

Mechanism to Ensure Independence of Director of Audit's Work

2. **MR ERIC LI** (in Cantonese): *Madam President, given that in performing his duties, the Director of Audit has to be directly accountable to the Chief Executive, will the Government inform this Council:*

- (a) *whether an operational mechanism is in place regarding how the Director of Audit should be accountable to the Chief Executive; if so, of the implementation date and details of it; if not, of the reasons for that;*
- (b) *of the number and contents of the meetings held between the Chief Executive and the Director of Audit since the establishment of the Government of the Hong Kong Special Administrative Region (SAR); and*
- (c) *how the independence of the work of the Director of Audit is ensured?*

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, before answering the question, I would like to state clearly to this Council that the SAR Government places the utmost importance on the independent functioning of the Audit Commission. We fully acknowledge that in order for the Audit Commission to discharge its duties in accordance with the law, its ability to function independently must be preserved.

Part (a) of the question concerns the mechanism under which the Director of Audit is accountable to the Chief Executive. According to Article 58 of the Basic Law, the Audit Commission shall function independently and be accountable to the Chief Executive. The Audit Ordinance has stipulated specific provisions to ensure the independent operation of the Audit Commission. Section 9 of the Audit Ordinance provides that in the performance of his duties and the exercise of his powers under the Ordinance,

the Director shall not be subject to the direction or control of any other person or authority. The Audit Ordinance also sets out the special condition under which the Director of Audit shall be accountable to the Chief Executive. According to section 15 of the Ordinance, the Director of Audit may be authorized in writing by the Chief Executive in the public interest to audit, examine or inquire into the accounts of a person, body corporate or other bodies. If he is so authorized, the Director of Audit shall, in pursuance of section 16 of the Ordinance, submit to the Chief Executive a statement of such accounts duly certified by him and a report as he may think fit.

The Basic Law has come into operation for more than two years now. The Audit Ordinance has been in use for a long time and has been operating smoothly all along. Over the years, the Audit Commission has been operating independently with a high degree of transparency, and performing its functions and duties with professionalism. We consider that at the present stage, there is no need to put in place any operational mechanism regarding how the Director of Audit should be accountable to the Chief Executive.

Regarding part (b) of the question which is about the number and contents of meetings between the Chief Executive and the Director of Audit, I hope Honourable Members would appreciate that it is normal and necessary for the Chief Executive to meet all principal officials (including the Director of Audit) and heads of departments, to understand matters related to their work. We do not keep any statistics on the number of these meetings.

Part (c) of the question is about how the independence of the work of the Director of Audit can be ensured. As explained in detail in my reply to part (a) of the question, we consider the Basic Law and the Audit Ordinance are adequate to ensure the independence of the work of the Director of Audit. The transparency, independence and professionalism of the reports of the Audit Commission can be seen by all.

MR ERIC LI (in Cantonese): *Madam President, this question asks only about the number and contents of the meetings held between the Chief Executive and the Director of Audit and does not touch upon the meetings held between the Chief Executive and any other government officials, chiefly because of the*

independence of the work of the Director of Audit. This question is very clearly worded, but if the Government simply replies to it by saying that the Chief Executive will meet with the Director of Audit in very much the same way as he meets with other principal officials, and that he meets them to acquire an understanding of matters related to their work, we will still be a little bit worried.

Madam President, although the Government is unable to tell us the number of meetings held between the Chief Executive and the Director of Audit, can we still be told of the contents of the meetings, so that we or members of the public can know clearly that when the Chief Executive meets with the Director of Audit, he will only try to understand matters related to his work, instead of giving him any direction or imposing any control over him in violation of section 9 of the Audit Ordinance? Is the Chief Executive also bound by section 9 of the Audit Ordinance? I think that it is necessary for the Government to offer members of the public a clear explanation on this point.

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I wish to reiterate that the SAR Government attaches a very great importance to the autonomy of the Audit Commission. The SAR Government is a law-abiding government; the Audit Ordinance is one of the ordinances in force in Hong Kong, and the SAR Government will abide by all the provisions contained in it. Mr LI asked about the contents of the meetings held between the Chief Executive and the Director of Audit. Actually, as I mentioned in the main reply, the contents of the discussions have been confined to matters related to the work of the Director of Audit. The Chief Executive only wants to understand the work of the Audit Commission, and there has been no attempt to infringe on the independent operation of the Director of Audit in violation of section 9 of the Audit Ordinance.

MR NG LEUNG-SING (in Cantonese): *Madam President, insofar as this question is concerned, we, as members of the Public Accounts Committee, were able to observe that in the past, after the Director of Audit had released his report, he was criticized by some government officials for acting beyond his terms of reference. The Secretary said that the Basic Law had come into operation for more than two years, and that the Audit Ordinance had been in*

use for a very long time. Faced with an Audit Ordinance that had been in use for such a long time, will the Government try to review it in one way or another some time in the future? Although the Secretary has pointed out in her main reply that at the present stage, the Government does not find it necessary to put in place any separate mechanism on how the Director of Audit should be held accountable to the Chief Executive, will the Government review the matter some time in the future, so as to determine whether a separate mechanism should be established?

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I believe that there is indeed a need to localize the Audit Ordinance in the foreseeable future. But apart from this, we cannot see any reason for reviewing the various provisions in the existing Audit Ordinance, nor do we see any need to do so.

MISS EMILY LAU (in Cantonese): *Madam President, I am a member of the Public Accounts Committee, so, like Mr LI and Mr NG, I am also very concerned about the independent operation of the Director of Audit. We actually discussed this matter for a number of times at the meetings of the Committee, and I very much support the raising of this question by Mr LI. But I am a bit surprised, because the Secretary for the Treasury has even failed to tell this Council the number of the meetings held between the Chief Executive and the Director of Audit. Madam President, I think that you would still remember that I once asked a similar question, a question on the number of meetings between the Chief Executive and the Chief Justice, and the answer I got was four times a year. Can the reply of the Secretary be interpreted to mean that the Chief Executive and the Director of Audit actually meet with one another very frequently, so frequently that she has virtually lost count? Besides, may I know whether the Chief Executive has ever raised with the Director of Audit some of the matters that are of particular concern to civil servants, and asked him to apply leniency during the process of investigation, or simply asked him not to carry out any investigation at all?*

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, as I stated clearly in the main reply, we do not keep any statistics on the number of meetings held between the Chief Executive and all principal officials, including

the Director of Audit. Although we do not keep any comprehensive statistics on the number of these meetings, I understand that the Chief Executive has held two meetings with the Director of Audit recently. I wish to make it clear to the Legislative Council once again that the SAR Government attaches a very great importance to the independent nature of the Director of Audit's work. This is a point which is very clear to all public servants working in the SAR Government, and they will not try to infringe on such independence.

PRESIDENT (in Cantonese): Miss Emily LAU, which part of your supplementary question has not been answered?

MISS EMILY LAU (in Cantonese): *Madam President, the Secretary has not answered the second part of my supplementary question, that is, the part on whether the Chief Executive has ever given any such direction. Many civil servants feel that they are under immense pressure, and many of them have indicated that they do not wish to become subjects for investigation. So, may I ask whether the Chief Executive has ever asked the Director of Audit to apply leniency during the process of investigation, or even not to carry out any investigation at all?*

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, it is stated in section 9 of the Audit Ordinance that in the performance of his duties and the exercise of his powers under the Ordinance, the Director of Audit shall not be subject to the direction or control of any other person or authority.

MR LEE WING-TAT (in Cantonese): *Madam President, for the sake of protecting the autonomy of the Director of Audit, will the Government consider the idea of recording the contents of the meetings between the Chief Executive and the Director of Audit, and then following the example of the Executive Council, requiring such records to be disclosed after a specified period of time? Such a measure can avoid an immediate need to disclose the contents of the discussions while ensuring the independence of the Director of Audit's work. Will the Government consider this measure?*

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, the SAR Government has always maintained an open-minded attitude. Hence, we will consider all proposals raised by Members.

MR FRED LI (in Cantonese): *Madam President, as a member of the Public Accounts Committee, I too wish to know the mechanism through which the Director of Audit is held accountable to the Chief Executive. Although the Secretary has explained that the accountability in question is nothing but a standard requirement, members of the public may still be worried that this kind of "accountability" may be interpreted as "being provided with advice". I mean, when the Chief Executive tries to understand matters related to the work of the Director of Audit, he may indirectly provide his advice. How is the Government going to allay our worries? If the meetings between the Chief Executive and the Director of Audit are not recorded in writing, how else can we know that the Chief Executive has not provided any advice?*

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I know that Members may all have their pre-determined positions regarding this question — I would not say "bias", though — but I must make it very clear again, for the fourth time, that the SAR Government does attach a very great importance to the independent operation of the Audit Commission, while the ability of the Audit Commission to operate independently is evidenced to all. Members can all see the independence enjoyed by the Audit Commission from all those accounts it audited in the past, and from the value-for-money audit reports it published. So, apart from stating all these facts, I really do not know how I can possibly give further assurance to Mr LI. We could of course consider the views expressed by Members. But when it comes to the method proposed, we must first give some thoughts to it before we can decide whether it will have more advantages than disadvantages, or the other way round.

MR ANDREW WONG (in Cantonese): *Madam president, I think that the very crux of the problem is caused basically by the comment made by the Secretary in the second part of her main reply, which reads: "it is normal and necessary for the Chief Executive to meet all principal officials (including the Director of Audit) and heads of departments, to understand matters related to their work." The point is that the Director of Audit and the Commissioner, Independent Commission Against Corruption are different from other principal officials,*

because under the Basic Law, the Audit Commission and the Independent Commission Against Corruption shall operate independently. And, in the case of other principal officials, they are supposed to take instructions. That is why if the Director of Audit is treated in the same way as other principal officials, people may be worried that he too will have to take instructions. I think that this is precisely where the crux of the problem lies.

When the Secretary for the Treasury replied to the question on reviewing the Audit Ordinance, she used a new term "localize". I cannot quite understand the meaning of "localize". Does she mean that since the existing Audit Ordinance was drawn up in the colonial past, the system concerned is marked by colonial characteristics? Does she want to point out that the Director of Audit used to be appointed by the British Government? Is she talking about problems of this kind? I hope that the Secretary for the Treasury can offer some explanation on this, because the Constitutional Affairs Panel is going to study this problem.

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I used the term "localize" largely because of a slip of the tongue. I actually wanted to say "adaptation of laws", because the existing Audit Ordinance still contains many terms used in the colonial era, some examples being "Secretary of State", "the Governor" and so on. We of course know that under Article 160 of the Basic Law, all laws previously in force would continue to apply after the reunification on 1 July 1997, and Members will also remember the "midnight bill" we passed that night, under which all those laws not adapted in time can continue to apply after the establishment of the SAR. But we still need to amend the out-dated terms and expressions of these laws. For the Audit Ordinance, the adaptation work has not yet started. I should not have said "localize" just now; I should have said "adaptation" instead.

PRESIDENT (in Cantonese): The last supplementary question.

MR ALBERT HO (in Cantonese): *Madam President, I think the Secretary will also agree that besides ensuring the independent operation of the Audit Commission and the Independent Commission Against Corruption under the Basic Law, we must at the same time make their operation seen to be so by the*

wider community. In other words, besides actually being independent in their operation, these bodies must also establish an independent image in the eyes of the community at large. This is a very important point. To build up such an independent image, they must ensure a high degree of transparency for their operation, and some kinds of mechanisms should be put in place to ensure their autonomy. This is very important. Hence, I am of the view that the proposal raised by Mr LEE Wing-tat just now is one of the feasible ways. I mean, it is feasible to record the proceedings of the meetings between the Chief Executive and the Director of Audit, and disclose them after following some specified procedures.

PRESIDENT (in Cantonese): Mr HO, please state your supplementary question directly.

MR ALBERT HO (in Cantonese): I wish to raise one point only. When she replied to our questions just now, the Secretary said that the relevant ordinance would be reviewed. But she did not say how the ordinance would be reviewed. I am of the view that it is actually not necessary to amend the ordinance. The only thing the Secretary needs to do is to relay this proposal or request to the Chief Executive and ask him to give us a definite reply — even a written reply, telling us whether or not he will consider the proposal, will do. And if he will not do so, what are the reasons? What does the Secretary think about this?

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I have already undertaken to consider this proposal. Once there is an outcome, we will inform the Legislative Council. (Annex II)

MR ALBERT HO (in Cantonese): The question I asked is this: Will the Secretary relay the proposal to the Chief Executive directly and ask him to make a decision? Will the consideration process also cover this part?

PRESIDENT (in Cantonese): Mr Albert HO, I could hear your supplementary question very clearly just now, and so could the Secretary for the Treasury, I believe. But I must say that the Secretary should be free to decide how she is going to answer your supplementary question.

MR ALBERT HO (in Cantonese): *Madam President, does the Secretary have anything to add? (Laughter)*

PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I have nothing to add.