

Papers on the Local Governance System and its Implementation
in Selected Fields Japan No.4

Raising the Level of Efficiency of Public Services
— Use of the Private Sector in such ways as the Designated Manager
System for Public Facilities and Private Sector Consignment—

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Foreword

The Council of Local Authorities for International Relations (CLAIR) and the National Graduate Institute for Policy Studies (GRIPS) have been working since 2005 on a “Project on the overseas dissemination of information on the local governance system of Japan and its operation”. On the basis of the recognition that the dissemination to overseas countries of information on the Japanese local governance system and its operation was insufficient, the objective of this project was defined as the pursuit of comparative studies on local governance by means of compiling in foreign languages materials on the Japanese local governance system and its implementation as well as by accumulating literature and reference materials on local governance in Japan and foreign countries.

In 2006, continuing from the previous year, we compiled various materials, for example “Statistics on Local Governance (Japanese/English)” and “Glossary on Local Governance Used in Japanese Official Gazettes (Japanese/English) (Supplementary Edition)”, and conducted a search for literature and reference materials concerned with local governance in Japan and overseas to be stored in the Institute for Comparative Studies in Local Governance (COSLOG). We also finished compiling “Up-to-date Documents on Local Autonomy in Japan” on two themes on which we had been working since 2005, and made a start on a new research project, “Papers on the Local Governance System and its Implementation in Selected Fields in Japan”, for which we decided to take up 4 themes.

This project is to be continued in 2007, and we aim to improve the materials so that they will be of real use and benefit to those who are working in the field of local governance.

If you have any comments, suggestions or inquiries regarding our project, please feel free to contact the Council of Local Authorities for International Relations (CLAIR) or the Institute for Comparative Studies in Local Governance (COSLOG) of the National Graduate Institute for Policy Studies (GRIPS).

July 2007

Michihiro Kayama
Chairman of the Board of Directors
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Tatsuo Hatta
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Preface

This booklet is one of the results of research activities conducted by the Institute for Comparative Studies in Local Governance (COSLOG) in 2006 as one part of a 5-year project that started in 2005 entitled “Project on the overseas dissemination of information on the local governance system of Japan and its operation”, sponsored by the Council of Local Authorities for International Relations (CLAIR). For the purpose of implementing this project, a “Research committee for the project on the overseas dissemination of information on the local governance system of Japan and its operation” has been set up, and a chief and deputy chiefs with responsibility for the project have been designated from among the members concerned with each research subject.

“Papers on the Local Governance System and its Implementation in Selected Fields in Japan” (2006, Volumes 1-4) were written under the responsibility of the following four members.

(Chief)

Satoru Ohsugi, Professor, Faculty of Urban Liberal Arts, Tokyo Metropolitan University

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This booklet, the fourth volume of the series, is about raising the level of efficiency of public service provision. It was written by Associate Professor Koyama.

At a time when restrictions are imposed on the various resources necessary for local government management, it is very important that local governments make every effort to improve efficiency in the provision of public services. Against this background, this booklet explains various measures for raising efficiency by means of utilizing the private sector.

We will continue to take up new topics, and add to the series.

Finally, I would like to express my appreciation to Associate Professor Koyama, and also to other members of the research committee for their expert opinions and advice.

July 2007

Hiroshi Ikawa

Chairperson

Research committee for the project on the overseas dissemination of information on the local
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Raising the Level of Efficiency of Public Services
— Use of the Private Sector in such ways as the Designated Manager
System for Public Facilities and Private Sector Consignment—

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1. Background of Need to Use the Private Sector for Public Services

1.1. Raising the efficiency of public services

Democratic and efficient administration is aimed for local public bodies, and local public bodies are expected to fulfill their administrative functions in the local community in an autonomous and comprehensive manner, with the primary aim of promoting the welfare of residents (Local Autonomy Law §1, §1-2①).

Based on this, the Local Autonomy Law prescribes principles regarding the administrative processes of local public bodies, one of which is §2⑭, which states that "In their execution of administrative processes, local public bodies shall aim to achieve the greatest possible effects while minimizing costs, as they work to promote the welfare of residents. The promotion of the welfare of residents is the primary *raison d'être* of local public bodies, and thus it is only natural that local public bodies should endeavor to promote the welfare of residents in the process of fulfilling their administrative functions. And local governments being entities that are run under the responsibility of residents and through their sponsorship, they must be administered in an efficient and effective way. In other words, "achieving the greatest possible effects while minimizing costs" is a standing imperative.

1.2. Necessity of Use of the Private Sector for Public Services

Even by international standards, Japanese society currently faces major changes due to its rapidly aging society and dwindling population. As the functions traditionally fulfilled by the family and local community decline, public services of local public bodies such as child care and nursing care for the elderly are the object of increasing expectations. Further, needs for local public services, such as the guarantee of a daily living space in which one can live with peace of mind and safety, are rising in the face of the increased crimes and incidence of natural disasters, etc. On the other hand, amidst stagnating tax revenue, local governments are under severe fiscal constraints and struggle to repay local government loans for public investments. Further adding to their hardships is the looming personnel crisis owing to the mass retirement of the baby boom generation starting in 2007.

Thus, management resources are being squeezed, and residents' needs for public services are growing increasingly diverse and advanced, so local public bodies are called upon to render public services more efficiently than ever, and it is pointed out that the ability of meeting residents' needs solely through public administration capabilities is subject to limits, both qualitative and

quantitative.

In the first place, "public" services are not meant to be solely performed by the government. A number of services, such as power, gas, public transportation, as well as volunteer activities and PTA activities, are actually offered by the "private" sector. Further, even public services that have traditionally been the charge of the government include various levels, ranging from services that can be handled only by the government, to services that can be fully assumed by NPOs, citizen groups, private sector enterprises, etc.

Based on the above, it is thought that, the public sector's role should be administrative-specific by handling only tasks which are beyond the private sector's capacity, so local public bodies will need to actively consign the delivery of services to NPOs, citizen groups, private sector enterprises, and so on, or to take steps for cooperation between the public and the private sector, including PFI.

The "Reform Strategy for Local Administration in a Decentralized Society—Aiming to Create a New Public Space— (Study Group on Reforms of the Administration of Local Administration Organizations for a Decentralized Society) (established within the Ministry of Internal Affairs and Communications)," announced in March 2005, expresses the state of local communities providing various public services suited for the community based on adequate benefits and obligations, through various entities taking charge of "public" services from their respective standpoints, as a "new public space," and points out the importance of taking action toward the formation of such a space.

1.3. Significance of the Opening of Government-Driven Markets to the Private Sector

Currently, the government is promoting the private sector's participation in public services, based on the principle of "transfer what the private sector can do to the sector." The opening of government-driven markets to the private sector, as the term is used by the government, is not limited to private sector consignment (privatization, transfer), but encompasses privatization in the broad sense of the word, including comprehensive subcontracting to the private sector and environmental preparations for private sector entry, and includes the viewpoint of actively using private sector enterprises for the provision of public services.

The significance of such opening of government –driven markets to the private sector is summarized as follows by the Council for the Promotion of Regulatory Reform (outline of the interim summary, as of August 3, 2004).

<1> The introduction of the principle of market mechanism helps the private sector to demonstrate its ingenuity and effort, which improves the efficiency and creativity of services as well as enabling a diverse range of citizen-oriented services.

<2> Reflecting the ever-complicated social climate and the transition and expansion of administrative demands, administrative operations should be more demand-specific and more appropriate allocation of government employees should be exercised so that the success of financial and administrative reform is fully appreciated.

<3> The practicing of the above in favor of applying the private sector's innovative ideas

encourages the creation of new business opportunities leading to the expansion of demands and employment opportunities, thus furthering economic revitalization.

2. Methods for the Utilization of Private Sector Enterprises for Public Services

While local public bodies engage in various activities that use private sector enterprises for the provision of public services, this paper overviews the designated manager system for public facilities, PFI, and market testing, which have recently been institutionalized and whose use is garnering attention, in addition to private sector consignment conventionally engaged in by Japan's local public bodies.

2.1. Private Sector Consignment

1) What is private sector consignment?

Outsourcing in the public sector consists in consigning office works and resident services to entities outside the public sector in the pursuit of economic rationality and policy aims. The national and local government consign to private sector enterprises, other organizations, or individuals, office works and operations, not taking a direct role in their execution and instead retaining administrative responsibility in the form of supervisory authority.

The legal nature of private sector consignment is generally covered by contract for work (§632) and quasi –mandate contract (§656) under the Civil Code. Additionally, there are items that are implemented in special legal frameworks, such as the delegation of general refuse collection, transportation, and disposal, as well as specific legal frameworks such as the designated manager system for public facilities based on Local Autonomy Law.

2) Status of private sector consignment

Private sector consignment has been practiced by local public bodies for a long time. The findings of a survey by the Ministry of Internal Affairs and Communications, on the current status of outsourcing, including recent private sector consignment, are presented below.

<1> Prefectural governments (as of December 1, 2002)

Table 1 Status of Outsourcing by Prefectural Governments

(1) Outsourcing in General Office Work

Type of Office Work	Percentage of Outsourcing	Percentage of Outsourcing in Previous Survey (April 1998)
Cleaning of Main Government Building	100%	100%
Night Security of Main Government Building	81%	74%
Reception/Information Desk	53%	53%
Telephone Switchboard Operation	42%	24%
Official Cars Driving	21%	20%
School Lunch	72%	68%
School Caretaker	23%	21%
Waterworks Meter Reading	50%	40%
Road Maintenance, Repair and Cleaning	94%	89%
Data Processing/Computer System Maintenance within Government Building	100%	
Website Editing/Operation	85%	
Salary Calculation	53%	

Note: Percentage of Outsourcing = Number of Outsourcing Groups (including groups contracted to do part of the work) ÷ Number of Groups Doing the Office Work × 100

(2) Outsourcing of Operation of Facilities

Type of Facility	Percentage of Outsourcing	Out of Which Facilities are Completely Operated by Outsourcee	Percentage of Outsourcing Facilities in Precious Survey (April 1998)	
			Percentage of Outsourcing	Out of Which Facilities are Completely Operated by Outsourcee
Children's Halls	100%	63%	67%	50%
Nursing Homes for Aged	100%	75%	100%	58%
Hot Springs Health Centers	100%	100%	100%	100%
Sewerage Final Handling Facilities	93%	55%	89%	62%
Gymnasiums	98%	84%	98%	82%
Track and Field Grounds	99%	87%	89%	75%
Swimming Pools	98%	89%	98%	86%
Libraries	98%	5%	95%	5%
City Parks	95%	64%	92%	71%
Civic Halls/Auditoriums	99%	89%	99%	84%
Hospitals	100%	6%	94%	7%
Parking Lots/Bicycle Parking Lots	91%	50%	57%	43%
Community Centers	100%	80%	100%	64%

Note: Percentage of Outsourcing = Number of Outsourcing Facilities (including facilities contracted to do part of the work) ÷ Total Number of Facilities × 100

Out of Which Facilities are Completely Operated by Outsourcee = Number of Facilities Outsourcing All of the Work ÷ Number of Facilities × 100

a) General office work

• Regarding the percentage of consignment of general office work, the following categories boast high percentages: cleaning of main government building and data processing / computer system maintenance within government buildings (100%), road maintenance, repair and cleaning (94%), website editing / operation (85%), and night security of main government building (81%). On the other hand, the percentages are low for the following categories: Official cars driving (21%), school caretaker(23%), telephone switchboard operation (42%).

• Compared with the previous survey conducted in April 1998, the percentage of consignment rose in almost all categories, with telephone switchboard operation and waterworks meter reading, among others, gaining 18 points and 10 points, respectively.

b) Operation of facilities

• Regarding the percentage of consignment of facility operation, the level is generally high, including 100% for hospitals, 99% for civic halls/auditoriums, 99% for track and field grounds, 98% for libraries, and 95% for city parks. However, full consignment is low, standing at just 6% for

hospitals and 5% for libraries.

• Compared with the previous survey conducted in April 1998, the percentage of consignment rose in almost all categories, with children's halls and parking lots/bicycle parking lots gaining 33 and 34 points, respectively.

<2> Municipal governments (as of April 1, 2003)

Table 2 Status of Outsourcing by Municipal Governments

(1) Outsourcing in General Office Work

(Reference)

Type of Office Work									Municipality Total Percentage of Outsourcing Groups in Previous Survey (April 1998)
	Municipality Total	Designated City	Core City	Special Case City	City with Population of 100,000 or More	Other City	Town/Village	Special Ward	
Cleaning of Main Government Building	86%	100%	100%	100%	100%	99%	83%	100%	82%
Night Security of Main Government Building	71%	85%	77%	82%	82%	84%	67%	70%	67%
Reception/Information Desk	20%	85%	69%	76%	60%	42%	8%	91%	19%
Telephone Switchboard Operation	33%	75%	39%	63%	72%	65%	22%	52%	33%
Official Cars Driving	29%	23%	17%	37%	41%	39%	26%	52%	16%
Human Waste Collection	78%	77%	61%	73%	79%	79%	79%	39%	76%
General Garbage Collection	84%	77%	100%	92%	90%	89%	82%	74%	77%
School Lunch	44%	92%	69%	72%	74%	63%	38%	83%	37%
School Caretaker	20%	8%	17%	23%	23%	27%	19%	13%	14%
Waterworks Meter Reading	82%	100%	97%	92%	96%	93%	79%	-	75%
Road Maintenance, Repair and Cleaning	67%	100%	97%	92%	93%	78%	62%	100%	50%
Home Helper Dispatch	91%	100%	91%	100%	93%	93%	90%	100%	83%
Meals Home Delivery Service	96%	100%	100%	100%	100%	99%	95%	95%	93%
Data Processing/Computer System Maintenance within Government Building	82%	100%	97%	97%	94%	90%	79%	100%	
Website Editing/Operation	49%	92%	66%	67%	59%	45%	48%	74%	
Salary Calculation	36%	39%	29%	23%	38%	34%	37%	17%	

Note1: Percentage of Outsourcing= Number of Outsourcing Groups (including groups contracted to do part of the work) ÷ Number of Groups Doing the Office Work × 100

Note2: If there is no applicable service, this is illustrated in the above chart with the mark "-".

(2) Outsourcing of Operation of Facilities

Type of Facility	Municipality Total		Designated City		Core City		Special Case City		City with Population of 100,000 or More		Other City		Town/Village		Special Ward		Percentage of Outsourcing in Previous Survey (April 1998)	
	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee	Percentage Out of Which Facilities are Completely Operated by Outsourcee
Nursery Schools	60%	6%	86%	9%	74%	3%	72%	4%	78%	6%	62%	9%	46%	5%	67%	2%	56%	4%
Children's Halls	71%	30%	98%	82%	76%	45%	87%	45%	82%	25%	67%	23%	54%	16%	80%	12%	66%	24%
Nursing Homes for the Aged	70%	29%	82%	41%	100%	40%	88%	36%	82%	37%	77%	28%	61%	26%	100%	100%	66%	27%
Hot Springs Health Centers	88%	58%	100%	100%	100%	84%	100%	78%	100%	76%	95%	62%	85%	55%	100%	38%	84%	57%
Garbage Handling Facilities	74%	17%	88%	6%	96%	3%	93%	10%	95%	10%	85%	15%	66%	19%	-	-	60%	14%
Sewerage Final Handling Facilities	92%	36%	99%	16%	98%	14%	94%	24%	98%	23%	97%	31%	90%	39%	-	-	79%	23%
Gymnasiums	75%	24%	100%	93%	89%	57%	84%	40%	92%	58%	92%	36%	65%	9%	100%	73%	67%	21%
Track and Field Grounds	75%	30%	100%	82%	100%	68%	81%	51%	95%	49%	85%	42%	63%	15%	94%	47%	65%	25%
Swimming Pools	76%	34%	89%	84%	95%	73%	96%	56%	95%	59%	90%	43%	63%	15%	100%	66%	66%	28%
Public Halls	73%	14%	100%	41%	88%	4%	87%	2%	81%	9%	73%	12%	64%	17%	100%	40%	62%	12%
Libraries	74%	3%	96%	17%	95%	0%	84%	4%	91%	5%	83%	2%	57%	3%	89%	0%	70%	3%
City Parks	91%	22%	96%	26%	90%	16%	86%	6%	91%	24%	91%	34%	84%	17%	96%	15%	77%	17%
Civic (Ward/Town/Village) Hall/Auditorium	88%	41%	98%	67%	99%	54%	94%	47%	99%	67%	98%	51%	80%	30%	87%	51%	80%	29%
Hospitals	90%	4%	100%	5%	97%	9%	100%	0%	100%	5%	97%	4%	84%	3%	-	-	77%	2%
Clinics	63%	18%	98%	46%	85%	15%	91%	32%	86%	28%	73%	11%	53%	16%	98%	55%	49%	17%
Parking Lots/Bicycle Parking Lots	79%	46%	99%	87%	87%	56%	91%	58%	91%	55%	82%	30%	49%	17%	78%	60%	67%	37%
Community Centers	90%	59%	100%	96%	99%	62%	75%	52%	95%	50%	95%	71%	85%	52%	96%	59%	80%	56%

Note1: Percentage of Outsourcing Facilities= Number of Outsourcing Facilities (including facilities contracted to do part of the work) ÷ Total Number of Facilities × 100

Percentage Out of Which Facilities are Completely Operated by Outsource =Number of Facilities Outsourcing All of the Work ÷ Total Number of Facilities × 100

Note2: If there is no applicable service, this is illustrated in the above chart with the mark "-".

a) General office work

Regarding the total percentages of general office work consigned by cities, wards, towns and villages, the following categories boast high percentages: Meals home delivery service (96%), home helper dispatch (91%), cleaning of main government buildings (86%), general garbage

collection (84%), and waterworks meter reading, data processing/computer system maintenance within government buildings (82%). On the other hand, the percentages are low for the following categories: Reception/information desk work (20%), school caretaker (20%), and official cars driving (29%).

- Compared with the previous survey conducted in April 1998, the percentage of consignment rose in almost all categories, with road maintenance, repair and cleaning going up 17 points and official cars driving 13 points.

- Viewed by category of local public body, by and large, the larger the body, the higher the consignment percentage. Particularly for the reception/information desk work, telephone switchboard operation, school lunch, waterworks meter reading, road maintenance, repair and cleaning, the percentage of outsourcing was considerably higher for cities and wards compared to towns and villages.

b) Operation of facilities

- Regarding the percentage of outsourcing groups for facility operation by cities, wards, towns and villages, the level is high for the following categories: Sewerage final handling facilities (92%), city parks (91%), hospitals and community centers (90%), hot springs health centers and civic (ward/town/village) halls/auditoriums (88%). On the other hand, the percentage is low for nursery schools (60%) and clinics (63%).

- Compared with the previous survey conducted in April 1998, the percentage of all outsourcing groups rose, including 14 points for garbage handling facilities, city parks and clinics, and 13 points for sewerage final handling facilities and hospitals.

- Viewed by category of local public body, the percentage of outsourcing at the city and ward level tends to be higher than at the town and village level, with the percentage of outsourcing groups being lower than 60% in 5 facility categories at the town and village level, while at the city and ward level, the percentage of outsourcing is between 70% and 90% in almost all facility categories.

2.2. Designated Manager System for Public Facilities

1) Public facilities

Public facilities are facilities provided by local public bodies for the purpose of promoting the welfare of residents through the use of these facilities (Local Autonomy Law §244①). These are general public facilities such as nursery schools, elderly welfare centers, gymnasiums, libraries, museums, parks, civic halls, cultural centers, and hospitals.

On the other hand, facilities that are not designed for the use of residents even though they have been built for public purposes, such as facilities of pure research organizations and government office buildings, are not comprised in the public facilities category. Further, facilities operated for the fiscal requirements of local public bodies, such as bicycle race tracks and horse race tracks, as well as facilities for maintaining public law and order, such as detention centers, are not regarded as public facilities.

2) Establishment of designated manager system for public facilities

Public facilities are established for the purpose of offering services to a large number of residents on an equal basis for the public interest. Adequate operation of such facilities is required. Therefore, items related to the operation of public facilities require specification through bylaws except for items specified by laws or related government ordinances (Local Autonomy Law §244-2①), and under the former public facility operation consignment system, eligible outsourcees were selected through focus on their public nature, and were limited to public bodies, quasi-public bodies, and government-sponsored corporations defined by government ordinance.

However, in recent years, an increasing number of private-sector entities have been recognized as having sufficient capability to offer services at physical education facilities such as sport gyms, meeting spaces, museums, welfare facilities, etc. Moreover, citizen needs themselves are becoming increasingly diversified, and using the know-how of private sector entities is thought to be an effective way to efficiently and effectively meet such needs.

For example, it is possible to cut management expenses by using techniques of private sector entities for the operation of public facilities (for example, cost reductions achieved by the designated manager himself having maintenance techniques for acoustic equipment used in cultural halls). In turn, these savings can be passed on to users in the form of cheaper admission fees, thereby increasing user satisfaction. Further, by incorporating the ideas of private sector manager seeking to secure a larger user base (for example, establishing counselors to help users design personalized training programs at sport gyms), great improvements in the services offered to users can be expected.

The need to reform the whole public facility management system has been pointed out at the Council for Regulatory Reform and at the Council for Decentralization Reform, and based on this, the revised Local Autonomy Law which established the designated manager system took effect in September 2003. The new system contributes to the improvement of the quality of resident services while securing appropriate operation by establishing the required system with no restrictions on the outsourcees, which is a major shift from the conventional approach that focused on the public nature of potential outsourcees and placed legal restrictions on eligible operation outsourcees.

3) Overview of designated manager system for public facilities

A local public body, when it considers this system necessary to efficiently achieve the purposes of establishing a given public facility, may designate a manager (corporation or other body (It is called "designated manager".)) and make the designated manager operate that public facility based on the prescriptions of bylaws (Local Autonomy Law §244-2③). These bylaws prescribe the procedure for specifying the designated manager, the standard of operation performed by the designated manager, the operation scope and other required items (Local Autonomy Law §244-2④).

<1> Designation of designated manager

The designated manager system for public facilities is a system whereby the right to operate a given public facility is delegated, through "designation," to an entity who has received this

designation. No particular limitations are placed on the scope of the designated manager, and as long as it is a "corporation or other body," it may become a designated manager through assembly's resolution, even if it is a private sector business.

This "designation" is a type of administrative disposal and does not form a contract, and thus is not applicable to contracts and tendering procedures. However, since operation by a designated manager must be done "to efficiently achieve the purposes of that public facility," the selection of the designated manager must naturally be done based on the appropriateness of the public facility operation as well as ability to perform efficient operation, and the designation procedure, including the application method, selection criteria, and so on, must be established by the local government bylaw, and the designation itself must pass assembly's resolution.

Further, the period of validity of the designation must also be specified (Local Autonomy Law §244-2^⑤). This is due to the fact that it is considered appropriate to give the local public body the opportunity to review whether operation by the designated manager is being adequately performed from the viewpoint of maximizing effects at minimal cost. No particular provisions regarding the designation period are provided, but setting a long designation period for no rational reason is inappropriate, and the local public body should set this period adequately based on consideration of the purposes of the facility, existing conditions, and so on.

<2> Authority of the designated manager

A designated manager is delegated the authority to operate a given public facility through designation, and is entitled to allow usage of the facility as part of the conferred operation authority as prescribed in the bylaws. This point differs from the consignment under which tasks such as cleaning and security are outsourced according to a private law contract, or the operation consignment system before the reform, under which operations were consigned based on a concrete outsourcing contract concluded based on bylaws.

On the other hand, the basic usage conditions that are to be applied must be established under the responsibility of the local public body itself, as the installer cannot delegate them to the designated manager, and they must be specified in the bylaws as operation standards. Such basic usage conditions include for example closed days, operating hours, usage permission criteria, and usage restrictions. The designated manager is to administer usage permission according to the conditions specified in the bylaws. In addition, basic items for the conduct of management that are considered essential from the viewpoint of the proper operation of that public facility, such as the handling of personal information acquired in the course of operation, must also be specified as operation standards.

Further, the authority of the head of local public body as fixed by laws and regulations, such as compulsory collection of usage fees (Local Autonomy Law §231-3), decisions regarding appeals of dissatisfaction (Local Autonomy Law §244-4), and authorization of the use of administrative assets for other than their purposes (Local Autonomy Law §238-4^④), cannot be passed on to the designated manager.

<3> Usage fee system

Local public bodies may make the designated manager collect fees for the use of the public

facility under management as the income of the designated manager when this is deemed appropriate (Local Autonomy Law §244-2⑧). The usage fees are determined by the designated manager based on the prescriptions of bylaws, except when this is considered contrary to the public interest, and the designated manager must receive the prior approval of the local public body regarding the proposed usage fee (Local Autonomy Law §244-2⑨).

The usage fee system was established in the revised Local Autonomy Law of 1991 under the operation consignment system, to facilitate the demonstration of autonomous management efforts by the outsourced operator with regard to the operation of the public facility, and to promote more efficient accounting by the local public body and outsourced operator. A similar usage fee system is employed under the designated manager system.

As a result, the budget required for performing operation by the designated manager can be procured in one of the following three ways: 1) Entirely from usage fees, 2) Entirely from disbursements by the installer (local public body), or 3) Partly from disbursements by the local public body, with the rest provided by usage fees.

<4> Supervision of designated managers

The designated manager must prepare a business report regarding the operation of the public facility under management after each fiscal year is over, and submit this report to the local public body that installed the public facility in question.

Moreover, to insure adequate operation on the part of the public facility by its designated manager, the head or committee of the local public body has authority to request that the designated manager submit reports on the operation and accounting, to investigate the implementation or to issue directions as required (Local Autonomy Law §244-2⑩). If continuation of operation by that designated manager is deemed undesirable due to the designated manager's to follow these directions or some other valid reason, the local public body can cancel the designation, or else order the cessation of management work in its entirety or in part after a given period of time (Local Autonomy Law §244-2⑪).

4) Introduction status of designated manager system for public facilities

The designated manager of public facilities system went into effect in September 2003, but in order for local public bodies, which heretofore consigned the operation of public facilities, to switch to the designated manager system, an interim measure was established to the effect that the existing operation consignment system can continue to be employed during the three year period (until September 2006) following the implementation of the revised Local Autonomy Law, in view of the need to draft the required bylaws, select designated managers, and so on.

According to a survey conducted by the Ministry of Internal Affairs and Communications, the status of the introduction of designated manager system as of the end of the period of said interim measure is as follows.

Facilities into which the designated manager system was introduced, numbered a total of 61,565, which breaks down into 7,083 in prefectures, 5,540 in designated cities, and 48,942 in

cities, wards, towns and villages. As there are 11,973 public facilities in prefectures, the designated manager system was introduced into 59.2% of the prefectural public facilities.

The breakdown by type is as follows: 11,330 (18.4%) facilities for recreation and sport (athletic fields, baseball fields, gymnasiums, pools, etc.), 6,096 (9.9%) for industry promotion (exhibition facilities, open-type research facilities, farm stands, tourist information facilities etc.), 18,798 (30.5%) for infrastructure (parking facilities, parks, public housing, water utilities, sewerage final handling facilities, etc.), 13,260 (21.5%) for culture (civic halls, museums, fine-art museums, etc.), 12,081 (19.6%) for social welfare (hospitals, child-care centers, welfare centers for the elderly, etc.).

Classified by type of manager, joint-stock corporations and limited liability companies account for 6,762 (11.0%), foundations and incorporated associations for 22,264 (36.2%), public bodies for 331 (0.5%), quasi-public bodies for 27,781 (45.0%), NPOs for 1,043 (1.7%), and others for 3,447 (5.6%). The total of joint-stock corporations, limited liability companies, NPOs and others numbers 11,252, which means that 18.3% of the total number of the facilities into which the designated manager system was introduced is operated by private sector businesses.

The status by designated period is as follows: 1 year for 2,217 (3.6%), 2 years for 2,698 (4.4%), 3 years for 29,139 (47.3%), 4 years for 5,681(9.2%), 5 years for 17,813 (28.9%), 6 years for 278 (0.5%), 7 years for 98 (0.2%), 8 years for 55 (0.1%), 9 years for 99 (0.2%), 10 years or longer for 3,487 (5.7%).

2.3. Private Finance Initiative (PFI)

1) What is PFI?

PFI is a method of offering public services that was born in 1992 as part of administrative reforms aiming to achieve a "small government" in the U.K. This constitutes a new approach that seeks to provide public services more efficiently and effectively than through direct implementation by the national or local governments, through the use of private sector funds, managerial capabilities, and technical expertise for the construction, maintenance, operation, etc., of public facilities.

In Japan, the Law Regarding the Promotion of Construction of Public Facilities ,their Management and /or the Provision of Related Services Using Private Capital and Other Resources Provided by the Private Sector (hereunder, PFI Law) went into effect on September 24, 1999. Further, a Basic Policy outlining the PFI concept and its realization method was formulated by the Prime Minister in March 2000, setting in place the basic scheme for PFI enterprise. Moreover, a string of guidelines on "Implementation Processes," "Risk Allocation"^{Note 1,,"} "VFM"^{Note 2 ,"} "Contracts," and "Monitoring" have been announced by the Committee for the Promotion of Private Finance Initiative established in the Cabinet Office.

Note 1: The promotion of any enterprise entails an element of risk owing to the possibility of various unforeseeable events, including accidents, changes in economic conditions such as fluctuations in demand, fluctuations in commodity prices and interest rates, as well as changes in

plans and natural disasters. Under the PFI system, the entity most capable of handling such risks bears these risks.

Note 2: VFM (Value For Money) is one of the major concepts of PFI. Under this concept, the most valuable services are to be delivered in exchange for money. VFM is the ratio indicating the extent to which total operating expenses can be curtailed by PFI compared with the traditional system.

2) Basic mechanism of PFI project

Under the PFI system, projects are ordered by the national or local government, and such projects are executed as public projects. However, whereas traditionally public projects were basically operated and offered by administrative departments, in the case of PFI the private sector is in charge of carrying out the project and responsible for offering a range of services, from raising its own funds and planning and constructing the facility in question, to maintaining and managing that facility, while the government determines the contents and level of the services to be offered and carries out supervision to maintain the level of services.

<1> Establishment of Special Purpose Company (SPC)

As the services to be offered cover a wide range from the planning and construction of the facility to the maintenance and management of the facility, the companies that apply for PFI projects in many cases form consortiums bringing together various companies belong to different industries. Moreover, since the stability and the continuous delivery of services are required, it is common for each company to establish with its own capital a special purpose company (SPC) for implementation of the PFI projects, in order to insure that the financial standing of the companies participating in the consortium does not adversely affect the PFI project.

<2> Placement of order with SPC

An SPC concludes a contract with the national or local government and carries out the PFI project.

Under the traditional public works system, order placement by the national or local government entailed dividing the work into its various constituent tasks, such as planning, construction, maintenance, and management, and placing orders for these tasks with various businesses each fiscal year. By contrast, under the PFI system, all tasks, such as planning, construction, maintenance, and management, are delegated to the SPC in the form of a long-term contract. Moreover, under the PFI system, the national or local government do not fix specifications down to the fine details as under the traditional system, instead delegating the entire project to the SPC on the base of "performance ordering," under the concept that "the detailed methodology is no object as long as the required performance is met." Through the above, the private sector has free reins to demonstrate originality and ingenuity, thereby achieving the merits of PFI, namely the delivery of high-quality public services at low cost.

<3> Financing through project finance

The SPC implements the PFI enterprise by securing the funds required for the project from financial institutions through the funding method called project finance^{Note 3}.

As a safety measure against the possibility of a bankruptcy of an SPC without management

capabilities, the national or local government and a financial institution conclude a contract known as a "direct agreement"^{Note 4}, creating a system to monitor the SPC to insure that it does not go under, and to confer that implementation of the PFI project may continue even if the SPC does collapse.

Note 3: Project finance is a method whereby the earning capacity of a project is used as collateral for funding the project, as a way to avoid dependence on the creditworthiness of a company.

Note 4: A direct agreement is an agreement concluded between the financial institution that funds a private sector and the national or local government, giving the financial institution the authority to intervene in the affairs of the private sector in the event that the PFI project runs into problems.

3) PFI project fields

The subject of PFI projects is defined as "public facilities, etc." under the PFI Law (PFI Law §2①), as follows.

<1> Public facilities

Roads, railroads, ports, airports, rivers, parks, waterworks, sewage lines, industrial waterworks, etc.

<2> Official facilities

Government buildings, public dormitories, etc.

<3> Public interest facilities

Public housing, educational and cultural facilities, garbage handling facilities, medical facilities, social welfare facilities, relief and rehabilitation facilities, parking lots, underground malls, etc.

<4> Other facilities

Information and telecommunication facilities, heat supply facilities, new energy facilities, recycling facilities (except garbage handling facilities), tourist facilities, research facilities

4) Impact of PFI projects

PFI projects are expected to yield the following effects.

<1> Provision of high-quality public services at low cost

PFI projects allow the use of the management know-how and technical expertise of private sector. They also hold the promise of efficient risk management for entire projects, as well as reductions in project costs through integrated handling of planning, construction, maintenance, and part or all of management. As a result, cost reductions and the provision of high-quality public services are expected.

<2> Reform in government's approach to the delivery of public services

As projects traditionally administered by the national or local government are transferred to the private sector, the emergence of a new form of government-private sector partnership based on adequate sharing of roles between the government and private sector is expected.

<3> Contribution to economic revitalization through the creation of business opportunities in the

private sector

As projects traditionally administered by the national or local government are transferred to the private sector, new business opportunities are thus created for the private sector. Further new business opportunities can also be created through combination with other profit-earning businesses. The adoption of new funding methods for PFI projects such as project finance is expected to strengthen the financial environment and lead to the creation of new financial markets. Thus positive impacts in the form of the creation of new industries and the promotion of economic structural reforms are expected.

5) PFI project status

The status of PFI project as of the end of August 2006 was as follows.

<1> Number of projects etc.

PFI projects with formally announced enforcement policies based on the PFI Law numbered 245, with project expenses totaling 1.7606 trillion yen. Out of this total, 123 projects had already moved into the operation stage and begun delivering services.

Broken down by project implementing body, the national government accounted for 31 projects (12.6%), local public bodies for 186 (76.0%), and others for 28 (11.4%). Thus local public bodies can be seen to be actively adopting the PFI system.

Broken down by field, education and culture (educational facilities, cultural facilities, etc.) accounted for 78 projects (31.8%), life and welfare (welfare facilities, etc.) for 12 projects (4.9%), health and environment (medical facilities, garbage handling facilities, funeral halls, etc.) for 46 projects (18.8%), industry (industrial promotion facilities, agricultural promotion facilities, etc.) for 13 projects (5.3%), urban development (roads, parks, sewage facilities, port facilities, etc.) for 32 projects (13.1%), security (police facilities, firefighting facilities, prison facilities, etc.) for 14 projects (5.7%), government buildings and public dormitories (administrative buildings, housing for government workers, etc.) for 25 projects (10.2%), and others (multi-purposes facilities, etc.) for 25 (10.2%).

<2> Project method

The PFI project encompasses a number of different project methods according to the type of ownership of facilities, etc., with the BTO method accounting for 154 of the projects (62.9%), the BOT method for 41 projects (16.7%), the BOO method for 10 projects (4.1%), the RO method for 7 projects (2.9%), and mixed-type and other methods for 23 projects (9.4%).

- BTO (Build Transfer Operate) method

The private sector builds the facility, and immediately following building completion, ownership is transferred to the government, with the private sector responsible for maintenance and operation of the facility.

- BOT (Build Operate Transfer) method

The private sector builds, maintains, and operates the facility, and upon the end of the project, ownership of the facility is transferred to the government.

- BOO (Build Operate Own) method

The private sector builds, maintains, and manages the facility, and upon the end of the project, the private sector scraps and clears the building.

- RO (Rehabilitate Operate) method

After rehabilitating a facility, the private sector performs maintenance and management of that facility until the end of the project.

<3> Project categories

PFI project categories include the service purchase type, whereby the government remunerates the private sector for services, the self-supporting accounting type, whereby the private sector builds and manages the facility using fee receipts, and the type that combines the afore-described two types.

The service purchase type accounted for 148 projects (60.4%), and the self-supporting accounting type for 18 projects (7.3%).

2.4. Market Testing

1) What is market testing?

The market testing is a system under which both the government and private sectors engage in competitive tendering on an equal basis for a given public service, and the party offering the best combination of price and quality wins the right to provide that service.

Under this system, the main focus is on the fact that the government and private sectors compete with each other, rather than simply consigning public services to the private sector.

The result of competitive tendering is that, if the private sector wins, privatization or private consignment is performed, leading to an improvement in the quality of public service through the originality and ingenuity of the private sector, but even if the government side wins, efforts toward greater efficiency result from the process of competition with the private sector. In other words, the market testing, creating a competitive environment for the provision of public services, is a method that promotes public service reform by aiming to raise quality while lowering cost.

Overseas in the U.K., U.S., Australia, etc., market testings are being successfully applied and yielding results in the form of improved and cheaper public services.

In Japan, following the Cabinet decision of the Three-Year Plan for the Promotion of Regulatory Reform and the Opening Up of Government Driven Market for Entry into the Private Sector in March 2004, studies and research were launched in earnest, and in fiscal 2005, legislation was passed taking into account the result of model projects (total of 8 projects in 3 fields, public employment security offices, Social Insurance Agency, and prisons), and the Law on Public Service Reform through the Introduction of Competition (hereunder, "Public Service Reform Law") went into effect in July 2006.

2) Overall flow of market testing

The Public Service Reform Law covers the public-private competitive tendering procedures for deciding the entity that is to provide public services, selected between governmental agencies and the private sector, and the private-private competitive tendering procedures for deciding which

private sector is to provide public services.

The types of projects to be covered by competitive tendering between the government and private sectors or in the private sector only (hereunder, public-private competitive tendering etc.), the types of projects to be abolished, and the measures that the government must take for this purpose, are to be decided by the Cabinet in the form of the Basic Policies for the Public Service Reform, taking into consideration the opinions of the private sector and local public bodies.

Next, based on the Basic Policies for the Public Service Reform, tendering shall be implemented following the compilation of the concrete implementation requirements by the government agencies in charge of the various public services in question, and the successful tenderer shall be determined. When the tendering is about the public service that until now would only be handled by public servants, a special exemption allowing the private sector to handle that service in the same manner as a public servant shall be incorporated into the Public Service Reform Law (public services covered by such special exemptions are called "specific public services"). So even if such a tendering is won by a private sector, any problem won't arise.

Thereafter, the successful tenderer shall deliver the public service in accordance with the contract (if the government is the successful tenderer, the implementation requirements and the proposal submitted at the time of the tendering) under his own responsibility, but the government agency responsible for the project shall carry out supervision to insure that the public service is being adequately and certainly provided.

At the end of the implementation period, the government agency responsible for the project shall evaluate the provision status, and determine whether or not to implement again public-private competitive tendering etc, or to abolish the project, and so on, and judge the state of public service provision after the implementation period.

Further, in order to insure the transparency of this series of implementation processes as well as neutrality and fairness, a third-party body consisting of knowledgeable persons (Supervisory Commission for Public-Private and Private-Private Competitive Tenderings) shall be involved as needed.

3) Market testing by local governments

With regard to specific public services under the Public Service Reform Law, in the case of local public bodies implementing public-private competitive tendering etc, the procedure is as defined by that law. While the procedure is largely the same as that of the national government, the main differences lie in the fact that, in the case of a local government, evaluation at the end of the implementation period is not mandatory, and also the fact that a deliberative council or other council system organ must be established as a third-party body.

Within the Public Service Reform Law as it exists at present, only "the acceptance of a request for the submission of a transcript family register, etc., and the submission of such documents based on the Family Registration Law" is prescribed for specific public services related to the operations of a local government. The addition of specific public services, either through suggestions from the private sector or through requests from local public bodies considering market

testings from the viewpoint of implementing administrative reforms of their own, is planned.

In the case of services other than specific public services, in other words services for which the establishment of special legal measures is not required even if a private sector is the successful tenderer, local public bodies shall implement public-private competitive tendering etc. by establishing procedures in the form of bylaws and regulations based on the Local Autonomy Law.

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