

Comparative Study
on Administrative and Financial Arrangements
of the Hong Kong and Pakistan Ombudsman Offices

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Comparative study on administrative and financial arrangements of the Hong Kong and Pakistan Ombudsman Offices

Chapter 1 - Introduction

Background

1.1 At the General Assembly meeting of the Asian Ombudsman Association (AOA) held on 1 December 2005 in Hong Kong, the President of the Association invited Members to undertake comparative research or studies on ombudsman systems and practices. This study was conducted in response to this invitation.

Scope of study

1.2 This study focuses on the administrative and financial arrangements of the Office of the Hong Kong Ombudsman and another ombudsman office, with a view to identifying and exploring essential elements of good practices of an independent ombudsman office.

1.3 With agreement of the Wafaqi Mohtasib (Ombudsman) of Pakistan, we have selected his office (hereinafter referred to as “the Pakistan Ombudsman Office”) as our partner in this study.

Chapter 2 - The Hong Kong Model

Background

2.1 When the Office of The Ombudsman (then known as Commissioner for Administrative Complaints) was established in 1989, it operated largely like a government department by adopting civil services rules and government practices and relying on support services from Government for its activities. The Office had a fixed establishment and was staffed by civil servants seconded from Government.

2.2 Although the Office functioned effectively, its independence was seen to have been compromised by its reliance on government, particularly by the fact that its investigators would eventually return to government departments under The Ombudsman's purview. Such concerns were repeatedly voiced by commentators in the early years.

2.3 In financial management, the Office was subject to stringent control in the same way as any government department. Expenditure was broadly divided into two major expenditure items: "Personal Emoluments" and "Departmental Expenses", the funding level for which was predetermined and could not be exceeded in any circumstances. As Controlling Officer under the Public Finance Ordinance, The Ombudsman is personally responsible for any overspending within the two categories even though overall expenditure is kept within the overall funding ceiling. This item-by-item expenditure control mechanism which is a common practice in the civil service, was intended to facilitate the supervisory control by the Financial Services and Treasury Bureau of the Government Secretariat over the usage of public funds by government departments. However, at the same time, it inevitably deprived the user of autonomy and flexibility in resource planning and deployment.

2.4 In 2000, The Ombudsman commenced negotiations with Government for a new funding arrangement that would, on a cost neutral basis, enhance the independence of the Office. This led to legislative amendments to The Ombudsman Ordinance which came into force on 19 December 2001, to sever The Ombudsman's linkage with Government and empower her with full autonomy in managing her own administrative and financial activities.

2.5 The following paragraphs outline these changes and compare them with the administrative and financial management mechanisms of the Pakistan

Ombudsman Office for the purpose at paragraph 1.2.

Administrative arrangements

2.6 Since 2000, the Office started formulating its own administrative rules and regulations in preparation for its delinking from Government. These included a new set of human resource management manual, stores and procurement regulations, security regulations and transport regulations. Guidelines on office practice were also promulgated in the form of internal circulars for compliance by staff.

2.7 The Office also started a series of recruitment exercises to replace civil servants in stages by its own contract staff.

Financial management: introduction of a new “one-line vote” system

2.8 A new “one-line vote” subvention arrangement was introduced in 2001. It aimed to replace all recurrent expenditures provided for the operation of the Office by a single lump-sum grant. Within this global allocation, The Ombudsman was given autonomy and flexibility in using the funds: this includes deploying funds between categories, components, and items of expenditure to suit the needs and changing circumstances of the Office. In return, The Ombudsman agreed to subject the Office to tight budgetary control by operating on a cash-limited basis. No additional funding would be available to meet normal operational expenditure; but requests for additional funding in respect of new projects or activities could be entertained.

2.9 This devolution of authority was introduced in the belief that The Ombudsman was best placed to decide on the operational priorities of her Office and the most optimal way to meet those priorities. Overall, the new arrangement was expected to bring about the following benefits:

- (i) buttress institutional safeguards and enhance public perceptions about the independence of The Ombudsman and the Office she operates;
- (ii) simplify administrative systems and speed up decision-making process in resource management, thereby

enabling the Office to respond to changes more promptly ;

- (iii) develop a sense of ownership among financial managers which would in turn encourage more innovative thinking in better utilization of resources ; and
- (iv) provide flexibility in deciding on the most optimal mix of manpower and other input resources to achieve the organization objectives.

2.10 For proper control and monitoring of the utilization of public funds, the Office developed its own accounting policies and internal control system for deployment and redeployment of funds and acquisition of equipment items and hiring of services.

Amendments to The Ombudsman Ordinance

2.11 Introduction of the new administrative and financial arrangements alone was not enough to ensure the administrative and fiscal independence, because:

- (i) the Office of The Ombudsman was not a legal entity; The Ombudsman was therefore not legally competent to perform certain necessary functions, such as enter into contracts, acquire and hold property etc. ;
- (ii) that The Ombudsman could not expect additional funding to meeting unexpected increase in normal operational expenses was an obstacle that could potentially hinder the future development of her Office ;
- (iii) as the bulk of the Office's operational expenses was for personal emoluments (for example, in 2000-01, the year prior to delinking, 92% of the total funding provision was for personal emoluments), there was little scope for The Ombudsman to redeploy her financial resources unless she had full control over the employment terms for her staff ;
- (iii) hitherto The Ombudsman could not retain savings for

future use ; and

- (iv) the Office’s continued reliance on government support services, for which Government had to be reimbursed, left little flexibility for the Office to seek such services in the most cost-effective way.

2.12 On 19 December 2001, The Ombudsman Ordinance (the Ordinance) was amended to provide legal backing to the new administrative and financial arrangements which would be conducive to the independence of The Ombudsman. The relevant legislative changes are summarized below.

- ***Independent status***

2.13 The most significant amendment is to confer legal status by creating a “**corporation sole**”¹ known as “The Ombudsman”; which “*shall have perpetual succession*” and “*may sue and be sued in that corporate name*”.

2.14 An amendment was also enacted to make it clear that The Ombudsman “*shall not be regarded as a servant or agent of the Government as enjoying any status, immunity or privilege of the Government*”².

2.15 These changes signify the complete severance of the Office’s linkage with Government. In addition, it confers legal competence on The Ombudsman to exercise full discretion in conducting the administrative and financial activities of her Office, and to “*do all such things as are necessary for, or incidental or conducive to, the better performance*”³ of her functions.

- ***Staffing***

2.16 The Ordinance empowers The Ombudsman to recruit staff on such **terms and conditions as may be determined by her**. Together with the “one line vote” arrangement, this authority enables The Ombudsman to control her establishment and determine the optimal mix of staff to suit operational needs, having regard to approved funding. She can also more flexibly adjust the employment terms and conditions for her staff, in the light of prevailing labour market situation and the need

¹ Section 3 of The Ombudsman Ordinance.

² Section 6B of the Ordinance.

³ Section 7(1A) of the Ordinance.

to fine-tune staffing complement on account of fluctuations in workload. With such flexibility, The Ombudsman is better placed to control and re-deploy resources to discharge her statutory functions more effectively and cost-effectively.

● ***Financial Management***

2.17 The amended Ordinance also empowers The Ombudsman to –

- (i) build up a **reserve of surplus** fund not immediately required to be expended ;
- (ii) **invest the surplus fund;**
- (iii) with Government’s agreement, **charge** any person such any **reasonable fee** as she determines in respect of any service provided by The Ombudsman to that person under the Ordinance, as otherwise than in pursuance of an obligation imposed by the Ordinance ; and
- (iv) be exempted from taxation under the Inland Revenue Ordinance.

2.18 The workload of the Office is driven by external factors over which it has no control. The ability to accumulate a reserve of savings over time would provide The Ombudsman with ability to tackle unexpected surges in caseload and to cope with the ever-increasing service demand of the community.

● ***Other administrative power***

2.19 The 2001 amendments also empower The Ombudsman to -

- (i) **acquire and hold property** necessary for accommodating him and his staff for the performance their functions under The Ombudsman Ordinance ; and
- (ii) **enter into, carry out , assign or accept** the assignment of, **vary or rescind**, any **contract, agreement or other obligation.**

2.20 These legislative amendments significantly reduce the Office's reliance on support services from Government. In 2002, with funding approval from the Legislative Council, The Ombudsman acquired permanent office accommodation in a commercial building in a prime central location and easily accessible to the public. This protects the Office from the vagaries of the Hong Kong property market, which has conventionally been fairly volatile. The Ombudsman can also contract out its support services in a more economical, but equally effective manner. The latter in turn contributes to cutting down operational costs.

Chapter 3 - The Pakistan Ombudsman Office

Background

3.1 The Pakistan Ombudsman Office (POO) was established in August 1983. It is an independent quasi-judicial institution with well-defined jurisdiction, functions and powers. It:

- does not figure in the Rules of Business-1973 of the Government of Pakistan; and
- does not form part of the Federal Secretariat.

3.2 The 1983 Establishment of the Office of the Ombudsman Order stipulates that the Ombudsman shall be the Chief Executive of his office and shall enjoy administrative and financial autonomy as may be prescribed by the Federal Government. Obviously, the POO is not regarded as a part of the Federal Government and is provided with as much as administrative and financial powers as possible to ensure its independent operation, though subject to a certain degree of control from the Federal Government. .

Administrative arrangements

3.3 Basically, the POO operates more or less the same way as the Hong Kong Ombudsman Office prior to December 2001. It follows civil service rules and regulations of the Federal Government of Pakistan for its internal administration, including those that govern establishment and procurement matters.

3.4 As regards staffing, except the Ombudsman, all senior officers of the POO are on secondment from Government for a maximum period of three years. However, the Mohtasib (Ombudsman) is empowered to recruit junior staff, such as clerical and supporting staff, on its own terms and conditions with reference to relevant rules of the civil service. The POO is now attempting to establish its own rules for recruitment. These rules have yet to be approved by the Federal Government.

3.5 Apart from recruiting junior staff, the Mohtasib also has flexibility to hire additional manpower. In the approved estimate, there is an expenditure item entitled

“Payment to Others for Services Rendered”. The Mohtasib can use the approved provision for this item to hire services from outside to cope with his business needs within the budgeted limit.

Funding arrangements

Expenditure control

3.6 Same as a Government department, the POO’s estimate is divided into a number of subheads such as, “Employee Related Expenses” and “Operating Expenses”. In its estimate submission, detailed breakdowns have to be provided to the Finance Division of Federal Government for consideration.

3.7 Once the estimate is approved, the POO can deploy funds flexibly among subheads with the exception of “Employee Related Expenses”. In the event that the overall expenditure has exceeded or is expected to exceed the approved limit, he has to seek supplementary grant from the Federal Government. In doing so, his Office has to present a case to the Finance Division with full justifications. If approved, the supplementary grant will come as an additional funding on top of the overall approved provision for that year.

3.8 For monitoring purpose, the POO is required to submit a revised estimate of expenditure in the latter part of a fiscal year to the Finance Division for approval.

Unexpended fund

3.9 The Mohtasib is responsible for proper spending of his approved funds. If the amount of unexpended fund exceeds a certain percentage of the approved provision, he is required to submit an explanation to the Federal Government. In any case, unexpended fund at the end of a fiscal year will lapse and cannot be retained for other use.

Chapter 4 - Comparison of administrative and financial arrangements between the two Offices

Comparison

4.1 Comparison of the administrative and financial arrangements between the Hong Kong and Pakistan Ombudsman Offices is summarized below:-

	Hong Kong Ombudsman Office	Pakistan Ombudsman Office
Administrative arrangements –		
(i) Rules and regulations	<ul style="list-style-type: none"> operates on self-developed rules and regulations 	<ul style="list-style-type: none"> follows civil service rules and regulations
(ii) Staffing	<ul style="list-style-type: none"> staffed by self-recruited contract staff on terms and conditions determined by The Ombudsman 	<ul style="list-style-type: none"> except for junior support staff, all senior staff are civil servants on loan from Government and remunerated on government's terms and conditions
Financial arrangements-		
(i) Expenditure control	<ul style="list-style-type: none"> has full discretion in utilization and deployment of funds within the overall approved limit not subject to scrutiny by the Government over its expenditure cash-limited and no supplementary fund for increase would be provided 	<ul style="list-style-type: none"> has no authority to deploy funds between "Employee Related Expenses" and other subheads subject to same degree of scrutiny as a Government department can apply for supplementary grant for increase in expenditure
(ii) Unexpended funds	<ul style="list-style-type: none"> can retain and invest surplus fund 	<ul style="list-style-type: none"> unexpended funds will lapse at the end of a fiscal year and go back to General Revenue

Pros and cons

4.2 Both types of arrangements have their pros and cons. The arrangements adopted by the POO have the advantages of having:

- (i) ready made Government administrative rules and regulations for its internal operation;
- (ii) experienced Government officers who can ease themselves into their jobs and immediately become fully functional without going through a steep learning curve; and
- (iii) subject to Government support, assurance of the availability supplementary funds in the course of a fiscal year to cope with unexpected increase in expenditure.

4.3 However, the disadvantages are that government rules are inflexible and provide no room to maneuver particularly as regard to unanticipated changes in operating circumstances. More importantly, a requirement to comply fully with government rules and regulations and staffing the office with serving government officers may compromise public perception of the office's independence.

4.4 Since introduction of the new administrative and financial arrangement in 2001, The Ombudsman of Hong Kong has been able to exercise full autonomy in running her Office, in particular, in the following areas:

- (i) maximizing the utilization of staffing resources in discharging her statutory role in serving the community. Apart from a core team of regular contract investigators, The Ombudsman now also employs temporary staff, on a need basis, on her own terms to meet ever-changing operational needs of her Office. Such flexibility is important at times of sudden and unexpected fluctuations in workload;
- (ii) building up a reserve of surplus fund accumulated as a result of The Ombudsman's full control over the Office's administrative and

financial businesses. Up to March 2006, the Office has accumulated a reserve of about HK\$160 million⁴, providing a healthy basis for The Ombudsman to plan for the future development of the Office.

4.5 Together with many legislative provisions governing the appointment, removal and operational autonomy, these administrative and financial achievements are very real institutional safeguards that underpin the independence of the Office of The Ombudsman of Hong Kong. With the independence in decision making and utilization of resources, The Ombudsman is now better placed to respond to community needs more readily and proactively.

⁴ Equivalent to almost two full year's subvention.

Chapter 5 - Concluding remarks

5.1 Ombudsman offices worldwide adopt different operational arrangements in organizing their internal administrative activities. Some of these arrangements are historical and resemble those in government departments. Some others, though have their origin in government, evolves over time to meet changing needs and circumstances to become what they are today.

5.2 There is no absolute yardstick for determining which type of arrangement is better or excel over others. Each of them has its own cause for existence. However, no matter what arrangements are adopted and the extent to which they contribute to the smooth running of the office, administrative and financial autonomy is, without doubt, an essential element for achieving operational independence of an ombudsman office. With such autonomy, an ombudsman can have a free hand to determine how best to deploy his resources and maximize the cost-effectiveness of his management systems and practices to serve the community.

5.3 The experience of the Hong Kong Ombudsman Office is certainly a worthy reference for other ombudsman offices to take into account for planning for their long-term development.