WY-6ZUU>.

<sup>40</sup> *AfD muss 402.900 Euro Strafe zahlen* [AfD is Fined 402,900 Euros], WELT, Apr. 16, 2019, <https://www.welt.de/politik/deutschland/article192032185/AfD-muss-wegen-illegaler-Parteispenden-402-900-Euro-Strafe-zahlen.html>, archived at <https://perma.cc/JR3B-38KZ>.

<sup>41</sup> *Id.*

<sup>42</sup> GRECO, THIRD EVALUATION ROUND. SECOND ADDENDUM TO THE SECOND COMPLIANCE REPORT ON GERMANY 6 (June 4, 2019), <https://rm.coe.int/third-evaluation-round-second-addendum-to-the-second-compliance-report/168094c73a>, archived at <https://perma.cc/46G4-RG6L>.

## VIII. Political Advertising

There are no specific rules on political advertising or other types of communications about elections during campaigns. Political advertisements fall under freedom of expression, freedom of the press, and freedom of the arts, protected by article 5 and article 21 on political parties of the German Basic Law.<sup>43</sup> Article 5 of the Basic Law is applicable to all persons, whether German or foreign.<sup>44</sup> Limits on political advertisements or other types of communications can be enforced when they violate general laws, for example, criminal laws.<sup>45</sup>

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<sup>43</sup> Basic Law, art. 5, paras. 1 & 3, art. 21.

<sup>44</sup> *Id.* art. 5, para. 1 states “**Every person** shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from generally accessible sources . . . .” (Emphasis added.)

<sup>45</sup> *Id.* art. 5, para. 2.

# Great Britain

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**SUMMARY** Great Britain has a number of laws designed to ensure that money donated to political parties and candidates are regulated through reporting requirements on the parties and candidates and through spending limits. Donations above specified amounts may only be received from “permissible donors.” Foreign individuals and foreign registered companies are precluded from this definition and thus are not permitted to make large donations to political parties or candidates. However, there does not appear to be any restriction on the employment of foreign staff by political parties or candidates. Digital campaigns have caused the Electoral Commission concern that foreign individuals and companies may be circumventing the law by spending money on digital advertisements from their home countries when they would be prohibited from doing so from within Great Britain. The Commission has made a number of recommendations that the law be clarified to ensure this action is explicitly prohibited.

## I. Prohibitions on Receipt of Foreign Contributions

The current law regarding campaign financing in Great Britain<sup>1</sup> is contained in the Representation of the People Act 1983;<sup>2</sup> the Political Parties, Elections and Referendums Act 2000;<sup>3</sup> and the Political Parties and Elections Act 2009.<sup>4</sup> The system in Great Britain of regulating campaign financing focuses on limiting the expenditure of political parties and individual candidates one year prior to a general election and making reporting requirements transparent rather than simply limiting the amount of donations that can be received by these parties and individuals.

While there are no limits on the amount of donations that political parties may receive, there are laws that govern who may be a donor and limits on spending by political parties, candidates, and third parties wishing to promote parties or candidates. The aim of the law is to regulate donations through transparency, as political parties, candidates, and third-party campaigners must make their finances public.<sup>5</sup>

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<sup>1</sup> This report will focus on the law of Great Britain, which comprises England, Wales and Scotland. The law applicable in Northern Ireland is similar but with minor differences.

<sup>2</sup> Representation of the People Act 1983, c. 2, <http://www.legislation.gov.uk/ukpga/1983/2>, archived at <https://perma.cc/4ZLU-PI4F>.

<sup>3</sup> Political Parties, Elections and Referendums Act 2000, c. 41, <http://www.legislation.gov.uk/ukpga/2000/41>, archived at <https://perma.cc/CL4C-FEY8>.

<sup>4</sup> Political Parties and Elections Act 2009, c. 12, <http://www.legislation.gov.uk/ukpga/2009/12>, archived at <https://perma.cc/E4HK-BRP8>.

<sup>5</sup> Political Parties, Elections and Referendums Act 2000, c. 41, pts IV-VI.

## A. Donations to Political Parties

Political parties may accept donations above £500 (approximately US\$630) only from “permissible donors.”<sup>6</sup> Donations are defined in the Political Parties, Elections and Referendums Act 2000 to include gifts of money and property; subscriptions and affiliation fees; sponsorship; money spent on behalf of a party; the provision of property, services, or facilities; or the lending of money other than at commercial rates.<sup>7</sup> A “permissible donor” is defined to include an individual registered on a UK electoral register, a UK-registered political party, a UK-registered company, a UK-registered trade union, a UK-registered building society, a UK-registered limited liability partnership, or a UK-based unincorporated association.<sup>8</sup>

Thus, foreign donors other than those that meet the criteria above are not considered to be permissible donors and thus may not donate more than £500 (approximately US\$630) to political parties. If a donation is received from a donor that does not fall into these categories, the political party must return the donation or, if the donor cannot be identified, return the money to the Electoral Commission.<sup>9</sup> If the Electoral Commission believes that a political party has received a donation from a “non-permissible source,” they may seek a forfeiture order in court for the value of the donation.<sup>10</sup> It is an offense to not provide information about donors, or facilitate donations to a political party from non-permissible sources, punishable with up to one year of imprisonment.<sup>11</sup>

## B. Candidates

Donations to candidates are considered to include money or other property; sponsorship; expenses incurred by other parties on behalf of the candidate; loans; or the provision of property, services, or facilities not on commercial terms.<sup>12</sup> There are no limits on the donations that electoral candidates may receive other than that, as with political parties, donations over a specified amount must come from permissible donors, and in the case of candidates the limit is set at £50 (approximately US\$70).<sup>13</sup>

## C. Third-Party Expenditure

Individuals or organizations and companies registered in the European Union (EU) who are not candidates or political parties and who spend money during the regulated period<sup>14</sup> in a manner

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<sup>6</sup> *Id.* § 54.

<sup>7</sup> *Id.* § 50.

<sup>8</sup> *Id.* § 54.

<sup>9</sup> *Id.* §§ 56–57.

<sup>10</sup> *Id.* § 58.

<sup>11</sup> *Id.* § 61 & sched. 20.

<sup>12</sup> Representation of the People Act 1983, sched. 2A.

<sup>13</sup> *Id.* § 71A & sched. 2A.

<sup>14</sup> The regulated period for general elections currently begins 365 days before the date of the election. THE ELECTORAL COMMISSION, REGULATED PERIODS FOR POLITICAL PARTIES: ELECTIONS IN MAY 2016 at 4, <http://www.>

that “can reasonably be regarded as intended to promote or procure the electoral success of a party or candidates” are known as nonparty, or third-party,<sup>15</sup> campaigners. Any of these individuals or entities that spend more than £20,000 (approximately US\$25,000) in England, or £10,000 (approximately US\$12,500) in Scotland or Northern Ireland, must be registered under the Political Parties, Elections and Referendums Act 2000 and must meet its rule on expenditure, with limits and reporting requirements.<sup>16</sup> The following individuals and entities are able to register as third-party campaigners: Individuals resident in the UK or registered on the UK electoral register;<sup>17</sup> companies registered in the UK or incorporated in the UK or an EU Member State that carry on business in the UK; registered parties; UK-registered trade unions; and certain UK-registered charities, partnerships, associations, and societies.<sup>18</sup>

While this section of the Political Parties, Elections and Referendums Act 2000 appears to preclude overseas individuals or overseas-based organizations from engaging in campaigning, the Electoral Commission is of the opinion that the Act is not sufficiently explicit in prohibiting these individuals or entities from engaging in campaign activity from overseas.<sup>19</sup> It notes that the Act was written to address concerns that foreign nationals would donate money to political parties and, at the time the law was drafted, the government “had not seen the potential for foreign sources to directly purchase campaign advertising in the UK.”<sup>20</sup>

## II. Employing Foreign Campaign Staff

Other than meeting immigration laws by ensuring that, if employed in Great Britain, any foreign national is lawfully able to work in the UK, there does not appear to be any restriction on the nationality of individuals hired by campaigners in the UK. For political parties and referendum campaigners, any money spent on staff they directly employ to work on their election and referendum campaigns does not count towards spending limits. In certain circumstances where a volunteer uses property, services or equipment, this may be considered notional expenditure (incurred when another person pays the cost that the political party would have otherwise had to pay) and be counted as a campaign expenditure incurred by the party.<sup>21</sup>

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[electoralcommission.org.uk/\\_data/assets/pdf\\_file/0015/193002/Regulated-periods-for-political-parties-elections-in-May-2016.pdf](https://electoralcommission.org.uk/_data/assets/pdf_file/0015/193002/Regulated-periods-for-political-parties-elections-in-May-2016.pdf), archived at <https://perma.cc/Q24F-5MF8>.

<sup>15</sup> *Non-Party Campaigners*, THE ELECTORAL COMMISSION, <https://www.electoralcommission.org.uk/i-am-a/party-or-campaigner/non-party-campaigners> (last visited July 2, 2019), archived at <https://perma.cc/U2XE-78VV>.

<sup>16</sup> Political Parties, Elections and Referendums Act 2000, § 85(2).

<sup>17</sup> *Id.* § 88.

<sup>18</sup> *Id.* §§ 54 & 88.

<sup>19</sup> ELECTORAL COMMISSION, DIGITAL CAMPAIGNING: INCREASING TRANSPARENCY FOR VOTERS ¶ 86 (June 2018), available at [https://webarchive.nationalarchives.gov.uk/tna/20180801141548/https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0010/244594/Digital-campaigning-improving-transparency-for-voters.pdf](https://webarchive.nationalarchives.gov.uk/tna/20180801141548/https://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/244594/Digital-campaigning-improving-transparency-for-voters.pdf), archived at <https://perma.cc/3ZAH-DX55>.

<sup>20</sup> *Who Pays for Digital Campaigns*, THE ELECTORAL COMMISSION, <https://www.electoralcommission.org.uk/find-information-by-subject/political-parties-campaigning-and-donations/digital-campaigning/4-who-pays-for-digital-campaigns> (last visited July 2, 2019), archived at <https://perma.cc/TLF7-39YT>.

<sup>21</sup> Political Parties, Elections and Referendums Act 2000, § 73.

The money spend on staff by registered third-party campaigners and candidates counts towards spending limits and these expenses must be reported.<sup>22</sup> The Electoral Commission has recommended for a number of years that the costs of employing staff by political parties should count towards the spending limits and that to do so “would close an obvious gap and inconsistency in the rules that allows political parties and referendum campaigners to spend potentially large sums of money on campaigning without having to declare them.”<sup>23</sup>

### III. Campaign Donations by Foreign Companies

Companies registered in either the UK or an EU Member State carrying on a business in the UK are considered to be permissible donors and can donate or lend money to political parties or candidates, and/or register as third-party campaigners.<sup>24</sup> The Electoral Commission has noted that the law currently allows foreign companies to use subsidiaries registered in the UK that do business there, but that do not necessarily generate money, to give or lend money sourced from outside the UK to campaigners in the UK. The Electoral Commission recommends that Parliament clarify the law that any money donated or loaned to campaigners must have been generated in the UK, and noted this would have to be done carefully to ensure that the law can be enforced and that it is carefully balanced with the need to ensure freedom of expression.<sup>25</sup>

### IV. Dissemination of Election Information through Mass Media

The focus on digital advertisements in Great Britain in relation to the current electoral financing laws is to ensure that any costs and expenditure connected with producing and/or disseminating digital materials are appropriately recorded and reported.<sup>26</sup> Currently, expenditure on this type of advertising must be reported in accordance with the various provisions of the Political Parties, Elections and Referendums Act 2000 depending upon whether it is spent by the party, a candidate, or a registered third-party campaigner. The Electoral Commission has expressed concern that the compilation of datasets and databases that are utilized for targeted digital advertisements may occur before the regulated period and thus fall outside the expenditure and reporting period for political parties, candidates, and registered third-party campaigners. It has recommended that that parties should declare an estimate of any expenditure the party or

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<sup>22</sup> ELECTORAL COMMISSION, UK PARLIAMENTARY GENERAL ELECTION 2017 GREAT BRITAIN: GUIDANCE FOR CANDIDATES AND AGENTS 8, [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0019/214516/UKPGE-Part-3-Spending-and-donations.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0019/214516/UKPGE-Part-3-Spending-and-donations.pdf), archived at <https://perma.cc/A8SX-D4ZS>.

<sup>23</sup> ELECTORAL COMMISSION, DIGITAL CAMPAIGNING: INCREASING TRANSPARENCY FOR VOTERS, *supra* note 19, ¶ 86.

<sup>24</sup> Political Parties, Elections and Referendums Act 2000 § 54. See also ELECTORAL COMMISSION, DIGITAL CAMPAIGNING: INCREASING TRANSPARENCY FOR VOTERS *supra* note 19, ¶ 93.

<sup>25</sup> ELECTORAL COMMISSION, DIGITAL CAMPAIGNING: INCREASING TRANSPARENCY FOR VOTERS *supra* note 19, ¶¶ 93-95.

<sup>26</sup> See, e.g., *Code of Practice: Political Parties (Current Draft)*, ELECTORAL COMMISSION, [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0015/246120/Political-parties-code-of-practice.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0015/246120/Political-parties-code-of-practice.pdf) (last visited June 25, 2019), archived at <https://perma.cc/79KL-GK4L>.

candidate has invested purchasing or developing any data they hold when they register as a party or candidate.<sup>27</sup>

The Electoral Commission has provided further guidance over the application of this law to digital materials and advertisements, stating as follows:

The rules do cover the costs of placing adverts on digital platforms or websites. They include the costs of distributing and targeting digital campaign materials or developing and using databases for digital campaigning. This applies even if the original purchase of hardware or software materials falls outside the regulated period for reporting spending. Spending limits and rules to report spending apply to campaign spending on advertising. The same rules apply whether campaigners use long-standing techniques, such as printed mailshots or billboards, or newer ones, such as emails and online adverts.<sup>28</sup>

As noted above, the Electoral Commission has stated that while there is a general principle in Great Britain that funding from overseas is not permitted, “the rules do not explicitly ban overseas spending.”<sup>29</sup> This has meant that foreign nationals who would be unable to register as third-party campaigners in Great Britain, which may include foreign nation states, private organizations, and individuals, are able to purchase digital advertisements in their home country and target voters in Great Britain.<sup>30</sup>

The Electoral Commission has recommended that the government introduce legislation to specifically prohibit campaign spending from overseas. The Digital, Culture, Media and Sport Committee has also called for the government to

review[] the current rules on overseas involvement in our UK elections to ensure that foreign interference in UK elections, in the form of donations, cannot happen. We also need to be clear that Facebook, and all platforms, have a responsibility to comply with the law and not to facilitate illegal activity.<sup>31</sup>

The Electoral Commission has further recommended that the law be updated to require any digital material to have an imprint that states who created and funded the campaign and to increase transparency by requiring more detailed invoices for digital advertisements.<sup>32</sup>

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<sup>27</sup> ELECTORAL COMMISSION, DIGITAL CAMPAIGNING: INCREASING TRANSPARENCY FOR VOTERS, *supra* note 19, ¶¶ 102-103.

<sup>28</sup> *Spending on Digital Campaign Activity*, THE ELECTORAL COMMISSION, <https://www.electoralcommission.org.uk/find-information-by-subject/political-parties-campaigning-and-donations/digital-campaigning/3-spending-on-digital-campaign-activity> (last visited July 1, 2019), archived at <https://perma.cc/6WKQ-8EST>.

<sup>29</sup> ELECTORAL COMMISSION, DIGITAL CAMPAIGNING: INCREASING TRANSPARENCY FOR VOTERS, *supra* note 19, ¶ 86.

<sup>30</sup> *Id.* ¶ 86. See also DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE, DISINFORMATION AND ‘FAKE NEWS’: FINAL REPORT (2018-19) H.C. 1791, ¶ 267, <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomeds/1791/1791.pdf>, archived at <https://perma.cc/54BK-ZNPE>.

<sup>31</sup> DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE, *supra* note 30, ¶ 267.

<sup>32</sup> ELECTORAL COMMISSION, DIGITAL CAMPAIGNING: INCREASING TRANSPARENCY FOR VOTERS, *supra* note 19, ¶ 103.

# India

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**SUMMARY** In India, the conduct of elections to the Houses of Parliament and state legislatures is mainly regulated by the 1951 Representation of the People Act. Section 29B of the 1951 Act prohibits all political parties registered with the Election Commission from accepting any contribution from a “foreign source.” Moreover, section 3 of the 2010 Foreign Contribution (Regulation) Act bars candidates, legislative members, political parties and party officeholders from accepting foreign contributions. In response to a 2014 High Court of Delhi decision finding a violation of the 1976 Foreign Contribution (Regulation) Act where political parties accepted contributions from local companies that were majority owned by a foreign corporation, the controlling Bharatiya Janata Party government passed a retroactive amendment through a 2016 Finance Bill that excludes from the definition of “foreign sourced” contributions from local companies even though a foreign company owns more than half their shares, provided certain direct investment requirements are met.

## I. Foreign Contributions to Elections

In India, the conduct of elections of the Houses of Parliament and state legislatures is mainly regulated by the 1951 Representation of the People Act.<sup>1</sup> Section 29B of the 1951 Act “prohibits all political parties registered with Election Commission to accept any contribution from a foreign source”:<sup>2</sup>

29B. Political parties entitled to accept contribution.—Subject to the provisions of the Companies Act, 1956 (1 of 1956), every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a Government company:

Provided that no political party shall be eligible to accept any contribution from any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976).<sup>3</sup>

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<sup>1</sup>Representation of the People Act, No. 43 of 1951, [https://indiacode.nic.in/bitstream/123456789/2096/3/a1951-43.pdf#search=THE REPRESENTATION OF THE PEOPLE ACT, 1951](https://indiacode.nic.in/bitstream/123456789/2096/3/a1951-43.pdf#search=THE%20REPRESENTATION%20OF%20THE%20PEOPLE%20ACT,%201951), archived at <https://perma.cc/645L-63PY>.

<sup>2</sup>Samya Chatterjee, *Campaign Finance Reforms in India: Issues and Challenges*, ORF ISSUE BRIEF No. 47, 4 (Dec. 2012), [https://www.orfonline.org/wp-content/uploads/2013/02/IssueBrief\\_47.pdf](https://www.orfonline.org/wp-content/uploads/2013/02/IssueBrief_47.pdf), archived at <https://perma.cc/G7EG-BV53>.

<sup>3</sup>Representation of the People Act, § 29B.

The 1976 Foreign Contribution (Regulation) Act was replaced by the 2010 Foreign Contribution (Regulation) Act,<sup>4</sup> which was passed to “regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.”<sup>5</sup>

Section 3(1) of the 2010 Act lists persons and entities barred from accepting foreign contributions, including candidates for election, members of any legislature, political parties or party officeholders, organizations of a political nature, and associations or companies engaged in the production or broadcast of audio news, audiovisual news, or current affairs programs.<sup>6</sup> No person or resident in India, and no citizen of India resident outside the country, is allowed to accept any foreign contribution or acquire or agree to acquire any currency from a foreign source on behalf of any political party, any person referred to in Section 3(1), or both.<sup>7</sup> Delivery of currency from a foreign source is also prohibited under the Act:

(b) No person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to any political party or any person referred to in sub-section (1), or both.

(c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to—

(i) any political party or any person referred to in sub-section (1), or both; or

(ii) any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.

(3) No person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any person or class of persons, referred to in section 9 [designate a person or class of person from receiving foreign contributions], shall deliver such currency—

(a) to any person other than a person for which it was received, or

(b) to any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a person other than the person for which such currency was received.<sup>8</sup>

Offenses and penalties are laid out in Chapter VIII of the Act. Section 35 of the Act stipulates that “[w]hoever accepts, or assists any person, political party or organisation in accepting, any foreign contribution or any currency or security from a foreign source, in contravention of any provision of this Act or any rule or order made thereunder, shall be punished with imprisonment for a term

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<sup>4</sup> Foreign Contribution (Regulation) Act, No. 42 of 2010, [https://indiacode.nic.in/bitstream/123456789/2098/1/201042.pdf#search= Foreign Contribution Regulation Act](https://indiacode.nic.in/bitstream/123456789/2098/1/201042.pdf#search=Foreign%20Contribution%20Regulation%20Act), archived at <https://perma.cc/6DBP-63CB>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* § 3(1).

<sup>7</sup> *Id.* § 3(2)(a).

<sup>8</sup> *Id.* § 3(2)(b)(c)- § 3(3).

which may extend to five years, or with fine, or with both.”<sup>9</sup> Offenses by companies are set forth by section 39 of the Act:

39. Offences by companies. – (1) Where an offence under this Act or any rule or order made thereunder has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act or any rule or order made thereunder has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.<sup>10</sup>

## II. Foreign Corporate Contributions to Elections

In 2014, the High Court of Delhi issued a decision<sup>11</sup> that found that India’s two main political parties, the Bharatiya Janata Party (BJP) and Indian Congress party, were in violation of the ban on foreign contributions in the 1976 Foreign Contribution (Regulation) Act by accepting cash from two local companies owned by London-listed mining group Vedanta Resources Plc between 2004 and 2012.<sup>12</sup> The court found that:

For the reasons extensively highlighted in the preceding paragraphs, we have no hesitation in arriving at the view that prima-facie the acts of the respondents inter-se, as highlighted in the present petition, clearly fall foul of the ban imposed under the Foreign Contribution (Regulation) Act, 1976 as the donations accepted by the political parties from Sterlite and Sesa accrue from “Foreign Sources” within the meaning of law.<sup>13</sup>

In the 1976 Act, a foreign company is partly defined as a “foreign source” if “a company within the meaning of the Companies Act, 1956, (1 of 1956) if more than one-half of the nominal value

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<sup>9</sup> *Id.* § 35.

<sup>10</sup> *Id.* § 39.

<sup>11</sup> Association for Democratic Reforms & ANR. v. Union of India & ORS, W.P.(C) 131/2013 (Del.) (Mar. 28, 2014), <http://lobis.nic.in/ddir/dhc/PNJ/judgement/27-03-2014/PNJ28032014CW1312013.pdf>, archived at <https://perma.cc/23HX-TKQ4>.

<sup>12</sup> Shyamantha Asokan & Sruthi Gottipati, *Vedanta Donations to Indian Parties Ruled Illegal by Delhi Court*, REUTERS (Mar. 28, 2014), <https://www.reuters.com/article/us-india-election-donations/vedanta-donations-to-indian-parties-ruled-illegal-by-delhi-court-idUSBREA2R0XU20140328>, archived at <https://perma.cc/LX92-7QY8>.

<sup>13</sup> Association for Democratic Reforms & ANR v. Union of India & ORS, para. 73.

of its share capital is held, either singly or in the aggregate, by one or more of the following” including “corporations incorporated in a foreign country or territory.”<sup>14</sup> By that definition, the Delhi High Court ruled that “multiple donations from the London-based natural resources giant Vedanta (among a few others) provided to both parties ran afoul of the law on the books.”<sup>15</sup> Since more than one-half of their share capital was held by a foreign company “the donations in favor of the political parties are to be construed as emanating from a 'Foreign Source' and fall within the prohibition imposed by the Act.”<sup>16</sup>

In response to the decision, the BJP as part of a 2016 Finance Bill enacted a retroactive amendment to the 2010 Foreign Contribution (Regulation) Act in order to redefine the term “foreign source” to include a proviso:

Provided that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999, or the rules or regulations made thereunder, then, notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source[.]<sup>17</sup>

According to Milan Vaishnav, a senior fellow of the Carnegie Endowment for International Peace:

To be fair, reasonable people can disagree as to the appropriate definition of what a foreign company ought to be. But the government was not interested in a reasoned, fact-based debate; in fact, it was not interested in a debate at all. To the contrary, what it—and the Congress opposition –[sic] desired was for their legal woes to go away with the stroke of a pen and without too many people taking notice. And what better way than an obscure clause in the Finance Bill, which as a “money bill” does not even need approval from the upper house of Parliament? With the passage of the 2016 Finance Act, the parties breathed a momentary sigh of relief. But in their rush to cover up their tracks, the offending parties slipped and committed an amateur mistake. That is because several of the foreign donations the BJP and Congress received pre-dated 2010, the date of the amended FCRA legislation. As the Delhi High Court order makes clear, the two national parties were actually found to be in violation of the original FCRA statute that dates back to 1976 (which was repealed and re-enacted by the modified 2010 statute). If “illegal” donations from foreign sources were received before 2010, redefining things as of 2010 actually does little good. One has to go back further.<sup>18</sup>

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<sup>14</sup> Foreign Contribution (Regulation) Act, No. 49 of 1976, § 2(e)(vi), <http://www.legislative.gov.in/sites/default/files/A1976-49.pdf>, archived at <https://perma.cc/GB6U-K99P>.

<sup>15</sup> Milan Vaishnav, *Don't Believe the BJP and Congress Claims That They're Cleaning Up Poll Funding*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Feb. 6, 2018), <https://carnegieendowment.org/2018/02/06/don-t-believe-bjp-and-congress-claims-that-they-re-cleaning-up-poll-funding-pub-75458>, archived at <https://perma.cc/LKS2-3SGZ>.

<sup>16</sup> VAISH ASSOCIATES ADVOCs., *BETWEEN THE LINES . . .*, 2 (Mar. 2016), <https://s3.amazonaws.com/documents.lexology.com/9fbfd64b-8849-46ef-8c61-dbe3979a45ef.pdf>, archived at <https://perma.cc/5ASY-SAZG>.

<sup>17</sup> Finance Bill, No. 18 of 2016, § 233, <https://www.indiabudget.gov.in/budget2016-2017/ub2016-17/fb/bill.pdf>, archived at <https://perma.cc/7ZW7-QNNX>.

<sup>18</sup> Vaishnav, *supra* note 15.

Due to the change made in 2016, foreign funds received by political parties after September 26, 2010, were validated while funds before that date could still come under scrutiny. Therefore, in the 2018 Finance Act,<sup>19</sup> the government introduced another amendment to cover “the period beginning August 5, 1976 – the date the original FCRA law came into being.”<sup>20</sup>

In any case, these changes effectively allow “for an intersection of the FEMA and the FCRA whereby it allows a company which is compliant with the foreign direct investment sectoral caps prescribed by the DIPP [Department of Industrial Policy and Promotion] and the RBI [Reserve Bank of India], to freely contribute to any person (as defined under the FCRA) in India without adhering to the restrictions thereon since they are excluded from the definition of ‘foreign source,’ as defined under s.2(1)(j).”<sup>21</sup>

The Supreme Court of India is currently in the process of hearing several petitions “that challenge the constitutional validity of a number [sic] legislative changes that have altered the landscape of campaign financing in India.”<sup>22</sup>

Another change that has come under some criticism is an amendment made through the 2017 Finance Act,<sup>23</sup> which amended section 29-C of the 1951 Representation of the People Act to exempt electoral bonds from the reporting of more than twenty thousand rupees in contributions from a person or a company:

29C. Declaration of donation received by the political parties.—(1) The treasurer of a political party or any other person authorised by the political party in this behalf shall, in each financial year, prepare a report in respect of the followings namely:—  
(a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;  
(b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

*Provided that nothing contained in this sub-section shall apply to the contributions received by way of an electoral bond.*

Changes to other laws by the 2017 Act also impacted transparency of contributions received by political parties:

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<sup>19</sup> Finance Act, No. 13 of 2018, § 220, <http://egazette.nic.in/writereaddata/2018/184302.pdf>, archived at <https://perma.cc/UE8P-RNKW>.

<sup>20</sup> Vaishnav, *supra* note 15.

<sup>21</sup> 2016 Amendment to the FCRA, CORP. L. REP., (Dec. 7, 2016), <http://corporatelawreporter.com/2016/12/07/2016-amendment-to-the-fcra/>, archived at <https://perma.cc/R6KS-NXAM>.

<sup>22</sup> Anuj Srivas, *In Supreme Court, EC Criticises Modi Govt's Electoral Bonds and Foreign Funding Tweaks*, WIRE (Mar. 27, 2018), <https://thewire.in/law/supreme-court-election-commission-modi-electoral-bonds-foreign-funds>, archived at <https://perma.cc/C8UF-LSMU>.

<sup>23</sup> Finance Act, No. 7 of 2017, [http://www.civilaviation.gov.in/sites/default/files/MoL&amp;J\(Legislative Deptt\) The Finance Act .pdf](http://www.civilaviation.gov.in/sites/default/files/MoL&amp;J(Legislative%20Deptt)TheFinanceAct.pdf), archived at <https://perma.cc/6GF3-GDJS>.

Similarly, section 13A of the Income Tax Act 1961 provides for exemption of all voluntary contributions received by a political party from payment of income tax. But such exemption is conditional on the recipient party maintaining such books of accounts and other documents as would enable the officers of the I-T department to properly deduce the income received by it and also maintaining a record of such contributions and the names and addresses of donors as well as amounts above ₹20,000. This provision also says that if the party fails to submit the report as stipulated in Section 29C of the RPI Act 1951, it will not get the tax exemption. The Finance Act, 2017 amended both these Acts and exempted electoral bonds from the purview of section 29 C of the RP Act 1951 as well as section 13 A of the IT Act 1961. This means the income received by way of electoral bonds is not required to be disclosed in the report which goes to the Election Commission. Further, political parties are not required to maintain any record of the same or the names and addresses of donors of these bonds. This is the essence of the bonds scheme.<sup>24</sup>

The Election Commission of India (EC), an autonomous constitutional authority responsible for administering election processes in India, has criticized the “BJP government’s electoral bond scheme and its decision to allow foreign funding of Indian political parties”<sup>25</sup> and has told the Supreme Court in an affidavit that it will have “serious repercussions on the transparency aspect of political funding of political parties.” The Commission also reportedly stated to the Court that:

[i]n a situation where contributions received through electoral bonds are not reported, on perusal of contribution report of political parties, it cannot be ascertained whether the political party has taken any donation in violation of section 29 B of the Representation of People Act, 1951, which prohibits the political parties from taking donations from government companies and foreign sources.<sup>26</sup>

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<sup>24</sup> *Electoral Bonds: Secretive and Opaque*, HINDU BUS. LINE (Mar. 22, 2018), <https://www.thehindubusinessline.com/opinion/electoral-bonds-secretive-and-opaque/article23323002.ece>, archived at <https://perma.cc/P6K5-HPUP>.

<sup>25</sup> Srivas, *supra* note 22.

<sup>26</sup> Aashish Aryan, *Election Commission Expresses Reservations on Donations via Electoral Bonds*, Bus. Standard (Mar. 28, 2019), [https://www.business-standard.com/article/current-affairs/election-commission-expresses-reservations-on-donations-via-electoral-bonds-119032701069\\_1.html](https://www.business-standard.com/article/current-affairs/election-commission-expresses-reservations-on-donations-via-electoral-bonds-119032701069_1.html), archived at <https://perma.cc/W93X-95RS/>.

# Israel

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**SUMMARY** Political parties and party lists (blocs) in general elections are prohibited from accepting campaign donations from foreign individuals and from corporations or registered partnerships in Israel or abroad. While individuals running in primaries are prohibited from receiving any corporate donations, Israeli or foreign, it appears that they may receive individual donations from either Israeli or foreign individual donors up to a ceiling and under conditions determined by law.

There are no prohibitions on hiring foreign consultants in political campaigns. Fees paid to such consultants must be included in financial reports submitted by political parties to the State Comptroller. Fees paid to consultants by Israeli nonprofit organizations are subject to extensive disclosure requirements for any contributions received from foreign political entities.

There are no laws that prohibit foreign persons or entities communicating about elections during campaigns, through any form of mass media, including the internet and social media. Television and radio broadcasting companies, however, are required to be registered in Israel or have a certain percentage of all means of control vested in Israeli residents or citizens or in a corporation registered in Israel.

## I. Prohibitions on Receipt of Foreign Contributions

Political parties and lists (blocs) of candidates<sup>1</sup> are prohibited from directly or indirectly receiving any contribution from foreign individuals and from corporations or registered partnerships in Israel or abroad.<sup>2</sup> Individual candidates are similarly prohibited from getting funding for primaries from any corporations and registered partnerships.<sup>3</sup>

While donations by individual foreign donors to individual candidates in primaries do not appear to be prohibited, similar to donations by Israeli donors, they are subject to a general cap of NIS 11,520 (about US\$3,189) for a single donation or the aggregate amount of donations by a single donor during the determining period. This period generally extends from the fifteenth day following the receipt of the donation to a candidate running for the first time, or following the

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<sup>1</sup> See *Parties, Lists, Parliamentary Groups, Etc.*, KNESSET WEBSITE, [https://www.knesset.gov.il/faction/eng/FactionEtc\\_eng.asp](https://www.knesset.gov.il/faction/eng/FactionEtc_eng.asp) (last visited June 10, 2019), archived at <https://perma.cc/TRX8-G8FR>.

<sup>2</sup> Political Parties (Financing) Law, 5733-1973, § 8(a) & (d1), SEFER HA-HUKIM (SH, Book of Laws, official gazette) 5733 No. 680 p.52, as amended; Knesset Elections (Consolidated Version) Law, 5729-1969, §§ 2 & 26, SH 5729 No. 556 p. 103.

<sup>3</sup> Parties Law, 5752-1992, § 28 D (a), SH 5752 No. 1395 p. 190 (as amended).

previous primary elections for a candidate who ran before, up to fourteen days after the primary elections.<sup>4</sup>

## II. Disclosure Requirements for Fees Paid to Foreign Consultants

The employment of foreign consultants in political campaigns is not prohibited but is subject to reporting requirements.

### A. Fees Paid Directly by Political Parties and Candidates

Fees paid by political parties or primary candidates to foreign consultants have to be reported as expenses in financial reports that must be filed with the State Comptroller's office.<sup>5</sup>

### B. Fees Paid by *Amutot*

Fees that are paid by nonprofit organizations (*amutot*) to foreign consultants for consulting with parties or candidates are subject to disclosure requirements under the Duty of Disclosure [for a Body] Supported by a Foreign Political Entity, 5771-2011 (Disclosure Law).<sup>6</sup>

The Disclosure Law applies to "foreign political entities" (FPEs) consisting of foreign countries and organizations, as well as the Palestinian Authority. A corporation established by an FPE's law or one in which an FPE holds more than half of a certain type of control in the corporation or that has been appointed on the FPE's behalf, as well as a foreign corporation whose financial report for the last fiscal year indicates it was funded mainly by FPEs, is also subject to disclosure requirements.<sup>7</sup>

Disclosure duties include quarterly financial reporting requirements as to the identity of donors, the amount and objectives of the donations, and the conditions for their receipt.<sup>8</sup> The information submitted to the Registrar of *Amutot* will be published on the website of the Ministry of Justice and by the funded body if it has a website, and in any other way selected by the Registrar. Additionally, an *amuta* that received a donation from a foreign entity for the purpose of funding

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<sup>4</sup> *Id.* § 28 F (a) (1 & 3).

<sup>5</sup> Political Parties (Financing) Law, 5733-1973, § 9; Parties Law 5752-1992, § 28 V; Directives regarding reporting requirements available at the STATE COMPTROLLER AND OMBUDSMAN OF ISRAEL, <https://www.mevaker.gov.il/he/mimun/Pages/MimunLaws.aspx> (last visited June 10, 2019) [in Hebrew], archived at <https://perma.cc/E4MK-LMHY>.

<sup>6</sup> Duty of Disclosure [for a Body] Supported by a Foreign Political Entity, 5771-2011, SH 5771 No. 2279, p. 362 (as amended); see also RUTH LEVUSH, *Israel: Disclosure Requirements for Organizations Funded by Foreign Political Entities*, GLOBAL LEGAL MONITOR (July 19, 2016), <http://loc.gov/law/foreign-news/article/israel-disclosure-requirements-for-organizations-funded-by-foreign-political-entities/>, archived at <https://perma.cc/AYA9-C2XW>.

<sup>7</sup> Disclosure Law § 1; (*Amutot* [Non-Profit Organizations] Law, 5740-1980, § 36A (a), SH 5740 No. 983 p. 210 (as amended)).

<sup>8</sup> Disclosure Law, § 2.

a special advertising campaign must publish, as part of its campaign, the fact that it has received the donation.<sup>9</sup>

An *amuta* that has received most of its funding in the last fiscal year from an FPE must state this fact in a digital form determined by the Minister of Justice.<sup>10</sup> Such an *amuta* must also conspicuously state in any of the following media that most of its funding derives from an FPE

1. any publically accessible publication designed to promote the *amuta*'s objectives including billboards, television, newspapers, the homepage of its Internet site, or its digital publications made widely and continuously available on the Internet;
2. any written request by the FPE to a public service provider or an elected official, by letter or by digital mail, on issues related to the performance of their official duties;
3. reports prepared and distributed by the *amuta* for public review.<sup>11</sup>

The Law further requires that any report prepared and distributed by the *amuta* for public review must, in addition to publicizing the fact that its funding is derived mostly from FPEs, provide the names of the FPEs from which it has received the donations that are listed on the Registrar of *Amutot*'s website.<sup>12</sup>

### III. Dissemination of Election Information through Mass Media

There are no laws that prohibit foreign persons or entities from communicating about elections during campaigns, through any form of mass media, including the internet and social media.

It should be noted, however, that in accordance with the Law for the Second Authority for TV and Radio (Authority), 5790-1990, television and radio broadcasters are required to obtain a license that is granted in a public tender.<sup>13</sup> Applicants must, among other requirements, be a corporation registered in Israel. The Law requires that the ability to direct the corporation's operation and at least twenty-six percent of all the means of its control should be with Israeli citizens and residents of Israel or by registered corporations in Israel.<sup>14</sup>

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<sup>9</sup> *Id.* §§ 4-5.

<sup>10</sup> *Id.* § 5A(a).

<sup>11</sup> *Id.* § 5A(b).

<sup>12</sup> *Id.* § 5A(c).

<sup>13</sup> Second Authority for TV and Radio, 5790-1990, § 38, SH 5770 No. 1304 p. 59 (as amended).

<sup>14</sup> *Id.* § 41(a)(1).

#### IV. Services by Foreign Campaign Consultants

There appears to be no prohibition on participation of foreign political campaign consultants. Consultants from the United States started to work on Israeli campaigns in the 1990s.<sup>15</sup> Many of Israel's major parties have reportedly used US political consultants.

According to an April 10, 2019, *Haaretz* article, Israeli Prime Minister Benjamin Netanyahu enlisted John McLaughlin, who had worked as an adviser and pollster for Donald Trump's 2016 presidential campaign, to assist in his May 2019 reelection campaign. Before working with Trump, the article states, McLaughlin helped Netanyahu with his successful 2015 campaign. The report also mentions Arthur Finkelstein's help in Netanyahu's success in 1996, when he assumed power for the first time.<sup>16</sup>

According to a February 12, 2015, article by *USA Today*,

Though U.S. consultants have advised Israeli politicians for nearly 20 years, "the level of partisan Israeli accusations of foreign meddling has reached an unprecedented level . . .

Israeli law prohibits foreigners from donating money directly to the country's political parties once candidates are chosen in primaries, but they can donate to partisan, non-profit organizations that promote the political viewpoints associated with Israeli parties or candidates. The parties say they have no links to these groups . . . .

The Republican consultants and money supporting right-wing causes provide a boost to Netanyahu's Likud Party, while the Democrats back the more liberal Labor Party and the Zionist Camp, a center-left coalition that includes Labor . . .<sup>17</sup>

#### V. A Bill Addressing Foreign Involvement in Israeli Election Campaigns

A private members' bill targeting propaganda directed by foreign countries was submitted on December 3, 2018, by three Knesset members. According to explanatory notes to this bill, its intention was "to prevent advertising propaganda from abroad, or by corporations that are prohibited from donating to Knesset candidates' lists."<sup>18</sup>

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<sup>15</sup> Alexander Griffing, *Bibi 2019 and Trump 2020//The Trump Pollster Who Helped Netanyahu Win Reelection*, HAARETZ (Apr. 10, 2019), <https://www.haaretz.com/us-news/.premium-the-trump-pollster-who-helped-netanyahu-get-reelected-1.7106293>, archived at <https://perma.cc/S37H-GSKK>.

<sup>16</sup> Michele Chabin, *American Advisers, Money Shape Israel's Election*, USA TODAY (Feb. 12, 2015), <https://www.usatoday.com/story/news/world/2015/02/12/israel-election-us-consultants-donors/23237871/>, archived at <https://perma.cc/BNS8-JHPF>.

<sup>17</sup> Id.

<sup>18</sup> Elections (Modes of Propaganda) (Amendment- Injunctions against Propaganda from a Foreign Country) Draft Bill for Preliminary Reading, 5779-2018 (filed Dec. 3, 2019), <https://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2076227> (click on link at left), archived at <https://perma.cc/S5YM-9HLN>.

The bill proposes to authorize the head of the Central Election Committee, who is a serving justice on the Supreme Court, to issue an injunction preventing the receipt of prohibited donations, monetary or otherwise, in accordance with the Parties Financing Law, 5733-1973.<sup>19</sup> The bill has not been adopted into law at this time.

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<sup>19</sup> *Id.*; Political Parties (Financing) Law, 5733-1973, SH 5733 No. 680 p. 52. For information on the financing of national elections in Israel, see Ruth Levush, *Campaign Finance: Israel*, LAW LIBRARY OF CONGRESS (Apr. 2009), <https://www.loc.gov/law/help/campaign-finance/israel.php>, archived at <https://perma.cc/9L63-BLF2>.

# Japan

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**SUMMARY** Japan's Public Office Election Act restricts candidates' campaigns and provides candidates with certain publicly funded promotion methods. Advertisements are restricted. A foreigner can promote candidates and parties online and can also take actions to defeat candidates, the same as a citizen.

Donations to candidates and parties are regulated, and there are caps. Election campaign spending is also capped. Political contributions from foreign persons and entities, including paying for advertisements or other types of communication, are prohibited.

## I. Overview of Japanese Campaign Finance Regulation

Japan regulates election campaigns and campaign finance by separate laws. These regulations are very different from those of the United States. The Public Office Election Act restricts candidates' campaigns and provides candidates with certain publicly funded promotion methods. Every candidate for public office is given a certain amount of free time for advertising on TV or radio, or free space for newspaper advertisements.<sup>1</sup> It is based on the view that, though election campaigns must be conducted as freely as possible because they provide information on which constituents can base their decisions, without restrictions, elections may be unfairly influenced by money and power.<sup>2</sup>

The campaign periods for parliament seats are very short: at least twelve days for election to the House of Representatives,<sup>3</sup> and at least seventeen days for election to the House of Councillors.<sup>4</sup> In recent elections, the campaign periods have been the minimum periods or a couple of days longer.<sup>5</sup>

Donations to political parties, politicians, and candidates are restricted. Under the Political Funds Control Act, corporations, industry organizations, and unions are only allowed to donate to

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<sup>1</sup> 公職選挙法 [Public Office Election Act], Law No. 100 of 1950, amended by Law No. 75 of 2018, arts. 149-151.

<sup>2</sup> Senkyo seido kenkyukai, 実務と研修のためのわかりやすい公職選挙法 (Easy-to-Understand Public Office Election Act for Practices and Trainings), at 176 (15<sup>th</sup> ed. 2014).

<sup>3</sup> Public Office Election Act, art. 31, para. 4 & art. 129. The campaign period is shortened for candidates who do not report their candidacy on the first day of the reporting period.

<sup>4</sup> *Id.* art. 32, para. 3 & art. 129.

<sup>5</sup> See 都内選挙日程 [Election Schedules in Tokyo], Secretariat to Election Administration Commission, Tokyo Metropolitan Government, <http://www.senkyo.metro.tokyo.jp/election/schedule/>, archived at <https://perma.cc/8YGS-X56G>.

political parties and their fund-managing organizations, not to specific politicians or candidates.<sup>6</sup> The upper limit of the total donation by these entities to political parties and political fund organizations ranges from 7.5 million yen to 30 million yen (US\$68,000 to US\$272,700) per year, depending on the entity's size.<sup>7</sup> Individuals can donate goods or services, other than money, to a candidate up to 1.5 million yen (US\$13,500) per year.<sup>8</sup> Individuals can donate money to political parties and their fund-managing organizations up to 20 million yen (US\$180,000) per year.<sup>9</sup>

Under the Political Party Subsidies Act, political parties receive government subsidies, which are distributed according to the numbers of seats each party has in the House of Representatives and the House of Councillors, as well as the proportion of votes they earned in past elections.<sup>10</sup> Parties may distribute money to their candidates at elections. Candidates use such distributions from their party and money that they raised by themselves, including donations from individuals.<sup>11</sup> There are caps for election campaign costs that are calculated by methods specified by the Public Office Election Act and its enforcement order, depending on the election methods and number of constituents.<sup>12</sup> For example, 52 million yen (US\$472,000) is the cap for a candidate for a seat in the House of Councillors elected by proportional representation.<sup>13</sup>

## II. Donations from Foreign Persons or Entities

Political contributions from foreign persons and entities are prohibited. The Political Funds Control Act states that no one can receive contributions for political activities from (1) foreign persons, (2) foreign entities, or (3) any other organizations of which the majority of the members are foreign persons or entities, except for domestic companies that have been listed on a Japanese stock exchange consecutively for five years or more.<sup>14</sup> Receipt of a political contribution in violation of this provision is punishable by imprisonment for not more than three years or a fine of not more than 500,000 yen (US\$4,500).<sup>15</sup>

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<sup>6</sup> 政治資金規正法 [Political Funds Control Act], Law No. 194 of 1948, amended by Law No.135 of 2007, art. 21, para. 1.

<sup>7</sup> *Id.* art. 21-3.

<sup>8</sup> *Id.* art. 21-2, para. 1 & art. 21-3, para. 3.

<sup>9</sup> *Id.* art. 21-3, para. 1.

<sup>10</sup> 政党助成法 [Political Party Subsidies Act], Law No. 5 of 1994, amended by Act No. 113 of 2006, art. 8.

<sup>11</sup> 選挙資金の確保は？ 1千万円超必要...新人、金策に四苦八苦 前職陣営は「カネでなくボランティア動員力」 [How to Secure Election Campaign Fund? More Than 10 Million Yen Required . . . New Candidate, Hard to Collect Money; Incumbents Say "Number of Volunteers Is More Important Than Money"], SANKEI SHIMBUN (Nov. 27, 2014), <https://www.sankei.com/west/news/141127/wst1411270061-n1.html>, archived at <https://perma.cc/E7Y2-2M8H>.

<sup>12</sup> Public Office Election Act, art. 194.

<sup>13</sup> 公職選挙法施行令 [Public Office Election Act Enforcement Order], Cabinet Order No. 89 of 1950, amended by Cabinet Order No. 344 of 2018, art. 127.

<sup>14</sup> Political Funds Control Act, art. 22-5, para. 1.

<sup>15</sup> *Id.* art. 26-2, item 3.

When a foreign corporation establishes a subsidiary in Japan in accordance with Japanese law, and the subsidiary establishes another company in Japan in accordance with Japanese law, that sub-subsidiary can make donations because the majority of its members are domestic persons or entities.<sup>16</sup>

### III. Financing Campaign Advertisements

As stated in the previous section, no one can receive political contributions from a foreigner or foreign entities. Therefore, foreign persons or entities cannot finance advertisements or other types of communications about elections during campaigns.

### IV. Foreign Person's Communication through Media and Internet

Election activities through television, radio, newspapers, magazines, postal mail, and email are regulated, and only candidates and parties can conduct them under specific conditions.<sup>17</sup> However, anyone, except for minors and persons who cannot vote because of a past violation of the Public Office Election Act or another law,<sup>18</sup> can promote candidates or parties by a "method using website."<sup>19</sup> Therefore, a foreigner can express support for a party or a candidate through the internet, including via homepages, blogs, social media (e.g., Twitter, Facebook), video sharing services such as YouTube, and video live streaming, but not by email.<sup>20</sup> A person must post an email address or other contact information on the website.<sup>21</sup> There does not appear to be a regulation governing entities' online election activities. If an entity offers to pay an employee to carry out election activities via the internet, however, the offer may constitute an attempted bribe.<sup>22</sup>

Activities aimed at defeating a candidate are less regulated. Under the Public Office Election Act, such activities are not regarded as "election activities." Election activities are understood as actions intended to help a candidate gain office.<sup>23</sup> Authorities and experts warn the public that

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<sup>16</sup> Seiji shikin seido kenkyukai, 政治資金規正法要覧 [SUMMARY OF POLITICAL FUNDS CONTROL ACT], at 103 (5<sup>th</sup> ed. 2015).

<sup>17</sup> Public Office Election Act, Ch. 13.

<sup>18</sup> *Id.* arts 137-2 & 137-3.

<sup>19</sup> *Id.* art. 142-3, para. 1.

<sup>20</sup> インターネット等を利用する方法による選挙運動の解禁等 [Lifting Ban from Election Campaign by Using Internet, etc.], Ministry of Internal Affairs and Communications, [http://www.soumu.go.jp/senkyo/senkyo\\_s/naruhodo/naruhodo10\\_2.html](http://www.soumu.go.jp/senkyo/senkyo_s/naruhodo/naruhodo10_2.html) (last visited June 17, 2019), archived at <https://perma.cc/BL7B-ZQUF>.

<sup>21</sup> Public Office Election Act, art. 142-3, para. 3.

<sup>22</sup> *Id.* art. 221, para. 1, item 1. See also Cabinet Answer No. 54 at House of Councillors, 180th Diet Session (Mar. 16, 2012), <http://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/180/touh/t180054.htm> (in Japanese), archived at <https://perma.cc/3WFQ-BVF2>.

<sup>23</sup> インターネット選挙運動等に関する各党協議会 [Conference of Parties on Internet Election Campaign], 改正公職選挙法 (インターネット選挙運動解禁) ガイドライン [Amended Public Office Election Act (Lifting Ban of Internet

the line between election activities and attempts to defeat a candidate are sometimes unclear. For example, when there are only two candidates for a seat, activities aimed at defeating one candidate directly benefit the other one.<sup>24</sup> Although not many persons, groups, or entities have committed such activities, small groups have started to do so recently by using the internet.<sup>25</sup> The Public Office Election Act states that persons attempting to defeat a candidate through the internet must show their email addresses or other contact information on their websites. Those activists can send emails to constituents, but they also must specify their email addresses and names in the emails.<sup>26</sup>

## V. Foreign Persons' Participation in Campaigns as Employees or Consultants

It does not appear that foreign persons' participation in campaigns as employees or consultants is regulated. However, compensation for their services may constitute bribery under the Public Office Election Act<sup>27</sup> unless their services are simple and no discretion is given to them.<sup>28</sup>

## VI. Report of Foreign Contacts

It does not appear that campaign personnel are obligated to report contacts with foreign persons regarding donations of money, information, or services.

## VII. Activities of Persons Employed by Foreign Entities

As stated in Part IV, a foreign person's or entity's election activities are not prohibited. However, the offer of payment to an employee for campaign activities may constitute attempted election bribery. In addition, as stated in Parts II and III, no one can receive contributions for political activities from a foreigner or a foreign entity. Therefore, it is illegal for a domestic person to accept funding from foreign entities, including nongovernmental organizations, for political campaigning.

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Election Campaign) Guidelines] (hereinafter "Guidelines"), at 29-30 (Apr. 26 2013), [http://www.soumu.go.jp/main\\_content/000222706.pdf](http://www.soumu.go.jp/main_content/000222706.pdf), archived at <https://perma.cc/MZ5Q-C8PC>.

<sup>24</sup> *Id.*

<sup>25</sup> 学生団体 SEALDs の合言葉「落選させよう」は公選法に違反しないのか? [Doesn't Students Group SEALDs' Motto "Make Them Unseated" Violate Election Law?], THE PAGE (Oct. 4, 2015), <https://headlines.yahoo.co.jp/hl?a=20151004-00000002-wordleaf-soci>, archived at <https://perma.cc/WKR2-CIUM>; Ema Shiroishi, 公職選挙法に注意! ~「落選運動を支援する会」共同代表の上脇博之教授による「落選運動のススメ」 [Be Aware of Public Office Election Act! - "Promotion of Activities for Making Some Candidates Unseated" by Professor Hiroyuki Kamiwaki, Co-Representative of "Group to support activities for making candidates unseated"], INDEPENDENT WEB JOURNAL (June 13, 2016), <https://iwj.co.jp/wj/open/archives/308570>, archived at <https://perma.cc/TB39-K9TW>.

<sup>26</sup> Public Office Election Act, art. 142-5.

<sup>27</sup> *Id.* art. 221, para. 1, item 1.

<sup>28</sup> Guidelines, *supra* note 23, at 48-49.

# Singapore

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**SUMMARY** Singapore’s Political Donations Act prohibits political associations and candidates from accepting donations from foreigners and restricts the receipt of anonymous donations. Evasion of these restrictions on donations may constitute an offense and be punished by imprisonment for up to twelve months, a fine, or both.

The Parliamentary Elections Act and Presidential Elections Act prohibit foreigners from conducting election activities or knowingly publishing or displaying, or knowingly causing or permitting to be published or displayed, any election advertising.

The Public Order Act was amended in 2017 to make it clear that the police can refuse to grant a permit for a public assembly or procession “directed towards a political end” that is organized by or involves the participation of any foreigners or foreign entities.

## I. Prohibition of Foreign Donations

Singapore’s Political Donations Act went into effect on February 15, 2001, and aims to prevent foreigners from interfering in Singapore’s domestic politics through funding. The government explained the rationale for enacting this statute as follows:

It is no more legitimate for foreigners to pay money to support a political association or candidate than it is for them to support the association’s cause or to vote for the candidate. . . . Politics in Singapore should be for Singaporeans only.<sup>1</sup>

### A. Permissible Donor

The Political Donations Act prohibits political associations and candidates from accepting donations from foreigners. According to the Act, donations must come from permissible donors.<sup>2</sup> A “permissible donor” is defined by the Act to mean

- (a) an individual who is a citizen of Singapore and is not less than 21 years of age;
- (b) a Singapore-controlled company which carries on business wholly or mainly in Singapore; or
- (c) in relation to a candidate, any political party he is standing for at an election[.]<sup>3</sup>

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<sup>1</sup> SINGAPORE ELECTIONS DEPARTMENT, POLITICAL DONATIONS HANDBOOK: INTRODUCTION (last updated May 24, 2017), <https://www.eld.gov.sg/handbook/introduction.pdf>, archived at <https://perma.cc/FY85-ABKK>.

<sup>2</sup> Political Donations Act (ch. 236) (revised Dec. 31, 2001) ss 8 & 14, <https://sso.agc.gov.sg/Act/PDA2000>, archived at <https://perma.cc/82X5-G29C>.

<sup>3</sup> *Id.* s 2(1).

A “Singapore-controlled company” under the Act means

a company incorporated in Singapore, the majority of whose directors and members are citizens of Singapore or, in the case of any member being another company, where that other company is incorporated in Singapore and the majority of whose directors and members are citizens of Singapore, and where that other company has a member who is a company which in turn has a member who is a company and so on, where each of those member companies are companies incorporated in Singapore and the majority of whose directors and members are citizens of Singapore.<sup>4</sup>

The Act restricts the receipt of anonymous donations to less than SG\$5,000 (approximately US\$3,650) in total per reporting period. According to the Act, political associations may accept anonymous donations less than SG\$5,000 during any one financial year of the association.<sup>5</sup> A candidate at an election and his election agent or a candidate at a presidential election and his principal election agent may also accept anonymous donations less than SG\$5,000 during the relevant period.<sup>6</sup>

## B. Definition of “Donation”

Donations may be in the form of money, property, services, or facilities provided other than on commercial terms, sponsorship, or subscription fee, as provided by article 3 of the Act:

3.—(1) In this Act, unless the context otherwise requires, “donation”, in relation to a candidate at an election or at a presidential election, means —

- (a) any gift of money or other property to the candidate or his election agent;
- (b) any money spent (otherwise than by the candidate as permitted by any other written law) in paying any expenses incurred, directly or indirectly, by the candidate or by his election agent or any person authorised by his election agent;
- (c) any money lent to the candidate or his election agent otherwise than on commercial terms;
- (d) the provision otherwise than on commercial terms of any property, services or facilities (including the services of any person) to the candidate or his election agent; or
- (e) the provision of any sponsorship in relation to the candidate,

which is given, spent, lent or provided (whether before or after he becomes a candidate) for the purposes of the candidate’s election.

(2) In this Act, unless the context otherwise requires, “donation”, in relation to a political association, means —

- (a) any gift of money or other property to the political association;

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* s 8(2).

<sup>6</sup> *Id.* s 14(2).

- (b) any money spent (otherwise than by the political association or a person acting on its behalf) in paying any expenses incurred, directly or indirectly, by the political association;
- (c) any money lent to the political association otherwise than on commercial terms;
- (d) the provision otherwise than on commercial terms of any property, services or facilities for the use or benefit of the political association (including the services of any person);
- (e) the provision of any sponsorship in relation to the political association; or
- (f) any subscription or other fee paid for affiliation to, or membership of, the political association.<sup>7</sup>

### C. Donation by a Trustee

For the purposes of the Political Donations Act, any donation received by a candidate, election agent, or political association by way of a donation by a trustee, in his capacity as such, shall be regarded as a donation received by the candidate, election agent, or association from a person who is not a permissible donor.<sup>8</sup>

### D. Penalty

An evasion of the restrictions on donations may constitute an offense and be punished by imprisonment. According to the Act, entering into or knowingly doing any act in furtherance of any arrangement that facilitates the making of donations to a candidate, election agent, or political association by any person or body other than a permissible donor is an offense, which is punishable by a fine not exceeding SG\$3,000 (approximately US\$2,200), imprisonment for a term not exceeding twelve months, or both.<sup>9</sup>

## II. Prohibition of Foreigners Conducting Election Activity or Advertising

### A. Election Activity

Singapore's election laws prohibit foreigners from conducting any election activities. The Parliamentary Elections Act and Presidential Elections Act provide that no person who is not a citizen of Singapore shall take part in any election activity.<sup>10</sup>

"Election activity" under the Parliamentary Elections Act and Presidential Elections Act generally includes any activity that is done for the purpose of promoting or procuring the election, except for clerical work wholly performed within enclosed premises.

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<sup>7</sup> *Id.* s 3.

<sup>8</sup> *Id.* s 2(5).

<sup>9</sup> *Id.* s 23(1).

<sup>10</sup> Parliamentary Elections Act (ch. 218) (revised Apr. 15, 2011) s 83(1), <https://sso.agc.gov.sg/Act/PEA1954>, archived at <https://perma.cc/6V69-V454>; Presidential Elections Act (ch. 240A) (revised July 15, 2011) s 65(1), <https://sso.agc.gov.sg/Act/PrEA1991>, archived at <https://perma.cc/KS3U-94EB>.

According to the Parliamentary Elections Act,

“election activity” includes any activity (other than clerical work wholly performed within enclosed premises) which is done for the purpose of –

- (a) promoting or procuring the electoral success at any election for one or more identifiable political parties, candidates or groups of candidates; or
- (b) prejudicing the electoral prospects of other political parties, candidates or groups of candidates at the election.<sup>11</sup>

According to the Presidential Elections Act,

“election activity” includes any activity which is done for the purpose of promoting or procuring the election of any candidate at any election other than clerical work wholly performed within enclosed premises.<sup>12</sup>

## **B. Election Advertising**

The two election laws both specifically forbid foreigners to “knowingly publish or display, or knowingly cause or permit to be published or displayed, any election advertising” during the specified election period.<sup>13</sup> The election period begins with the day a writ of election is issued and ends with the start of the eve of voting day.<sup>14</sup>

“Election advertising” under the election laws may be in the form of a poster, banner, notice, circular, handbill, illustration, article, advertisement, or other material with certain exceptions for items such as buttons, pens, and balloons.<sup>15</sup> The term “publish” is specifically defined by the Parliamentary Elections Act to include making available to the general public by means of broadcasting (by wireless telegraphy or otherwise) and transmitting on the internet.<sup>16</sup>

## **C. Penalties**

Contravening the provisions concerning persons who are prohibited from conducting election activities may constitute an offense. According to the Parliamentary Elections Act and Presidential Elections Act, such an offense is punishable by a fine not exceeding SG\$2,000 (approximately US\$1,460), imprisonment for a term not exceeding twelve months, or both.<sup>17</sup> There do not appear to be any provisions specifically requiring campaign personnel to inform the authorities of contacts by foreigners offering money, information, or services.

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<sup>11</sup> Parliamentary Elections Act s 83(8).

<sup>12</sup> Presidential Elections Act s 65(8).

<sup>13</sup> Parliamentary Elections Act s 83(1A); Presidential Elections Act s 65(1A).

<sup>14</sup> *Id.*

<sup>15</sup> Parliamentary Elections Act s 2(1); Presidential Elections Act s 2(1).

<sup>16</sup> Parliamentary Elections Act s 2(1).

<sup>17</sup> Parliamentary Elections Act s 83(5); Presidential Elections Act s 65(5).

### III. Political Assembly with Foreigners Involved

In Singapore, the government controls public assemblies by granting permits in accordance with the Public Order Act. The Act was amended in 2017 to further tighten the restrictions, by making it clear that the police can refuse to grant a permit for a political public assembly or procession that is organized by or involves the participation of any foreigners or foreign entities. According to section 7 of the Act,

(2) The Commissioner may refuse to grant a permit for a public assembly or public procession in respect of which notice under section 6 has been given if he has reasonable ground for apprehending that the proposed assembly or procession may –

...

(h) be directed towards a political end and be organised by, or involve the participation of, any of the following persons:

- (i) an entity that is not a Singapore entity;
- (ii) an individual who is not a citizen of Singapore.<sup>18</sup>

An assembly or procession is subject to the Act if its purpose, or one of its purposes, is to: (1) demonstrate support for or opposition to the views or actions of any person, group of persons or any government; (2) publicize a cause or campaign; or (3) mark or commemorate any event.<sup>19</sup>

An “assembly” means a gathering or meeting that may consist of any lecture, talk, address, debate, or discussion, including a demonstration by one person alone. A “procession” means a march, parade, or other movement composed of two or more persons gathered at a place of assembly to proceed together, or a march by a person alone, for a purpose governed by the Act.<sup>20</sup>

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<sup>18</sup> Public Order Act (ch. 257A) (revised May 31, 2012) s 7(2)(h), <https://sso.agc.gov.sg/Act/POA2009>, archived at <https://perma.cc/3V3Q-V3CS>.

<sup>19</sup> *Id.* s 2(1).

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

# South Africa

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**SUMMARY** South Africa’s Political Party Funding Act, enacted in January 2019, will, once implemented, regulate the manner in which political parties raise funds, including from private donors. Under the Act, political parties generally are barred from accepting donations from foreign sources. However, the Act permits a political party to accept a foreign donation if it is made for the purpose of training and skills development of the party’s members or assistance toward policy development of the party and if it does not exceed US\$344,360 in value.

When a foreign government, its agencies, or a foreign person or entity makes an allowable donation to a political party above US\$6,885 in value, both the donor and the party must disclose the donation to the Electoral Commission, which must publish the information.

Although the Act permits the Commission to accept private donations to disperse to qualifying parties, the Commission is prohibited from accepting donations from a foreign government or its agencies.

Accepting donations from a foreign source in violation of the Political Party Funding Act constitutes an offense punishable by a fine, a custodial sentence, or both.

## I. Introduction

The “funding for political parties” clause of the South African Constitution provides for the public funding of political parties, stating that “[t]o enhance multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis.”<sup>1</sup> On the basis of this clause, the country’s Parliament enacted the Public Funding of Represented Political Parties Act in 1997. This law and its subsidiary legislation regulate various aspects of public funding of political parties, including the manner in which public funds are allocated to each qualifying party and dispersed.

Although private funding of political parties has remained unregulated, this will soon change. In a 2018 decision, the Constitutional Court upheld a Western Cape Division of the High Court judgment, which declared unconstitutional the Promotion of Access to Information Act of 2000 “to the extent of its inconsistency with the Constitution by failing to provide for the recordal, preservation and reasonable disclosure of information on the private funding of political parties

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<sup>1</sup> S. AFR. CONST., 1996 § 236, available on the South Africa government website, <https://www.gov.za/documents/constitution-republic-south-africa-1996-chapter-14-general-provisions#236>, archived at <https://perma.cc/4D8G-MED2>.

and independent candidates” and ordered Parliament to amend the Act.<sup>2</sup> More recently, in January 2019, South Africa enacted the Political Party Funding Act to repeal the Public Funding of Represented Political Parties Act of 1997 and regulate the public and private funding of political parties, among other reforms.<sup>3</sup> Its implementation has been postponed pending the conclusion of drafting its subsidiary legislation.<sup>4</sup> This report describes the restrictions this Act is intended to impose, particularly with regard to donations made to political parties from foreign sources.

## II. Political Party Funding Act

### A. Restriction on Direct Foreign Donation

Once implemented, the Act will preclude political parties from accepting donations from foreign governments or their agencies as well as foreign persons or entities.<sup>5</sup> A foreign person is a person or entity that is not a citizen or permanent resident of South Africa or a company or trust not registered in South Africa.<sup>6</sup> A draft regulation for the Act defines the term “foreign entity” (interchangeable with foreign agency) as a body “incorporated and registered outside of the Republic irrespective of whether it is . . . [a] profit, or non-profit [e]ntity . . . or [c]arrying on business or non-profit activities, as the case may be, within the Republic.”<sup>7</sup>

A “donation” includes an in-kind donation, but it excludes a membership fee or other fees imposed by a political party on its elected representatives.<sup>8</sup> It also excludes appropriated funds made available to political parties by national or provincial legislative bodies.<sup>9</sup> In-kind donations include

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<sup>2</sup> *My Vote Counts NPC v Minister of Justice and Correctional Services and Another* 2018 (5) SA 380 (CC) para. 91, available on the Southern African Legal Information Institute (SAFLII) website, at <http://www.saflii.org/za/cases/ZACC/2018/17.pdf>, archived at <https://perma.cc/ILT5-VPU5>.

<sup>3</sup> Political Party Funding Act No. 6 of 2018 (Jan. 23, 2019), available on the South African government website, at [https://www.gov.za/sites/default/files/gcis\\_document/201901/42188gon63politicalpartyfundingact6of2019.pdf](https://www.gov.za/sites/default/files/gcis_document/201901/42188gon63politicalpartyfundingact6of2019.pdf), archived at <https://perma.cc/B759-8NZH>.

<sup>4</sup> *Electoral Commission Postpones Commencement of Political Party Funding Act*, SOUTH AFRICA GOVERNMENT (Apr. 3, 2019), available at <https://www.gov.za/speeches/electoral-commission-postpones-commencement-political-party-funding-act%C2%A03-apr-2019-0000>, archived at <https://perma.cc/EH4X-KZSB>.

<sup>5</sup> Political Party Funding Act § 8.

<sup>6</sup> *Id.* § 1.

<sup>7</sup> Draft Political Party Funding Regulations § 2 (Jan. 23, 2019), available on the Electoral Commission of South Africa website, at [https://www.elections.org.za/content/Documents/Laws-and-regulations/Political-Party-Funding/Government-Gazette---Invitation-to-make-representations-in-respect-of-proposed-regulations-for-Political-Party-Funding-Act-No\\_-6-of-2018/](https://www.elections.org.za/content/Documents/Laws-and-regulations/Political-Party-Funding/Government-Gazette---Invitation-to-make-representations-in-respect-of-proposed-regulations-for-Political-Party-Funding-Act-No_-6-of-2018/), archived at <https://perma.cc/9FAE-DDL9>.

<sup>8</sup> Political Party Funding Act § 1.

<sup>9</sup> *Id.*

...

- (i) any money lent to the political party other than on commercial terms;
- (ii) any money paid on behalf of the political party for any expenses incurred directly or indirectly by that political party;
- (iii) the provision of assets, services or facilities for the use or benefit of a political party other than on commercial terms; or
- (iv) a sponsorship provided to the political party . . . <sup>10</sup>

“Services rendered personally by a volunteer” do not fall within the definition of in-kind donations.<sup>11</sup>

An exception to this rule allows political parties to accept a donation from a foreign entity if such a donation is made for the purpose of “training or skills development of a member of a political party . . . or policy development by a political party.”<sup>12</sup> However, the donation may not exceed the equivalent of South African Rand ZA5,000,000 (about US\$344,360) in value.<sup>13</sup>

## **B. Restriction on Indirect Foreign Donation**

Private persons and entities may contribute indirectly to political parties through the Multi-Party Democracy Fund, one of the sources of funding for political parties administered by the Electoral Commission as part of the public funding of political parties plan.<sup>14</sup> In addition to other restrictions that apply, the Commission is barred from receiving donations from foreign governments or their agencies for this fund.<sup>15</sup>

Among other reasons, the Draft Regulation for the Act enables the Commission to return a donation made to the fund “should the Commission be of the belief, or have reason to believe, or suspect, or have reason to suspect” that it originated from a foreign government or foreign agency.<sup>16</sup>

## **C. Prohibition against Donations to Individual Political Party Members**

The Act bars any person or entity, including foreign persons and entities, from conveying a donation to an individual member of a political party unless the donation is meant for the party’s political purpose.<sup>17</sup> A member of a political party may only receive such donations if done on behalf of the party.<sup>18</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* § 8.

<sup>13</sup> *Id.* sched. 2, § 8.

<sup>14</sup> *Id.* § 3.

<sup>15</sup> *Id.*

<sup>16</sup> Draft Political Party Funding Regulations § 4.

<sup>17</sup> *Id.* § 9.

<sup>18</sup> *Id.*

## D. Disclosure Requirements

A political party is required by law to disclose to the Electoral Commission any donation, including a donation from foreign sources permitted under the rules, that is above the prescribed threshold of ZA100,000 (about US\$6,885) within any financial year.<sup>19</sup> Similarly, all entities that make donations to a political party that are above the prescribed threshold must also disclose such donations to the Commission.<sup>20</sup> The Commission must publish such information quarterly.<sup>21</sup>

## E. Transparency

Political parties are required to account for all donated money. The Act states that a political party must:

- (a) deposit all donations received by that political party, membership fees and levies imposed by the political party on its representatives into an account with a bank . . . in that political party's name;
- (b) keep a separate account with a bank into which all money allocated to it from the Funds must be deposited;
- (c) appoint an office-bearer or official of that political party as its accounting officer; and
- (d) appoint an auditor registered and practising as such . . . to audit its books and financial statements.<sup>22</sup>

The accounting officer must prepare a statement showing all donations and membership fees, and any levy imposed by the political party on its elected representatives during that financial year and submit it to the auditor.<sup>23</sup> Upon receiving the statement, the auditor must perform an audit and “express an opinion” on a number of items, including whether any of the money received by the political party came from a foreign government, entity, or agency.<sup>24</sup> The auditor must then submit the opinion and the audited financial statement to the Commission.<sup>25</sup>

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<sup>19</sup> *Id.* §§ 9 & 24; *Id.* sched. 2, § 8.

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

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* § 12.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* §§ 11 & 12.

## F. Enforcement

The Commission has a broad monitoring, inspection, and investigative mandate to ensure that political parties comply with all of their legal obligations. It can do this in part by evaluating the information and documentation submitted to it by political parties.<sup>26</sup> Importantly, as part of its mandate to monitor compliance and investigate complaints, the Commission may request anyone

- (a) to disclose any relevant information;
- (b) to produce, in whatever form, any relevant books, records, reports and other documentation;
- (c) for permission to—
  - (i) enter any premises during ordinary working hours to inspect any relevant book, record, report and other document; or
  - (ii) copy or store in any format, any information, books, records, reports or other documentation produced in terms of paragraph (b) or discovered in terms of paragraph (c)(i); or
- (d) to answer a question about any relevant information.<sup>27</sup>

If a person refuses its request, the Commission may petition the Electoral Court for an order to compel the person to do so.<sup>28</sup> If the Commission receives a complaint relating to the income or expenditures of a political party and it “is of the view that there is prima facie substance to the complaint,” it is required by law to conduct an investigation.<sup>29</sup>

When a political party fails to comply with the Act, the commission has a number of tools at its disposal, including: the power to issue directions, the power to suspend payment to a political party from the relevant funds, the power to recover money irregularly accepted or spent, and the power to institute proceedings for imposition of administrative fines before the Electoral Court.<sup>30</sup>

## G. Offenses and Penalties

Anyone who accepts a donation from a foreign government, foreign government agencies, or foreign persons or entities in violation of the Act commits an offense punishable by a fine of up to ZA5,000,000 (about US\$69,119) depending on the person’s past behavior, a prison term not exceeding five years, or both.<sup>31</sup>

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<sup>26</sup> *Id.* § 14.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* §§ 15-18.

<sup>31</sup> *Id.* § 19; *Id.* sched. 1.

# Sweden

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**SUMMARY** Sweden requires local, municipal, and national parties to disclose their incomes. They do not need to disclose their spending. Failure to disclose is sanctioned with monetary fines.

Anonymous donations are capped at SEK 2,325 (about US\$145) per anonymous donor, and any amount that exceeds that amount must be returned to the donor or (when not possible) relinquished to the Swedish state.

Receiving foreign donations intended as propaganda is a crime, but receiving donations from foreign entities that are not to be used for propaganda is not criminalized.

Advertisements with a political message may be limited to non-parties during election periods.

The Swedish government has undertaken educational efforts to counter misinformation and influence campaigns.

## I. Legislation on Domestic and Foreign Campaign Contributions

### A. Act on Transparency in Political Party Financing (Political Income Disclosure Act)

Since April 1, 2018, all Swedish political parties (local, municipal, and national) have been required to disclose the origin of their income to the Kammarkollegiet, Sweden's Legal, Financial, and Administrative Services Agency, pursuant to the Act on Transparency in Political Party Financing.<sup>1</sup> Between 2014 and 2018, political parties were only required to disclose their incomes if they were represented in the Swedish Parliament or the European Parliament.<sup>2</sup> Prior to 2014 political parties were not required to disclose their income or finance.

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<sup>1</sup> 3 & 24 §§ LAG OM INSYN I FINANSIERING AV PARTIER [ACT ON TRANSPARENCY IN POLITICAL PARTY FINANCING] (SFS 2018:90), [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-201890-om-insyn-i-finansiering-av-partier\\_sfs-2018-90](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-201890-om-insyn-i-finansiering-av-partier_sfs-2018-90), archived at <https://perma.cc/65GE-4BB4>; Redovisa intäkter, KAMMARKOLLEGIET (May 13, 2019), <https://www.kammarkollegiet.se/vara-tjanster/partiinsyn/redovisa-intakter> (last visited June 12, 2019), archived at <https://perma.cc/H2SW-V5TA>; Proposition [Prop.] 2017/18:55 Ökad insyn i partiernas finansiering – ett utbyggt regelverk [Increase Insight into Political Party Finance – an Expanded Framework], <https://www.regeringen.se/4adfe9/contentassets/2e899e8fc83c4672b5de0d8e6e12750f/okad-insyn-i-partiernas-finansiering--ett-utbyggt-regelverk-prop.-20171855>, archived at <https://perma.cc/C8NF-ADNW>; Statens Offentliga Utredningar [SOU] 2016:74, Ökad insyn i partiernas finansiering – ett utbyggt regelverk [Increased Transparency of Political Party Financing – An Expanded Regulatory Framework], <https://data.riksdagen.se/fil/0E890E8C-0BC4-4E55-8258-DABB8DF8217C>, archived at <https://perma.cc/VXR5-4RJV>.

<sup>2</sup> 3 § LAG OM INSYN I FINANSIERING AV PARTIER [ACT ON TRANSPARENCY IN POLITICAL PARTY FINANCING] (SFS 2014:105)- [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2014105)

The finance reports for 2018 were required to be filed with the Kammarkollegiet no later than July 1, 2019.<sup>3</sup> The Kammarkollegiet must make the reports public, except for information on a private individual's contributions.<sup>4</sup> Failure to disclose the information as mandated is punishable with a fine of up to SEK 100,000 (about US\$10,600),<sup>5</sup> which is paid to the state.<sup>6</sup>

The purpose of the Act is to "protect the public's knowledge of how parties, representatives of public assemblies, and alternates for such representatives are financing their activities."<sup>7</sup>

The following must be disclosed:<sup>8</sup>

1. support received in accordance with the Act on State Support for Political Parties (1972:625),
2. support received in accordance with the Act on State support for Parliamentary Women Organizations (2010:473),
3. support received in accordance with the Act on Support for the Party Groups for the Parliamentary Members' Work in Parliament (2016:1109)
4. party support that is paid to the party in accordance with 4 ch. 29 and 30 §§ Municipal Act (2017:725),
5. state and municipal support for a youth organization,
6. member fees,
7. income from sales and lotteries,
8. income from the collection of cash,
9. contributions from private individuals, corporations, associations, and other associations, including foundations and funds, and
10. other income.<sup>9</sup>

Although the Act was not introduced until 2014, and not expanded until 2018, the idea of requiring political parties to disclose their income and expenses is not new in Sweden; discussions about including such a requirement were underway already in the 1950s.<sup>10</sup>

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[2014105-om-insyn-i-finansiering-av-partier\\_sfs-2014-105](https://perma.cc/62H3-KFBP), archived at <https://perma.cc/62H3-KFBP>; Figures for 2014 are available at *Hämta ut redovisade intäkter för politiska partier*, KAMMARKOLLEGIET, <https://www.kammarkollegiet.se/vara-tjanster/partiinsyn/hamta-ut-redovisade-intakter/hamta-ut-redovisade-intakter-for-politiska-partier>, archived at <https://perma.cc/P9Q8-V4K2>.

<sup>3</sup> 24 § LAG OM INSYN I FINANSIERING AV PARTIER.

<sup>4</sup> *Id.* 27 §.

<sup>5</sup> *Id.* 32-33 §§.

<sup>6</sup> *Id.* 35 §.

<sup>7</sup> *Id.* 1 §.

<sup>8</sup> *Id.* 11 §.

<sup>9</sup> *Id.* (all translations by author).

<sup>10</sup> Statens Offentliga Utredningar [SOU] [Government Report Series] 1951:56 Om offentlig redovisning av den politiska propagandans finansiering: Partifinansieringssakkunnigas betänkande [About Public Accounting of Political Propaganda Financing: The Political Party Financing Expert Report], <https://lagen.nu/sou/1951:56>, archived at <https://perma.cc/3DCQ-W9E5>.

## B. Prohibition on Anonymous Donations

As part of the law that increased the oversight of political parties' financial affairs, Parliament also adopted a prohibition on all donations that exceed 0.05 of the *prisbasbelopp* (price index amount),<sup>11</sup> currently SEK 2,325 (about US\$245) and SEK 2,275 (about US\$240) in 2018.<sup>12</sup> Prior to the adoption of the prohibition parties were only required to disclose donations that exceeded SEK 22,400 (about US\$2,360).<sup>13</sup> Any donation received that exceeds the capped amount must be returned to the donor.<sup>14</sup> If that is not possible, the extra amount exceeding SEK 2,275 should be transferred to the Kammarkollegiet.<sup>15</sup> An itemization of all anonymous donations must be made, even if they do not exceed 0.05 prisbasbelopp.<sup>16</sup>

The public versions of the income declarations do not include information on specific individual donors.<sup>17</sup> Thus, despite the cap on anonymous donations, private citizens do not have access to information on who specifically provided donations. However, in 2014 public media reported on some of the political party's income, and included information that the Left Party (Vänsterpartiet) had received a private donation from its Chairman of SEK 133,000 (about US\$14,000).<sup>18</sup> Reportedly, under that party's bylaws political representatives must pay the political party all compensation that they receive in relation to their position that exceed SEK 28,000 (about US\$3,000).<sup>19</sup> Information on how the political party compensates its employees and representatives is not included in the disclosure requirements.<sup>20</sup> The largest share of most parties'

<sup>11</sup> *Id.* 9 § LAG OM INSYN I FINANSIERING AV PARTIER.

<sup>12</sup> Prisbasbelopp was SEK 45,500 for 2018 and is SEK 46,500 for 2019. *Prisbasbelopp för 2019 fastställt*, REGERINGEN (Sept. 6, 2018), <https://www.regeringen.se/artiklar/2018/09/prisbasbelopp-for-2019-faststallt/>, archived at <https://perma.cc/FT6F-YCLR>; 2 kap. 6 & 7 §§ SOCIALFÖRSÄKRINGSBALK [SOCIAL INSURANCE CODE] (SFS 2010:110), [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialforsakringsbalk-2010110\\_sfs-2010-110](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialforsakringsbalk-2010110_sfs-2010-110), archived at <https://perma.cc/3KCI-P78B>.

<sup>13</sup> SOU 2016:74, *supra* note 1.

<sup>14</sup> 10 § LAG OM INSYN I FINANSIERING AV PARTIER.

<sup>15</sup> *Id.*

<sup>16</sup> 19 § LAG OM INSYN I FINANSIERING AV PARTIER.

<sup>17</sup> See *Hämta ut redovisade intäkter för politiska partier*, KAMMARKOLLEGIET (June 3, 2019), <https://www.kammarkollegiet.se/vara-tjanster/partiinsyn/hamta-ut-redovisade-intakter/hamta-ut-redovisade-intakter-for-politiska-partier>, archived at <https://perma.cc/D6KM-Q4KR>.

<sup>18</sup> Marit Sundberg, *Fidgetspinnare och lotterier – så får partierna in pengar till partikassan*, SVT (Apr. 14, 2018), <https://www.svt.se/nyheter/inrikes/fidgetspinnare-och-lotterier-sa-havar-partierna-in-pengar-till-partikassan>, archived at <https://perma.cc/AG84-F8YZ>.

<sup>19</sup> Marit Sundberg & Roger Jansson, *Här är alla intäkter som partierna redovisat till Kammarkollegiet*, SVT (Apr. 14, 2018), <https://www.svt.se/nyheter/inrikes/har-ar-alla-intakter-som-partierna-redovisat-till-kammarkollegiet>, archived at <https://perma.cc/3Q3C-578S>.

<sup>20</sup> See LAG OM INSYN I FINANSIERING AV PARTIER.

income is the state grant that the parties receive, based on how successful they are in the last two elections.<sup>21</sup>

### C. Prohibition on Bribes

Swedish law prohibits political figures from giving or receiving bribes.<sup>22</sup> Both crimes are sanctioned with monetary fines or imprisonment of up to two years depending on the severity of the crime.<sup>23</sup> Both domestic and foreign bribes are prohibited.<sup>24</sup>

Generally, a gift to a politician whose political views one shares is not considered a bribe, unless the gift can be tied to a specific political action.<sup>25</sup>

### D. Regulation of Foreign Contributions to Political Campaigns

Foreign contributions to political campaigns are not explicitly criminalized or forbidden in Sweden. However, depending on the intent of the donation, the contribution may be prohibited.<sup>26</sup>

Historically making a foreign contribution with the intent to influence politics or public opinion was a crime in Sweden.<sup>27</sup> The crime, known as *tagande av utländskt understöd* (receiving foreign support), was abolished in 1976 but reintroduced a few years later in a more limited wording.<sup>28</sup> The crime now requires the person offering the monetary or material support to be a foreigner acting on behalf of, or in the interest of, a foreign government and that the recipient has the intent to disseminate propaganda in Sweden.<sup>29</sup>

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<sup>21</sup> LAGEN OM STATLIGT STÖD TILL POLITISKA PARTIER [ACT ON STATE SUPPORT FOR POLITICAL PARTIES] (SFS 1972:625), [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1972625-om-statligt-stod-till-politiska\\_sfs-1972-625](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1972625-om-statligt-stod-till-politiska_sfs-1972-625), archived at <https://perma.cc/ENE7-JXEH>.

<sup>22</sup> 10 kap. 5a, 5b § BROTTSBALKEN [BRB] [CRIMINAL CODE], <https://data.riksdagen.se/fil/4C5B3F7A-25BD-4680-B5CC-0183760EABEE>, archived at <https://perma.cc/3GFE-FRZY>.

<sup>23</sup> 10. kap. 5a & 5b §§ BRB.

<sup>24</sup> *Id.*

<sup>25</sup> SOU 2016:74, *supra* note 1, at 121-22. For example, following the Swedish EU election campaign, EU Parliamentarian Sara Skyttedal received a gift of a Chanel purse from a supporter, following accusations from another candidate that she carried such a purse when in fact she didn't have one. Gusten Holm, Skyttedal fick lyxig Gucciväska i gåva, EXPRESSEN (June 10, 2019), <https://www.expressen.se/nyheter/skyttedal-fick-lyxig-guccivaska-i-gava/>, archived at <https://perma.cc/5382-Q66B>. Such a gift is not considered a bribe because it was not tied to a political action. Compare SOU 2016:74, *supra* note 1, at 121-22.

<sup>26</sup> 19 kap. 13 § BRB.

<sup>27</sup> 8 kap. 10 § STRAFFLAGEN.

<sup>28</sup> Prop. 1979/80:176 om ändring i brottsbalken (om spioneri etc) [On Changes in the Criminal Code (About Spying etc.)], <https://data.riksdagen.se/fil/4C5B3F7A-25BD-4680-B5CC-0183760EABEE>, archived at <https://perma.cc/J9NE-3XU6>.

<sup>29</sup> 19 kap. 13 § BRB; Prop. 1979/80:176, *supra* note 30; JuU 1981/82:8.

The Council of Europe has suggested that Sweden should criminalize foreign donations to campaigns.<sup>30</sup> There currently is no such initiative pending in the Swedish parliament.

The Nordic Council has also discussed harmonizing campaign contribution laws across the Nordic states (Denmark, Finland, Iceland, Norway, and Sweden) following Iceland's adoption of a prohibition on foreign donations to political parties in 1978.<sup>31</sup> However, no final suggestion has been made. Sweden is currently the only Nordic country with no explicit prohibition on foreign donations.<sup>32</sup>

## E. Political Advertisement Regulation

Swedish law requires political parties and others to apply for a permit before displaying political advertisement on public roads, and such permits are typically only granted during election campaign periods.<sup>33</sup>

The Swedish TV and Radio Act does not prohibit political advertisements on television for non-public broadcasters.<sup>34</sup> TV4, the only Swedish nonpublic broadcaster, has adopted its own rules on political advertisements broadcast by them.<sup>35</sup> The rules do not explicitly exclude any foreign contributors from purchasing political advertising.<sup>36</sup> However, during the most recent election to the European Parliament (three weeks prior to the May 26, 2019, vote) only political parties and unions were allowed to advertise political messages.<sup>37</sup>

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<sup>30</sup> Prop. 2017/18:55, *supra* note 1.

<sup>31</sup> Prop. 1979/80:176, *supra* note 30, at 18.

<sup>32</sup> Statens Offentliga Utredningar [SOU] [Government Report Series] 2016:74 at 137-162, <https://www.regeringen.se/4ab338/contentassets/3eb32862b4704f44b116304ed772b0ab/okad-insyn-i-partiers-finansiering--ett-utbyggt-regelverk-sou-201674>, archived at <https://perma.cc/N7L8-BN35>.

<sup>33</sup> 6 § LAG MED SÄRSKILDA BESTÄMMELSER OM GATURENHÅLLNING OCH SKYLTLNING [ACT WITH SPECIAL REGULATIONS ON STREET CLEANING AND DISPLAYING SIGNS](SFS 1998:814), <https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1998814-med-sarskilda-bestammelser-om-sfs-1998-814>, archived at <https://perma.cc/5YGS-5G92>; GRÅSTORPS KOMMUN, REGLER FÖR VALAFFISHERING (DNR 282/2018), <https://www.grastorp.se/download/18.fb17d54164abeff6e24c95c/1533631411527/Regler%20f%C3%B6r%20valaffischering.pdf>, archived at <https://perma.cc/D8UY-GUK8>; Allmänna lokala ordningsföreskrifter i Stockholm, STOCKHOMS STAD (Jan. 24, 2019), <https://stad.stockholm/politik-och-demokrati/styrande-dokument/allmanna-lokala-ordningsforeskrifter-i-stockholm/>, archived at <https://perma.cc/N9QM-KVPX>.

<sup>34</sup> See RADIO- OCH TV-LAGEN [RADIO AND TV ACT] (SFS 2010:696), [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/radio--och-tv-lag-2010696\\_sfs-2010-696](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/radio--och-tv-lag-2010696_sfs-2010-696), archived at <https://perma.cc/HT88-E4Z2>.

<sup>35</sup> *Regler för åsiktsannonsering i TV4*, BONNIER BROADCASTING (Mar. 29, 2018), <https://www.bonnierbroadcasting.com/om-oss/tv4/lagar-och-regler/regler-for-asiktsannonsering-i-tv4/>, archived at <https://perma.cc/B5BU-LUB6>.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* § 7.

## II. Government Education Efforts to Counter Misinformation

To combat misinformation, Sweden has worked to increase the information literacy of its citizens. The Civil Contingencies Agency was specifically tasked with increasing awareness among Swedish residents of the threats associated with misinformation and influence campaigns.<sup>38</sup> One of the Agency responses was the publication of *Countering Information Influence Activities: A Handbook for Communicators*.<sup>39</sup> This is intended to serve as a “manual describing the principles and methods of identifying, understanding, and countering information influence activities,” specifically information campaigns “deployed covertly and deceptively by foreign powers to undermine critical democratic processes, control public dialogue, and influence decision making.”<sup>40</sup>

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<sup>38</sup> Regleringsbrev för budgetåret 2019 avseende Myndigheten för samhällsskydd och beredskap [Appropriations Letter for Budget Year 2019 Regarding the Swedish Civil Contingencies Agency], ESV (Dec. 20, 2018), <https://www.esv.se/statsliggaren/regleringsbrev/?RBID=19538>, archived at <https://perma.cc/H94V-RXV7>.

<sup>39</sup> CIVIL CONTINGENCIES AGENCY, COUNTERING INFORMATION INFLUENCE ACTIVITIES: A HANDBOOK FOR COMMUNICATORS (Mar. 2019), <https://www.msb.se/RibData/Filer/pdf/28698.pdf>, archived at <https://perma.cc/3L7W-YJ2Y>.

<sup>40</sup> *Id.* at 7.

# Turkey

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**SUMMARY** It appears that, under Turkish law, it is illegal for foreign persons or entities to make any kind of donation or assistance, in money or in kind, to political parties regardless of where these donations will be used by the political party. Political parties are further barred from receiving any kind of direct or indirect assistance from non-Turkish persons and entities. A political party receiving any kind of material assistance from foreign entities for any reason may be permanently dissolved by the Constitutional Court. Party authorities or candidates who are responsible for the receipt of foreign donations may be imprisoned. There appears to be no prohibition against foreign persons and entities not affiliated with a political party using their freedom of expression to communicate about elections in the form of online content on the internet. The display of certain types of physical material, on the other hand, is subject to additional restrictions during election periods. Participation by foreign persons and entities in political marches and meetings is subject to additional rules at all times. There appears to be no specific rule concerning the mandatory reporting of illegal foreign assistance in the context of the financing of political parties. There appears to be no specific legislation concerning the financing of electoral campaigns, and the general rules concerning the financing of political parties also apply to elections. There appears to be a gap in the law concerning the financing of individual electoral candidates as opposed to the rules concerning political parties. Turkey has been criticized by GRECO of the Council of Europe for its lack of progress in fixing this unregulated field.

## I. Overview of Legal Framework Applicable to Political Parties and Campaigns

Under Turkish law, the financing of political parties and political campaigns is regulated at the constitutional level and by statute.

Article 69 of the Constitution of Turkey<sup>1</sup> authorizes the Constitutional Court to audit the accounts of political parties in collaboration with the Court of Accounts, and forbids political parties to engage in commercial activity with or to accept aid from foreign entities. Accepting aid from foreign entities is explicitly sanctioned by permanent dissolution of the party as the constitutional norm.

The Law on Political Parties (LPP)<sup>2</sup> regulates the founding, organization, objectives, rights, obligations, acquisition of property, incomes and expenses, auditing, and dissolution (voluntarily or by court order) of political parties. The LPP includes a catalogue of allowed sources of income for political parties (arts. 61-69), which also incorporates prohibitions on certain sources of aid, including foreign entities. A further prohibition on assistance by foreign entities is set forth in Article 79(c), under Part IV of the LPP, which prohibits certain

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<sup>1</sup> Constitution of the Turkish Republic, Law No. 2709 (adopted Oct. 18, 1982, published Nov. 9, 1982).

<sup>2</sup> *Siyasi Partiler Kanunu* [Law on Political Parties], Law No. 2820 (published and effective Apr. 24, 1983).

activities related to public order, national sovereignty, and the unitary character of the state. The LPP prescribes a range of sanctions, including criminal sanctions, for the violation of the prohibitions.

Apart from the general rules set for the activities and financing of political parties under the LPP, the Law Concerning the Basic Provisions of Elections and Electoral Rolls (Elections Law) sets forth a specific legal framework applicable to political campaigning in national and regional elections.<sup>3</sup> This framework is complemented by the provisions of the Law Concerning the Establishment and Broadcasting Services of Radios and Televisions (Radio and TV Law)<sup>4</sup> regarding political programming and advertising specific to election periods, and the applicable general provisions of the Law on Public Meetings and Demonstration Marches (LMM).<sup>5</sup> The latter law includes special provisions regulating the organization of public meetings and demonstration marches by foreign entities and their participation in these events (art. 3/2 LMM).

The Law on Presidential Elections (LPE)<sup>6</sup> sets forth certain special provisions concerning donations that can be made to the “election accounts” of individual presidential candidates (as distinct from donations that can be made to political parties supporting the candidates) to be used for presidential election campaigns. These provisions include a ban on accepting donations from foreign persons. General provisions of the Elections Law and other related legislation mentioned above remain applicable to presidential elections.

## II. Rules Regarding Financing of Political Parties, Candidates, and Campaigns

### A. LPP and LPE

The LPP provides a complete list of the sources of income allowed for political parties (art. 61 LPP). Parties can collect various categories of fees from party members,<sup>7</sup> and income may be generated by property owned by the party, the sale of party paraphernalia, and from donations. Additionally, parties that have received at least 3% of the vote in national elections receive annual financial assistance from the state in an amount proportional to the vote that they obtained. The amount of annual funding is multiplied by two for municipal election years, by three for national parliamentary election years, and by three for years in which both elections take place.

Article 66 LPP regulates donations, prohibiting donations from certain public entities and entities in which the state is a stakeholder, and from any natural or legal person that is not of Turkish

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<sup>3</sup> Seçimlerin Temel Hükümleri ve Seçmen Kütükleri Hakkında Kanun [Law Concerning the Basic Provisions of Elections and Electoral Rolls], Law No. 293 (published and effective May 26, 1961). Intraparty primary elections are regulated by articles 37-52 LPP.

<sup>4</sup> Radyo ve Televizyonların Kuruluş ve Yayın Hizmetleri Hakkında Kanun [Law Concerning the Establishment and Broadcasting Services of Radios and Televisions], Law No. 6112 (published and effective Mar. 3, 2011).

<sup>5</sup> Toplantı ve Gösteri Yürüyüşleri Kanunu [Law on Public Meetings and Demonstration Marches], Law No. 2911 (published Oct. 6, 1983, effective Jan. 3, 1984).

<sup>6</sup> Cumhurbaşkanı Seçimi Kanunu [Law on Presidential Elections], Law No. 6271 (published and effective Jan. 26, 2012).

<sup>7</sup> Only Turkish citizens can become party members: Const. art. 67; art. 6 LPP.

nationality, including foreign states and international institutions. Art. 66/2 provides for an annual value limit (subject to annual revisions) on monetary or in-kind individual donations (including access to publishing or broadcast media) by authorized natural or legal persons. In 2016, the annual value limit was TRY37,105.<sup>8</sup> Political parties are also prohibited from engaging in commercial activities and receiving credit or loans (art. 67) and acquiring real property that is not necessary for party activities (art. 68).

Other than the rules regarding donations made to individual candidates in presidential elections explained below, there are no special provisions for the financing of political campaigns and electoral propaganda, and the financing rules of the LPP apply to these activities. The LPP rules also apply to the activities of political parties in the context of presidential elections.

The LPE provides for additional rules specifically regarding the financing of the electoral campaigns of presidential election candidates. According to article 14 LPE, candidates can accept donations only from natural persons of Turkish nationality. Donations must be deposited in an “election account” audited by the Supreme Election Council and used only for election-related expenses. Individual donations for each election round cannot exceed the gross monthly compensation of Turkey’s highest ranking civil servant. In the June 2018 presidential elections, this limit was TRY 13,916.<sup>9</sup> Amounts exceeding the individual limit and monies that were not spent for election-related expenses by the end of the election are transferred to the Treasury.

## **B. Rules Related to Ethics and Bribery**

The only existing statutory framework applicable to the financial affairs of elected public officials and high-level political appointees such as ministers and presidential advisors is set by the Law on Declarations of Assets and Combating Bribery and Corruption.<sup>10</sup> Article 3 of that law stipulates that “gifts” (other than frames of signed commemorative photographs) given to such individuals for any reason by a foreign state, international institution, any kind of legal entity under international law, or natural or legal persons that are not of Turkish nationality must be transferred to their own institutions if a gift’s value exceeds ten times the net minimum monthly wage at the time of gifting (approximately TRY20,210 or about US3,564 for 2019).

The Group of States against Corruption (GRECO) of the Council of Europe has criticized Turkey for not implementing its recommendations for the adoption of a more comprehensive code of ethical conduct for members of parliament that covers conflicts of interest, including gifts and other advantages, third-party contacts, relationships with lobbyists, and employment

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<sup>8</sup> COURT OF ACCOUNTS OF TURKEY, *SIYASİ PARTİLER MALİ DENETİM REHBERİ* [GUIDEBOOK ON FINANCIAL AUDITING OF POLITICAL PARTIES] 56 (December 2015, ver. 2015/1).

<sup>9</sup> Decision No. 2018/335 of the Supreme Election Council (Apr. 30, 2018).

<sup>10</sup> *Mal Bildiriminde Bulunulması, Rüşvet ve Yolsuzluklarla Mücadele Kanunu* [Law on Declarations of Assets, and Combating Bribery and Corruption], Law No. 3628 (published and effective May 4, 1990).

arrangements after a member's term of office has ended, etc. The most recent GRECO compliance report found Turkey's compliance with its recommendations to be "globally unsatisfactory."<sup>11</sup>

### III. Constitutional and Statutory Prohibitions against Foreign Financing or Other Assistance for Political Parties

While, in principle, foreign persons are guaranteed freedom of expression, including political speech, under the Constitution of Turkey by virtue of articles 10 (prohibition of discrimination and equality before the law), 26 (freedom of expression and dissemination of thought), and 28 (freedom of the press), the political activity of foreign natural and legal persons is subject to certain limitations, as permitted by article 16 of the Constitution, which allows the limiting of fundamental rights and freedoms of foreigners by statute in accordance with international law.

Article 69, paragraph 10 of the Constitution states: "Political parties that accept aid from foreign states, international institutions and persons and corporate bodies of non-Turkish nationality shall be dissolved permanently." In the place of the word "aid" in the translation provided by the official website of the Grand National Assembly of Turkey and reproduced above, the original Turkish text uses the words *maddi yardım*, which translate to "material aid." It appears from the text of the Article before its amendment in 1995 and the relevant provisions of the LPP that govern the application of the constitutional rule that material aid is to be understood as all kinds of monetary and in-kind assistance.

The constitutional norm has been codified in the LPP, in both specific financial and criminal sanctions addressing irregular and illegal receipts of donations and in the sanction of permanent dissolution of a party by the Constitutional Court.<sup>12</sup>

#### A. Donation-Related Financial and Criminal Sanctions

As mentioned above, donations made to political parties are regulated under Article 66 LPP, which also applies in its entirety to election periods and election campaigning. Besides providing a list of domestic legal persons that are prohibited from donating or otherwise providing material aid to political parties, article 66 prohibits political parties from accepting "monetary and in-kind assistance and donations" from foreign states, international institutions, and natural and legal persons that are not of Turkish nationality. All income or real property found to be acquired by a political party in violation of the financial rules (including the rules concerning donations in article 66) by an audit of a party by the Constitutional Court will be confiscated and transferred to the Treasury (art. 76). Persons donating, or party officials accepting, donations in violation of the donation-related rules of the LPP can be subject to imprisonment for six months to one year (art. 116/1), while party officials, party candidates, or nominees for candidacy who accept

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<sup>11</sup> GRECO, FOURTH EVALUATION ROUND, INTERIM COMPLIANCE REPORT ON TURKEY 3, 15 (June 28, 2019), <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/168095417c>, archived at <https://perma.cc/YK6S-9UXK>.

<sup>12</sup> Nevertheless, research did not yield any dissolution judgments that were made by the Court on the basis of article 69, paragraph 10 in the history of the provision, nor, it appears, were any dissolution actions brought against any political party on these grounds. This accounts for the lack of judicial guidance on the interpretation of the constitutional norm and the statutory rules based on it.

donations from foreign states, international institutions, or natural or legal persons that are not of Turkish nationality can be subject to imprisonment for one to three years.

A further prohibition on foreign assistance is found in article 79 LPP titled “Protection of Independence [of the state],” which proscribes the “acceptance of direct and indirect assistance in any form” from the same list of non-Turkish entities. Due to the lack of guiding jurisprudence from the Constitutional Court on the matter, our research could not yield information as to what kind of assistance comprises “non-material aid” or as to the scope of the terms “direct” and “indirect” assistance referred to in article 79. In any case, the LPP provides the above-mentioned specific financial and criminal sanctions only for violation of the article 66 donation-related prohibition. It appears that the general party dissolution or “warning decision” procedures under article 101 and 104, respectively, and as explained below, apply to the article 79 prohibition.

## **B. Dissolution of Party by Constitutional Court**

Within the system of the LPP, there appears to be a categorical difference made between “constitutional prohibitions” provided in article 101 LPP and statutory prohibitions laid down in other provisions of the LPP and in other laws. While the sanction for violation of constitutional prohibitions is dissolution of the party or its exclusion from state assistance (art. 101), the sanction for the latter type of prohibition is a “warning decision” made by the Constitutional Court, ordering the party to cease the violation (art. 104).<sup>13</sup>

Constitutional prohibitions consist of the restatement of article 69 of the Constitution in article 101 of the LPP. Article 101/1(c) LPP repeats the rule of Article 69, para. 10 of the Constitution regarding the prohibition of foreign material aid and sets the sanction as dissolution of the political party by the Constitutional Court. The dissolution action is brought by the Chief Prosecutor of the Court of Cassation, and may be initiated *ex officio* by the Chief Prosecutor, or upon the complaint of another political party or the Department of Justice under a decree by the Cabinet of Ministers (arts. 98-100).

It is noteworthy that the article 101/1(c) prohibition was excluded from the article 101/2 provision allowing the Constitutional Court to order a relatively more lenient sanction of partially or entirely denying state assistance to a political party that violates the prohibitions of article 101/1(a) and (b), which together concern certain activities against the rule of law; the independence, unity, democratic and secular character of the state; or the promotion of dictatorship.

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<sup>13</sup> Originally, article 104, after its amendment in 2003 by Law No. 4778, provided that the Chief Prosecutor would *ex officio* bring an action for denial or partial denial of state assistance against a party that did not cease the violation within six months of the notification of the Constitutional Court’s warning decision. However, this provision was struck down by the Constitutional Court on the grounds that it was discriminatory against parties that were eligible for state assistance as it could not be applied effectively against parties that were not eligible. The resulting gap in the legislation does not appear to be fixed yet. Constitutional Court of Turkey, decision no. 2008/5 E. 2009/81 K. (June 11, 2009).

It appears that article 101/1(c)'s prohibition of foreign "material aid" is interpreted to include article 66's prohibition of foreign "monetary and in-kind assistance and donations."<sup>14</sup> However, research did not yield information as to the extent the article 79 prohibition against the "acceptance of direct and indirect assistance in any form" from foreign persons and entities overlaps in practice with the article 101 prohibition regarding material aid. There appears to be a lack of guiding jurisprudence from the Constitutional Court on this point. There appears to be no specific rule concerning the mandatory reporting of foreign assistance in the context of the financing of political parties.

### C. Question of Foreign Assistance via Associations and Foundations Located in Turkey

In 2007 the Constitutional Court annulled a provision in article 10 of the Law on Associations<sup>15</sup> that allowed associations founded under the Turkish Civil Code to make donations to political parties. The Court reasoned that since article 21 of the same Law allowed associations to accept monetary and in-kind assistance from persons located abroad,<sup>16</sup> allowing associations to make donations to political parties would provide a way to circumvent the constitutional prohibition against foreign material assistance to political parties. The Court explained that "it is understood that the framers of the constitution [by including the prohibition against foreign assistance] have sought to protect political parties from all kinds of external influence. It is possible for political parties that receive in-kind or monetary assistance from persons, institutions and organizations located abroad to fall under the influence of these and be directed from abroad." The Court, on the other hand, rejected claims of unconstitutionality against the article 21 provision allowing assistance by persons from abroad, finding that there was no constitutional barrier to such assistance, provided that the persons did not convey assistance to political parties.<sup>17</sup>

## IV. Regulation of Electoral Campaigns

The conduct of political campaigns by political parties and their candidates in a public election (electoral campaigns) is regulated mainly by the Elections Law and the LPE. Additional rules regarding political communications and electoral campaigns are included in the Radio and TV Law and the LMM.

This report does not detail the provisions of the Elections Law regulating the conduct of electoral campaigns, as they do not include specific provisions concerning the involvement of foreign

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<sup>14</sup> Court of Accounts of Turkey, *supra* note 8, at 25.

<sup>15</sup> Dernekler Kanunu [Law on Associations], Law No. 5253 (published and effective Nov. 4, 2004).

<sup>16</sup> Conditional on prior notification made to the chief of the local authority, art. 21 of the Law on Associations.

<sup>17</sup> Constitutional Court of Turkey, Decision No. E.2004/107 K.2007/44 (Apr. 5, 2007). Cited in CEM D. UZUN, TÜRKİYE'DE SİYASİ PARTİLERİN FİNANSMANI 121 (Adalet Yayınevi, 2010). Uzun points to the fact that foundations are similarly allowed under article 25/2 of the Law on Foundations ([Vakıflar Kanunu], Law No. 5737, published and effective Feb. 20, 2008), to accept donations and assistance from persons and entities located abroad, and argues that this might also be a loophole in light of the Constitutional Court's reasoning. The Law on Foundations does not include a provision explicitly allowing foundations to donate to political parties, however, there are no provisions that explicitly prohibit it. UZUN at 124. The fact that article 5 of the Law on Foundations allows foreign persons to establish foundations in Turkey on the basis of reciprocity further complicates the problem.

persons or entities, in any form. Indeed, as mentioned above, the financing of electoral campaigns is not specifically regulated apart from the rules concerning presidential candidates' election accounts in the LPE, and therefore, it appears that the rules of the LPP concerning foreign assistance will apply generally to the activity of political parties related to electoral campaigns.

There appears to be a significant gap in the law concerning the financing and expenditures of individual candidates in municipal and national elections other than presidential elections, whether or not the candidates are affiliated with a party. The absence of specific rules for the financing of electoral campaigns is criticized in the literature, and legislative efforts to regulate the area appear to have been fruitless so far.<sup>18</sup> GRECO criticized Turkey for the lack of concrete legislative steps to adopt an adequate legal framework to ensure transparency of the financing of electoral campaigns, while noting the publication of a Guidebook on Financial Auditing of Political Parties<sup>19</sup> as a positive development.<sup>20</sup>

As there exists no special legislation under Turkish law concerning the employment of foreign persons in political campaigns as employees or consultants, it is reasonable to conclude that the LPP's general prohibition against material aid (art. 101) and acceptance of direct and indirect assistance in any form (art. 79) will preclude a political party from employing a non-Turkish national in any capacity, whether or not the employment is related to an electoral campaign. However, the law is silent concerning the individual election campaigns of candidates, and a gap similar to that concerning financing of electoral campaigns exists in this area.

#### **A. Rules on Political Communications during Election Periods and Their Applicability to Foreign Persons**

The Election Law's rules regarding election campaigns are effective from sixty days before the election day in the case of national elections, and for three months before municipal elections. The rules apply to both the candidates of political parties and independent candidates. The election law also includes certain limitations concerning the political communications of private "citizens" (*vatandaşlar*) not officially affiliated with an election campaign. Citizens cannot physically display banners, posters, placards, party flags, or similar materials that convey a political message or advertisement in places other than those provided in the Law (art. 61). Citizens are allowed to display such materials on their private residences, workplaces, and vehicles beginning from the thirtieth day before the election day until 6 p.m. on the day before the election day (art. 60/13).

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<sup>18</sup> See for example Gençkaya, Gündüz et al., *Siyasetin Finansmanı ve Şeffaflık*, TRANSPARENCY INT'L, Jan. 2016, at 71. The most recent large-scale attempt to introduce election financing regulation appears to be a draft bill proposed by the Republican People's Party on Mar. 20, 2017. No significant legislative actions appear to have been taken regarding this bill and it appears that the draft bill was not reintroduced in the current session of the legislature. The GRECO Third Evaluation Round compliance reports for Turkey indicate that a draft bill on transparency in campaign financing was in the process of being prepared by the government beginning in 2014, but it has not been finalized and sent to the parliament yet. GRECO, THIRD EVALUATION ROUND, ADDENDUM TO THE SECOND COMPLIANCE REPORT ON TURKEY 6 (June 28, 2019), <https://rm.coe.int/third-evaluation-round-addendum-to-the-second-compliance-report-on-tur/1680954181>, archived at <https://perma.cc/VR7Q-5V8L>.

<sup>19</sup> See *supra* note 8.

<sup>20</sup> GRECO, *supra* note 18, at 6.

Displaying electoral advertisements on the internet appears to be unrestricted, except for sending emails, and the sending of voice and text messages to private telephones, which are not allowed (art. 55/B(1) and (2)).

Although the word *vatandaşlar*, which translates as “citizens,” is used in the Election Law’s provisions concerning the regulation of political communications, in light of the overall structure of the Law and the language used, it appears that the term citizen might reasonably be interpreted as being used to distinguish individuals not affiliated with a political campaign from those who are. Research did not yield explicit judicial guidance on the matter, however, and clarification may depend on whether the Constitutional Court considers the issue. Thus, whether foreign persons can physically display political messages and advertisements during the electoral period regulated by the Election Law is unclear.

### **B. Further Limitations on Foreign Persons’ Political Activities with Regard to Public Meetings and Marches**

Besides the prohibition under the LPP of becoming a member of a political party or giving assistance to a political party in any form, another limitation on the political speech of foreign persons exists under the LMM, which regulates the conduct of public meetings and marches. According to article 3/2 LMM, natural or legal foreign persons must receive permission from the Ministry of Internal Affairs to organize a public meeting or a march. Foreign persons who want to address the audience or carry propaganda material such as photos, placards, banners, etc. in a meeting or a march must notify the highest administrative authority about the place of the event forty-eight hours in advance (art. 3/2, second sentence). The latter rule was created by an amendment in 2002—previously, these activities were also subject to the permission of the Ministry.<sup>21</sup>

### **V. Auditing of Political Parties and Campaigns, and External Criticism on Effectiveness and Transparency of Auditing System**

As mentioned above, the Constitutional Court is responsible of the financial auditing of political parties with the assistance of the Court of Accounts. In practice, political parties send their final accountings to the Constitutional Court in June each year, which are then forwarded to the Court of Accounts for inspection.<sup>22</sup> The reports of the Court of Accounts are then reviewed by the Constitutional Court and finalized with a judgment.<sup>23</sup> The Constitutional Court may order the transfer to the Treasury of income that it finds to be irregular, and make criminal complaints to the Office of the Chief Public Prosecutor in cases where criminal sanctions provided in article 111 LPP apply to the irregularities. There appears to be no separate auditing procedure specific to the financing of electoral campaigns by political parties or candidates, with the important exception of the auditing rules brought by the LPE that charges the Supreme Election Council with auditing

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<sup>21</sup> Law No. 2911, note 5, *amended by* Law No. 4771 (published Aug. 3, 2002).

<sup>22</sup> This procedure was brought by Law Regarding the Establishment of the Constitutional Court and its Adjudicative Procedure, Law No. 6216.

<sup>23</sup> Rıfat Karakoç, *Türkiye’de Siyasi Partilerin Mali Denetimi* [Financial Audit of Political Parties in Turkey], 109 *Sayıştay Dergisi* 90 (2018), <https://www.sayistay.gov.tr/tr/Upload/95906369/files/dergi/pdf/109m4.pdf>.

the election accounts of individual presidential candidates (art. 14/6-8 LPE).<sup>24</sup> It appears that the Supreme Election Council's auditing authority does not extend to the electoral campaigns of political parties that support the presidential candidates. Presidential candidates also are also required to declare their assets to register as candidates; the declarations are published in the Official Gazette following the finalization of the elections (art. 14/2 LPE).

External reports on the effectiveness of the auditing and anticorruption framework for campaign financing and the financing of political parties in general appear to be highly critical of the current auditing system. The scope of the audit under the LPP was criticized by Transparency International-Turkey reports for being narrow in scope, and was characterized as being a technical accounting regularity audit limited to the inspection of financial records provided to Court; the very wide definition of allowed expenditures in the LPP was also criticized.<sup>25</sup> It was noted that the absence of any kind of financial reporting or asset disclosure obligations applicable to electoral candidates presents a severe problem in transparent accounting of expenditures of political parties during electoral campaigns, pointing out that there is an unregulated possibility for the comingling of the political party's funds and the candidates' own resources that can be generated by monetary or in-kind donations or provision of services by third parties, which may allow for underreporting of expenditures, especially in election periods.<sup>26</sup> The European Commission's Turkey 2018 Report stated that "[t]he track record of audits on the financing of political parties and electoral campaigns demonstrates a very low level of effectiveness," highlighting the country's failure in implementing GRECO recommendations.<sup>27</sup> The 2019 Report reiterated Turkey's failure to align its policy with GRECO recommendations, and highlighted the absence of legislation regulating conflicts of interests in governance and lobbying.<sup>28</sup>

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<sup>24</sup> GÜNDÜZ, ERDOĞAN ET AL., TÜRKİYE ŞEFFAFLIK SİSTEMİ ANALIZI 139 (TRANSPARENCY INT'L, 2016).

<sup>25</sup> Gençkaya, Gündüz et al., *supra* note 18, at 31; GÜNDÜZ, ERDOĞAN ET AL., *supra* note 24, at 187. Indeed, a provision included in article 74/1 LPP by an omnibus bill in 2011 prevented the Court from conducting the audit "in a manner that would narrow the scope of the activities that are seen useful for furthering the aims of political parties" and from "questioning the appropriateness of such activities," while another provision introduced as article 74/4 LPP by the same bill states "[p]olitical parties may make any expenditure within the scope of the political activities they see necessary in the furtherance of their aims." Amending (omnibus) Law No. 6111 (published and relevant provisions effective Feb. 25, 2011).

<sup>26</sup> GÜNDÜZ, ERDOĞAN ET AL., *supra* note 24, at 188.

<sup>27</sup> EUROPEAN COMMISSION, TURKEY 2018 REPORT 28 (COMMISSION STAFF WORKING DOCUMENT SWD(2018) 153 final) (Apr. 17, 2018).

<sup>28</sup> EUROPEAN COMMISSION, TURKEY 2019 REPORT 27 (COMMISSION STAFF WORKING DOCUMENT SWD(2019) 220 final) (Mar. 29, 2019).