Outline of the Interim Summary

"Realization of a Private Sector-led Economic Society" through the Opening of Government-driven Markets for Entry into the Private Sector

August 3, 2004

Council for the Promotion of Regulatory Reform

Contents

I. Inauguration of the Council for the Promotion of Regulatory Reform and the current top priority tasks

Regulatory reform is the core pillar of the structural reforms that are indispensable for the regeneration of Japan's economy. Hence, regulatory reform should be accelerated while difficult issues, such as the opening of areas where services are provided by the government per se and where services are made available by certain private providers under government restriction, should be addressed in full strength and scale. With the above intention "The Council for the Promotion of Regulatory Reform" ("The Council" hereafter), a citizens-oriented advisory committee to the Prime Minister of Japan, was formed in April 2004.

"The Operating Policies of the Council for the Promotion of Regulatory Reform 2004" have been decided and announced, and it is stated that while The Council operates in accordance with the deliberations made by its predecessor The Council for Regulatory Reform, it also aims to refine these deliberations on issues and areas yet to be resolved. The Council is also committed to the ever-intensive promotion of regulatory reform and the opening of government-driven markets for entry into the private sector by applying innovative ideas and feasible methods.

To be more precise, The Council's main focus is currently on "the opening of government-driven markets to the private sector". The Regulatory Reform Committee (Chairman: Yoshihiko Miyauchi) has launched three working groups on "the development of a cross-sectoral method", "the privatization of public services" and "the reform of the major government-driven markets". These areas have been studied and discussed with enthusiasm, and have involved the holding of symposiums, hearings with the ministries and open debates. This paper summarizes the outcomes of such activities, accompanied by supplementary information where the opinions expressed by the ministries and The Council's responses to them are stated so as to clarify the points of contention.

II. Significance of the opening of government-driven markets to the private sector

1. Importance of the opening of government-driven markets to the private sector

The recovery of Japan's economy has been achieved, yet it is short-lived. Regulatory

reform has been intensively promoted by the Japanese government over the last ten years, and it is vital to advance it even further so as to secure its stability and continuity. Meanwhile, economic reform closely related to industrial activities is beginning to reflect the government's effort. In addition to this, a more dynamic approach is needed for both social-related and public service-related reforms, which concern closely the issues of medical care, education, welfare, employment and labour, and agriculture. The Council for Regulatory Reform had been engaged in promoting these reforms.

Economic globalization, the declining birthrate and an ageing society all contribute to the making of significant changes to Japan's socio-economic climate. With these changes the nation's needs diversify and therefore radical reshaping is required for all regulatory systems and the government's administrative role. The private sector is already open to the principle of market mechanism and its keen eye for any climate changes is a contributable factor of the present economic recovery. Private service providers and operators are eliminated from competition if they are incapable of responding swiftly enough to climate changes to retain the support of service users and consumers. Government-driven markets, in contrast, have insufficient knowledge and ability to implement the principle of market mechanism, thus lacking adaptability to socio-economic climate changes. Consequently, government-driven markets allow public service providers to remain, at the nation's cost, continuing to offer their inefficient services. Another difficulty is to stabilize both quality and availability of public services in the light of financial restriction. This problem is apparent in the current circumstances and is characterized by long waiting lists.

Hence, the promotion of regulatory reform is necessary in order to create an environment where the private sector can display its ingenuity to perfection, plus the opening of government-driven markets to the private sector should enable the provision of more choice for service users and consumers as well as enabling the realization of a "citizen-oriented economic society" from the viewpoint of the people of Japan, i.e. customers. In other words, the intention of regulatory reform and the opening of government-driven markets to the private sector is to realize the optimal socio-economic system by the fundamental overhaul of the stereotype of the respective roles of the public and private sectors so as to facilitate the provision of highly value-added services for the people of Japan, who are service users and consumers.

Summarized below is the significance of the opening of government-driven markets to the private sector:

(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 a more appropriate allocation of government employees should be exercised so that the success of financial and administrative reform is fully appreciated.

(3) The practising of the above in favour 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. The Council's approach to the opening of government-driven markets to the private sector

(1) Promotion of the opening of public services to the private sector through market testing

The Council for Regulatory Reform discussed the opening of government-controlled services ("public services" hereafter) to the private sector in terms of the restructuring of the respective roles of the public and private sectors. Subsequently, The Council for Regulatory Reform clarified its basic stance in the Second Report Regarding Promotion of Regulatory Reform (December 12, 2002) that "the public sector's role be administrative-specific by handling only tasks which are beyond the private sector's capacity". Furthermore, the promotion of opening public services to the private sector led to the establishment of the Designated Operators of Public Facilities System, a scheme to open the administration of public facilities to selected private enterprises, in June 2003 (came to effect in September 2003) in line with the enforcement of the partially revised Local Autonomy Law (Law No.67 of 1947). In addition, the review of Road Traffic Law (Law No.105 of 1960) in June this year has enabled the administration of the handling of illegal parking (checking abandoned vehicles and ticketing) to be given to private companies that fulfil certain criteria. The opening of central and local administrative tasks

to the private sector has successfully been actualized.
Taking into account the above-mentioned achievements, The Council supports a cross-sectoral and comprehensive approach to making all public services subject to the principle of market mechanism by introducing “Market Testing” (competitive tendering between the public and private sectors). The Council also approves an individually-targeted approach to the opening of each public service to the private sector in a careful, appropriate fashion. By applying both tactics equally and tactfully, The Council has been working intensively on the opening of public services to the private sector since its establishment in April 2004. At the time of publishing this interim summary these tactics are defined as follows:

“Market Testing” as a cross-sectoral method to promote the opening of government-driven markets to the private sector: “Market Testing” is not only approved by and included in “The Basic Policies for Economic and Fiscal Management and Structural Reform 2004” (Cabinet decision, June 4, 2004) but it has already been applied in the West. The Council has held detailed discussions to decide the basic policies and implementation process of “Marketing Test” prior to the pilot introduction in 2005. The adoption of “Market Testing” will overcome the limitations of conventional methods including PFI for the opening of public services to the private sector. It will also expose public services to the principle of market mechanism, thus creating equal opportunities for both the public and private sectors to compete in prices and quality, through which The Council will conduct the vigorous promotion of the opening of public services to the private sector, both cross-sectorally and comprehensively.

The opening of public services to the private sector: The Council will review thoroughly the identification of all public services and their indispensability within government-driven markets on the basis of the idea that “the public sector’s role should be administrative-specific by handling only tasks which beyond the private sector’s capacity”. The indispensability of public services should be clarified by the ministries responsible in order to manage the opening of each public service to the private sector in an individually-targeted manner. Any tasks regarded as “administrative specific” will be subject to a fundamental review from the viewpoint of “whether or not government employees are truly required for handling them” so as to pursue thoroughly the feasibility of the opening of public services to the private sector. With a strong focus on benefits packages and collection services, The Council will typify and review strenuously as many

office tasks and operations as possible.
The Council intends to promote the opening of public services to the private sector according to the following basic philosophy:

1) The respective roles of the public and private sectors will continue to be defined and standardized by the idea that “the public sector’s role should be administrative-specific by handling only tasks which are beyond the private sector’s capacity”.

2) Any office work and operations that may require administrative involvement should not be dealt with by government employees automatically but should be handled by private sector personnel where possible and appropriate upon the fulfilment of criteria including service quality assurance.

3) The public sector should bear the burden of proof on the adequacy of government employees handling office work and operations.

4) The current and future handling of public services by the private sector must not lead to unproductive pro forma “privatization” by bloated external organizations that are specially related to the public sector. Furthermore, non-governmental restrictions by industry groups and private monopoly in the private sector should be eliminated so as to ensure a market environment for fair competition.

(2) Promotion of the reform of major government-driven markets

For areas of services that are provided by selected private enterprises under strict administrative control, The Council for Regulatory Reform had worked enthusiastically on regulatory reform by applying “The Structural Reform Special Districts System”, which is an advanced pilot scheme. As a result, in structural reform special districts, the participation of private companies in the management of hospitals and schools has become authorised under certain criteria. Including this example, the opening of government-driven markets to the private sector has gradually been realized, yet there are still restrictions to be overcome, thus further effort is needed.

The Council for Regulatory Reform had actively and intensively been engaged in “The Action Plan, 17 Priorities for the Promotion of Regulatory Reform”. Taking this into account, The Council intends to promote ever more vigorously the opening of

government-driven markets, especially in the areas of medical care, nursing care and education, to the private sector from the perspective of service users and consumers. It is important that service users and consumers have a fundamental right to free choice in these areas and that any regulations and systems that hinder their rights should be reformed. It is equally important that such reform will create flexibility and fair competition between the public and private sectors while discovering potential demand at the same time as creating new demand. Consequently, The Council hopes to create a virtuous circle where the private sector has more freedom to show its ingenuity and creativity, which will be of benefit to service users and consumers.

The reform of government-driven markets as described above is very closely related to the lives of Japanese citizens. Hence, it is important to clarify issues prior to the reform from the viewpoints of service users and consumers as well as to acquire social consensus that the reform will bring advantages that can be appreciated by the entire nation.

III. “Market Testing” (competitive tendering between the public and private sectors) as a cross-sectoral method to promote the opening of public services to the private sector

1. What is “Market Testing” (competitive tendering between the public and private sectors)

(1) Outline of “Market Testing”

“Market Testing” is a mechanism that prepares a ground upon which both the public and private sectors can compete equally. It also helps to crystallize “what should be done by the private sector”. That is to say, “Market Testing” is a system that conducts competitive tendering between the public and private sectors under transparent, neutral and fair conditions so as to ensure quality services at affordable prices following successful bidding by highly-capable providers.

“Market Testing” has already been applied in many advanced countries including the US, the UK and Australia. Private firms in Japan also enjoy optimal production by using the system for comparing the cost-benefits between in-house production and outsourced production. In order to provide high-quality public services for the nation with the more effective use of limited financial resources, the public sector should explore the private sector’s approach and philosophy.

In Japan’s case, many routine public services such as cleaning and the security of public facilities are often contracted out to private firms. However, the opening of key areas of public services, including planning and designing, to the private sector has seldom been promoted. The adoption of “Market Testing” is therefore required urgently, as a means of accelerating the transfer process of authority and administration from the public sector to the private sector so as to encourage the privatization and entrustment of public services, which is not only restricted to outsourcing but also in a more comprehensive sense.

(2) Types of “Market Testing”

Two types of “Market Testing” methods may be introduced in Japan.

1) Commission-based

Bidding for part or the whole of a public service is carried out by candidate commissioners from both the public sector (independent administrative agencies and special public

corporations) and the private sector. In addition, the requisite of the commissioned service may be:

(a) The commissioning of the whole area of management including the determining of utility charges

(b) Alternatively, the commissioning of the service to which (a) does not apply.

2) Entrust-based

Bidding for part or the whole of a public service is carried out by its original public entrustor and private candidate entrustees.

The bidding result may be that:

(a) Its original public entrustor's bidding proves successful.

(b) Alternatively, a private entrustee's bidding proves successful.

Also, the entrustor may need to take measures to privatize or assign the service to the private sector.

(3) Existing systems

The privatization of some public services has been promoted where appropriate. The following cross-sectoral measures have also been employed in opening public services to the private sector but they have various limitations:

1) PFI system

PFI (Private Finance Initiative) is a means of improving social infrastructure. It is a model of how the private sector can finance investments in and apply its experience and knowledge to various types of public services, such as the planning, construction, maintenance and management of public facilities, which have traditionally been financed and managed by the public sector. In 1999, the Japanese government enacted PFI Law (Law No.117 of 1999) and since that time 161 public projects, of which 16 are by the central government and the rest by local authorities, have been implemented and so far a good result has been achieved (at the end of July 2004) while demonstrating the effectiveness of PFI.

However, there has been some criticism made regarding the application of PFI:

(a) Roads, rivers and canals, airports, ports and harbours, city parks and sewage systems are protected by Public Properties Administrative Law and are managed by central government and local authorities who act as "operators". This restricts the extent of

the administrative work of public facilities that can be executed by those private operators who are carefully selected under PFI Law.

(b) The criteria for selecting PFI operators and the selection procedures by central government and local authorities do not necessarily provide a ground upon which private operators can generate and implement their ingenuity to full extent.

2) Designated operators of public facilities system

In line with the review of Local Autonomy Law in June 2003, The Designated Operators of Public Facilities System has been exercised since September of the same year. The administration and operation of public facilities belonging to local authorities were customarily passed over to the third sector when certain criteria are met. The passing over of the administration and operation of public facilities to private providers, i.e. “designated operators”, became approved by The Council for Regulatory Reform as supported in the Second Report Regarding Promotion of Regulatory Reform (December 12, 2002).

There are however some critical views of the system:

(a) The system may be applied to facilities under local government authorization but not to centrally-administrated facilities.

(b) There is no coordination established between the system and Public Properties Administrative Law, which hinders the smooth administration and operation of all local public facilities.

3) Structural reform special districts system

The Structural Reform Special Districts System provides regionally-tailored preferential regulatory measures to promote local structural reform and revitalization. Structural Reform Special Districts Law was established in 2002 (Law No. 189 of 2002) and there are currently 386 special districts projects approved by the government.

The system receives positive feedback, as private sector-oriented regulatory reform can be realized within a short period of time. There are also adverse points made about the system, which are:

(a) The system will remain as a locally-effective program that provides preferential measures.

(b) The private providers may participate in project planning and proposal of special districts along with local authorities. However, only local authorities, not private providers, are entitled to apply directly for proposal approval.

In order to overcome these limitations, it is necessary to carry out “Market Testing” both cross-sectorally and comprehensively and ensure the seamless transfer of public administrations and operations to the private sector.

(4) Course of discussions and deliberations over “Market Testing” in Japan

Described below is the course of discussions and deliberations by the Japanese government relating to the introduction of “Market Testing”.

1) “The Third Report Regarding Promotion of Regulatory Reform” (prepared by The Council for Regulatory Reform, December 22, 2003, subsequent to which “The Three-Year Program for Promoting Regulatory Reform” was approved by the Cabinet (March 19, 2004).

• Market Testing (action in 2004)

”Market Testing” is a system that conducts bidding between public and private service providers of mutual specializations under fair competitive conditions so as to determine highly-capable providers who can offer quality services and affordable prices. “Market Testing” has already been exercised in other countries including the UK, Australia, Holland, Denmark and Sweden. In Japan also, with the purpose of securing fair competitive conditions for both the public and private sectors, investigations and research studies should be carried out on the adoption of “Market Testing” (competitive tendering between the public and private sectors), while looking into examples of other countries, from the perspective of the government’s role in ensuring safe and secure living for its people.

2) “The Basic Policies for Economic and Fiscal Management and Structural Reform 2004” (Cabinet decision, June 4, 2004)

In order to accelerate the introduction process of systems to promote the opening of government-driven markets to the private sector, such as “Market Testing” that clarifies the indispensability of public services and the determining of numerical targets, the designing of institutional arrangements must be completed during the year 2004 and further discussion will be held prior to the pilot introduction of the systems.

2. Basic policies for introducing “Market Testing”

Listed below are the basic policies upon which the designing of institutional arrangements including legal measures should be carried out prior to the launch of “Market Testing”:

(1) Main focus on services provided by the central government

Public services opened to the private sector by “Market Testing” will initially be services that are operated by the central government (the ministries), preceding those operated by local authorities. The government (including internal subdivisions of each ministry, extra-ministerial bureaus, regional bureaus, independent administrative agencies and special public corporations) should actively engage in the coordination of systems related to their own operations.

The central government should also provide the necessary environment to encourage the spontaneous introduction of “Market Testing” by forward-thinking local authorities.

(2) Target at a wide range of services based on proposals from the private sector

All public services are subject to “Market Testing”.

Public services subject to “Market Testing” are determined annually by the Cabinet, covering as wide a range of areas as possible. Prior to such decision making, the Cabinet will welcome a wide variety of proposals from private providers and local authorities alike, and consider them with maximum respect.

(3) Establishment of a legal framework

Explained below are the perspectives on the basis of which a legal framework should be established for “Market Testing”:

1) Reform of various related regulations

Legal constraints, by Public Properties Administrative Law for instance, can hinder the inclusion of public services in the private sector by “Market Testing”. Therefore, it may be necessary to review the required legal constraints. The uniformization of competitive conditions between the public and private sectors may also need to be ensured.

In order to realize the opening of public services to the private sector effectively by taking into account proposals made by the private sector, it is necessary to take the following actions:

(a) The relaxation of legal constraints that discourage the opening of public services to the private sector
(b) The establishment of “a legal framework” together with the uniformization of competitive conditions between the public and private sectors.

2) Establishment of a competitive tendering system between the public and private sectors

The current bidding procedures are based on the assumption that the private sector is to provide the public sector with services. Therefore, it does not always ensure fair competition between the public and private sectors. Truly fair competition between the public and private sectors can be achieved by the expeditious discussion and implementation of preferential measures for the statutes regarding the current bidding procedures.

(4) Comprehensive disclosure of information including public services expenditure

In order to encourage the realization of truly fair competition between the public and private sectors, the expenditure of public services subject to “Market Testing” should be detailed precisely. Furthermore, all management-related comprehensive information of such public services, including both direct and indirect expenditure, subsidies and tax exemptions, should be transparent, thus subject to disclosure.

(5) Establishment of monitoring procedures to ensure the equal-footing in competition between the public and private sectors

The uniformization of competitive conditions between the public and private sectors should be ensured continuously by establishing the perspective of transparency, neutrality and fairness, from which the entire implementation process of “Market Testing” (including the determination of public services, the formulation of assessment criteria and the selection of successful bidders) should be monitored by an independent third body such as The Council.

3. “Market Testing” implementation process

Described below are sample procedures of “Market Testing”, which are implemented annually:

(1) Determination of targeted public services

From among the public services that are operated by the ministries (including internal subdivisions of each ministry, extra-ministerial bureaus, regional bureaus, independent administrative agencies and special public corporations), the Cabinet annually nominates by certain criteria which services are to be subject to “Market Testing” as well as clarifying the appropriate measures (the reform of relevant rules and regulations) to facilitate the opening of the selected public services to the private sector. The final decision is made following the collection of opinions from the ministries concerned and the evaluation by the independent third body.

To prevent the selection of nominated public services from being limited or biased, proposals made by the private sector covering as many areas as possible should be received and considered, thus, the number of nominated public services may be increased as necessary. If the ministries concerned agree to reject any proposal made by the private sector, the basis of their argument against the proposal should be explained clearly and logically and supported by objective evidence such as data. The assessment by the independent third body should also be taken into account.

(2) Implementation of competitive tendering between the public and private sectors

Assessment criteria should be objective and should be officially announced in advance. Assessment criteria should be formulated from the comprehensive perspective with a focus on the quality and pricing of services while pursuing the fundamental significance and objective of competitive tendering and not by simply applying the standards set by the public sector. If no measures have been taken to equalize competitive conditions between the public and private sectors, different assessment criteria may be acknowledged by both sectors.

(3) Result of evaluation and selection of entries

The ministries determine successful bidders in accordance with the assessment criteria. The public sector should treat the private sector fairly, creating no disadvantages for the private sector.

(4) Continuous monitoring

The operation of services by successful bidders should be monitored on a regular basis so as to ensure that the services provided are consistent with agreed terms and conditions.

This applies to service providers both in the public sector and in the private sector. Rebidding should be implemented after a determined period of time.

(5) Appropriate allocation of government employees

When a private bidder proves successful in the take over of a public service, the ministry, i.e. its original operator must consider the cross-sectional reallocation of the personnel in charge to another section within the ministry or to another ministry. Alternatively, the personnel in charge may be transferred to the private sector upon the consideration of requests from the private bidder. In any event, it is necessary to consider and develop a mechanism that facilitates a smooth reallocation and transfer of government employees.

4. "Market Testing" development schedule

With the aim of developing "Market Testing" into a fully-functional and highly-practical system the following actions, including the designing of institutional arrangements, must take place quickly under the strong leadership of The Council.

1) Personnel structure

The Cabinet (including the Office for Promotion of Regulatory Reform) should proceed with the planning and promotion of "Market Testing", from the year 2004 onwards, by maximizing the use of business management and operation experts from the private sector.

2) Guideline

The Cabinet (including the Office for Promotion of Regulatory Reform) should proceed swiftly to the completion of a guideline within the year 2004 so as to provide the detailed bidding procedures required for the implementation of "Market Testing" on services operated by the government (including independent administrative agencies and special public corporations).

3) Deliberation and establishment of "Market Testing Law" (tentative title)

The Cabinet (including the Office for Promotion of Regulatory Reform) must complete quickly the designing of institutional arrangements for "Market Testing" and proceed with the discussion and coordination of "Market Testing Law" (tentative title) during the period from 2004 to 2005. The role of the parental organization for promoting "Market Testing" in accordance with such law should also be considered and necessary measures should be

proposed.

4) Selection and implementation of “model projects”

Prior to the pilot introduction of “Market Testing” in 2005, the Cabinet should select model services in 2004 in response to a diverse range of proposals made by the private sector.

5) Full-scale introduction of “Market Testing”

Taking into account the operational conditions of the model services, “Market Testing” should be introduced fully in 2006 in accordance with “Market Testing Law” (tentative title). Meanwhile, numerical targets should be set for enhancing the effective functioning of the system.

(Reference) Case studies of other countries

1) United States

In the US, competition between the public and private sectors has been institutionalized by the US government since the 1960's as part of the competitive procurement procedures (the Office of Management and Budget Circular A-76) but it wasn't until the 1980's that the system finally went into full swing, spreading into states, counties, cities, towns and villages. Since the late 1990's, the system has come to be considered a significant part of the US government's policies (the Reform of Affirmative Action in Federal Procurement 1998, President Bush's administrative reform agenda 2001). According to the system procedures, the US government and each state government review the services they provide on a regular basis to distinguish administrative-specific services from service that may be operated by private providers. In the latter case for a certain period of time, consistent with legislative measures, services are presented for competitive tendering between the public and private sectors. The idea of opening all marketable public services to the private sector, rather than keeping them under administrative control, and selecting the most ideal service providers through public-private competition has been demonstrated on both a national and a regional scale in the US. This includes the operation of airports, water supply and sewage systems, transport systems, prison facilities, fleet maintenance and public facilities management.

2) United Kingdom

In the UK, the private procurement of certain public services operated by local authorities may be approved only through certain competitive tendering procedures. This compulsory competitive tendering system has been introduced and implemented by stages since the 1980's as part of local government reform (Local Government Planning and Land Act 1980, Local Government Act 1988, 1992). The system was implemented for a wide range of services including the operation, management and maintenance of public facilities, road maintenance, refuse collection and disposal, fleet maintenance and administrative office work. Later, the system was applied further to prison facilities and other services by government agencies and became recognized as an effective method. Since 1997, the compulsory aspect of the system has been redressed to move to a "best value"-based approach with more focus on not only the prices of services but also the quality of services. However, the method of public-private competition is still exercised and the fundamental idea of providing services through market competition is recognized as an effective

approach.

3) Australia

Australia has always been ahead in working on competitive methods for private operators. In 1995, the Australia government formulated a national competition policy reform program. At the same time it also introduced policies to put in place a competitively neutral ground to promote more effective competition while eliminating the idea that the public sector has more advantages than the private sector in competition. The policies are implemented by local governments and because regional climates may vary, public-private competition is exercised in many forms. Demonstrated by the policies are the receipt of passport applications and the collection of handling fees, employment support for the unemployed, comprehensive port services for naval ships, plus the operation, management and maintenance of a diverse range of public facilities such as public parks.

IV. Promotion of the opening of public services to the private sector

The Council intends to develop and further the work done by The Council for Regulatory Reform in the promotion of opening public services to the private sector. The opening of public services to the private sector is top of the agenda and The Council will designate a period of three years during which time The Council intends to promote the above radically while revisiting and coordinating the basic promotion philosophy as well as understanding and considering comprehensively the appropriateness of public services for entry to the private sector.

In addition, a further expansion of the private sector's use of public facilities contributes to an improvement in convenience in people's lives, thus The Council will also concentrate closely on this issue.

1. Basic philosophy for the promotion of the opening of public services to the private sector

During discussions held between The Council for Regulatory Reform and the ministries, many arguments were put forward to suggest the unfeasibility of opening public services to the private sector. Listed below (1) to (6) are the opinions of The Council in response to key issues.

(1) Exercise of public authority by government employees

There is a commonly shared idea that public authority should be exercised by government employees. However, "the exercise of public authority", whether by government employees or by private sector employees, generally relates to legal authorization in accordance with legislative policies and process. Hence, The Council believes that the exercise of public authority can be opened to the private sector under legal authorization.

Needless to say that authorization should be granted with careful consideration of the degree and condition of the exercise of public authority from the perspective of fairness, neutrality, continuity and stability. Therefore, necessary measures (confidentiality agreement, regulations for "deemed" personnel etc.) are bound to be employed and there is very little rationale in restricting the exercise of public authority exclusively to "government employees".

It is a matter of fact that many operations similar to the exercise of public authority are already dealt with by the private sector, including permits for the access to and the use of public facilities granted by designated private operators, land substitution carried out by land adjustment associations, on-the-spot inspections of public buildings conducted by urban redevelopment associations, compulsory collections arranged by health insurance societies, and the collection and receiving of water service charges by private companies commissioned by local public corporations.

Furthermore, the opening of public services to the private sector by adjustments to legislative systems so as not to interfere with the exercise of public authority has been demonstrated by the examples below.

Example 1: The handling of illegal parking

The handling of illegal parking is customarily conducted so as to penalize "the driver" who has legal responsibility. This operation can now be performed by the private sector from the perspective that "the user of a vehicle" is as responsible for parking as "the driver".

Example 2: Nursing care insurance

Nursing Care Insurance Law (Law No.123 of 1997) has replaced the administrative measures for the welfare of the elderly with equivalent, contract-based arrangements. This has enabled the participation of public nursing care services in the private market.

(2) Exercise of administrative authority by government employees under the government's constitutional authority

The administrative authority of course belongs to the Cabinet under the constitution. However, this means that the ultimate liability for the exercise of administrative authority and its outcome is held by the Cabinet. Therefore, administrative office work and operations related to the exercise of administrative authority do not have to be executed by government employees. Moreover, the outsourcing of such tasks and operations will not cause any problems under certain measures to ensure that such an arrangement and its consequence are covered under the Cabinet's liability.

(3) Exercise of administrative authority by government employees at their discretion

The application of one's discretion to the exercise of administrative authority should be minimized by examining its legitimacy as well as by providing a manual and guideline.

By following certain procedures, the process of the exercise of administrative authority will produce a well-founded, transparent result, which can be examined externally and objectively. It is therefore feasible to open administrative office work and operations to the private sector.

Incidentally, there have been no convincing arguments to support the premise that better results are achieved when administrative authority is exercised by government employees instead of by private sector personnel.

(4) Execution of public services that require fairness, neutrality, continuity and stability, and high confidentiality

As pointed out in (1), under certain measures regarding the transfer of authority, fairness, neutrality, continuity and stability, and high confidentiality can be protected. There are numerous precedents to support the fact that this can be realized.

Especially, a violation of confidentiality can be very damaging for a private provider, i.e. compensation payment, damaged brand name and/or even withdrawal from the market in some cases. Therefore, there must be pressure generated within the private sector so that private providers have to put great importance in protecting confidentiality. There are even some comments made on private providers' abilities that suggest that they are superior to those of government employees.

(5) Execution of administrative office work and operations by government employees in agreement with conventions

Some administrative office work and operations are considered to be executed by government employees only in agreement with conventions. To be precise, however, conventions including the International Plant Quarantine Convention may use the term "authority" but the term "government official" is not used, nor do they state a requirement for government employees to execute administrative office work and operations. Hence, the execution of such tasks does not have to be restricted exclusively to government employees as long as the right to final judgments and decisions is reserved

by the government.

(6) Public services with little marketability, which no private providers would want, and public services with high efficacy when operated by the public sector

The public sector should be responsible for the verification of marketability and efficacy of administrative office work and operations when they are theoretically considered to be appropriate for entry to the private sector.

It is no surprise that administrative office work and operations have very little marketability since they have been conducted under the government's control and have been outside market competition. However, there is believed to be plenty of scope for creating new markets by opening such work and operations to the private sector. Therefore, the appropriateness of such work and operations for entry to the private sector should be considered unless there are inevitable or well-grounded reasons for retaining such work and operations in the public sector.

In addition, when classifying administrative office work and operations by category, there are some that have potential marketability and efficacy and therefore they are suitable to be executed by private providers.

As stressed in the previous chapter, the aforesaid opinions support the importance of the expeditious introduction of "Market Testing", which will help to measure the marketability and efficacy of administrative office work and operations fairly and objectively under competitive discipline.

Furthermore, any administrative office work and operations, which are considered still to be executed by the public sector even after disregarding their potential marketability and efficacy, should be discussed in the light of whether or not it is really necessary to continue such work and operations.

None of the above-listed arguments given by the ministries, which are against the realization of the opening of public services to the private sector, presents any well-founded reasons.

Hence, further protest by any ministries against the opening of public services to the private sector must be supported by persuasive argument based on evidential data.

2. Radical promotion of the opening of public services to the private sector

(1) Identification and extraction of public services that are potentially subject to entry to the private sector

The Council supports the view that with the exception of tasks related to policy planning, public office work and operations should be subject to entry to the private sector, covering as wide a range of areas as possible. Subsequently, The Council carried out a survey amongst the ministries with the intention of identifying and extracting public services that are potentially subject to entry to the private sector. The details and findings of the survey are as follows:

The survey was conducted as described below and 812 responses were collected.

1) Date conducted: Questionnaires were distributed to the ministries on June 3, 2004 and responses were collected on July 2, 2004.

2) Target services: Office work and operations that are conducted by the ministries under Japanese law including:

(a) Office work and operations that are conducted by the central government, local authorities, independent administrative agencies or national universities

(b) Office work and operations, which are either conducted predominantly by special public corporations or specially authorized corporations, or executed by designated corporations under certain conditions, which are considered to be potentially appropriate for entry to the private sector

a： Authorization assessments that require personnel specifically for the execution thereof (when one or more than one assessment operation monopolizes more than half of the personnel's workload)

b： Inspection, certification, appraisal and evaluation (of censorship systems etc.)

c： Office work and operations related to examinations, lectures, recommendations and the issuance of qualifications

d： Registration and delivery that require personnel specifically for the execution thereof (same as "a")

e： Office work and operations related to monitoring

f： Benefits packages, collections

g： Research work

h： Office work and operations related to training and education

i： Statistical research

j： Measuring and surveying

k： Production, preparation

l： Coordination, management and operation of information and telecommunication systems

m： Direct property service operations

n： Other service operations

3) Findings: Titles of office work and operations, the outlines of office work and operations, evidential provisions, main operators, accounting classification, the feasibility of the opening of public services to the private sector, the presence of corporate requirements, reasons for the unfeasibility of opening public services to the private sector etc.

(2) Public services which The Council believes should be priorities for entry to the private sector

Subsequent to the identification and extraction of public services that are potentially subject for entry to the private sector, The Council has classified priority services 1) to 6) prior to the implementation of radical promotion.

1) Benefits packages and collections
2) Improvement, management and operation of public facilities
3) Registration-related services
4) Statistical research, production etc.
5) Inspection, certification etc.
6) Other office work and operations

1) Benefits packages and collections

A. Circumstances concerning entry to the private sector

(a) Benefit-related services

The handling of pension payments and others of a similar kind is already outsourced to private financial institutions. As for government-administered health insurance, the office procedures of the Social Insurance Medical Fee Payment Fund are also ensured by a commissioned body.

Moreover, the delivery of benefits packages is outsourced on behalf of registered frequency expiration support agencies under Radio Law (Law No.131 of 1950).

(b) Collection-related services

It is a common and convenient practice that private financial institutions commissioned by the public sector collect payments by account transfer when payments are made spontaneously by payees. The collection and storing of local taxes and charges, which are incurred for local public enterprise operations and national pensions, are also commissioned to private operators such as convenience stores.

In addition, private health insurance associations are authorized to conduct compulsory collection in accordance with the procedures for the collection of national tax delinquency.

B. Perspectives in favor of the promotion of the opening of benefits and collection-related services to the private sector

(a) Benefit-related services

Benefit-related services are basically mechanical routine work by which benefits packages are processed according to the benefit payment standard. Generally, benefit-related services do not involve political judgment or discretion and therefore, benefit-related services should be considered for entry into the private sector.

From the perspective that supports the unfeasibility of opening benefit-related services to the private sector, the operation of such services by a non-financially responsible operator may cause problems when considering the prevention of overpayments.

However, the provision of a clear definition of the benefit payment standard and regulatory measures will eliminate political discretion, thus ensuring the prevention of overpayments.

Moreover, looking into current circumstances, which indicate a lack of overpayment prevention possibly caused by the system where benefit-related services are supervised and executed by the same public body, it might be more effective in preventing moral hazards if supervision and execution were operated separately by appropriately motivated private providers.

(b) Collection-related services

Collection-related services are the routine processing of taxes according to tax rates and others of a similar kind that are stipulated by the government's policies. Generally, collection-related services do not involve political judgment or discretion and therefore, benefit-related services should be considered for entry into the private sector.

The perspective that supports the unfeasibility of opening benefit-related services to the private sector argues that:

a. Tax imposition and collection should be executed under public authority.

b. Compulsory procedures such as the collection of tax delinquency should be conducted under public authority.
c. Fairness and neutrality may be lost by commissioning collection-related services to a private provider.

With regards to point (a), the processing of tax imposition and collection is normally a routine procedure, as previously mentioned. If it requires a significant degree of political discretion, this fact itself casts doubts. What is required in order to minimize discretion is a manual and guideline and by putting such measures in place, the opening of collection-related services to the private sector should become feasible.

As for point (b), the effectiveness of collection efforts will improve if tax delinquencies are handled by highly-capable private debt collection experts rather than by government employees.

Potential problems indicated by point (c) are conquerable by providing appropriate measures. The current situation where payment delinquencies are overlooked due to staff shortages in the public sector is the core problem that threatens the fairness and neutrality of the operation procedures. The opening of public services to the private sector is an effective means of improving this situation.

All the above opinions therefore indicate that collection-related services including compulsory collection should be opened to the private sector, providing regulatory grounds for confidentiality agreements and the employment of deemed personnel to execute the services.

(c) Benefits and collection-related services to be considered for entry to the private sector

Collection of national and local taxes and other public funds, provision of early retirement benefits, sponsorship delivery for international cultural exchange, formulation and implementation of income benefits, services related to employees' pensions, national pensions, government-administered health insurance, nursing care and employment insurance, employment insurance, plus

others of a similar kind

2) Improvement, management and operation of public facilities

A. Circumstances concerning entry to the private sector

The improvement, management and operation of public facilities, which are accessed and used by the general public, is under the restriction of new construction and extension so as to avoid competition with the private sector. The improvement, management and operation of public facilities, which does not require administration by the public sector yet which are highly manageable, has actively been institutionalized by independent administrative agencies as well as being privatized and commissioned to private operators.

Furthermore, the recent enforcement of PFI Law and the introduction of the Designated Operators of Public Facilities System in line with the enforcement of the partially revised Local Autonomy Law facilitated the development of institutional grounds, upon which the opening of public services to the private sector has been promoted while identifying public services related to public facility management that can be operated by PFI-selected providers and designated operators.

B. Perspectives in favor of the promotion of the opening of public facilities to the private sector

Competition with the private sector in the management and operation of existing public accommodation facilities that are run by the government and independent administrative agencies must be addressed urgently; these facilities must be either closed down or privatized promptly.

Further application of PFI and the Designated Operators of Public Facilities System to other public facilities should be promoted and for that purpose any reasons why some public services should not be managed by PFI-selected providers and designated operators must be verified strictly in order to maximize the range of public services available to the abovementioned providers and operators.

Also, since the Designated Operators of Public Facilities System applies only to locally-administered public facilities, measures similar to the above should be taken for the management of facilities that are operated by the government and independent administrative agencies.

In addition to the above, facilities such as government buildings and quarters need not be owned by the government; many of such facilities are leased in other countries. Also, it is indicated that administrative assets may be managed more democratically in a single-year's budget.

Consequently, the leasing of government-owned facilities requires further discussion not only in the light of fulfilling short-term administrative demand but also from the viewpoint of long-term management. As for government employees' quarters in particular, it is often pointed out that inadequacy in the securing of accommodation in response to frequent job relocation obstructs the smooth operation of public duties. Such instances should be dealt with by providing each government employee with basic allowance for quarters, which need not be owned or leased by the government per se.

C. Public facilities to be considered for entry to the private sector

Accommodation facilities (sanatorium facilities under the management of forestry administration bureaus, seamen's insurance, government-administered health insurance, employees' pension fund centers, national children's centers, national youth houses, National Olympics Memorial Youth Center, National Women's Education Center), government buildings, quarters, meeting facilities, information and telecommunication systems, national defense facilities, prison facilities, ports and harbors, national archive of Japan, Expo Memorial Park and others of a similar kind

3) Registration-related services

A. Circumstances concerning entry to the private sector

Registration-related services (including pre-registration assessments) involve routine work such as data processing, which has already been outsourced to private firms.

Investigation work into industrial property rights is also implemented by government-designated private investigation bodies.

B. Perspectives in favor of the promotion of the opening of registration-related services to the private sector

Including the implementation of assessments and similar work, registration-related services are normally not affected by political judgment and therefore, the opening of registration-related services to the private sector is believed to be feasible.

There are two major bases for arguments to support the necessity for government employees to execute registration-related services, which are:

a. Strictness, fairness and neutrality

b. Seriousness of implication caused by misjudgment

With regards to point (a), when registration-related services concern the forming of entitlements between two private parties, “registration of program copyrights” for instance is already conducted by designated private registration bodies. Hence, the opening of registration-related services to the private sector is considered to be feasible. Moreover, “strictness, fairness and neutrality” are not directly attributed to government employees. It should be noted that these elements are more likely maintained by regulatory discipline such as confidentiality agreements.

As for point (b), judgments are made most appropriately by highly-experienced and knowledgeable individuals but not necessarily by government employees. Hence, registration-related services can be executed by reasonably-experienced private operators.

Furthermore, registration-related services are under pressure for improved convenience, speedy processing and affordable fees. Hence, registration-related services need to be subject to the principle of market mechanism, where appropriate, by entry to private markets. Especially, the processing of patents is incapacitated under the current circumstances where there are as many as several hundred thousand patent applications waiting to be assessed and such a huge backlog cannot be resolved merely by increasing the number of jurors under the conventional system. Consequently, a large-scale promotion for the opening of patent registration services to the private sector is much desired in order to develop Japan into an intellectual property nation.

C. Registration-related services to be considered for entry to the private sector
Certificate of automobile parking space, registration office work, notarization office work, registration concerning copyrights, registration of breeds, agrichemicals, fertilizers, industrial property rights, mineral property rights, ore property rights, automobiles and surveys, issuance of electromechanical diploma and others of a similar kind

4) Services related to statistical research, production etc.

A. Circumstances concerning entry to the private sector
Office work and operations related to statistical research, production, nonlife insurance, appraisal and evaluation, measurement, research and training need not be operated by the public sector, yet they have been under the public sector's control because it is believed that the private sector is incapable of providing these services with the same quality and at the same standards. However, the opening of these services to the private sector has been gradually promoted, including privatization and comprehensive commissioning. Institutionalization by independent administrative agencies has also been encouraged for those services that cannot be dealt with by the private sector.

As for services related to statistical research, a guideline was created by each ministry in 2004 so as to promote the entry of the services to the private sector ever more actively.

B. Perspectives in favor of the promotion of the opening of services related to statistical research and production to the private sector
In the basic sense, office work and operations related to statistical research, production and others of a similar kind can be executed outside the public sector. However, many have been implemented by the public sector, as depending on the scale of an operation and the degree of specialization, they require more than what is available in private markets. Therefore, such services should be taken care of by only private operators who meet the required level of performance.

The production of banknotes and passports is a good example. It does not have to be operated by the public sector as long as a producer can give assurances that

forgery is not possible.

Therefore, the necessity for the administrative execution of the abovementioned work and operations should be re-evaluated thoroughly. Subsequently, services which do not require administrative execution should be transferred to the private sector and as for services which require administrative execution, the possibility of opening certain parts of the services to private markets should be explored and promoted vigorously.

C. Statistical research and production-related services to be considered for entry to the private sector

Statistical services, production of banknotes and coins, decorations and metal artefacts, securities, printed materials, white paper and other publications, trade insurance services, evaluation of articles for public sale, weather observation, surveying services, education of seamen, research studies into alcohol beverages and research and training operated by independent administrative agencies, and other services of a similar kind.

5) Services related to inspection, certification etc.

A. Assessments, inspections, certification and qualification exams related to approvals and licenses

(a) Circumstances concerning entry to the private sector

Assessment-related office work for approvals and licenses has been promoted in private markets under a system where the work is executed by private bodies designated by the government. The promotion of its entry to the private sector has been accelerated recently, moving from the ministry designation system to a private provider registration system and progressing to a self-authorization system.

Consequently, conformance tests for the accuracy of liquefied petroleum gas meters for instance, have been implemented spontaneously by designated meter manufacturers since the revision of Measurement Law in 1992. This has enabled the “just-in-time” production system for manufacturers and has realized

significant productivity improvements* as well as rectifying distribution systems, which has enhanced traceability (the tracking down and checking of distribution).

* Case study - productivity improvements (Company A)

- Lead time: reduced to 1/30
- Stock quantity: reduced to 1/10
- Production space: reduced to 1/4
- Testing facilities: reduced to 5/7

(b) Perspectives in favor of the promotion of the opening of services related to inspection and certification to the private sector

The execution of assessment-related services for approvals and licenses should be subject to entry to the private sector unless items to be assessed concern political judgment.

Even when some assessments involve political judgment, the possibility of opening the implementation of such assessments should still be explored in terms of providing manuals and guidelines.

Moreover, the significance of such assessments should be re-verified and those that lack indispensability of implementation should be abolished.

With regards to national examinations, although it is appropriate for the government to operate them, the publication of answer sheets, the processing of exam applications and other similar work should be commissioned to private providers as much as possible.

(c) Inspection and certification-related services to be considered for entry to the private sector

Approval assessment of pharmaceutical production and mineral property rights, Assessment prior to granting/denying of mining right licensing assessment of home traders, inspection of agricultural equipment, weights and measures inspection, driving tests, certified public accountants exams, confectionery hygienists exams, sand and gravel mining chief operators exams, quarry managers exams, air factory inspectors exams, weighers and measurers exams,

librarians certificate courses and others of a similar kind

B. Other types of inspections, certification and monitoring

(a) Circumstances concerning entry to the private sector
From the perspective of service efficacy those services related to other types of inspections, certification and monitoring have also been opened to the private sector, unless they concern political judgment and authority

(b) Perspectives in favor of the promotion of the opening of services related to other types of inspections, certification and monitoring to the private sector
Services that characterize supervisory and monitoring functions such as inspection, certification and monitoring are indispensable for maintaining healthy and effective competition especially in an “ex post facto” society.

However, whether such services are executed hypercautiously or inappropriately for the needs of the times should be under constant review. Meanwhile, such services may play vital roles but it does not mean that they must all be operated by government employees; some may not require government employees at all in order to be executed. Furthermore, the current circumstances indicate that there are many supervisory and monitoring services which are not functioning fully under the public sector’s control due to human resources limitations.

Hence, the introduction of the principle of market mechanism is crucial in order to enhance the functionality of the above services at less cost, i.e. the opening of the services to the private sector must be promoted.

(c) Services related to other types of inspections, certification and monitoring to be considered for entry to the private sector
Surveillance of overseas diplomatic establishments, etc., physical inventorying of national properties, on-the-shot inspection to check food labeling, plant and animal quarantine, medical inspection, inspection of services and resources provided by social welfare agencies, road inspection, radio wave monitoring, household goods monitoring, medical care monitoring, monitoring and supervising of food products, monitoring and supervising of environmental

sanitation and other operations of a similar kind

6) Other office work and operations

A. Perspectives in favor of the promotion of the opening of other office work and operations to the private sector

What The Council is trying to achieve as the result of opening as many public services as possible to the principle of market mechanism is to provide the Japanese nation with inexpensive quality services with the enhancement of their functionality. From this perspective any office work and operations other than those mentioned above should also be promoted into private markets.

After some public office work and operations have been opened to the private sector successfully, others of a similar kind should also be evaluated for their appropriateness for entry to private markets and their entry should be promoted intensively.

The implementation status of office work and operations by independent administrative agencies is to be reviewed by the end of the immediate interim target period by ministries in charge and the Conformity Assessment Committee of the Ministry of Public Management, Home Affairs, Posts and Telecommunications. The Council also intends to contribute simultaneously its evaluation and consideration regarding the aforesaid services.

B. Other work and operations to be considered for entry to the private sector

Processing of property damage accident reports, emergency services, auction procedures, job-search services, air-traffic control services and other office work and operations that are implemented by independent administrative agencies

The basic philosophy as clarified through 1) to 6) provides grounds for the promotion of the opening of the aforesaid office work and operations to the private sector. When designating private providers for implementing these services, the regularity of designating the same providers merely to prolong service execution without improvements, as it use to happen with designated agencies, should be avoided and therefore, the determination of designation periods, regular reviews of designated

providers and the introduction of several designated providers should be encouraged in order to optimize the principle of market mechanism.

(3) Direction of the promotion of the opening of public services to the private sector

Looking to the future, the aforementioned basic philosophy along with the perspectives in favor of the promotion of the opening of the above-classified services to the private sector should allow further review and discussion with a strong focus on maximum exploration of the possibility of entering these services into private markets, thus reaching good outcomes for the year 2004.

Furthermore, issues, which could not be resolved in 2004, will certainly be on the following year's agenda to be addressed ever more enthusiastically so as to achieve the opening of public services to the private sector.

3. Review of the management system for national and public assets

As a general rule, National Property Law (Law No.73 of 1948) and Local Autonomy Law do not allow private rights to any of the administrative assets.

The recent legal reform however grants PFI-selected providers with lease rights to public assets. In June 2004, "the standards for the use of and profiting from government buildings" (notified by the Director General of the Administration Bureau, the Ministry of Finance, January 7, 1958) was also revised. This enabled the more flexible operation of national assets by the private sector.

These reforms may have given a way forward towards entry into private markets but the basic fear of private leasing obstructing the public use and purpose of administrative assets has not changed, i.e. the reforms only allow a wider range of "exceptions".

However, when prioritizing the private leasing of administrative assets over the measures against private leasing for the prevention of misusing such assets for wrongful purposes, private leaseholders will be expected to optimize the use of the assets in the best interest of the general public. Hence, current standards will only contribute to the prevention of the management of national and public assets entering into the private sector and many national and public assets will remain unused to their full extent.

In order to promote further the availability of national and public assets for the private sector to manage as well as optimizing their use, there needs to be a general principle that allows the private leasing of and private rights to such public assets not only available to PFI-selected providers but also to all private providers unless the fundamental purpose and use of national and public assets are seriously ignored or abused, in which case private rights to the public assets should be disallowed.

Consequently, the management system of national and public assets needs reviewing in relation to the classification between administrative assets and common assets when considering further promotion to optimize the use of national and public assets subsequent to successful entry into the private sector. The recent opening of administrative assets to the private sector and the emergence of various banking practices and technologies are also important elements to be taken into consideration for the review.

V. Promotion of reform of major government-driven markets

Keeping in mind the “17 Top Priority Tasks in the Action Plan for Promotion of Regulatory Reform” by the Council for Regulatory Reform, this Council has selectively and intensively discussed, since its establishment in April, seven tasks among those left unfinished in the three areas of medical service, nursing care and education that are closely related to the national livelihood, of which the emergence and increase of demands are expected through a widening variety of alternatives for users and consumers by 1) allowing for the flexible combination of services of the government and the private sector and 2) securing the level playing fields between the government sector and the private sector.

We must do away with the conventional idea that the government should exclusively provide or totally control the services to the nation, and the major government-driven, markets, such as medical services, nursing care, education and so forth, that are “service provider-oriented” must be converted to “user- and consumer-oriented” markets through the measures proposed hereafter.

1. Medical field

As the economic and social environments undergo significant changes, the provision of high-quality, diverse medical services is required to meet the needs of patients. For that purpose, it is necessary to provide an environment in which patients can choose medical care services themselves by means of thorough disclosure of information on medical institutions and the services provided as well as promoting improvement of the quality of medical services through competition among medical institutions.

Specifically, restrictions such as those listed below should be relaxed or abolished as soon as possible.

(1) Lifting the ban on “Mixed Medical Care Services (combined use of insured and non-insured medical care services)”

[Recognition of current status]

1) The combined use of insured and non-insured medical services (so-called “Mixed Medical Care Services”) is not currently permitted in Japan although there are no clear provisions in the law that prohibit mixed medical care services. Accordingly, if only part of a series of medical treatments is non-insured, the insurance would no longer be applied to the remaining part of the medical treatments that is usually covered by insurance, and the patient is required to pay for the total cost of the medical treatments received.
(See Medical 1 of the attached Data.)

Medical insurance is a system for sharing the risk of disease and injuries among the insured, and the medical treatments covered by insurance should be determined in consideration of such factors as the generality of medical treatment methods, risk of side effects, prevention of moral hazards, and the fiscal balance of the insurance finance, and it is not intended to prohibit medical treatments that exceeds the scope covered by insurance. Accordingly, there is no reason to restrict additional non-insured medical treatments by imposing a disadvantage on the patients, denying them the insured medical treatments received along with non-insured medical treatments, as far as there is no additional burden to other insured people and the expense is borne solely by the patients themselves.

2) Because mixed medical care services are prohibited, a patient and his or her doctor are denied the opportunity to choose from a variety of alternatives of medical treatments mutually agreed upon and this is causing many problems detrimental to the interest of patients. For example, the Council for Regulatory Reform points out the following in its “Action Plan for Promotion of Regulatory Reform, Report on 12 Top Priority Tasks - Aiming at a Consumer/User-oriented Society” (July 15, 2003):

a. Medical treatments are intentionally divided into insured and non-insured in order to avoid the so-called “mixed medical care services”. This necessitates extra hospital stays or operations although they could be completed at one time if the mixed

medical treatments were permitted. It is a fact that these separate medical treatments add to the physical and economical burden for patients and such ineffective practices increase the national medical expenditure.

b. The ban on mixed medical care services causes significant harm to medical care services. It prevents doctors from vigorously tackling new medical technologies and services that are not covered by public insurance in Japan whereas they are widely accepted in foreign countries. It also reduces the number of opportunities for patients to receive medical care, and hinder the improvement of the quality of medical care services.

c. Lifting the ban on mixed medical care services would make it possible for patients to receive the benefit of highly advanced medical technologies with a certain amount covered by public insurance, which so far the patients have had to bear completely on their own. It is not “preferential treatment for the rich” but, on the contrary, it increase patients’ opportunities to receive medical treatment, and would result in easing the feeling of inequality attributable to differences in income. (See Medical 2 of the attached Data.)

   Under the current circumstances where mixed medical care services are not permitted, in the case of a private person deciding to pay a huge expense to save the life of a family member and if the expense is not covered by insurance, it would further add to his or her economical burden. We have to say that such treatment is inhumane.

d. The originality and ingenuity of the personnel in medical institutions and the competition in medical technologies cannot be promoted by a method that places limits on permission for mixed medical care services by approving respective medical technologies case by case through the deliberation of the Central Social Insurance Medical Council, etc. in accordance with the current “specified medical care coverage system” (Note 1).

For those reasons, the above report by the Council for Regulatory Reform, etc. made the following proposal as a conclusion:

“In order to make it easy for patients to choose highly advanced medical treatment, it is proposed, for the following reasons, to introduce a system that comprehensively allows for the so-called mixed medical care services (combined use of insured and non-insured medical care services) in which, for example, not only the highly advanced medical technologies under the current specified medical care coverage system, but also new medical technologies (including those that are widely accepted overseas but not covered by insurance in Japan) should be permitted without requiring individual approval for medical institutions such as specifically insurance-approved medical care facilities that can provide high-quality medical services.”

3) In this connection, the Ministry of Health, Labor and Welfare simplified the approval procedure in March 2004 based on the “Basic Policy for Economic and Fiscal Management and Structural Reform 2003” (Decision by the Cabinet on June 27, 2003) (Note 2), which provides that the use of highly advanced medical technologies under the specified medical care coverage system should not require individual approval for each medical technology and hospital, and that approval is promptly given upon notification by those institutions on condition that a certain standard is met (Note 3). However, the highly advanced technologies for which the approval procedure was simplified include only 17 types of technologies, such as implant denture, out of 71 types of technologies (20 types of technologies out of 77 highly advanced technologies as of August 2004), and the simplification is still quite insufficient. Accordingly, it would be very difficult to accept this system without more radical modifications (acceleration of study, securing transparency of procedure, conversion to user-oriented policy, etc.).

Note 1: Outline of Specified Medical Care Coverage System

The “Specified Medical Care Coverage System”, established in 1984 in accordance with Article 86 of the Health Insurance Law (Law No. 70 of 1922), stipulates that “the specific medical care payment” will be made for 1) “selected medical care” of which 13 types of medical care are listed such as beds at extra charge, and 2) if a patient receives a highly advanced medical treatment upon his or her choice at a specifically insurance-approved medical care facility approved by the Minister of Health, Labor and Welfare, and that the specifically insurance-approved medical care facilities may request the government to bear expenses in addition to the portion designated to be borne by the government for medical treatments approved by the Minister of Health, Labor and Welfare. The number of technologies designated by this system is 77 and the number of medical institutions is 124 at present.

Note 2: The Basic Policy for Economic and Fiscal Management and Structural Reform 2003" (Decided by the Cabinet)

<Expansion of combined use of insured medical care services and non-insured medical care services>

As for the highly advanced medical technologies under the specified medical care coverage system, study should be made on a system that promptly approves highly advanced technologies without requiring individual approval for each technology and medical institution. A conclusion should be reached and actions taken during FY2003. From the perspective of improving medical technologies, the scope of applicable technologies should be expanded by the accelerated introduction of new technologies in highly advanced medical treatments.

Note 3: Outline of Simplification of Approval Procedure of Highly Advanced Technologies Under Specified Medical Care Coverage System

Simplification of the approval procedure was made in that, as for the medical technologies selected by the Highly Advanced Medical Specialists Council from among the technologies approved as highly advanced technologies, notification is regarded as approval if the medical institution that submitted the notification is approved as a "specifically insurance-approved medical care facility".

4) In addition to these highly advanced medical technologies, it is pointed out by the Council in hearings from experts that the ban on mixed medical care services is an obstacle in such cases as (a) the use of new test methods/medicines/treatments the effectiveness of which is recognized by specialists, (b) preventive treatments that are performed in a series of medical treatments and tests with limitations placed on the number covered by health insurance, (c) medical treatments affected by the patient's sense of values, and (d) services incidental to medical treatments. (These are examples only; there could be other cases where banning mixed medical care services would have adverse effects.) (Refer to the attachment.)

[Specific measures: action to be taken during FY2004]

For the reasons above, from the perspective of realizing patient-oriented medical treatment, the ban on "Mixed Medical Care Services" should be completely lifted so that the part of the treatments usually covered by insurance would also be covered by insurance when the patients choose the treatment themselves in addition to the insured treatments based on appropriate information on non-insured treatments and their cost.

The following measures should be promptly implemented:

a. The ban should be immediately lifted on preventive treatments that are performed in a series of medical treatments and the tests with limitations placed on the number covered by health insurance, the medical treatments affected by the patient's sense of values and services incidental to medical treatments (Examples of "b." to "d." in the attachment).

b. As proposed by the Council for Regulatory Reform, new test methods, medicines and treatments (including Example "a." in the attachment), etc. should be comprehensively permitted in medical institutions of a certain level or higher that can provide services of high quality, for which judgment of use is made by those medical institutions under the principle of sufficient disclosure of information and in accordance with agreement by the patients.

Furthermore, lifting the ban on the technology in fields for which the social needs are high (such as infertility therapy) should be considered and a conclusion should be promptly reached.

Attachment

Examples of cases in which Mixed Medical Care Services should be permitted

a. New test methods/medicines/treatments, the effectiveness of which is recognized by specialists.

- Use of medicines, the effectiveness of which is recognized, such as carcinostatics, in cases that are not covered by insurance.
- Practice of established treatment methods that are yet to be listed for insurance coverage.
- Use of medical materials that are not listed for insurance coverage (yet to be approved) and so forth.

b. Preventive treatments that are performed in a series of medical treatments and tests with limitations placed on the number covered by health insurance.

- Tests and medical examinations on patients during hospitalization (such as stomach examination requested by a cardiologist
- Preventive vaccination for pneumococci to elderly patients (when the patient requests the vaccination during treatment)
- Dose of folic acid before partus for prevention of spinal bifida, etc. (preventive treatment for pregnant woman hospitalized for a disease)
- Elimination of helicobacter pylori (elimination after third course of treatment)
- Tumor marker (tumor marker inspection that exceeds one month)

c. Medical treatments affected by the patient's sense of values

- Reconstructive operation of mammary gland removed in mammary cancer treatment. (Part reconstructed at the same time as mammary cancer treatment or during a series of medical treatments)
- Plastic surgery after the extirpation of cancer of tongue. (Part reconstructed at the same time as tongue cancer treatment or during a series of medical treatments)
- Hemorrhoid treatment by PPH Procedure [rectal mucous membrane resection with an automatic stapling device] (Temporary measures until leaving the hospital and at an early stage of application of insurance)
- Uterine artery embolization therapy for hysteromyoma (Temporary measures until application of insurance)
- Cecum port operation (Temporary measures until application of insurance)

d. Services incidental to medical treatments

- Interpretation for foreign patients (Interpreters provided by hospitals)
- Extra staffing of doctors, nurses, etc. that exceeds the national standard (Part of the services provided by staff exceeding the standard number.)

(2) Allowing joint-stock corporations to participate in the management of medical institutions through medical corporations

[Recognition of current status]

1) Entry of joint-stock corporations, etc. that are engaged in modern management with expertise for effectively providing quality services in the management of medical institutions promotes competition among medical institutions, increases the alternatives for patients, prompts diversification of means of financing, and facilitates the provision of patient-oriented medical care services.

   From this perspective, the Council for Regulatory Reform has pursued lifting the ban on the entry of joint-stock corporations, etc. in the management of medical institutions as a major task for reform on government-driven markets. As a result, the entry of joint-stock corporations, etc. in special structural reform zones has been permitted, but to a very limited extent, that is, to the field of “free medical treatment” (medical care services outside the insurance system), which is categorized as “advanced medical treatments, etc.”

2) If medical institutions of low quality can be renovated into financially sound institutions through financing by high-quality medical institutions, for example, in addition to the existing measures of amalgamation of medical corporations, it would lead to the supply of high-quality medical care services and expansion of alternatives for patients through competition among medical institutions with high quality.

   If upgrading and networking of medical institutions progresses through these measures, it would become possible to pursue economy of scale in employment, training of employees, joint procurement of medical materials, and would facilitate the wide use of expertise for prevention of medical mishaps, resulting in advancement of modernization in the management of medical institutions.

   In another aspect, the rebuilding of hospital facilities and renewal of medical equipment, informationization such as computerization of clinical records and so forth are indispensable in medical institutions for providing patients with a variety of high-quality medical care services, and for those purposes smooth financing is

required. Although the means of financing are becoming increasingly diversified such as securitization of medical treatment fee claims, indirect financing such as bank loans still accounts for a large part of financing by medical institutions.

3) The medical corporations with provisions for shares organized “as incorporated associations” have juridical character whereby the property rights of the investors are protected, unlike social welfare corporations with no such provisions. Accordingly, a medical corporation is very close to a private enterprise and it is treated in the same way as a business corporation in terms of taxation. The individual interests in the medical institution are personal properties and as such they are subject to inheritance tax. Moreover there are cases of legal action for the return of investment in medical institutions as the investors are aging. (See Medical 3 of the attached Data.)

Under such circumstances, the Ministry of Health, Labor and Welfare is relaxing the conditions on the special medical institution system and specified medical institution system (both institutions are “incorporated foundations” or “corporations without provisions for shares”) and is trying to promote medical corporations with provisions for shares to reorganize themselves into incorporated foundations or corporations without provisions for shares by means of establishing the system of “Corporation with Limitation of Investment Amount”. However, the measure goes against the will of most medical corporation executives who are concerned about personal property rights and it cannot be said that it is the only possible measure for solving the problems of medical corporations. In actuality, the ratio of medical corporations with no provisions for shares is showing a decreasing tendency and, according to a recent survey, remains at about 1% of the total number of medical corporations. (See Medical 4 in the attached Data.)

[Specific measures: action to be taken during CY2004]

The following measures should be promptly implemented so that medical corporations can do away with the so-called family business type management, affected by the entry of joint-stock corporations, etc. in medical fields, and pursue business with transparent management based on democratic procedures, group enterprise management covering individual corporations, economy of scale and, in addition, promote modernization of management through diversified, smooth financing. On those occasions, it should be

widely recognized by all parties concerned including the Ministry of Health, Labor and Welfare that the restrictions below have no grounds in the laws and regulations, and are not legally binding on entrepreneurs. The government should make every effort to make this known to all organizations of the government.

It is presumed in administrative procedural laws that a notice issued by a government organization is administrative guidance, which in itself does not have the effect of imposing any obligation on a private person or limiting any rights of a private person. The Council considers that there is absolutely no reason that medical corporations should be bound by the following notices concerning investment in medical corporations or voting in those medical corporations.

a. It is stated that joint-stock corporations may invest in medical corporations, but they may not become members at present. However, the joint-stock corporations should be allowed to become members and have voting rights in the general meeting of members.

   There are no legal grounds in the view asserted by the Ministry of Health, Labor and Welfare as grounds for opposition that joint-stock corporations may invest in medical corporations, but they are not entitled to have voting rights in the general meeting of members or to participate in the management of medical corporations as directors or officers (Direction No. 1 of January 17, 1991 Response to the President of the Tokyo Bar Association from the Manager of the Guidance Division, Health Policy Bureau of the Ministry of Welfare).

b. It is stated that medical corporations may not invest in other medical corporations at present. However, they should be allowed to invest in medical corporations.

   The view asserted by the Ministry of Health, Labor and Welfare as grounds for opposition that the cash of medical corporations should be deposited in or entrusted to post offices, banks, or trust companies, or stored after conversion to government bonds, public funds, safe marketable securities (“Establishment of Operation/Management Administrative Guideline for Medical Corporations that Open Hospitals, Insurance Facilities for the Elderly, etc.”, “Operation/Management Administrative Guideline for Medical Corporations” attached to the notice to the

Governors of Prefectures from the Director General of the Health Policy Bureau of the Ministry of Welfare, March 1, 1990) is the only stipulation concerning the asset management method of medical corporations, and it is difficult to consider it as grounds for banning the investment.

c. It is provided that each member of the general meeting of medical corporations has one voting right irrespective of the amount of investment made. However, the members should be granted voting rights corresponding to the amount of investment.

   It was originally permitted to differentiate voting rights in accordance with the articles of incorporation for medical corporations based on Paragraph 3 of Article 65 of the Civil Code (Law No. 89 of 1896), which is applied mutatis mutandis to the Medical Service Law (Law No. 205 of 1948).

   There are no legal grounds in the view of the Ministry of Health, Labor and Welfare as grounds for opposition that the members each have franchise one resolution vote and one election vote at the general meetings of members (“On Revision of the Medical Corporation System and Prefectural Council on Medical Service Facilities” Notice of the Director General, Health Policy Bureau of the Ministry of Welfare, June 26, 1986).

(3) Reconsidering the pricing mechanism in the medical field

The medical treatment fees, the price of medicines and price of medical materials are determined by the Central Social Insurance Medical Council, but it has been pointed out for some time that there is a lack of transparency in the grounds for determination and in the process. From the perspective of securing fairness, neutrality and transparency, the following measures should be taken. [To be implemented promptly.]

a. The conventional management policy that is excessively service-provider-oriented should be corrected and the composition of members of the Central Social Insurance Medical Council must be reviewed including the question of whether or not it is acceptable to allow representatives of service providers (members of the interested parties who are directly affected by the decisions) to participate in the said council as members with a voting right in the decisions.

b. The term of office of the members should be curtailed.

c. The reasons for revision of medical treatment fees, etc. should be objectively and scientifically presented. Evaluation after the revision is also required.

d. A system to reflect the voice of patients, individual doctors and so forth at the actual sites of medical practices, and the opinions of the general public who are potential consumers of medical care services, should be established.

e. The process of deliberation in the council including the minutes should be fully disclosed. (The minutes should be disclosed on a web site.)

In this respect, the “Basic Policy for Economic and Fiscal Management and Structural Reform 2004” (Decision by the Cabinet Council on June 4, 2004) provides that, in reviewing the medical treatment fee system, it is necessary to review how systems such as the Central Social Insurance Medical Council should be administered so that the views of users may be reflected and the process of deliberation can be made transparent.

In addition, the First Report on the Promotion of Regulatory Reform (December 11, 2001) included the following proposal:

“Medical treatment fees, the price of medicines and price of medical materials are determined by the Central Social Insurance Medical Council, but several problems are pointed out concerning the grounds for pricing, the process of determination and the method of determination, etc. As for the price of medicines, radical reform in the calculation rules is required, such as the introduction of an appropriate calculation method to provide the incentive for development effective in the price calculation of products placed on the market earlier and those placed on the market at a later time, and the pricing of innovative new medicines. As for the effectiveness of the existing medicines, re-evaluation should be made under a specific standard and measures should be taken to cancel the approval of medicines the effectiveness of which has not been reconfirmed. The “¥205 Rule”, under which claims for the cost of medicine can be made without submitting details, such as the name of the medicine, if the cost is ¥205 or below (Dosage for one day, dose of potion, etc.) should be abolished to ensure that the claimed amounts are clear and medical treatments transparent. As for medical materials, the necessary measures should be taken to correct

the price difference between domestic products and imported products by means of optimization of prices through the introduction of an overseas price reference system and by promotion of a policy for thorough competition through the adoption of radical reform in the entire distribution channel. Since medical care services is a matter about which the entire nation is concerned, it is necessary to reconsider how the Central Social Insurance Medical Council, etc. should be administered from the perspective of ensuring that the pricing and the process of introducing insurance is transparent, neutral and fair."

(4) Reconsidering the community health care program (regulation of the number of hospital beds)

The "Three-Year Plan for Promotion of Regulatory Reform" (Decision by the Cabinet Council, March 19, 2004) provides that 1) as for the function of beds at the acute stage, chronic stage and for specified medical treatment, measures should be taken to ensure thorough control so that the numbers of beds approaches the appropriate numbers based on a calculation for which the standard was fairly and strictly established in consideration of the situation and the needs in each locality, and 2) from the perspective of securing an appropriate system for providing medical care services through promotion of competition among medical institutions in the quality of medical practice by such means as standardization of medical treatments and reduction of average days of hospitalization, the health care program should be reviewed including how the restriction on the number of beds should be dealt with as well as conducting a study on introducing a system of fixed medical treatment fee payment for each medical treatment group, and the corresponding measures should be taken. (Study during FY2004 and implementation in early FY2005)

From the perspective of promoting disclosure of information and competition among hospitals based on the patients' choice, the time of implementation should be moved up. [Study and implementation during FY2004]

2. Nursing care field

(1) Integrating institutional services and in-home care services

[Recognition of current status]

1) Through the enforcement of long-term care insurance in April 2000, long-term care of the elderly was converted from a system of administrative disposition, in which administrative offices designate the people who need long-term care and take necessary measures, to a user-oriented system in which the user chooses a necessary service and enters into contract with a service provider as mutually equal parties. After the enforcement, the number of people who admitted as requiring long-term care has increased to 3.77 million from 2.18 million and the total amount of payment jumped to ¥4.8 trillion from ¥3.2 trillion. (Comparison between FY2000 and FY2003, respectively.), and the need for long-term care is anticipated to increase and become more diversified as the aging of people progresses. Under such circumstances, it is necessary to continue efforts to provide an environment in which users can properly choose the service needed.

2) At present, in special nursing homes for the elderly and other institutional service facilities (hereafter referred to as “special nursing homes”), expenses such as rent, utility costs, meals (so-called accommodation costs, etc.) are covered by long-term insurance, but in group homes and other specified facilities (such as nursing homes in the private sector with a charge), expenses such as accommodation costs are borne by the users as in the case of in-home care services. (See Nursing Care 1 of the attached Data.) For this reason, users tend to prefer institutional services to in-house care services and because many users apply for institutional services when they do not necessarily require them, a long queue is forming for admission to the facilities. The charge for using a special nursing home is about 40 thousand yen, which in actuality is very inexpensive at only slightly more than one thousand yen for a night with three meals and 24-hour care. The burden on users is extremely small. Originally, long-term care was intended to respond to the risk of people being compelled into a condition requiring nursing care. Accordingly, expenses such as accommodation costs, which are incurred whether or not a person is in a condition requiring nursing care, should not be covered by long-term care insurance.

3) The “Basic Policy for Economic and Fiscal Management and Structural Reform 2004” (Decision by the Cabinet Council on June 4, 2004) provides that the burden on users for “the accommodation costs” and expense for meals should be reviewed from the perspective of correcting the imbalance in the scope covered by insurance payment between in-house nursing care services and institutional care services, and adjustment should be made as to multiple payments between the pension and the nursing care payment.

[Specific measures]

1) Burden of accommodation costs, etc. on users for three facilities covered by long-term care insurance [Action to be taken during FY2005]

The dual service system of “institutional care and in-house care services”, which is a remnant of the old system of special measures, should be abolished. By having the accommodation costs, etc. of the three long-term nursing care facilities borne by the users, in principle, the facilities may be regarded as “houses for rent with nursing care”. The items to be covered by long-term care insurance should be limited to care services.

With the above modifications, an equal amount of payment would be made to a care service of equal value and the burden on users would be equilibrated. The users who truly need institutional care services can be admitted to the required facilities. In this connection, the living environment and provision of meals corresponding to the accommodation costs paid by the users must be secured and the living environment should be a private room, in principle, in the future.

When compared with the past in which establishment of new nursing facilities was restricted through the assistance of facilities maintenance cost to social welfare corporations, equalization of competitive conditions among a variety of care services in facilities (houses with nursing care) can be realized by having the accommodation costs, etc. borne by the users. This would eventually promote new entry of private enterprises into the market, and improvement of services in quality and quantity can be expected through competition.

Along with the measure to have the accommodation costs, etc. borne by the users, it is also reasonable to have the costs previously covered by insurance payment borne by the users. These costs are for meals at a facility in cases where the user commutes to the facility, and for cooking by home workers. In the case of a low-income user who cannot bear such a burden as the accommodation costs, it is appropriate to deal with this by flexible management of public assistance such as through the rent subsidy system or housing assistance.

It is expected that the abolishment of the dual system of institutional care and in-house care services would bring about the supply of a variety of services combining institutional care services and in-house services. This will enable a user to continuously use necessary services corresponding to the level of required long-term care even when the user changes residence because of a change in family status or physical condition, and is living at a place other than his or her house.

2) Abolishment of subsidies to social welfare corporations on the maintenance of facilities [Conclusion to be drawn during FY2004, action to be taken during FY2005]

Although it is expected that by having the accommodation costs, etc. borne by the users, the competition conditions between social welfare corporations that manage special nursing homes for the elderly and other management entities are becoming more equalized as compared with the present situation, the above measure is not enough to realize perfect equalization because social welfare corporations are still receiving subsidies on the maintenance of facilities from the national and local governments (three-quarters of the expenditures). Accordingly, the current subsidies on the maintenance of facilities should also be abolished on the premise that the accommodation costs, etc. should be borne by the users. By doing so, expansion of alternatives and improvement of services can be expected. At the same time, however, the relaxation of restrictions contributing to effective management of social welfare corporations needs to be considered. From the same viewpoint, the subsidies to health facilities for the elderly and the payment by long-term care insurance for the reimbursed portion of facility construction cost and groups of beds for the use of long-term care should also be abolished.

3) Disclosure of information related to service details [Action to be taken during FY2004]

It should be widely known that information disclosure by the entities that provide services is required on the details of care services that are covered by insurance payment, care services and in-house care services that are not covered by insurance payment, and the charges, etc. in order to contribute to appropriate choice by users of nursing care services. On the occasions of disclosure, confirmation by a neutral third party is essential.

As for specified facilities such as private nursing homes for the elderly, which charge a fee, it should be widely known that (a) the expenses for the use of the room, care services covered by insurance payment, provision of meals and other services that are necessary in daily life should be clearly classified, (b) the details of the contract (such as the conditions for using a private room when the user suffers a condition requiring long-term care, the stipulations concerning the reimbursement of a deposit for admittance, etc.) should be clearly disclosed to the user to prevent him or her from being driven into an extremely disadvantageous position during the term of the contract.

3. Educational field

Under the current circumstances in which the sense of values of the people have diversified along with the changing social environment, as indicated by the declining birth rate, change in employment practices and so forth, it is becoming clear that the existing rigidly uniform education system cannot sufficiently meet the needs of the nation.

For ensuring that every person in the country enjoys the desired education, it is necessary to invite various entities into the education services as well as to promote the provision of a variety of quality services through competition, which can be achieved by unifying competition criteria among entities with different styles of management (national, public, private, and joint-stock corporations, etc.).

(1) Unifying competition criteria between schools with different management styles

[Recognition of current status]

1) At present, the education services are mainly provided by public schools that have an overwhelming share and private schools that are gaining somewhat of a share in urban areas. (See Education 1 of the attached Data.) Public schools and private schools operate under the same control based on the School Education Law (Law No. 26 of 1947), and there is no significant difference between them in the basic part such as educational conditions or the subjects of education.

2) On the other hand, the national schools are receiving far greater subsidies on management than those received by private schools when the amount per student is compared. (See Education 2 of the attached Data.) The difference is reflected in the school tuition and if a student chooses a private school, he or she would have to bear the higher cost in combination with part of the cost for national and public schools.

   Another problem is that if private schools are not entitled to receive preferential tax treatment only because the managing entities are joint-stock corporations, etc., and if this is causing an increase in tuition fees, it would go against the principle of equality under the law among the people receiving education services.

3) In February 2003, joint-stock corporations and NPO (Non-Profit Organization) corporations were granted permission to become entities establishing schools as an exceptional measure in special structural reform zones, and three schools were established under the management of joint-stock corporations this April. However, the unification of competition criteria between the entities and incorporated schools poses a problem. In the 5th notice inviting proposals on special structural reform zones, 15 responses requested application of private education institution aid and preferential taxation to joint-stock corporations that established schools.

[Specific measures]

1) Application of private education institution aid and preferential taxation to schools established by joint-stock corporations or NPOs [Action to be taken immediately at least in special structural reform zones]

As a temporary measure for complete unification of competition criteria between schools with different management styles (national, public, private schools, and those established by joint-stock corporations, etc.), application of private education institution aid and preferential taxation to schools should be extended to the schools established by joint-stock corporations, etc. permitted in special structural reform zones as in the case of incorporated schools.

The ban on establishment of schools by joint-stock corporations, etc. should be lifted nationwide and private education institution aid, etc. should be applied to those schools.

The Ministry of Education, Culture, Sports, Science and Technology points out two problems concerning application of private education institution aid, etc.

a. Expending public funds on behalf of charitable, educational or benevolent enterprises not under the control of a public authority is prohibited by Article 89 of the Constitution.

b. Whether or not it is “under the control of a public authority” is decided by comprehensive consideration of the regulations by the School Education Law, the Private School Law (Law No. 270 of 1949) and the Private School Promotion Subsidy Law (Law No. 61 of 1975), and aid that lacks any condition of the laws would be regarded as unconstitutional.

The following is the view of the Council, which is almost the same as that presented in the “Action Plan for Promotion of Regulatory Reform, Report on 12 Major Items - Aiming at a Consumer/User-oriented Society” (July 15, 2003) by the Council for Regulatory Reform.

Item a.
The following three purposes are given as the intention of the latter part of Article 89 of the Constitution: (a) securing autonomy in enterprises such as in the field of education, (b) prevention of abusive use of public expenditure and (c) elimination of religious bias from educational business. However, if the argument of item (a) is accepted, it would be interpreted that securing autonomy is not required in enterprises other than those in the field of education. And, it should be noted that the freedom to not accept public money cannot be denied. As for (b), prohibiting abusive use of public money is not limited to educational business. Accordingly, the view of the Council is that it is most reasonable to believe that Article 89 of the Constitution intends to eliminate religious bias from educational business as indicated in (c).

From the viewpoint that the latter part of Article 89 of the Constitution intends to completely separate government and religion, it is sufficient if measures have been taken to ensure that public money is not used for religious business so that religious bias may not infiltrate educational business, even if there may be an argument about the latter part of Article 89 of the Constitution.

Item b.
The argument by the Ministry of Education, Culture, Sports, Science and Technology is clearly contradictory to the fact that the Ministry permits aid (aid to schools to which Article 102 of the School Education Law is applicable) to the schools for the blind, schools for deaf-mutes, schools for the handicapped and to kindergartens managed by those other than incorporated schools including individuals who intend to establish incorporated schools in accordance with Article 2 of the Bylaw of the Private School Promotion Subsidy Law, although it is a temporary measure for a period of five years. In actuality, there are cases in which a prefectural government provided a subsidy that was not returned although the school was not incorporated within a specified period.

Accordingly, the Council considers that the ban on expenditure to educational businesses not under the control of a public authority can be sufficiently secured by controls on the conduct of schools that have already been imposed on the schools established by joint-stock corporations, etc. in special structural reform zones rather than the formal “controls on the subjects” whether or not the beneficiary of the expenditure is an incorporated school.

The Cabinet Legislation Bureau responded to a question concerning educational business “under the control of a public authority” in the Committee on the Cabinet in the House of Councilors on May 20, 2004 that there is no system in which a school may be ordered to disincorporate itself based on the School Education Law, but if there is another alternative measure to secure control, there would be room for study by taking into consideration the various conditions. In response to a proposal to make private education institution aid applicable to the schools established by joint-stock corporations, etc. including a way to revise the Special Structural Reform Zone Law to make the Private School Promotion Subsidy Law applicable to those schools, the then Vice Minister of Education, Culture, Sports, Science and Technology said that there was room for consideration, but that restrictions equivalent to those on incorporated schools would be required at the same time that permission is granted.

2) Introduction of Educational Voucher System [Study to be conducted and conclusions drawn during FY2004]

In order to ensure complete freedom of choice for educational services among consumers, the introduction of an educational voucher system used in the U.S.A. for direct aid to students should be considered for replacing the institutional aid in which there is a large difference in the payment between schools with different management styles such as the difference between national/public schools and private schools. (See Education 3 of the attached Data.) By doing so, the current difference between aid for national/public schools and private schools in the educational field would be corrected and a person receiving public aid may freely choose the quality and cost of educational service. It is important that the adoption of the voucher system would also lead to the supply of a larger variety of educational services by promoting competition among entities with different management styles providing educational services.

By promoting the entry of many educational service providers in the market, the voucher system can be made into a more effective system. From this perspective, it is very important to lift the nationwide ban on establishment of schools by joint-stock corporations, etc. as previously stated, and the ban on schools that are “publicly established and privately managed” mentioned below.

The “Basic Policy on Economic and Financial Management and Structural Reform of Economy and Society” (Decision by the Cabinet Council on June 26, 2001) states

that the perspective of competition for the purpose of creating universities of the highest level in the world will be reflected in the institutional aid in the management of public aid to university education. In reviewing the entire system of public aid in the direction of attaching importance to aid to individuals, measures will be considered for improvement of scholarships and assistance to individuals receiving education by self-support so that students who have the will and capability receive education. More than three years have passed since then. It is necessary to advance the study on the introduction of the voucher system and to promptly reach a conclusion.

(2) Lifting the ban on schools "publicly established and privately managed"

[Recognition of current status]

1) In the field of education, the public school system is a government-driven market where public schools have a large share in the stages of elementary, lower secondary and upper secondary schools. Especially in the stages of compulsory education, since the share of private schools is extremely low (about 3%), private schools are not playing the role of an effective competitor against public schools, and as such, education has not met the various needs of the consumers. Under the circumstances, promotion of the establishment of private schools providing a variety of education services with distinctive characteristics would contribute to the improved quality of education services in the existing schools through competition. Lifting the ban on schools that are "publicly established and privately managed" is considered to be a very effective measure for utilizing the originality and ingenuity of the private sector in areas where it is difficult to establish such private schools, and for realizing school management with distinct characteristics that meet the needs of consumers.

   In the 5th notice inviting proposals on special structural reform zones, 14 responses request lifting of the ban on schools "publicly established and privately managed" including the stage of compulsory education.

2) On this subject, the "Basic Policy on Economic and Financial Management and Structural Reform of Economy and Society" (Decision by the Cabinet Council on June 27, 2001) states that deliberation should be started as soon as possible at the Central Council for Education on the comprehensive entrustment of public school

management and operation to the private sector. There is also a similar description in the “Three-Year Plan for Promotion of Regulatory Reform” (Decision by the Cabinet Council, March 19, 2004). Furthermore, the decision of the Headquarters for the Promotion of Regulatory Reform in September 2003 states that, as for the comprehensive entrustment of public school management and operation to the private sector, study should be made on the application to high schools and kindergartens within this year and necessary measures should be taken when the conclusion is reached. The Ministry of Education, Culture, Sports, Science and Technology had the Central Council for Education study the subject following the above decision and received a report in March 2004, but measures have not yet been implemented.

[Specific measures: action to be taken during FY2004]

As a measure to promote the entry of various entities into educational services, necessary measures should be taken to lift the ban on the system of schools “publicly established and privately managed” (the system where the management and operation of the institutions established by local governments are comprehensively entrusted to the private sector such as joint-stock corporations, NPOs, etc. which is widely used in the fields of welfare and child nursing) and application should be permitted not only to upper secondary schools and kindergartens but to all schools including those for compulsory education.

As clearly indicated in the above-mentioned decision of the government, the system of schools “publicly established and privately managed” is not necessarily premised on the “appointed management system”, a scheme in which an appointed manager designated by a local government manages a public institution by proxy. Methods other than the appointed management system should also be studied.

On the system of schools “publicly established and privately managed”, the Ministry of Education, Culture, Sports, Science and Technology and others assert that there remain problems requiring resolution from a legal standpoint if a school is still positioned as a public school after actions having the characteristics of disposition that should be made by public authorities such as dismissal, suspension, admission and approval of graduation, etc. and daily educational activities that are closely related to the above

actions and inseparable from them are entrusted to a private person or institution. However, the current laws do not provide that those actions having the characteristics of disposition be made by only administrative organizations under the National Government Organization Law, and it is clear from actual instances that a private person or institution can file a protest suit such as one requesting cancellation of “a disposition” on the premise that the action having the characteristics of disposition was made by a private enterprise or entity. The assertion by the Ministry that a private organization cannot “exercise public authority” under the Administrative Dispute Law is only a tautology meaning that business carried on by the government cannot be entrusted to the private sector because it is government business.

Accordingly, the Council considers that the publicly established and privately managed school system can be realized by either (a) positioning these schools as an intermediate style of school between public and private, of which the actions having the characteristics of disposition are exercised by a local government, or (b) positioning these schools as a type of private school, in which an action corresponding to dismissal in public school, for example, would be treated as cancellation of a contract.

VI. Toward the year-end report

For the year-end report, the Council is determined to conduct vigorous investigation and deliberation on the opening up of government-driven markets to the private sector in cooperation not only with the Headquarters for the Promotion of Regulatory Reform (Head of Headquarters - Prime Minister), but with the relevant organizations including the Council on Economic and Fiscal Policy, the Headquarters for Promotion of Special Structural Reform Zones, the Headquarters for Regional Revitalization, etc.

As for the study by field corresponding to the “Three-Year Plan for Promotion of Regulatory Reform”, the Council will be actively engaged in follow-up monitoring of the implementation status, in-depth study, moving up of the plan, addressing new issues, and answering individual requests received during the “Month for Reception of Proposals for Regulatory Reform” and will reflect the achievements in the year-end report.