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Report of the Bills Committee on City University of Hong Kong (Amendment) Bill 2006

Purpose

This paper reports on the deliberations of the Bills Committee on City University of Hong Kong (Amendment) Bill 2006 (the Bill).

Background

2. In May 2001, the Secretary for Education and Manpower (SEM) commissioned the University Grants Committee (UGC) to launch a comprehensive review of higher education. The review covered all aspects of higher education provision, including the governance of the UGC-funded institutions. In March 2002, UGC published the review report entitled "*Higher Education in Hong Kong*" (the HER Report). Following public consultation on the HER Report, UGC submitted to the Administration its final recommendations in September 2002, of which most were accepted. Amongst other recommendations, the HER Report recommended "*That the governing body of each university carry out a review of the fitness for purpose of its governance and management structures. Such an exercise will necessarily include a review of the relevant ordinances and, where appropriate, proposals for legislative changes should be made.*"¹.

3. In response to the recommendation in the HER Report, the Council of the City University of Hong Kong (the CityU Council) decided on 25 November 2002 to establish the Review Committee on University Governance and Management (the Review Committee). The Review Committee was tasked to conduct a review of the governance and management structures of the City University of Hong Kong (CityU) to determine its fitness for purpose in the light of the changing environment of higher education, and report its findings to the CityU Council together with recommendations for changes deemed appropriate to both the governance and management structures.

¹ page 19, HER Report

4. The Review Committee submitted its report to the CityU Council in November 2003. One of its recommendations was to reduce the CityU Council membership from the maximum number of 37 to not more than 20. The Review Committee also recommended that there should be a clear majority of external members, which could possibly be achieved by reducing the number of internal members to five, comprising the President, the Deputy President, two staff members and one student elected respectively by themselves.

5. The CityU Council approved the recommendations of the Review Committee and proposed amendments to the City University of Hong Kong Ordinance (the Ordinance) (Cap. 1132) to effect changes to its structure.

The Bill

6. The Bill is a Members' Bill presented by Ir Dr Hon Raymond HO Chung-tai. It seeks to reduce the total number of CityU Council members, make consequential amendments and provide for transitional matters.

The Bills Committee

7. The House Committee decided on 20 October 2006 to form a Bills Committee to study the Bill. Hon Emily LAU Wai-hing was elected Chairman of the Bills Committee. The Bills Committee held five meetings and met with the Administration, UGC, the CityU Council, the CityU Staff Association (the Staff Association), the CityU Postgraduate Association (CUPA), and the CityU Provisional Standing Committee of Convocation (the Standing Committee). The membership list of the Bills Committee is in **Appendix I**.

Deliberations of the Bills Committee

8. Members of the Bills Committee support the objective of the Bill to streamline the structure of the CityU Council. During the scrutiny of the legislative proposal to restructure the CityU Council, members have made reference to the Public Accounts Committee Report No. 40A (the PAC Report) published in November 2003 which covers, inter alia, the governance of the UGC-funded institutions². The deliberations of the Bills Committee are set out in the ensuing paragraphs.

² One of the PAC's recommendations made in its Audit Report No. 40A (of November 2003) was "all the institutions to adopt measures to ensure that external members will constitute a majority at the Council meetings". Institutions were asked to consider publishing the attendance records of their Council members and uploading the records onto their websites for the information of the public. CityU was also recommended to set up an audit committee to strengthen its internal audit function and the corporate governance structure.

Composition of the CityU Council

9. Under the existing section 10 of the Ordinance, the CityU Council shall consist of a potential total of 37 members including -

- the President and the Deputy President;
- four Vice-Presidents and five Deans;
- three public officers;
- two members of staff elected by all staff;
- one member of staff nominated by the Senate;
- the Chairman of the Convocation;
- the President of the Students' Union; and
- 18 lay members appointed by the Chief Executive (CE).

10. The Bill proposes to reduce the membership of the CityU Council to not more than 20, comprising five internal members and 15 external members to be appointed by CE. The five internal members are -

- the President;
- the Deputy President;
- one member of staff elected by all staff;
- one member of staff nominated by the Senate; and
- one student elected by students.

11. A comparison of the composition of the CityU Council under the existing Ordinance and the Bill is in **Appendix II**.

Staff representative

12. The Staff Association objects to the proposed reduction of staff members elected by all staff from two to one in the CityU Council. The Staff Association points out that according to the recommendation of the Review Committee, the internal members of the CityU Council should include two staff members elected by all staff. Members have sought explanation from the CityU Council for the proposed reduction.

13. The CityU Council has explained that under the proposal in the Bill, there will be two staff members elected by all staff in the CityU Council one of whom shall be nominated by the Senate. The reason for specifying representation from the Senate is to reflect the fact that the Senate is formally established under the Ordinance as the supreme academic body of CityU. Members of the Review Committee had discussed their recommendations with the Executive Committee of the CityU Council. According to the minutes of the relevant meeting, the Review Committee believed that one of the staff members should be an academic member of staff possibly elected by the Senate. This recommendation had been reported to the full CityU Council which decided that the academic member should be elected by the Senate.

14. Members appreciate the need for representation of the Senate in the CityU Council. On the other hand, they understand the view of the Staff Association that given the academic function and the restricted membership of the Senate, its representative should not be taken as the staff representative. In this regard, members note the comments in the report of the Review Committee that "*The Review Committee was impressed by the arguments of the Staff Association that there should be a strong representation of elected staff. Their argument is based on the fact that senior staff of the University have ample opportunity through the internal committee structure to influence and have 'their say' on the operation and development of the University. This is denied to the generality of staff and having elected representatives in the Council can help redress this.*"³. Members are of the view that the proposal of having only one staff member elected by all staff in the restructured CityU Council does not accord with the views of the Review Committee. Members consider it necessary to enhance the staff representation in the restructured CityU Council.

Convocation representative

15. Section 17B of the Ordinance provides that a Convocation of CityU shall be established. Section 10 of the Ordinance specifies that the Chairman of the Convocation shall be a member of the CityU Council. Notwithstanding these provisions, the Convocation had yet to be established as at the end of 2006.

16. The Standing Committee has explained to members the preparation work for the establishment of the Convocation since October 2005 and its plan for establishing the Convocation in 2007. The Standing Committee is disappointed about the removal of the Chairman of the Convocation as an ex officio member of the restructured CityU Council. In its view, a convocation of a university serves as a link between the alumni and the university and gives advice on the development of the university. A convocation also helps in raising fund for the university. The Standing Committee considers that the Chairman of the Convocation should continue to be an ex officio member in the restructured CityU Council.

³ paragraph 59 of the Report of the Review Committee

17. Members note the representation of the respective convocations in the existing Councils of some UGC-funded institutions, including the Chinese University of Hong Kong, the Hong Kong University of Science and Technology and the Polytechnic University of Hong Kong. Members appreciate the role of a convocation in the development of a university and support the request of the Standing Committee for representation of the Convocation in the CityU Council.

Student representative

18. Although the proposal in the Bill does not change the number of student representatives in the CityU Council, CUPA considers it inadequate to have only one student representative in the CityU Council on the grounds that students of CityU comprise both undergraduates and postgraduates and their views and stance on issues may be different. CUPA requests that two seats in the CityU Council be allocated to students, one for the undergraduates and the other for the postgraduates. Their request is supported by members of the Bills Committee.

Revised composition

19. Since the council of a university is the governing body and the supreme decision-making body of the institution, members consider it of utmost importance that the stakeholders should be adequately represented therein. Members of the Bills Committee unanimously request the CityU Council to consider the views and request of the Staff Association, the Standing Committee and CUPA.

20. The CityU Council met on 27 November 2006 to consider the views of the Bills Committee. After deliberations, the CityU Council proposed to increase its membership to 28 comprising -

- the President;
- the Deputy President;
- one Vice-President and two Deans;
- two staff members elected by themselves;
- one academic member of the Senate elected by the Senate;
- the President of the Students' Union;
- the President of CUPA;
- the Chairman of the Convocation; and
- 17 external members.

21. Members of the Bills Committee have expressed disappointment at the proposal of the CityU Council. Members have pointed out that the proposed size of the restructured CityU Council is even larger than the existing size of 27 members. The proposal will reduce the ratio of external members to internal members in the CityU Council from 3:1 in the Bill to 1.875:1. The Administration also does not consider it necessary to increase the number of external members to be appointed by CE from 15 to 17.

22. According to the CityU Council, five Deans of CityU have jointly requested for representation in the restructured CityU Council. Having considered the need to reduce the current potential size, ensure a clear majority of external members and strike the correct balance of internal members, i.e. staff, students, alumni and the CityU management, the CityU Council have therefore put forward a proposed membership size of 28.

23. In the light of the views expressed by members and the Administration, the CityU Council agreed to reconsider its proposal. The CityU Council convened a special meeting on 4 January 2007 and has agreed on a revised proposal by a majority of votes. Under the revised proposal, the CityU Council shall comprise 23 members. Apart from the 20 members proposed in the Bill, three more members, namely one more elected staff member, the President of CUPA and the Chairman of the Convocation, will be added.

24. The CityU Council has also explained to members that in the Bill, the student representative is to be elected from among students including both undergraduates and postgraduates. As the President of CUPA is proposed to be an ex officio member of the CityU Council under the revised proposal, the CityU Council considers it appropriate to expressly provide that the other student representative should be the President of the Students' Union the membership of which is restricted to undergraduate students only.

25. As the respective Presidents of the Students' Union and CUPA will be ex officio members of the CityU Council under the revised proposal, members are concerned about the mechanisms adopted by these two student bodies for coping with the situation when the office of their Presidents becomes vacant and when there is no cabinet. Members note the provision in the constitution of the Students' Union for the appointment of the Vice-President as the Acting President in the absence of the President. Where the Executive Committee of the Students' Union has not been formed or ceases to function, the Chairman of the Students' Union Council will be the Acting President. Members are satisfied that the provisions in the constitution of the Students' Union could address their concern.

26. As regards CUPA, members note the provisions in its constitution for the appointment of the Vice President as the Acting President in the absence of the President or in the event of the post of President falling vacant. However, there

is no provision in its constitution for coping with the situation when there is no cabinet and hence no Vice-President. CUPA had attempted to address the inadequacy by amending its constitution to provide that the immediate past President should be the Acting President. An Annual General Meeting (AGM) was called by CUPA on 15 March 2007 to approve the proposed amendment. The AGM was adjourned due to the lack of a quorum which should be around 300 members, i.e. 5% of the membership of CUPA which stands at around 5 800. According to CUPA's constitution, if the quorum was not present within the first half hour of the appointed time for the adjourned AGM, the number present would form the quorum. The adjourned AGM was reportedly attended by 24 members, but the proposal for amending the constitution was voted down by a great majority.

27. Members are gravely concerned about the poor attendance at CUPA's AGM and adjourned AGM which is indicative of the extent of its representation and the level of participation of its members in its activities. Based on the information provided to members, this phenomenon is not unique to the latest AGM and adjourned AGM but has consistently been so for the past 10 years. Given its track records, members are of the view that CUPA has yet to develop into a mature organization representing postgraduate students. They therefore express reservations about the proposed appointment of its President as an ex officio member of the CityU Council.

28. Nevertheless, members maintain that postgraduate students should be represented in the CityU Council. The CityU Council shares this view. As the members of staff are elected from among their number to the CityU Council under the existing Ordinance, members consider that the same arrangement should be applied to postgraduate students. Noting that the elections of staff have all along been run by the CityU Council, members agree with the CityU Council that the election of a postgraduate student representative will be run by the CityU Council, and the responsibility for running the election will be passed over to CUPA when the CityU Council considers it appropriate. The CityU Council has provided to the Bills Committee the details of the election rules and explained the logistics for the election. Members consider the arrangements in order.

29. A comparison of the composition of the CityU Council under the existing Ordinance, the Bill and the revised proposal agreed to by the Bills Committee is in **Appendix III**. To effect the revised proposal, Ir Dr Hon Raymond HO will move Committee Stage amendments (CSAs) to clause 3 of the Bill. Having regard to the progress of scrutiny of the Bill, members also agree to delete clause 1(2) which provides 1 January 2007 as the date for commencement of the Bill.

30. In the course of scrutiny of the Bill, members have compared the composition of councils of various UGC-funded institutions. Members note that the councils of many UGC-funded institutions still maintain a large membership size and have yet to streamline their structures.

Attendance of external members at CityU Council meetings

31. Members consider it a good practice of corporate governance for tertiary institutions to have in their councils a majority of independent external members, who are capable of exercising independent judgment on important issues. Although the proposed revised composition of the CityU Council will meet this criterion, whether the external members will perform their functions depend on their extent of participation in the business of the CityU Council. Members note from the PAC Report the low attendance of external members at meetings of the CityU Council during the period from 2000 to 2003. Members have sought information on measures taken by the CityU Council to enhance its transparency, accountability and openness, and the attendance of external members at CityU Council meetings.

32. According to the CityU Council, the mission of CityU emphasises the provision of professional education programmes and CityU should concentrate on applied research. CityU has all along sought external members who from their knowledge and experience can contribute to these aims. The external members are largely drawn from commerce, industry, the community and the professions. Several improvement measures have been taken to enhance transparency, accountability and openness of the CityU Council. These include the completion of the 'fit for the purpose' review undertaken by the Review Committee; the promulgation of a Code of Practice for CityU Council members which provides guidance on the conduct of the CityU Council business; and the setting up of an audit committee under the CityU Council in 2004 to, among other responsibilities, monitor the executive decisions of the CityU management. CityU has also agreed to make available the attendance records of CityU Council members to the Administration upon request and publish the attendance records in its annual reports.

33. The Administration has also confirmed that in considering appointment to the CityU Council, it will generally adhere to the "six-year rule" and the "six-board rule", i.e. a person will not be appointed to more than six advisory and statutory bodies (ASBs) and will not sit on an ASB for more than six years.

Establishment of the Court

34. Section 8A (1) of the Ordinance specifies that there is to be a Court of CityU which is its supreme advisory body. Section 8A(2) provides that the Court shall consist of the Chancellor as chairman and such office as the statutes specify. Members note the concern of PAC members about the non-establishment of the Court notwithstanding these provisions. Although the issue does not fall within the scope of the Bill, during the course of its scrutiny, the Bills Committee has asked for the reasons for the non-establishment of the Court more than a decade after the Ordinance has been enacted.

35. According to the CityU Council, CityU decided to set up the Court in 2003 following the release of the Director of Audit Report No. 40 in March 2003 which criticized the non-establishment of the Court. The then statute required that the Chancellor, i.e. CE, shall be the Chairman of the Court and shall preside at meetings of the Court. In view of the busy schedule of CE, CityU Council recommended in end 2004 that Dr Norman LEUNG Nai-pang be appointed as Pro-Chancellor of CityU so that Dr LEUNG could chair the meetings of the CityU Court in the absence of the Chancellor. Dr LEUNG was subsequently appointed by CE as Pro-Chancellor of CityU for a term of three years with effect from 1 January 2005.

36. Under the statute, the Court shall comprise, among others, 20 members nominated by the CityU Council and appointed by the Chancellor. The Court has been formally established in early 2007 with all categories of membership in place.

Resumption of Second Reading debate

37. Ir Dr Hon Raymond HO will move CSAs regarding the membership of the Council and the commencement date of the Bill. Subject to the CSAs to be moved by Ir Dr Hon Raymond HO, the Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting on 13 June 2007.

Committee Stage amendments

38. The CSAs to be moved by Ir Dr Hon Raymond HO have been agreed by the Bills Committee.

Consultation with the House Committee

39. The Bills Committee consulted the House Committee on 1 June 2007 and obtained its support for the resumption of the Second Reading debate on the Bill.

**Bills Committee on
City University of Hong Kong (Amendment) Bill 2006**

Membership list

Chairman Hon Emily LAU Wai-hing, JP

Members Ir Dr Hon Raymond HO Chung-tai, SBS, S.B. St.J, JP
Hon LEE Cheuk-yan
Hon CHEUNG Man-kwong
Dr Hon YEUNG Sum
Hon Tommy CHEUNG Yu-yan, JP
(since 10 November 2006)
Dr Hon Fernando CHEUNG Chiu-hung
Prof Hon Patrick LAU Sau-shing, SBS, JP

(Total : 8 Members)

Clerk Miss Odelia LEUNG

Legal Adviser Mr Arthur CHEUNG

Bills Committee on City University of Hong Kong (Amendment) Bill 2006

**Comparison of the membership of the Council of City University of Hong Kong
under the City University of Hong Kong Ordinance and the Bill**

City University of Hong Kong Ordinance	The Bill
– The President	– The President
– The Deputy President	– The Deputy President
– Not more than 4 Vice Presidents nominated by the President and appointed by the Council	—
– Not more than 5 Deans of faculties or such office holders in an equivalent body of the University nominated by the Senate and appointed by the Council	—
– Not more than 3 public officers appointed by the Chief Executive	—
– Not more than 18 members who are not public officers or employees of the University of whom - (i) not less than 10 have experience in commerce or industry in Hong Kong (ii) not more than 9 are appointed by the Chief Executive on the recommendation of the Council; (iii) 9 are appointed by the Chief Executive	– Not more than 15 members who are not students or employees of the University of whom - (i) not more than 8 are appointed by the Chief Executive on the recommendation of the Council (ii) 7 are appointed by the Chief Executive
– An academic member of the Senate nominated by the Senate and appointed by the Council	– An academic member of the Senate nominated by the Senate and appointed by the Council
– The Chairman of the Convocation	—
– The President of the Students' Union	– 1 student elected from among students and appointed by the Council
– 2 members of staff elected from among their number and appointed by the Council	– 1 member of staff elected from among their number and appointed by the Council
Total : 37 members (maximum)	Total : 20 members (maximum)

Bills Committee on City University of Hong Kong (Amendment) Bill 2006

Comparison of the membership of the Council of City University of Hong Kong under the City University of Hong Kong Ordinance, the Bill and the revised proposal agreed to by the Bills Committee

City University of Hong Kong Ordinance	The Bill	Revised proposal
– The President	– The President	– The President
– The Deputy President	– The Deputy President	– The Deputy President
– Not more than 4 Vice Presidents nominated by the President and appointed by the Council	—	—
– Not more than 5 Deans of faculties or such office holders in an equivalent body of the University nominated by the Senate and appointed by the Council	—	—
– Not more than 3 public officers appointed by the Chief Executive	—	—
– An academic member of the Senate nominated by the Senate and appointed by the Council	– An academic member of the Senate nominated by the Senate and appointed by the Council	– An academic member of the Senate nominated by the Senate and appointed by the Council
– 2 members of staff elected from among their number and appointed by the Council	– 1 member of staff elected from among their number and appointed by the Council	– 2 members of staff elected from among their number and appointed by the Council
– The Chairman of the Convocation	—	– The Chairman of the Convocation
– The President of the Students' Union	– 1 student elected from among students and appointed by the Council	– The President of the Students' Union
—	—	– 1 postgraduate student elected from among postgraduate students

City University of Hong Kong Ordinance	The Bill	Revised proposal
<p>– Not more than 18 members who are not public officers or employees of the University of whom -</p> <ul style="list-style-type: none">(i) not less than 10 have experience in commerce or industry in Hong Kong(ii) not more than 9 are appointed by the Chief Executive on the recommendation of the Council(iii) 9 are appointed by the Chief Executive	<p>– Not more than 15 members who are not students or employees of the University of whom -</p> <ul style="list-style-type: none">(i) not more than 8 are appointed by the Chief Executive on the recommendation of the Council(ii) 7 are appointed by the Chief Executive	<p>– not more than 15 members who are not students or employees of the University of whom -</p> <ul style="list-style-type: none">(i) not more than 8 are appointed by the Chief Executive on the recommendation of the Council(ii) 7 are appointed by the Chief Executive
<p>Total : 37 members (maximum)</p>	<p>Total : 20 members (maximum)</p>	<p>Total : 23 members (maximum)</p>