

BRIEF FOR LEGISLATIVE COUNCIL

THE UNIVERSITY OF HONG KONG ORDINANCE (CAP. 1053)

The University of Hong Kong (Amendment) Bill 2010

INTRODUCTION

1. The University of Hong Kong (the “University”) is one of the eight local universities funded by the University Grants Committee. The University was established in 1911 through the enactment of the University Ordinance, which was subsequently repealed and replaced in 1958 by the University of Hong Kong Ordinance (Cap. 1053) (the “Ordinance”). Subject to the provisions of the Ordinance, the University is governed in accordance with the provisions of the statutes (the “Statutes”). The Statutes outline matters such as the degrees the University may confer, the governing officers and panels of the University and their respective powers.

2. At the meeting of the Council and the Court of the University held on 29 November 2005 and 15 December 2006, respectively, it was agreed to clarify the role of the Court as the supreme advisory body of the University and the Council as the supreme governing body of the University.

3. At the meeting of the Council and the Court on 5 December 2006 and 15 December 2006, respectively, it was agreed new academic titles be adopted as part of the University’s Human Resource Reform so that the old titles of Reader, Senior Lecturer, Lecturer and Assistant Lecturer be replaced by new academic titles of Chair, Professor, Associate Professor and Assistant Professor.

4. To give effect to the proposed changes, the University of Hong Kong (Amendment) Bill 2010 (the “Bill”) will be introduced as a Member’s Bill into the Legislative Council (“LegCo”) by the Dr. Hon David Li Kwok-po, GBM, GBS, JP, Pro-Chancellor of the University and a Member of LegCo.

JUSTIFICATION

Roles and Powers of the University’s Court and Council

5. In 2003, the University conducted a review of its governance and management structures, which resulted in the production of a report titled “Fit for Purpose”. Fit for Purpose identified an inconsistency in the role of the Court and the Council as described in Section 7 of the Ordinance and as described in the University Statutes. Further, in reviewing the governance and management structures of the government-funded tertiary institutions in 2003, the Government Audit Commission recommended that the University Grants Committee request the University to propose appropriate amendments to the Ordinance so as to create consistency with the powers granted in the Statutes. The recommendation was endorsed by the

Public Accounts Committee of LegCo. The then Education and Manpower Bureau (“EMB”) requested that the University follow up on the audit recommendation to amend the Ordinance.

6. The Council has obtained advice from Senior Counsel that it is desirable to effect amendments to the Ordinance and the Statutes because there are inconsistencies between Section 7 and the provision of the Statutes concerning the respective powers of the Court and the Council, as well as between Section 7 of the Ordinance and the recommended or actual respective roles of the Court and the Council.

7. The amendments provide that the Court be described as the “supreme advisory body”, whilst the Council be described as the “supreme governing body” of the University.

Academic Titles

8. The Bill also provides for the amendment of the Ordinance to streamline the academic titles used by the University so that the academic titles of Teachers comprise Assistant Professor, Associate Professor, Professor and Chair.

9. The University allows staff members holding old academic titles (i.e. Readers, Senior Lecturers, Lecturers and Assistant Lecturers) to retain their titles, if they so wish. Clause 5(2) of the Bill contains the said transitional provision. The transitional provision in the Bill also ensures that staff members who decide to retain their old academic titles of Readers, Senior Lecturers, Lecturers and Assistant Lecturers continue to enjoy “good cause” protection. Clause 5 (1) of the Bill contains the said transitional provision.

Proposed Changes to the Ordinance

10. A copy of the Bill is at **Annex A**. A comparison table showing the current version of the Ordinance and the proposed changes is at **Annex B**.

CONSULTATION

11. The Court and the Council have met on more than one occasion to consider the subject and are supportive of the proposed amendments set out in the Bill.

12. During the University’s Human Resource Reform exercise, extensive consultation took place with the staff members regarding changes to the academic titles. Accordingly, the measures in the current Bill are consequential to the Human Resource Reform proposals which were introduced after consultation with staff members.

13. Several additional rounds of consultation have been carried out, including presentation of the draft legislation to the Panel on Education of the Legislative Council on 12 June 2008 and 8 June 2009. Comments from members of the Panel on Education were noted. The transitional provision has subsequently been incorporated to respond to these comments to avoid any possible doubts regarding the ability of staff members to retain their old titles.

14. No objection to the proposed amendments has been received from the Education Bureau and the University Grants Committee. On 18 May 2010, the Department of Justice issued a certificate under rule 51(2) of the Rules of Procedure of LegCo. A copy of the letter

from the Secretary for Education to the Registrar of the University dated 21 October 2010 is at **Annex C**.

IMPLICATIONS OF THE PROPOSAL

15. The letter from the Secretary for Education to the Clerk to LegCo dated 11 June 2010 states that the Bill does not relate to public expenditure, political structure, the operation of the Government, or to Government policies.

16. The proposal is in conformity with the Basic Law, including the provisions concerning human rights.

THE BILL

17. The key of provisions of the Bill in **Annex A** are as follows:

- i. **Clause 2** replaces “governing” with “advisory” when referring to the Court and replaces “executive body” with “supreme governing body” in reference to the Council. The role of the Council is clarified by stating that it may exercise all the powers and perform all the duties of the University other than those vested by the Ordinance or the Statutes in some other officers.
- ii. **Clause 3** amends the titles of the Teachers and amends the employment status to state clearly the staff who are protected by good cause.
- iii. **Clause 4** amends the Statutes to reflect the amendments to the Ordinance as a consequential amendment.
- iv. **Transitional Provision** ensures that staff members could retain their old academic titles should they wish to do so and would continue to be protected by good cause.

ENQUIRIES

18. Any enquiries about this brief can be directed to Mr. Andrew Burns at the office of Dr. HON David Li Kwok-po, GBM, GBS, JP, Member of the Legislative Council, 21st Floor, Bank of East Asia Building, 10 Des Voeux Road, Central, Hong Kong, Tel No.: 3608 8200, Fax No.: 3608 6100, or Mr. Henry Wai, Registrar, The University of Hong Kong, Pokfulam Road, Hong Kong, Tel No.: 2859 2222, Fax No.: 2858 2549.

Registrar
The University of Hong Kong
November 15, 2010

ANNEX A

A BILL

To

Amend the University of Hong Kong Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the University of Hong Kong (Amendment) Ordinance 2010.

2. Court, Council and Senate, their constitutions, powers and duties

(1) Section 7(2) of the University of Hong Kong Ordinance (Cap. 1053) is amended by repealing “governing” and substituting “advisory”.

(2) Section 7(3) is amended by repealing “executive body” and substituting “supreme governing body”.

(3) Section 7(3) is amended by repealing “it shall administer the property and manage the affairs of the University” and substituting “the Council may exercise all the powers and is to perform all the duties of the University other than those vested or imposed by this Ordinance or the statutes in some other authority of the University or in an officer”.

3. Officers and teachers, their appointment, powers, duties and emoluments

(1) Section 12(9) is amended by repealing “The teachers shall be the Professors, Readers, Lecturers, and such other persons as may be designated teachers by the statutes. The teachers shall be appointed by the Council.” and substituting “The teachers are the Chairs, Professors, Associate Professors and Assistant Professors of the University, and such other persons as may be designated as teachers by the statutes. The teachers are to be appointed by the Council on such terms as it thinks fit.”.

(2) Section 12(10)(b) is amended by repealing “or probationary” and substituting “or for a fixed term”.

4. Statutes of the University of Hong Kong

(1) Statute XII of the Statutes of the University of Hong Kong in the Schedule is amended, in paragraph 1, by repealing “the senior lecturers, the assistant lecturers,”.

(2) Statute XIX is amended, in paragraph 1, by repealing “The Council shall administer the affairs of the University other than those vested by the Ordinance” and substituting “The Council may exercise all the powers and is to perform all the duties of the University other than those vested or imposed by the Ordinance”.

(3) Statute XIX is amended by repealing paragraph 2(s) and substituting –

“(s) to do all such acts and things and perform all such duties as may be necessary for or incidental to exercising the powers or performing the duties vested or imposed on the Council by the Ordinance or the statutes.”.

(4) Statute XXVIII is amended by repealing paragraph 1(1)(b) and substituting –

“(b) the Chairs, Professors, Associate Professors, Assistant Professors, Readers, Senior Lecturers, Lecturers, Assistant Lecturers, Tutors and Demonstrators of the University;”.

5. Transitional provision

(1) The Council must not terminate the appointment of a person who was a teacher and entitled to the protection on termination of appointment described in section 12(9) of the University of Hong Kong Ordinance (Cap. 1053) immediately before the commencement of this Ordinance except where after due enquiry into the facts and after receiving the advice of the Senate on

the findings of such enquiry there exists in the opinion of the Council good cause for such termination.

(2) Any person who was a teacher holding a title of Reader, Senior Lecturer or Lecturer immediately before the commencement of this Ordinance is permitted to retain the title after the commencement of this Ordinance as long as the person remains in the same grade of employment in the University.

6. Saving

Nothing in this Ordinance shall affect or be deemed to affect the rights of the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws, or the rights of any body politic or corporate or of any other person except such as are mentioned in this Ordinance and those claiming by, from or under them.

Explanatory Memorandum

The purpose of this Bill is to amend the University of Hong Kong Ordinance (Cap. 1053) (“the Ordinance”) to remove inconsistencies between the Ordinance and the Statutes of the University of Hong Kong (“the Statutes”) with regard to the roles and powers of the Court and the Council of the University of Hong Kong (“the University”), and to give effect to the adoption of new academic titles as part of the University’s human resources reform.

2. Clause 2 amends section 7(2) and (3) of the Ordinance to remove inconsistencies between the Ordinance and the Statutes with regard to the roles and powers of the Court and the Council of the University to the effect that the Court is to be described as the “supreme advisory body” of the University and the Council as the “supreme governing body” of the University.

3. Clause 3(1) repeals the previous academic titles of “Professors” (講座教授), “Readers” (教授) and “Lecturers” (講師) and substitutes them with the new titles of “Chairs” (講座教授), “Professors” (教授), “Associate Professors” (副教授) and “Assistant Professors” (助理教授). However, teachers may, if they so

choose, retain their previous academic titles unless or until their grade of employment in the University changes (see clause 5(2)). Teachers adopting the new titles are still entitled to protection against dismissal without good cause, unless they are beyond a retiring age as determined by the Council (see section 12(10)(a) of the Ordinance) or their employment is for a fixed term or is temporary or part-time (see section 12(10)(b) of the Ordinance as amended by clause 3(2)). However, no person who has been entitled to the protection immediately before the commencement of the Bill when enacted is to be affected (see clause 5(1)).

4. Clause 4 removes reference to the old academic titles of “senior lecturers” (高級講師) and “assistant lecturers” (副講師) appearing in Statute XII of the Statutes in the Schedule to the Ordinance and expands Statute XXVIII of the Statutes to include the new academic titles. The clause also introduces consequential amendments to paragraphs 1 and 2(s) of Statute XIX of the Statutes.

5. Clause 5 is a transitional provision.

6. Clause 6 is a saving provision.

Mayer Brown JSM
Solicitors for the
University of Hong Kong

ANNEX B

Amendments to the University of Hong Kong Ordinance (Cap. 1053)

Roles and Powers of the University's Court and Council

Existing Ordinance/Statute	Proposed Ordinance/Statute
<p><u>Section 7 Court, Council and Senate, their constitutions, powers and duties</u></p> <p>(2) The Court shall, subject to the provisions of this Ordinance and the statutes, be the supreme governing body of the University.</p>	<p>(2) The Court shall, subject to the provisions of this Ordinance and the statutes, be the supreme advisory body of the University.</p>
<p>(3) The Council shall be the executive body of the University, and shall provide for the custody and use of the University seal, and subject to the provisions of this Ordinance and the statutes, it shall administer the property and manage the affairs of the University.</p>	<p>(3) The Council shall be the supreme governing body of the University, and shall provide for the custody and use of the University seal. Subject to the provisions of this Ordinance and the statutes, the Council may exercise all the powers and is to perform all the duties of the University other than those vested or imposed by this Ordinance or the statutes in some other authority of the University or in an officer.</p>
<p><u>Statute XIX Powers of the Council</u></p> <p>1. The Council shall administer the affairs of the University other than those vested by the Ordinance/or the statutes in some other authority of the University or in an officer.</p>	<p>1. The Council may exercise all the powers and is to perform all the duties of the University other than those vested or imposed by the Ordinance or the statutes in some other authority of the University or in an officer.</p>
<p>2.(s) to do all such other acts and things as may be requisite to perform any duty which the Court may delegate to the Council or to give effect to the powers conferred on the Council by the Ordinance or the statutes.</p>	<p>2.(s) to do all such acts and things and perform all such duties as may be necessary for or incidental to exercising the powers or performing the duties vested or imposed on the Council by the Ordinance or the statutes.</p>

Academic Titles

Existing Ordinance/Statute	Proposed Ordinance/Statute
<p><u>Section 12(9)</u></p> <p>The teachers shall be the Professors, Readers, Lecturers, and such other persons as may be designated teachers by the statutes. The teachers shall be appointed by the Council. The Council shall not terminate the appointment of any teacher except where after due enquiry into the facts and after receiving the advice of the Senate on the findings of such enquiry there exists in the opinion of the Council good cause for such termination.</p>	<p>12(9)(a) The teachers <i>are the Chairs, Professors, Associate Professors and Assistant Professors of the University, and such other persons</i> as may be designated as teachers by the statutes. The teachers <i>are to</i> be appointed by the Council <i>on such terms as it thinks fit</i>. The Council shall not terminate the appointment of any teacher except where after due enquiry into the facts and after receiving the advice of the Senate on the findings of such enquiry there exists in the opinion of the Council good cause for such termination.</p> <p>(Note: The purpose of the above amendments is to list the new academic titles, and to ensure that serving Teachers continue to be protected by good cause notwithstanding the amendments to the Ordinance and the Statutes.)</p>
<p><u>Section 12(10)</u></p> <p>Notwithstanding the provisions of subsections (6) and (9), any officer or teacher -</p> <p>(a) who is appointed after or continued in employment beyond a retiring age determined by the Council; or</p> <p>(b) whose employment is temporary, part-time or probationary,</p> <p>may be removed from office in accordance with the terms of his contract of service or on any other lawful grounds, without any reason for such removal being assigned.</p>	<p>Notwithstanding the provisions of subsections (6) and (9)(a), any officer or teacher -</p> <p>(a) who is appointed after or continued in employment beyond a retiring age determined by the Council; or</p> <p>(b) whose employment is temporary, part-time <i>or for a fixed term</i></p> <p>may be removed from office in accordance with the terms of his contract of service or on any other lawful grounds, without any reason for such removal being assigned.</p> <p>(Note: The purpose of the above amendment is to state clearly who is protected by good cause.)</p>

<p>Statute XII(1)</p> <p>In addition to the persons designated as such by the Ordinance, the senior lecturers, the assistant lecturers, the appointed Deans of Faculties and the Heads and Deputy Heads of the Institutes, Schools, Centres and Units and other sub-divisions of studies and learning appointed under the provisions of Statute XXV shall be teachers.</p>	<p>In addition to the persons designated as such by the Ordinance, the appointed Deans of Faculties and the Heads and Deputy Heads of the Institutes, Schools, Centres and Units and other sub-divisions of studies and learning appointed under the provisions of Statute XXV shall be teachers.</p> <p>(Note: The purpose of the above amendment is to delete reference to the old academic titles.)</p>
<p>Statute XXVIII 1(1)(b)</p> <p>the professors, readers, lecturers, tutors and demonstrators of the University.</p>	<p><i>the Chairs, Professors, Associate Professors, Assistant Professors, Readers, Senior Lecturers, Lecturers, Assistant Lecturers, Tutors and Demonstrators of the University.</i></p>
	<p><u>Transitional provision</u></p> <p><i>(1) The Council must not terminate the appointment of a person who was a teacher and entitled to the protection on termination of appointment described in section 12(9) of the University of Hong Kong Ordinance (Cap. 1053) immediately before the commencement of this Ordinance except where after due enquiry into the facts and after receiving the advice of the Senate on the findings of such enquiry there exists in the opinion of the Council good cause for such termination.</i></p> <p><i>(2) Any person who was a teacher holding a title of Reader, Senior Lecturer or Lecturer immediately before the commencement of this Ordinance is permitted to retain the title after the commencement of this Ordinance as long as the person remains in the same grade of employment in the University.</i></p>

ANNEX C



中華人民共和國香港特別行政區政府總部教育局
Education Bureau
Government Secretariat, The Government of the Hong Kong Special Administrative Region
The People's Republic of China

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21 October 2010

Mr H.W.K. Wai
Registrar
The University of Hong Kong
Pokfulam Road
Hong Kong

Dear Mr Wai,

The University of Hong Kong Ordinance (Cap. 1053)

Thank you for your letter of 19 October 2010 on the above subject.

From higher education policy angle, we have no objection to your draft Amendment Bill to -

- (a) remove the inconsistencies between the Ordinance and the Statutes with regard to the roles and powers of the Court and the Council; and
- (b) give effect to the adoption of new academic titles as part of the University's human resources reform.

In this connection, we note that the Hon David Li will introduce a Member's Bill to the Legislative Council. Please keep us informed of the development and let us know if we could be of any assistance.

Yours sincerely,

(Eric Cheng)
for Secretary for Education

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