

10 January 2012

To: Clerk of Bills Committee
Legislative Council
Attn: Miss Meisy Kwok
Fax: 2869 6794

Written submission by:
Hans Mahncke
Senior Coordinator (Projects)
City University of Hong Kong

Bills Committee on The Hong Kong Polytechnic University (Amendment) Bill 2011

Meeting on 19 January 2012 at 4:30 pm
in Conference Room 3 of the Legislative Council Complex

Dear Bills Committee members,

Re: Sections 9(3)(c) and 11(2)(c)

Thank you for inviting members of the public to share their views on The Hong Kong Polytechnic University (Amendment) Bill 2011. I have recently had occasion to study the various ordinances which govern publicly funded universities in Hong Kong.

I am making this submission as I have concerns regarding the recommendations to amend sections 9(3)(c) and 11(2)(c) of Cap. 1075 pertaining to the question of who is to determine the terms and conditions of service of staff. The fact that I am making this submission involving Hong Kong Polytechnic University is in no way connected to my employment with City University of Hong Kong.

In paragraph 9 of the Legislative Council Brief it is stated that:

"PolyU believes that the Council should be the body to approve the policy governing the terms and conditions of service of staff members while the University's management, under the authority of its President, should determine and approve the terms and conditions of service of individual employees (...)"

There seems to be an important distinction between the term "policy governing the terms and conditions of service" and the term "terms and conditions of service" in that "policy governing

the terms and conditions of service" means that the University Council sets some indefinite guidelines and the president then sets the actual "*terms and conditions of service*".

Currently, the University Council sets the "*terms and conditions of service*". Thus, the proposed amendment would entail a significant shift of the university's powers from the University Council to the president. Therefore, in my opinion, the amendment does not merely - as asserted in the Legislative Council Brief - "clarify" existing provisions. Rather, it fundamentally alters the allocation of powers at Hong Kong Polytechnic University. The amendment, if approved, would give the president wide-ranging powers to determine employment related matters. Such conferral of wide-ranging powers on one person means that that person could provide or take away publicly funded work at his or her whim. The Legislative Council should be astute in ensuring that the laws and amendments it passes do not create potential for abuse of power or for corruption or for perceived abuse of power or perceived corruption in awarding or terminating publicly funded employment.

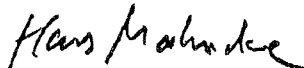
I note that at least three other universities in Hong Kong are governed by the exact same provisions relating to terms and conditions of service of staff as those which currently govern Hong Kong Polytechnic University. Thus, the fact that the respective university councils approve terms and conditions of service seems to be part of the governance model for universities in Hong Kong and there is no justification that this be changed in the case of Hong Kong Polytechnic University. Indeed, if such amendments were made, they would logically also need to be made with respect to the other universities' ordinances, specifically Cap. 1126, Cap. 1141 and Cap. 1165.

I would also like to point out that the proposed amendments seem to create a conflict with section 8(3) of Cap. 1075.

If Hong Kong Polytechnic University is genuinely concerned about clarifying sections 9(3)(c) and 11(2)(c) of Cap. 1075, they may wish to look at sections 13(4)(a) and 15(2)(a) of Cap. 1132 for a suitable alternative term. In this way, the term "*approve terms and conditions of service of persons in the employment of the University*" could be replaced with the term "*approve terms and conditions of service of any class of persons in the employment of the University*". Materially, I do not think that adding the words "*any class of*" changes the allocation of power, it merely clarifies that the Council does not have to approve every single employment contract, which, I assume, is not the case anyway, even under existing rules.

In closing, for the reasons I have articulated above, the Legislative Council should not approve the proposed amendments to sections 9(3)(c) and 11(2)(c) of The Hong Kong Polytechnic University (Amendment) Bill 2011.

Thank you for your kind attention.



Hans Mahncke