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

Background brief for the meeting on 10 December 2010

Purpose

This paper summarizes the deliberations of the Panel on Education ("the Panel") on the legislative proposals to amend the University of Hong Kong Ordinance (Cap. 1053) ("the Ordinance").

Background

Report on Higher Education in Hong Kong

2. In May 2001, the then Secretary for Education and Manpower commissioned the University Grants Committee ("UGC") to launch a comprehensive review of higher education in Hong Kong. The review covered all aspects of higher education provision, including the corporate governance of the UGC-funded universities. In March 2002, the UGC published the review report entitled "*Higher Education in Hong Kong*" ("the Report"). After consultation with the Panel and the stakeholders on the Report, the UGC submitted its final recommendations to the Secretary for Education and Manpower in September 2002. The Government accepted most of the UGC's final recommendations, and announced in November 2002 the blueprint for the further development of higher education in Hong Kong. Under the blueprint, the UGC-funded institutions were required to review their governance and management structures including the grievances and complaints mechanisms to ensure that they were "fit for the purpose". The governing bodies of the UGC-funded institutions started their reviews of the fitness for purpose of their governance and management structures in 2003.

Director of Audit Report

3. Against this background, the Audit Commission ("Audit") conducted a value for money audit on the UGC-funded institutions including their corporate governance. The findings were contained in Report No. 40 of the Director of Audit ("D of A") which was released in March 2003. As far as the University of Hong Kong ("HKU") was concerned, D of A observed that the Court of HKU, specified as the supreme governing body in the Ordinance, largely functioned as an advisory body. The Council of HKU ("the Council"), on the other hand, had much wider powers in administering the affairs of the institution other than those vested in the Ordinance. D of A recommended that the UGC should request HKU to amend the Ordinance to ensure that the statutory roles of its Council and Court reflected their actual functions.

4. D of A also observed that the overall attendance rates of external members of the Councils of the eight UGC-funded institutions for the three financial years from 2000-2001 to 2002-2003 ranged from 50% to 80%. The average attendance rates for HKU dropped from 62% in 2001-2002 to 51% in 2002-2003 (July to November 2002). D of A recommended that the UGC should advise the eight institutions to ascertain, where necessary, the reasons for the low attendance rates of external members of their Council meetings; take appropriate action to improve the attendance rate of external members at Council meetings; and recommend to the Government and the institutions that, as a matter of principle, they should not appoint those Council/Court members whose attendance at Council/Court meetings was low.

Public Accounts Committee Report

5. Pursuant to the publication of Report No. 40 of D of A, the Public Accounts Committee ("PAC") conducted public hearings on its findings. In November 2003, PAC published Report No. 40A. PAC expressed serious concern that the attendance rates of external members at meetings of the Council of HKU and some other institutions were generally low. As a result, when decisions were required to be made at meetings of the Councils, there might be over-reliance on internal members. PAC recommended that the UGC should request -

- (a) all the institutions to adopt measures to ensure that external members would constitute a majority at the Council meetings;

- (b) all the institutions to consider publishing the attendance records of the Council members and uploading the records onto their websites for the information of the public; and
- (c) that, as a matter of principle, the institutions should not re-appoint those Council and/or Court members whose attendance at Council and/or Court meetings was low.

6. PAC also expressed concern that the Court of HKU largely functioned as an advisory body, despite the Ordinance specifying it as the supreme governing body. The Council of HKU, on the other hand, had much wider powers in administering the affairs of the institution other than those vested in the Ordinance. In this connection, PAC recommended that HKU should amend the Ordinance to ensure that the statutory roles of its Council and Court reflected their actual roles.

7. HKU set up in 2003 an independent review panel ("the Review Panel") to review its governance structure. The Review Panel submitted its report entitled "Fit for the Purpose" which identified an inconsistency in the role of the Court and the Council as described in section 7 of the Ordinance and the University of Hong Kong Statutes ("the Statutes").

University of Hong Kong (Amendment) Bill 2010 ("the Bill")

8. The Bill was presented by Dr David LI to the Council on 24 November 2010. It seeks to -

- (a) remove the inconsistency between the Ordinance and the Statutes with regard to the roles and powers of the Court and the Council of HKU to the effect that the Court is to be described as the "supreme advisory body" and the Council the "supreme governing body";
- (b) replace the old academic titles of "Teachers" comprising Readers, Senior Lecturers, Lecturers and Assistant Lecturers with the new titles of Chairs, Professors, Associate Professors and Assistant Professors; and
- (c) make transitional provisions to protect the employment of teachers retaining the old academic titles.

Deliberations of the Panel

9. The Panel first discussed the proposed legislative amendments to the Ordinance at its meeting on 12 June 2008 as Dr David LI originally intended to present the Bill of 2008 version ("the 2008 Bill") to the Council before the end of the Third Legislative Council ("LegCo"). As the 2008 Bill was not presented in the Third LegCo, HKU briefed the Panel again at its meeting on 8 June 2009 although the Bill of 2009 version ("the 2009 Bill") was the same as the 2008 Bill. The major concerns of members on the 2009 Bill and related issues are summarized below.

Role of the Council and the Court

10. Members were concerned if there was any objection to the proposal to define the Court and the Council as the "supreme advisory body" and "the supreme governing body" respectively, and how the change of their respective roles would be conducive to the governance of HKU.

11. According to HKU, the 2009 Bill sought to rectify the inconsistency in the Ordinance and the Statutes about the role of the Court and the Council. It would not change their roles and functions that had remained so since the establishment of HKU a century ago. Except in some specified areas such as the power to approve the establishment of a faculty, the Court had all along assumed an advisory role in university management, whereas the Council had all along been the governing body of HKU. HKU was conducting a stock-taking exercise on the progress of implementation of the recommendations of the Review Panel, which would cover the operation of the re-structured Council.

12. Members expressed support for the proposal in the 2009 Bill to rectify the inconsistency in the Ordinance and the Statutes about the role of the Court and the Council.

Chinese names of the Council and the Court

13. Members were concerned that the Chinese names of the Council and the Court were inconsistent with those of other UGC-funded institutions. For other UGC-funded institutions, the Chinese name of their Councils was "校董會", and their Court "校務委員會". For HKU, its Council was known as "校務委員會" and its Court "校董會". To avoid confusion about their roles, members considered it necessary for HKU to amend the Chinese names of its Council and Court to bring them in line with those of

other UGC-funded institutions.

14. According to HKU, the Chinese names of its Council and Court had been in use since the establishment of HKU in 1911, and there had never been any intention of causing confusion about their roles. The Council had considered amending the Chinese names of the two bodies to reflect their respective governing and advisory roles. However, many stakeholders preferred to retain their existing Chinese names. HKU considered that their views should be respected. As the two Chinese names had been used for about a century and carried significant sentimental value to some stakeholders, any proposed changes would require extensive consultation.

LegCo representation in the Court and the Council

15. Members were all along concerned about the governance and management structure of the UGC-funded institutions. Members noted that LegCo Members only sat on the advisory body of HKU ("the Court") but not its governing body ("the Council"). Some members considered that HKU should make use of the 2009 Bill to include LegCo representation in its Council to enhance public participation in its governance.

16. HKU explained that the Review Panel recommended the size of the Council in the range of 18 to 24, with each member appointed or elected in his personal capacity and serving as a trustee instead of a delegate or representative of a particular constituency. Currently, the Council comprised the Vice-Chancellor as an ex-officio member, four teachers, two students, one staff member, two members elected by the Court, and other members who were nominated and/or appointed by the Council and/or the Chancellor. Although the Council did not have ex-officio LegCo representation, it had two members elected by the Court on which LegCo was represented.

17. Members suggested that HKU could consider adopting different approaches in having LegCo representation in its Council. For example, in the case of The Chinese University of Hong Kong, the relevant ordinance provided for the inclusion of three LegCo Members in its Council, whereas in the case of the Hong Kong University of Science and Technology, a LegCo Member was appointed as its Council member. HKU indicated that the Council was open on the appointment of LegCo Members as its members. Currently, the Council had appointed 13 external members.

Amendment to the academic titles

18. Members were concerned about the impact of the proposed change of the academic titles of "Teachers" on the employment terms and conditions of serving staff, in particular those who were employed on contract terms. Members sought information on the policy for the conversion of academic and non-academic staff on probationary terms into substantiated terms.

19. HKU explained that the 2009 Bill provided that all existing staff would enjoy the "good cause" protection in their employment with HKU. On the basis of the Human Resources Reform in 2004, HKU had adopted the American model on staff employment. Under the existing policy, all academic staff in HKU were employed initially on contract terms, and would normally be considered for substantiated employment after satisfactory completion of two three-year contracts. Previously, staff promotion was subject to the approved staff establishment as funded by the Government. After the reform, staff promotion was decided on the basis of performance. In other words, an Assistant Professor would be promoted to Associate Professor and further to Professor on the basis of his performance without regard to financial consideration. From that perspective, the career development prospect for academic staff members had been improved. The maximum number of non-academic staff for substantiated employment had been adjusted from 75% to 80% of the establishment. HKU assured members that the proposed amendments would not affect the employment terms and conditions of serving staff. For teachers not yet employed on substantiated terms with "good cause" protection, they were employed on "probationary" terms. The proposed amendments made it clear that the "probationary" employment status meant contracts for a fixed term.

20. HKU stressed that the proposed amendments to the academic titles were made after extensive consultation, and some 98% of teachers had expressed support for the new titles. The Council had assured teachers that their entitlement to "good cause" protection in employment would not be affected by the adoption or otherwise of the new academic titles. Currently, about 98% of teachers had used the new academic titles, and only 2% of teachers (20 in total number) had retained the old titles for personal reasons. The new academic titles were in line with those adopted by local and overseas institutions.

21. Members noted that the retention of old academic titles would be effected by administrative arrangement, and the transitional provision in the 2009 Bill did not expressly provide for the retention of the old academic titles.

Members considered this issue important and called on HKU to address it.

Transparency and accountability

22. Members considered that as publicly-funded bodies, the UGC-funded institutions should enhance transparency and accountability by making available the agendas for and minutes of meetings of their governing bodies for public information, except for items which involved confidential or commercially sensitive information. There was a view that as matters relating to staff appointment and terms of employment were rarely discussed at the Council meetings of the UGC-funded institutions, there was no reason for keeping confidential the discussions and papers relating to institutional management and development.

23. HKU explained that the Heads of Universities Committee and the governing bodies of the UGC-funded institutions had discussed the matter thoroughly in response to the request of the Panel in 2005. They shared the view that it was inappropriate to make available the agendas for and minutes of Council meetings for public access, as personnel as well as strategically or commercially sensitive matters were often discussed at these meetings. Nevertheless, the institutions would make public announcement on decisions and policies which were of public interest through press conferences or press releases as appropriate. HKU also advised that it was the first UGC-funded institution to conduct a review on its governance and management structure, and had adopted the recommendations of the Review Panel to restructure its Council comprising eight internal members and a majority of external members.

24. HKU advised that its Council was of the opinion that the best way to achieve the objective of enhancing public transparency was to reinforce the existing communication channels. Its Council had agreed to release in future, through the internet and after each meeting, a report summarizing all its decisions, except those on personal matters relating to individuals and plans and proposals not yet finalized, on the understanding that for the latter, the disclosure would be made at a later stage after the proposals had been finalized.

Attendance at meetings

25. Members were concerned about the non-attendance of some external members at the Council meetings of HKU. They noted that of the 11 Council meetings held during February 2007 to May 2008, some members had been absent from five or more meetings. In their view, external

members with low attendance rate at Council meetings should not be considered for reappointment.

26. HKU pointed out that its Council had set up a nominations committee to identify suitable candidates for appointment as lay members. In nominating candidates for reappointment, the committee would consider the expertise needed in the different areas to enable the Council to discharge its responsibilities effectively as well as the candidate's past performance and attendance at Council meetings. There were lay members who had not been reappointed in the past.

Relevant papers

27. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
9 December 2010

**Relevant papers on
University of Hong Kong (Amendment) Bill 2010**

Meeting	Date of meeting	Paper
Public Accounts Committee	--	Chapter 8 of the Report No. 40 of the Director of Audit Chapter 1 of the Supplemental Report of the Public Accounts Committee No. 40A Chapter IV of the Report of the Public Accounts Committee No. 43
Panel on Education	12.6.2008 (Item III)	Minutes Agenda CB(2)2281/07-08(01)
Panel on Education	9.2.2009 (Item VI)	Minutes Agenda
Panel on Education	8.6.2009 (Item IV)	Minutes Agenda
Panel on Education	6.7.2009 (Item I)	Minutes Agenda
Panel on Education	12.7.2010 (Item III)	Minutes Agenda