

**Motion on
“Formulating Operational Standards for Public Organizations”
at the meeting of the Legislative Council on 16 December 2009**

Progress Report

Purpose

At the Legislative Council meeting on 16 December 2009, the above motion moved by the Hon IP LAU Suk-ye, Regina, as amended by the Hon LAU Kin-ye, Miriam and the Hon PAN Pey-chyou, was carried (see Annex). This paper reports on the issues of concern raised by Members on the motion.

Monitoring of the operation and finances of public organizations

2. The Government attaches great importance to the monitoring of the operation and finances of public organizations. Generally speaking, the policy bureau concerned may enter into a Memorandum of Administrative Arrangements with the subvented organization and monitor the financial position and work progress of the organization through regular reporting and progress review meetings, etc., to ensure that public money is properly spent. The policy bureau will also adopt performance indicators in the Controlling Officer’s Report where necessary to provide a more effective assessment of the organization’s performance and increase transparency. We also encourage public organizations to announce various performance targets and indicators in their annual reports to enhance their operational transparency. Moreover, the Government has guidelines in place on subvention of public organizations for reference by Heads of Bureaux and Controlling Officers who are responsible for the management and monitoring of such organizations.

Highly transparent mechanism for declaration of interests

3. Apart from the guidelines on declaration of interests provided by the Government for various advisory and statutory bodies, we understand that it is a statutory requirement for many statutory bodies to put in place a mechanism for declaration of interests. Moreover, many organizations have adopted the guideline on two-tier reporting system for declaration of interests promulgated by the Independent Commission Against Corruption to prevent real or potential conflicts of interests or transfer of interests. Public organizations will develop a mechanism for declaration of interests in the light of their operational needs.

For example, they may issue a code of practice for employees which lays down clear stipulations on conflict of interests and require employees to make a declaration as necessary. The employment contract may also include, amongst others, provisions on confidentiality and exit arrangements to prohibit employees from disclosing classified information to other people during their employment or after cessation of their employment.

Value for money audits by the Director of Audit on a regular basis

4. At present, most public organizations, including those which receive more than half of its income from public money, are subject to funding requirements, or are authorized by the relevant legislation, are incorporated into the scope of an "audited organization", meaning that they are subject to the value for money audits by the Director of Audit on a regular basis.

5. As for public organizations currently not being subject to value for money audits by the Director of Audit, many of them operate as a business on prudent commercial principles. Given that their nature of business and mode of operation are different from government departments or subvented organizations, these public organizations will make reference to the best market practices in formulating the code of practice for corporate management and risk management system, with a view to achieving effective and prudent management. They generally adopt the system of internal control and audit of private enterprises, including setting up an internal audit department to conduct audits on the effectiveness and efficiency of internal control on a regular basis and submitting reports to the audit committee specifically set up by the board or appointing external auditors to conduct independent audits on the annual financial reports. The audit reports will then be submitted to the board or the management committee.

The principles of “big market, small government” and free market economy not to be jeopardized

6. It has all along been the Government’s economic policy to uphold the principles of “market leads, government facilitates” and “big market, small government”. The Government will ensure that public organizations and the market are complementary to each other in their operation, in order to maximize the benefits to the public. In fact, some public organizations are intended to assist the operation of the market and promote market efficiency, whereas some are to make up for the inadequacies of the operation of the market.

Proposal for public organizations to be subject to the regulation of the fair competition law

7. The drafting the Competition Bill is currently in full swing. The proposal under the Competition Bill of exempting statutory bodies from regulation unless otherwise stipulated will help the regulatory authority to effectively utilize resources to focus on anti-competitive conduct in the market by private sector organizations in future. In implementing the policy on competition, the Government will continue to ensure that the activities of government departments and statutory bodies are in line with the principle of fair competition. We will continue to listen to the views of Members on this issue.

Meeting the overall interests of the community and discharging corporate social responsibility

8. Each public organization has clear objectives laid down upon its establishment. The board or management committee of an organization must develop strategies and plans in accordance with the objectives of the organization, while the relevant policy bureau will from time to time review and monitor the performance of the organization to ascertain whether it is promoting its work in line with the objectives of its establishment. However, given that the concept of corporate social responsibility is rather vague and general and in the absence of a universally recognized definition and standard, we consider it difficult to rigidly make this an operational requirement to be met by public organizations. It is more appropriate to encourage public organizations to consider the relevant factors in all aspects, including the overall interests of the community, when developing the strategies and plans for their work. In fact, many public organizations are currently taking up the responsibilities of a corporate citizen and have from time to time participated and supported various activities to promote environmental protection, personal growth and community well-being.

Implementing a good staff management culture

9. The Government has all along attached great importance to corporate governance and staff management of public organizations. We will continue to encourage public organizations to make ongoing efforts to improve the channels for communication with their staff and put in place a mechanism for employees to express their views.

10. Through diversified publicity and promotional activities, the Labour Department encourages employers in both public and private sectors to adopt good staff management practice based on the "people-oriented" principle, such as ensuring that their employees are provided with reasonable salary, job stability, reasonable workload, fair treatment and suitable training opportunities, etc and to fulfill their responsibilities towards the employees and their families.

Pay levels and appointment and removal from office

11. Public organizations have the autonomy to manage and control their own affairs. In addition, different public organizations are different in nature and may have different operational needs as well as requirements for talent. Thus, rigidly drawing up a set of standards for them may not suit the needs of individual organizations and may even impede the effective operation of the organization. Many public organizations are statutory bodies with independent boards or management committees to monitor their management and operation, including the policy and arrangements pertaining to the remuneration of senior executives. The board or management committee has the duty to make a fair and appropriate judgment on remuneration matters having regard to the conditions of the organization, pay levels in the market, as well as qualifications, competence and performance of the executives.

Conclusion

12. Before the establishment of a public organization, the Government must consider all relevant factors and clearly set out the objectives to be met by the organization as well as the powers that should be conferred on it. While the operational autonomy of the public organizations will be respected, the relevant policy bureaux will review, on a need basis, the effectiveness of the organizations in service delivery, including whether the objectives of the establishment of the organizations have been effectively achieved. Given that public organizations are different in their nature of work and functions, it is neither practicable nor appropriate to try to set up a system which can meet the needs of all organizations. In general, the existing system has to a certain extent performed a check-and-balance role. The Government will conduct reviews from time to time having regard to the needs of society.

13. We understand that the public is concerned about the corporate governance of subvented organizations and they expect the Government to have an effective monitoring role. The Efficiency Unit together with relevant Policy

Bureaux and departments are now developing a practical guide to corporate governance for subvented organizations, which aims to illustrate best practices of corporate governance for reference by subvented organizations. It is believed that by making reference to the guide, subvented organisations may have a better understanding of the principles, systems and good practices of corporate governance, thereby enhancing their ability to define the role of each post in a more consistent and effective manner.

(Translation)

Motion on
“Formulating operational standards for public organizations”
moved by Hon Mrs Regina IP LAU Suk-ye
at the Legislative Council meeting commencing
on Wednesday, 16 December 2009

Motion as amended by Hon Miriam LAU Kin-ye and Dr Hon PAN Pey-chyou

That, owing to different policy objectives, the Government has in the past set up dozens of public organizations, some being statutory bodies, to provide important public services in areas including housing, transportation, commerce and trade as well as financial services, etc; the funding for such organizations is mostly provided by the Government in full or in part, and some of them are authorized by legislation to impose levies or develop other businesses to enhance their profitability; it is learnt that in determining the pay and bonus for the management of these public organizations, their profitability is one of the important criteria for measuring performance, causing some public organizations to fully strive to expand and compete with the private sector for profits, hence disregarding the purposes of their establishment, development of free market economy and public interests; as such, this Council urges the Government to strengthen the monitoring of the operation and finances of various public organizations, which include ensuring that they exercise prudence in financial management, make effective use of public funds, put in place a highly transparent mechanism for declaration of interests and are subject to audits by the Director of Audit on a regular basis; and public organizations having an objective to make profits have to strike a balance between pursuing profits and public interests, should be subject to the regulation of competition law and uphold the principles of ‘big market, small government’ and free market economy in their operations; in addition, different public organizations should evaluate their performance based on their respective nature and the following five criteria:

- (a) shall meet the purposes laid down upon the establishment of the organization;
- (b) shall meet the overall interests of the community;
- (c) shall comply with stringent indicators for corporate social responsibility;
- (d) shall attain public service standards which are updated from time to time and are measurable; and
- (e) for public organizations having an objective to make profits, shall adhere to the principle of prudent business operation;

and peg the pay/bonus for the remunerated directors and senior executives of public organizations as well as the appointment and removal of the chairmen of public organizations and members of their management boards or management committees to the above evaluation results; in formulating operational standards for public organizations, the Government should also ensure that public organizations shall implement a good staff management culture, which provides staff with reasonable salary, job stability and reasonable workload, and enables them to have fair treatment in employment relationship; in addition, the Government should enhance public participation in the board of directors of various public organizations, include staff representatives who have recognition to sit on the board and, at the same time, strengthen the board's ability in monitoring the operation, governance and financial operations of the organizations.