

立法會
Legislative Council

LC Paper No. CB(2)1381/10-11
(The minutes have been seen by
the Administration and
The University of Hong Kong)

Ref : CB2/BC/2/10

**Bills Committee on
University of Hong Kong (Amendment) Bill 2010**

**Minutes of the third meeting
on Wednesday, 9 February 2011, at 4:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Cyd HO Sau-lan (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Dr Hon PAN Pey-chyou
Hon Tanya CHAN
- Member attending** : Dr Hon Margaret NG
- Member absent** : Hon Starry LEE Wai-king, JP
- Public Officers attending** : Ms Amy WONG
Principal Assistant Secretary (Higher Education),
Education Bureau

Miss Joyce CHAN Nga-sze
Assistant Secretary-General (Quality Assurance),
University Grants Committee

Attendance by invitation : The University of Hong Kong

Professor TSUI Lap-chee
Vice Chancellor and President

Professor Roland T CHIN
Deputy Vice-Chancellor and Provost

Professor Johannes M M CHAN
Dean of Faculty of Law

Mr Henry WAI
Registrar

Ms Katherine MA
Director of Communications

Ms Dora YUE
Senior Assistant Registrar in the Registry

Mrs Rebecca CHING
Assistant Registrar in the Registry

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (2)6

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Judy TING
Council Secretary (2)6

Ms Carmen HO
Legislative Assistant (2)6

Action

I. Meeting with The University of Hong Kong and the Administration

(LC Paper No. CB(2)945/10-11(01) -- List of follow-up actions arising from the discussion at the second meeting on 18 January 2011

LC Paper No. CB(2)945/10-11(02) -- The University of Hong Kong's response to issues raised at the second meeting on 18 January 2011

LC Paper No. CB(2)945/10-11(03) -- Paper on the composition of the Councils of the University Grants Committee-funded institutions provided by the Education Bureau

LC Paper No. CB(2)945/10-11(04) -- Further joint submission provided by Academic Staff Association of The University of Hong Kong ("ASAHKU") and University of Hong Kong Employees Union ("HKUEU")

LC Paper No. CB(2)1066/10-11(01) -- The University of Hong Kong's response to the further joint submission provided by ASAHKU and HKUEU)

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Good cause protection

2. On the request of ASAHKU and HKUEU for giving "Teacher" status, including "good cause protection", to academic-related staff (non-professoriate staff) who, under the Proposal on the Reform of Human Resources Management Phase I, were recommended to be accorded the new title of "Lecturer I/II/III", Professor TSUI Lap-chee, Vice Chancellor and President, said that although the Council of HKU had approved the proposal in principle, the details had yet to be worked out pending the completion of the legislative amendments to the University of Hong Kong Ordinance ("the Ordinance") and the Statutes of the University of Hong Kong ("the Statutes") and the consequential release of the use of the old title of "Lecturer".

Action

3. Mr Henry WAI, Registrar of HKU, supplemented that he had informed the staff organizations concerned of HKU's intention to propose amendment to the transitional provision in the Bill to provide expressly that staff members holding the old academic titles were permitted to retain the title and status of a teacher. This would provide further reassurance to the staff members retaining the old academic titles. Although HKU had no intention to extend the application of good cause protection to academic-related staff who would be accorded the new title of "Lecturer I/II/III", the Council intended to extend to them various rights that were currently enjoyed by "Teachers", such as membership of Faculty Board and Board of Examiners, rights to nominate and vote for Department Headship/Faculty Board Chairmanship/Senate members, etc.

4. Mr CHEUNG Man-kwong requested HKU to provide written information on its discussion with the staff associations concerned and whether they considered the measures/arrangements proposed by HKU acceptable.

5. In response to Ms Audrey EU's enquiries about the relationship between "good cause protection" and "substantiation" and the criteria for granting "good cause protection" to staff members, Professor TSUI Lap-chee explained that teachers were entitled to "good cause protection" and staff members holding the title of teacher were defined in the Ordinance. Pursuant to the Human Resource Management Reform in 2004, HKU no longer offered substantiated appointment but tenure appointment to professoriate staff. Under the current system, professoriate staff were appointed initially to the grade of Assistant Professor on "3+3" fixed-term contracts and those in the Faculty of Medicine "4+4" fixed term contracts. After satisfactory completion of the requisite contracts, academic staff would be appointed with tenure, i.e. guaranteed permanent appointment, to the professoriate grade of Associate Professor, and be entitled to "good cause protection". HKU could terminate staff on tenure appointment only in the event of misconduct and non-performance. The terms and conditions of appointment were expressly set out in the offer letter. Under exceptional circumstances, professoriate staff might be offered another fixed term contract after "3+3" because of indisposition during the contract period.

6. Dr PAN Pey-chyou considered the adoption of the "3+3" model appropriate to ensure effective and prudent use of public resources. However, he had reservations about the "4+4" model for the professoriate staff in the Faculty of Medicine because medical academics were different from medical practitioners as their main duty was teaching and not research. He was concerned about the mechanism for handling grievances about

Action

appointment matters. Ir Dr Raymond HO was also concerned about differential treatment for professoriate staff in the Faculty of Medicine.

7. Professor TSUI Lap-chee explained that mentorship would be provided for under-performed professoriate staff. Professor Johannes CHAN, Dean of Faculty of Law, elaborated that new appointees were advised of the tenure-track at their appointments. During the "3+3" fixed-term contract period, the performance of the staff members was appraised annually. The staff members would normally be offered the next 3-year contract upon successful completion of the first 3-year contract except in the event of misconduct and non-performance. They would then be considered for tenure appointment in the fifth year of their appointment. A committee was tasked to oversee the renewal of contracts. If a staff member felt aggrieved at not having his contract renewed, he could resort to the established redress mechanism.

8. Mr Henry WAI said that as medical academics generally required six to seven years for acquiring specialist professional qualification, the "4+4" model was adopted. Professor Roland CHIN, Deputy Vice-Chancellor and Provost, supplemented that the best practice among the top universities worldwide was that tenure appointment was offered only to academic staff at the rank of Assistant Professor and above.

9. Responding to Dr PAN Pey-chyou's enquiry, Professor TSUI Lap-chee clarified that academic staff on fixed-term contracts were not entitled to "good cause protection". Notwithstanding this, other means were in place to safeguard the academic freedom of academic staff.

10. Mr LEE Cheuk-yan was concerned whether HKU followed the civil service appointment system by adopting the "3+3" model and whether there was resources consideration in adopting such a model. Professor TSUI Lap-chee responded that pursuant to the Higher Education Review 2002, the salaries of staff of the University Grants Committee ("UGC")-funded institutions were delinked to those of the civil service, and universities had full autonomy in deciding their appointment terms. The "3+3" model was a common practice among the universities worldwide. Professor Roland CHIN added that the contract period could be flexibly adjusted having regard to the previous experience of the staff members. Mr Henry WAI said that the current appointment system provided certainty to staff. Unlike the situation before 2003 where staff members could be offered fixed-term contracts for an indefinite period, after the adoption of the "3+3" model, staff members would either not be offered renewal of contracts after two consecutive fixed-term contracts or be offered tenure appointment.

Action

11. The Chairman raised the concern about job security of academic staff on tenure appointment in faculties with low student intake such as humanities. Professor TSUI Lap-chee said that roughly about one-third of the professoriate grade in HKU was in the rank of Assistant Professor, and the number of staff in the rank of Professor would increase with the lapse of time. Professor Roland CHIN said that while humanities faculties might not have large number of students, the teaching duties of the academic staff were heavy as they were responsible for teaching general courses, which were taken by students of other faculties. He assured members that academic staff on tenure appointment would not be terminated and faculties would not be closed because of low student intake.

Redress mechanism and retirement age

12. On the four recommendations made by the UGC for improving the grievance procedures of the UGC-funded institutions, Mr LEE Cheuk-yan was of the view that the best way forward was to set up an inter-institutional redress mechanism to enhance fairness in the process. Professor TSUI Lap-chee advised that the Federation of Hong Kong Higher Education Staff Associations was considering the grievance procedures of the UGC-funded institutions. HKU would consider its views on the matter.

13. The Chairman sought information on the availability of a redress channel for staff members who felt aggrieved at not being offered an extension of appointment after the normal retirement age. Professor TSUI Lap-chee advised that under the current practice, a staff member would be invited by his faculty or department to apply for continuation of work beyond the normal retirement age. HKU considered cases to work beyond the retirement age on the recommendations of the faculty or department of the relevant staff members.

14. Ir Dr Raymond HO said that when he was the Chairman of the Council of the City University of Hong Kong, the Council had raised the retirement age of staff members to 65 with a view to retaining experienced staff. Mr Abraham SHEK shared the view and added that the Administration should increase its allocation of resources to universities to facilitate their continued employment of experienced staff beyond retirement age. Professor TSUI Lap-chee stressed the need to consider both resources and staff performance. He pointed out that HKU was meeting its deficits from reserve at around \$500 million per annum. HKU would maintain the retirement age at 60.

Legislative Council ("LegCo") representation in HKU Council

15. Mr CHEUNG Man-kwong said that each UGC-funded institution had its unique history in its establishment of the governing body. Being the two universities with the longest history in Hong Kong, HKU and The Chinese University of Hong Kong had LegCo representation in their governing bodies. The Court of HKU had changed from its role as the supreme governing body to an advisory body with the lapse of time. As the original intention of the Ordinance was to have LegCo representation in the governing body of HKU, this legislative spirit should be maintained in effecting amendments to the Ordinance to provide expressly that the Council was HKU's governing body.

16. Mr Abraham SHEK shared Mr CHEUNG Man-kwong's view and considered it necessary to have at least one LegCo Member in the Council of HKU either by election from among LegCo Members or by appointment.

17. Professor TSUI Lap-chee pointed out that HKU's Council upheld the principle of trusteeship under which all its members served the Council as trustees on an ad personam basis. There was no membership category for any constituencies. Indeed, LegCo Members could participate in the HKU Council through the existing mechanism as detailed in HKU's paper, and this was the same as in the case of The Hong Kong Polytechnic University and the Hong Kong University of Science and Technology.

18. Mr LEE Cheuk-yan considered that all UGC-funded institutions should follow the same model of having LegCo representation in their governing bodies. The number of LegCo representatives in the Council of HKU would be subject to discussion.

19. Dr PAN Pey-chyou considered it important to uphold academic freedom. In his view, universities should be given full autonomy in handling academic and administrative affairs. Given the political affiliations of individual Members, the participation of LegCo Members in advisory bodies of universities would be more appropriate.

20. Dr Raymond HO declared that he was an alumnus of HKU. While he had yet to form a view on the issue of including LegCo representation in the Council of HKU, he considered that the representation of different stakeholders in the governing bodies of universities would enhance communication. He hoped that members could reach a consensus with HKU on the issue.

Action

21. Ms Audrey EU enquired whether a change of the composition of the Court and Council of HKU entailed amendments solely to Statutes XV and XVIII respectively. She opined that should members go for LegCo representation in HKU's Council, it was necessary to discuss the number of LegCo representatives; whether the size of HKU's Council should be changed to accommodate LegCo representatives and whether LegCo representatives in the Court should be removed.

22. Assistant Legal Adviser 1 ("ALA1") said that subject to confirmation, any change to the composition of the Court and Council of HKU necessitated amendments to Statutes XV and XVIII respectively.

23. Mr CHEUNG Man-kwong said that as pointed out in the relevant Director of Audit's Report that the size of the governing bodies of universities was in the range of 25 to 30, there was room for HKU to increase the size of its Council which had 24 members. He considered that the number of LegCo representation in the Court should be reduced should LegCo be represented in the Council.

24. Ir Dr Raymond HO said that the inclusion of LegCo Members in HKU's Council should not affect the existing representation of other stakeholders.

25. In response to members' views, Professor TSUI Lap-chee said that the functions of the Court and Council of HKU had never been changed. HKU had undertaken thorough study and staff consultation and made reference to overseas experience in its consideration of the governing structure. Any amendments to the composition of the Council would entail consequential changes.

26. Professor Johannes CHAN urged members to consider the issue from the systemic perspective. He pointed out that there was currently no membership category for any constituencies in HKU's Council. In the realization of the principles of independence and autonomy of universities, the autonomy in deciding on the composition of their governing bodies was of paramount importance. The autonomy of HKU would be called in question should it be provided in law for the representation of LegCo, which was an entity in the constitutional structure, in the Council of HKU. Except in Singapore, there were no universities worldwide which provided for a special category of members from the legislature in their governing bodies.

27. Mr Henry WAI supplemented that the Convocation, the Grant Schools Council and the Hong Kong Subsidized Secondary Schools

Action

Council which had representatives in the Council of HKU previously, were sitting on the Court of HKU only. They were no longer represented in the HKU Council after its streamlining.

28. Mr Abraham SHEK requested HKU to provide information on the legislative intent of the provision in the Ordinance of HKU for having five LegCo Members in the Court. Ms Audrey EU requested ALA1 to look for relevant information.

29. Responding to Mr LEE Cheuk-yan's enquiry about the scope of amendments to the Bill, ALA1 said that Rule 57 of the Rules of Procedure applied to proposed amendments to bills including Members' Bill, irrespective of whether the proposer was the sponsor of the bill or individual Members. Under the rule, an amendment must be relevant to the subject matter of the bill and of the clause to which it related. All proposed amendments to the Bill would be subject to the President's ruling. In considering whether a proposed amendment was within the scope of a bill, the President would, in his past rulings, take into account not only the long title of the bill but also the provisions in the bill and the information contained in the relevant LegCo Brief.

Date of next meeting

30. Members agreed that the fourth meeting would be held on Thursday, 24 February 2011, at 8:30 am.

(Post-meeting note : Upon the request of HKU and the agreement of the Chairman, the fourth meeting has been rescheduled to be held on Monday, 4 April 2011, at 4:30 pm.)

II. Any other business

31. There being no other business, the meeting ended at 6:36 pm.

Council Business Division 2
Legislative Council Secretariat
30 March 2011

**Proceedings of the third meeting of the
Bills Committee on University of Hong Kong (Amendment) Bill 2010
on Wednesday, 9 February 2011, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000823-001653	Chairman Professor TSUI Lap-chee	Professor TSUI Lap-chee's advice on consideration of The University of Hong Kong ("HKU") of the request for extending the application of "good cause protection" to academic-related staff (non-professoriate staff).	
001654-002100	Chairman Mr CHEUNG Man-kwong Mr Henry WAI	Mr CHEUNG Man-kwong's enquiry about HKU's discussion with the staff associations on ways to address their concerns. Mr Henry WAI's advice on measures to address staff associations' concerns.	HKU
002101-003054	Professor TSUI Lap-chee Professor Johannes CHAN Ms Audrey EU Professor Roland CHIN	Ms Audrey EU's enquiry about the relationship between "good cause protection" and "substantiated appointment". Elaboration by Professor TSUI Lap-chee, Professor Johannes CHAN and Professor Roland CHIN on the relationship between good cause protection and tenure and overseas practice.	
003055-003524	Chairman Dr PAN Pey-chyou Professor TSUI Lap-chee	Dr PAN Pey-chyou and the Chairman's enquiry about the entitlement of academic staff on fixed-term contract to "good cause protection" and renewal of contracts. Professor TSUI Lap-chee's explanation of the old and current appointment systems and the redress mechanism.	
003525-004240	Chairman Mr LEE Cheuk-yan Professor TSUI Lap-chee Professor Johannes CHAN Mr Henry WAI	Mr LEE Cheuk-yan's concerns about the 3+3 model and entitlement of staff members to "good cause protection" under section 12(9) of the Ordinance. Professor Johannes CHAN's clarification of section 12(10) of the Ordinance. Professor TSUI Lap-chee and Mr Henry WAI's elaboration on the operation of the "3+3" model.	

Time marker	Speaker	Subject	Action required
004240-004805	Chairman Ir Dr Raymond HO Mr Henry WAI Professor TSUI Lap-chee Professor Johannes CHAN	<p>Ir Dr Raymond HO's enquiry about the differences between "tenure" and "good cause protection" and the different contract periods for staff members in different faculties.</p> <p>Elaboration by Mr Henry WAI, Professor TSUI Lap-chee and Professor Johannes CHAN on operation of the "3+3" and "4+4" models and the reasons for adopting the two models.</p>	
004806-005715	Chairman Dr PAN Pey-chyou Professor Roland CHIN Mr Abraham SHEK	<p>Dr PAN Pey-chyou's concern about the "4+4" model in medical school.</p> <p>Professor Roland CHIN's explanation on the flexible arrangements for justified cases.</p> <p>Mr Abraham SHEK's view on the need to respect HKU in managing administrative and employment matters.</p> <p>The Chairman's enquiry about the job security of academic staff on tenure appointment in the event of low student intake.</p> <p>Professor TSUI Lap-chee's advice on the proportion of Assistant Professors to Associate Professors and Professors.</p> <p>Professor Roland CHIN's assurance that academic staff would not be terminated because of low student intake.</p>	
005716-010204	Chairman Professor TSUI Lap-chee Mr LEE Cheuk-yan	<p>Professor TSUI Lap-chee's elaboration on HKU's consideration of the four recommendations made by the University Grants Committee ("UGC") on the grievance procedures of the UGC-funded institutions.</p> <p>Mr LEE Cheuk-yan's view on the need to set up an inter-institutional redress mechanism.</p> <p>Professor TSUI Lap-chee's advice on the consideration of the matter by the Federation of Hong Kong Higher Education Staff Associations.</p>	
010205-011145	Chairman Professor TSUI Lap-chee Ir Dr Raymond HO Mr Abraham SHEK	Views of the Chairman, Ir Dr Raymond HO and Mr Abraham SHEK on retirement age and continued employment beyond retirement age.	

Time marker	Speaker	Subject	Action required
		Professor TSUI's elaboration on the procedure for extending the appointment of staff members to work beyond retirement age.	
011145-012527	Professor TSUI Lap-chee Mr CHEUNG Man-kwong Mr Abraham SHEK	Professor TSUI Lap-chee's elaboration on the current composition of HKU Court and Council. Mr CHEUNG Man-kwong's views on the historical reasons for including LegCo Members in the governing bodies of UGC-funded institutions. Mr Abraham SHEK's views on the role played by LegCo Members in the governing bodies of universities. Professor TSUI Lap-chee's emphasis on the importance of upholding the principle of trusteeship in the HKU's Council.	
012528-013557	Chairman Mr LEE Cheuk-yan ALA1 Mr CHEUNG Man-kwong	Mr LEE Cheuk-yan's view on LegCo representation in all the governing bodies of UGC-funded institutions. His and the Chairman's enquiry about the scope of amendments to the Bill. ALA1's advice on operation of Rule 57 of the Rules of Procedure.	
013558-013910	Chairman Dr PAN Pey-chyou Mr Abraham SHEK Ir Dr Raymond HO	Dr PAN's views on the need to uphold the autonomy of universities in governance. Mr Abraham SHEK's view on respect of LegCo Members of the autonomy of HKU. Ir Dr Raymond HO's view on the issue of including LegCo representation in HKU Council.	
014637-015542	Ms Audrey EU ALA1 Mr CHEUNG Man-kwong Ir Dr Raymond HO	Ms Audrey EU enquiries about legislative amendments to effect change to the composition of the Court and Council. ALA1's advice on the matter. Mr CHEUNG Man-kwong and Ir Dr Raymond HO's view that the existing representation of stakeholders in the HKU's Council should not be reduced.	ALA1

Time marker	Speaker	Subject	Action required
015543-020313	Professor TSUI Lap-chee Professor Johannes CHAN	Prof TSUI Lap-chee's advice on composition of overseas universities' governing bodies. Professor Johannes CHAN's emphasis on the importance of independence and autonomy of HKU in governance.	
020314-020531	Mr Abraham SHEK Chairman Ms Audrey EU	Mr Abraham SHEK and Ms Audrey EU request for information on the legislative intent of the provision for having five LegCo Members in the Court.	HKU
020532-020716	Mr LEE Cheuk-yan Mr Henry WAI	Mr LEE Cheuk-yan's comment on actual roles the Court and the Council as against their statutory roles. Mr Henry WAI's provision of information on the previous composition of HKU Council.	
020717-020800	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
30 March 2011