

ARTICLE

Indices of ‘Internal Control’ for the Purpose of International Comparison

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Abstract

The Local Autonomy Act of Japan was modified in 2017 and a new element, named ‘Internal Control’ was included to be introduced in 2020. This is a new way of tightening control on the operation of local governments. This is first introduced to prefectural governments and Designated Cities, which are large local governments. Chief executive officers of those local governments are obligated to take actions including establishment of plans and reports against misconducts.

This paper takes this opportunity to review existing measures in local government system in Japan and considers the indices for international comparison in controls of the executive organisations of local governments.

1. Introduction

‘Internal Control’ is a new element in the sphere of local government in Japan, introduced with the amendment to the Local Autonomy Act in 2017 and is expected to be put into force at the beginning of April, 2020.

The word, ‘Internal Control’, which is a direct translation from the Japanese word used in the Local Autonomy Act, is equivocal, but in Japan’s context with regard to this new amendment to the Local Autonomy Act, it seems almost synonymous to ‘risk management.’ This is evident, if one sees the actual application of the new amendment. This is because the application of this new measure is limited at the start of its introduction. For the time being, the new obligation of local governments in order to make effective ‘Internal Control’ legally required by the new amendment is only applicable to prefectures¹ and Designated Cities² and covers only financial matters including not only management of tangible assets but also intangible assets. However, the concept of ‘Internal Control’ itself is a broader one which includes many measures already existing in the current system including Auditors’ audit, supervision by the Local Assembly, and Residents’ Lawsuit.

This is a new development trying to achieve more effective ways of local administration, with the rapid depopulation in rural Japan in the background. The reason why it is emphasized now is that with smaller and aged population expected in future, local governments must be more risk conscious and less prone to incorrect activities of its members in order to keep its effectiveness and efficiency in future.

In this paper, the author intends to introduce this new development as well as contemplating on indices that should serve as indicators for the relative degree of ‘Internal Control’ activities in local governments for the purpose of international comparison.

2. What is it that is meant by the word, 'Internal Control' in Japan?

The 31st Local Government System Investigation Commission³ expressed its opinion in its report that “since (1) local governments are expected to resolve issues about which it is difficult to make a consensus in the coming depopulation society, and (2) in order to increase well-being of residents and to realise the best result with smallest cost, there will be larger request to secure proper implementation of its business. Therefore, Chief Executive Officers, Auditors, local assemblies and residents must make efforts in this direction based on the advantages each of them has.”

Following this view, the Commission recommended that 'Internal Control' of the local governments in the hands of the chief executive officers of them should be systematised.

As a result of this report, the Cabinet submitted a bill to make an amendment to the Local Autonomy Act in 2017 and the Diet passed it in the same year.

As a measure to introduce this new concept, Article 150, a new article to systematise 'Internal Control,' was added. This article is yet to become effective as of April 1, 2020.

Article 150 (author's abridged translation)

1 Governors of Prefectures and Mayors of Designated Cities⁴ shall make a policy statement in order to secure proper and lawful management and execution of following business of his/hers and establish necessary system for its implementation.

1) Business enumerated in the Decree of the Minister for Internal Affairs and Communications which must include financial business, and

2) Other kinds of business whose proper and lawful management and execution by the Governor or the Mayor are deemed especially important.

2 Mayors of Cities⁵, Towns and Villages, except for Mayors of Designated Cities, shall make an effort to make a policy statement in order to secure proper and lawful management and execution of following business of his/hers and establish necessary system for its implementation.

1) Business enumerated in the Decree of the Minister for Internal Affairs and Communications which must include financial business

2) Other business whose proper and lawful management and execution the Mayor deems especially important

3 Governors and Mayors must make it public without delay, when they make or amend the policy statement mentioned in Clauses 1 and 2.

4 Governors of Prefectures, Mayors of Designated Cities and Mayors of Cities, Towns and Villages who have made a policy statement according to Clause 2 above, must make a report evaluating the policy statement and the system established according to it, following the regulations of the Minister for Internal Affairs and Communication's Decree, at least once in a fiscal year.

5 Governors of Prefectures, Mayors of Designated Cities and Mayors of Cities, Towns and Villages who have made a policy statement according to Clause 2 above, must have the report made based on the preceding Clause examined by the Auditors.

6 Governors of Prefectures, Mayors of Designated Cities and Mayors of Cities, Towns and Villages who have made a policy statement according to Clause 2 above, must submit the report, after it is examined by Auditors, according to the preceding Clause to the Local Assembly of the local government, together with the opinion of the Auditors.

7 The opinion of the Auditors mentioned in the preceding Clause must be made through consultation of all the Auditors.

8 Governors of Prefectures, Mayors of Designated Cities and Mayors of Cities, Towns and Villages who have made a policy statement according to Clause 2 above, must publicise the report submitted to the Local Assembly according to Clause 6.

9 Other necessary matters concerning the policy statement mentioned in Clauses 1 and 2 and the systems established according to the statement shall be provided for with a Minister for Internal Affairs and Communication's Decree.

What this article means is that there are new obligations for Governors of Prefectures and Mayors of Designated Cities to make a policy statement to secure proper and lawful management and execution of part of his/her business, which shall include financial matters, and establish necessary system for its implementation. The same is optional for ordinary Cities, Towns and Villages.

3. Why is this 'Internal Control' emphasised in Japan now?

As the author has pointed out, Japan is seeing depopulation and this tendency will certainly continue for some time. In this circumstance, local governments in Japan must increase their efficiency since they will have more tasks and less financial resources for their tasks. This tendency is especially clear in smaller local governments, smaller in terms of population, in rural remote areas. Almost every one of them has a population that is rapidly decreasing as well as aging. According to the Population Census of the central government conducted in 2015, 1,419 municipalities out of 1,719 municipalities had smaller population compared with the figures in Population Census 2010. This means that 82.5% of municipalities are facing depopulation. Also 41 prefectures out of 47 prefectures have a population that contains more than a quarter of people aged 65 or more⁶. This leads to less local tax revenue and more financial burden in the field of social welfare, especially for aged population. One of the countermeasures was amalgamation of basic local governments, municipalities. This was widely promoted by the central government in the early years of this century. As a result, the number of municipalities, which was 3,229 at April 1, 1999, is now 1,718. The number has been nearly halved. This measure has achieved considerable outcome and the next measure is the effort to minimise losses from avoidable causes in existing local governments. Therefore, this amendment was made.

It is interesting to note that although the needs for 'Internal Control' seems larger for smaller local governments on rural side, it is only large local governments that are required to introduce the system provided for in the new act. At the moment the introduction of the new system is considered to require a high degree of capacity of a local government and is only possible for larger, and consequently more capable, local governments. However, the central government has an intention to broaden the application of this system gradually to wider range of local governments.

Another factor is the fact that the Board of Audit⁷ had pointed out many inappropriate accounting practices during the period starting from 2008. This was related to the discretion allowed for the executive branch in connection with the use of public money. Most of the practices pointed out as inappropriate were traditionally established ways of appropriation of budgeted money but with increased preference for strict compliance to regulations they were branded as inappropriate.

Horiuchi Takumi also points out that the illegal accounting practice at Yubari City Government⁸ discovered in 2006 is one of the starting points leading to this amendment of the Local Autonomy Act (Horiuchi, 2017).

4. Content of the Internal Control System in Japan's local Government

According to the guideline issued by the Ministry of Internal Affairs and Communications in March, 2019, 'Internal Control' in the context of local governments of Japan is conceived as follows.

(1) Purposes of the 'Internal Control'

'Internal Control' in Japan has four purposes. They follow the practice of internal governance activities of private companies.

- a. Effective and efficient implementation of local government activities
- b. Guarantee of the correctness of financial reports
- c. Compliance to the laws and regulations governing local government affairs
- d. Preservation of assets

In order to achieve these four purposes, local governments in Japan are required to incorporate into their system a process that involves everyone in the organisation to evaluate the risks which might prevent the attainment of these purposes and keep the risks under a certain level.

(2) Elements of the 'Internal Control'

This process includes six elements. They are;

- a. Environment for 'Internal Control,'
- b. Evaluation of and response to risks,
- c. 'Internal Control' Activities
- d. Dissemination of information,
- e. Monitoring of the process and
- f. Response to ICT.

"Environment for 'Internal Control'" means the basic environment of a local government that includes values the organisation holds and personnel and office function rules. These factors define the attitudes and behaviours of the members of the organisation and therefore, important.

In "Evaluation of and response to risks," risks are divided into those for the local government as a whole and those specific only to a part of it. Here risks that a local government cannot manage like natural disasters and epidemics are excluded because a local government cannot reduce these risks through 'internal control.' 'Response' means trying to avoid the risks, reduce them or transfer them through insurance etc.

"'Internal Control' Activities" mean the policy and procedures set to secure the proper compliance to the commands and instructions of the Chief Executive Officer, who is responsible for 'Internal Control.'

"Dissemination of information" means that necessary information shall be recognised, processed and given to those who need it inside and outside the local government.

"Monitoring of the process" means the procedures provided for continuous evaluation of the effectiveness of the 'Internal Control' system. This includes monitoring done during the daily work procedures and monitoring done independently.

"Response to ICT" represents the need to respond to the development of ICT. This is a subordinate element to other elements in that it is strongly related to other elements of the 'Internal Control' and is not an independent element from other elements.

5. Operations required by the introduction of the new system.

As the author has shown, the new Article 150 of the Local Autonomy Act says, what will become a legal obligation in terms of 'Internal Control' is,

- 1) for the chief executive officers of large local government (prefectural Governors and Designated City Mayors)
- 2) to lay out the policy statement and necessary systems for it.

The affairs about which such activities are required are mainly limited to financial matters.

The Chief Executive Officer of a large local government (a prefecture or a Designated City) has to publicise the policy statement, when he/she makes it.

Then the chief executive officer of a large local government (a prefecture or a Designated City) has to evaluate the operation of its policy and systems of 'Internal Control' and make a report, at least, once a year. The report must be examined by the Auditors of the local government. After the Auditors' examination, the report must be submitted to the Local Assembly of the local government, together with the result of the Auditors' examination.

6. Comparison with the existing ways to regulate activities inside local governments.

The introduction of 'Internal Control' means addition of new processes for appropriate implementation of local government affairs.

However, there are already many systems and measures in operation in local governments to secure correct implementation of the local governments' functions.

Here the author outlines those measures and systems and would like to show their differences to the new system.

(1) Auditors

Most notable among them is the activities of the Auditors. This is a traditional system which has been there since pre-war time. Every local government in Japan has Auditors. A large local government (a prefecture or a Designated City) normally have four Auditors and other local governments each have two Auditors, although their number can be increased with a by-law of the local government. (Article 195 of the Local Autonomy Act)

They have sometimes been considered not totally effective. The main reason for this sort of argument was that most of them are 'insiders.' They are appointed by the Chief Executive Officer, the main objective of their audit. Half of them are usually chosen from the members of the Local Assembly, although following an amendment to the Act, a local government may make a by-law stating that it does not appoint such an Auditor. A 'knowledgeable and noble persons' are to be chosen for other positions of Auditors. However, since many of them were former officials of the local government, now there is a restriction on the appointment of former local government official of the local government and only one such person may be appointed (Clause 2 Article 196 of the Local Autonomy Act, Article 140-3 of the Cabinet Order for the Execution of the Local Autonomy Act). Also the use of 'External Auditor' has been widened.

The Auditors conduct audits on many matters including financial matters like account settlement and the ways public administration is implemented.

They make audits;

- 1) Where laws require them to conduct an audit like annual audit on financial matters including annual account settlement and on other matters like the ways public administration is implemented, at least once in a fiscal year (Articles 199 and 233 of the Local Autonomy Act and many others),
- 2) When more than one fiftieth of the voters in a local government want them to conduct an audit on some affair of

the local government (Article 75 of the Local Autonomy Act),

3) When the chief executive officer of a local government calls for an audit (Article 199 of the Local Autonomy Act),

4) When the Local Assembly of a local government calls for an audit (Article 98 of the Local Autonomy Act) and

5) When a voter of a local government asks for an audit on financial matters of the local government (Article 242 of the Local Autonomy Act).

For larger local governments (a prefecture, a Designated City or a Core City⁹), it is also required to appoint an External Auditor¹⁰ for comprehensive audit. Appointment of an External Auditor is optional for other local governments. An External Auditor is contracted either to conduct an ordinary audit like the one that auditors conduct on financial matters and other matters or to conduct an audit on specific matters. This is a relatively new system, introduced in 1998 (Article 252-27 of the Local Autonomy Act).

(2) Supervision by the Local Assembly

The Local assembly of an ordinary local government in Japan has a right to examine documents of the local government, ask for a report about the affairs of the local government to examine its implementation and ask for an audit by Auditors (Article 98 of the Local Autonomy Act).

The Local assembly of an ordinary local government in Japan also has the right to make an investigation on the affairs of the local government (Article 100 of the Local Autonomy Act).

The Local assembly of an ordinary local government in Japan is given these authorities to supervise the local government's affairs as they represent the residents of the local government.

(3) Residents' Lawsuit

When a voter makes a request for an audit with regard to financial matters, and then he/she is not satisfied with the result of the audit and when the request is about an illegal activity, the voter may start a lawsuit to correct this deed (Article 242-2 of the Local Autonomy Act). This is a unique system in local governments in Japan and the central government has no such system..

(4) Reprimand on Officials

This is a system to give disciplinary action to an individual officer who has made some misconduct. The chief executive of a local government can fire, suspend from the work, reduce the salary or warn an official for one's misconduct inside and outside his/her work. In the sense that this is for an individual, this is somewhat different from other measures. But many improper implementations found out through other measures lead to this measure on the officials responsible for it. Since this sometimes deprives the job and salary of the official concerned, this is also an important tool for 'Internal Control' in a wider sense.

7. Differences between Existing Measures and the New System

The biggest feature of this new 'Internal Control' system is that it obligates the Chief Executive Officer to follow procedures to secure correct and proper implementation of his/her affairs. At the time of its initial introduction, it is optional for smaller local governments. At the time of the introduction of this system in 2020, it will only obligate the Chief Executive Officers of large local governments to follow this set of procedures, but the central government has the intention to expand the obligation to the chief executive officers of smaller local governments. Financial matters are the only field that must be covered by the set of procedures at the time of its introduction in 2020, but local governments can, with their own decisions, expand the application of the system to other fields.

All existing measures are applied to all local governments regardless of their size, except for the obligation to appoint an External Auditor, which was introduced comparatively recently.

Another point is that this is a system for the Chief Executive Officer to evaluate the implementation of his/her own tasks him/herself. All existing measures let someone who is somewhat independent from the chief executive officer conduct the evaluation. Voters are clearly outside the local government organisation, and even though local assemblies are part of the local government organisation, they have an independent position as the representatives of the residents. Auditors belong to the local governments' executive branch, but they are considered to have a somewhat independent status as an independent commission of a local government. It has been taken for granted for the Chief Executive Officer to take control of the executive branch and secure correct conducts of it but the new system added a new formality to it.

8. What factors can be used to compare the degree of regulation for the purpose of guaranteeing correct activities inside local governments?

Since local government systems are different from country to country, it is not easy to compare the degree of regulation internationally.

Looking at Japan's system, following points seem good indicators of the regulation for the purpose of guaranteeing correct activities inside local governments.

1) What kind of procedures are legally made compulsory?

Who are responsible?

What can a resident (voter) do in this respect?

If there is a semi-independent organisation to watch the deeds of a local government inside the local government like Auditors in Japan?

If there is a possibility to contract an outside expert for the purpose of examining the implementation of a local government's affairs?

To what degree does the local government's deliberative organ have the supervisory power on executive branch of the local government?

(Distinction between countries where local deliberative organs have executive power and those where they do not have the executive power.)

If there are any obligations for the chief executive officer of a local government to review his/her own operations?

2) If these obligations are universally applied to all local governments?

3) To what field of operation of local governments are these procedures applied?

4) If there is specific system to give disciplinary action to public officials?

(Appendix 1) Related provisions in Local Autonomy Act)
(Author's abridged translation)

[Audit by the voters' request]

Article 75. Those who have suffrage in an ordinary local government¹¹ (in the case of District Public Safety Commission in Hokkaido, those in the District) can require the Auditors of the local government to conduct an inspection on the implementation of affairs of the local government through their representative by acquiring signatures from more than one fiftieth of the voters.

[Local Assembly]

Article 89. An ordinary local government shall have a Local Assembly.

(Article 93 of the Constitution of Japan: The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.)

[Inspection by the Local Assembly]

Article 98. The Assembly of an ordinary local government can inspect the management of, execution of its resolutions about and accounting for the ordinary local government's affair (except for those affairs belonging to the responsibilities of Labour Commission and Expropriation Commission enumerated by a Cabinet Order in the case of autonomous affairs¹² and those enumerated in a Cabinet Order as not fit for such inspection because of the possibility of affecting national security and the like in the case of legally delegated affairs¹³) by examining documents and account statements and by asking for reports from its Chief Executive Officer, Education Board, Election Management Board, Personnel Commission or Equity Commission, Public Safety Commission, Labour Commission, Agriculture Commission, Auditors and other Commissions provided for by an act.

2 The Local Assembly of an ordinary local government can ask Auditors of the local government to conduct an audit on the ordinary local government's affair (except for those affairs belonging to the responsibilities of Labour Commission and Expropriation Commission enumerated by a Cabinet Order in the case of autonomous affairs and those enumerated in a Cabinet Order as not fit for such inspection because of the possibility of affecting national security and the like in the case of legally delegated affairs) and call for the report of Auditors. In this case the provision in the latter half of 2nd Clause of Article 199 is applicable.

[Investigation by the Local Assembly]

Article 100. The Local Assembly of an ordinary local government can make an inspection on the ordinary local government's affair (except for those affairs belonging to the responsibilities of Labour Commission and Expropriation Commission enumerated by a Cabinet Order in the case of autonomous affairs and those enumerated in a Cabinet Order as not fit for such inspection because of the possibility of affecting national security and the like in the case of legally delegated affairs). In this case, it can ask a voter or other related person to appear and testify and ask for submission of records.

[Auditors]

Article 195. An ordinary local government shall have auditors.

2 The number of Auditors shall be four in a prefecture and cities that are designated by a Cabinet Order, and two in other cities, towns and villages. However, the number may be increased by a by-law.

[Appointment of Auditors]

Article 196. The Chief Executive Officer of an ordinary local government shall appoint auditors, with a consent of

the Local Assembly, from among (1) those who have noble character and are knowledgeable in financial management, enterprise operation and other public administration management and (2) members of its Local Assembly. However, it may be decided by a by-law not to choose an Auditor from among the members of the Local Assembly.

2 In an ordinary local government where the number of Auditors that were chosen because of their knowledge is two or more, there can be only one among them who had been an official of the ordinary local government.

3 An Auditor cannot simultaneously be a full time employee of a local government.

4 Auditors chosen for their knowledge can be full time employees of the local government.

5 In a prefecture of a Designated City, at least one of the Auditors chosen for their knowledge must be a full time employee.

6 The number of Auditors appointed from among the Local Assembly members shall be one or two, in prefectures and Designated Cities, and one in other cities, towns and villages.

[The term of office of Auditors]

Article 197. The term of office of Auditors chosen for their knowledge shall be four years. The term of office of Auditors chosen from among Local Assembly members depend on their term as Local Assembly members. They shall remain in the office until their successors are appointed.

[Dismissal of Auditors]

Article 197-2. The Chief Executive Officer of an ordinary local government can dismiss an Auditor when he/she recognises that the Auditor is incapacitated because of mental or physical disorder, or the Chief Executive Officer recognises that the Auditor made an offence to his/her official duty or a misconduct which make the Auditor unfit for his/her duty, with the consent of the Local Assembly. In this case, a public hearing must be held in a permanent committee or a special committee of the Local Assembly.

2 An Auditor shall not be dismissed against his/her own wish, except for the cases provided for in the preceding clause.

[Retirement of an Auditor]

Article 198. An Auditor shall receive an approval from the Chief Executive Officer of the ordinary local government, when he/she intends to retire.

[Restriction on the appointment]

Article 198-2. A person who is a parent, a child, a brother or a sister, or a spouse of a Chief Executive Officer, a Vice Governor, or a Vice Mayor cannot be an Auditor.

2 An Auditor who becomes one of those stipulated in the preceding Clause shall lose his/her position.

[Attitude of an Auditor]

Article 198-3. An Auditor must always keep just and unbiased attitude at his/her duty of audit.

2 An Auditor shall not divulge secret he/she has acquired during the course of his/her duty. The same applies even after he/she retired.

[Auditors' duties]

Article 199. An Auditor shall conduct inspections on the implementation of affairs of a local government concerning financial matters and on the management of affairs of a local government concerning enterprise operation.

2 An Auditor may, adding to what is provided for in the preceding clause, make an inspection on the implementation of the ordinary local government's affair (except for those affairs belonging to the responsibilities of Labour Commission and Expropriation Commission enumerated by a Cabinet Order in the case of autonomous affairs and those enumerated in a Cabinet Order as not fit for such inspection because of the possibility of affecting national

security and the like in the case of legally delegated affairs), when they consider it necessary. In this case, necessary items for this inspection shall be provided for in a Cabinet Order.

3 An Auditor must pay special attention, when they conduct inspection according to Clauses 1 and 2 of this article, to whether the implementation of affairs of a local government concerning financial matters, the management of affairs of a local government concerning enterprise operation, and the implementation of the ordinary local government's affair is made according to the purport of Clauses 14¹⁴ and 15¹⁵ of Article 2.

4 An Auditor shall conduct inspection provided for in Clause 1, fixing the date at least once a fiscal year.

5 An Auditor may, in addition to the inspection provided for in the preceding clause, conduct inspection provided for in Clause 1, whenever they deem it necessary.

6 An Auditor shall, when requested by the Chief Executive Officer of the local government to conduct inspection on the implementation of the affairs of the local government, conduct inspection on the required items.

7 With regard to an entity to which the local government gives financial support including subsidies, grants, obligatory share, loan, guarantee of loss compensation and interest subsidy, An Auditor may, when they deem it necessary or when the Chief Executive Officer of the local government requested it, conduct inspection on operations of its affairs related to those financial supports, including its accounts. The same applies to an entity provided for in a Cabinet Order to which the ordinary local government makes investment to, to an entity to which the ordinary local government guarantees the repayment of the principal or interest, to the trustee of a trust of which the local government has the beneficiary right and an entity to which the local government delegates the management of a public facility according to Clause 3 of Article 244-2¹⁶.

8 An Auditor can, when he/she deems it necessary for audit, ask a related person to appear, make investigation on a related person, ask a related person to produce accounting books, documents and other records or ask a knowledgeable person for his/her opinion.

9 An Auditor shall decide upon the report on the result of an audit, submit it to the Local Assembly of the local government, Chief Executive Officer, and Commissions concerned among Education Board, Election Management Board, Personnel Commission or Equity Commission, Public Safety Commission, Labour Commission, Agriculture Commission, Auditors and other Commissions provided for by an act and publish it.

10 An Auditor can, when he/she think it necessary based on the result of his/her audit, submit his/her opinion together with his/her report according to the preceding clause, in order to contribute to the rationalisation of the local government's organisation and management.

11 The report about the result of the audit according to Clause 9 and the opinion according to the preceding clause shall be determined with consultation of all Auditors.

12 After an Auditor submitted a report about the result of his/her audit, if the Local Assembly of the local government, Chief Executive Officer, Education Board, Election Management Board, Personnel Commission or Equity Commission, Public Safety Commission, Labour Commission, Agriculture Commission, Auditors and other Commissions provided for by an act to which the report have been submitted has made some move based on it or referring to it, the organ shall report the fact to the Auditor. In this case, the Auditor shall publicise those items related to the report.

(Call for an Audit by Residents)

Article 242. A resident of an ordinary local government can, if he /she thinks that there is an illegal or inappropriate payment with public fund, acquisition, management or disposition of assets, conclusion or fulfilment of a contract or acknowledgement of liability (including cases where these things are expected to happen with considerably high probability), or if he/she thinks that there is illegal or inappropriate imposition, or collection of public obligation, or

negligence in management of assets, request Auditors with written evidence, to conduct an audit, to prevent their happenings, to correct these things, to correct the negligence or to take necessary steps to recover damages caused to the local government by such deeds or negligence.

(Resident's Lawsuit)

Article 242-2. A resident of an ordinary local government may, after he/she made a call for an audit by an Auditor according to Clause 4 of the preceding Article and if he/she is dissatisfied with the result of the audit or recommendations according to Clause 4 of the same Article, or with steps taken by the Local Assembly, the Chief Executive Officer, other executive organs or officials according to Clause 9 of the same Article, if the Auditor does not conduct an audit or issue a recommendation within the period provided for in Clause 5 of the same Article or if the Local Assembly, the Chief Executive Officer, other executive organs or officials do not take steps according to Clause 9 of the same Article, file following lawsuits about illegal deeds and negligence concerning their call according to Clause 9 of the same Article to a court

- a) Request for an injunction to the executive organ or official against the whole or part of the deed.
- b) Request for repeal or confirmation of ineffectiveness of the deed which constitutes an administrative act.
- c) Request for confirmation of illegality against negligence of an organ or an official
- d) Request to obligate an executive organ or an official in charge of the ordinary local government to claim compensation for damage or repayment of undue benefit from the official in question or from the opponent of the deeds or negligence. In case the official in question or the opponent of the deeds or negligence is the one to whom the 'order of compensation of damage' according to Clause 3 of Article 243-2 is applicable, request to obligate an executive organ or an official in charge of the ordinary local government to give the 'order of compensation of damage.'

(Responsibility of Officials to compensate for damage)

Article 243-3. Treasurer, officials subordinate to the Treasurer, officials who received advance payment, officials who have movable property in custody and officials who make use of materials must compensate for the damage if he/she lost or damage cash, bonds, materials, immovable properties in his/her custody or materials he/she uses, with intention or through serious negligence. The same applies when officials who have the authority to do following deeds and those officials who are designated in a rule of a local government as those helping them, give damage to his/her ordinary local government by illegal deeds or negligence with intention or through serious negligence.

- a) an deed to confirm expenditure
- b) an order based on Clause 1 of Article 232-4¹⁷ and a confirmation based on Clause 2 of the same Article¹⁸.
- c) expenditures and payments
- d) Supervision or inspection based on Clause 1 of Article 234-2

2 In a case the preceding Clause is applicable, if the damage is caused by two or more officials, those officials will share the responsibility to compensate for it according to their rank and the degree of influence of their deeds.

3 The Chief Executive Officer of an ordinary local government shall, when he/she recognises that an official provided for in Clause 1 inflicted damage to the ordinary local government through deeds provided for in the same Clause, ask the Auditors to conduct an audit as to whether the fact really exists or not, to decide upon whether the official has the responsibility to compensate for it and, if any, to decide upon the amount of the compensation. Based on the Auditors' decision, the Chief Executive Officer shall order the official to compensate with deadline.

(Appendix 2) Related provisions in Local Government Personnel Act)
(Author's abridged translation)

Article 29. When one of the following conditions applies to an official, a disciplinary action, which includes warning, reduction in salary, suspension from work or dismissal, may be used.

- a) When an official violates this Act, an Act which is stipulated to provide for exceptions according to Article 57¹⁹, rules of a local government or rules made by organs of a local government.
- b) When an official breaches his/her duty, or neglected his/her duty.
- c) When an official made a misconduct which is contradictory to his/her status as a servant to the whole community.

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Notes

- ¹ Prefectures are upper layer local governments in Japan's two tier government system.
- ² Designated Cities are large cities, which belong to the lower layer of Japan's local government system, but because of their size, given most of the responsibilities that normally belong to prefectures.
- ³ This is a consultative body to the Prime Minister in matters related local government systems.
- ⁴ A Designated City is a large city which has much larger authority, which includes most of the functions normally exercised by prefectures, than ordinary cities. Most of them have a population of more than 700,000. There are twenty of them as of September, 2019.
- ⁵ Cities are larger municipalities, which comprises cities, towns and villages. Usually they have a population of 50,000 or more but there are many of them whose population is much smaller. Towns are usually smaller and villages are usually the smallest in terms of population. Cities have a slightly larger authority than towns and villages. Towns and villages are different only in their names.
- ⁶ Japan's population at October 1, 2015 contained 26.6% of those aged 65 or more.
- ⁷ Board of Audit is an independent organ of the central government of Japan, which has the authority to examine the financial and administrative matters of the central government.
- ⁸ Yubari City is a former coal-mining city and after the closure of the coal mines, it tried to develop other industries including tourists industry with attractions like an amusement park. However, the effort failed and in 2006, it was discovered that the city has a huge amount of liability, a large part of it illegally made, exceeding 10 times of its standard budget scale. This was made by making a cycle of short term borrowing which was not so strictly supervised.
- ⁹ A Core City is a city which has a population of more than 200,000 and not designated as a Designated City, and there are 58 of them as of September 1, 2019.
- ¹⁰ An External Auditor is appointed based on a contract, and attorneys, chartered accountants, certified tax accountants and those who has certain level of experience in local administration can be an External Auditor.
- ¹¹ "Ordinary local governments" means prefectures and municipalities.
- ¹² Autonomous affairs are those that fundamentally belong to local governments.
- ¹³ Legally delegated affairs are those that are basically national government's affairs but whose implementation are delegated to local governments.
- ¹⁴ Clause 14 of Article 2: A local government shall endeavour to increase the welfare of residents and achieve maximum benefit with minimum cost when it deals with its affairs.
- ¹⁵ Clause 15 of Article 2: A local government shall always try to rationalise its organisation and management and try to optimise its scale while asking for help from other local governments.
- ¹⁶ Clause 3 of Article 244-2: An ordinary local government may, when it recognises it necessary effectively to achieve the aim of establishing the public facility, delegate the management of the public facility to an entity including legal corporations which the ordinary local government appoints according to its by-law.
- ¹⁷ An order based on Clause 1 of Article 232-4 is an order for payment.
- ¹⁸ A confirmation based on Clause 2 of Article 232-4 is a confirmation that the expenditure is legal and based on the budget, and the liability actually exists.
- ¹⁹ Article 57 says that an Act is to be made to cover government employees who do not have authoritative responsibility. This Act has never been made.

Reference

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