

# 立法會

## *Legislative Council*

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**Paper for the House Committee meeting on 24 June 2011**

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

### **Purpose**

This paper reports on the deliberations of the Bills Committee on University of Hong Kong (Amendment) Bill 2010 ("the Bill").

### **Background**

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"). 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 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.

3. Against this background, the Audit Commission conducted a value for money audit on the UGC-funded institutions. 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 University of Hong Kong Ordinance (Cap. 1053) ("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. D of A recommended that UGC should request HKU to amend the Ordinance to ensure that the statutory roles of its Council and Court reflected their actual functions. The concern of D of A was echoed in Report No. 40A of the Public Accounts Committee ("PAC"). PAC recommended that HKU should amend the Ordinance to ensure that the statutory roles of its Council and Court reflected their actual roles.

4. 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").

### **The Bill**

5. The Bill is a Member's Bill sponsored by Dr Hon David LI, Pro-Chancellor of HKU. 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" of HKU;
- (b) replace the old academic titles 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.

### **The Bills Committee**

6. At the House Committee meeting on 26 November 2010, members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Cyd HO, the Bills Committee has held five meetings

and has met with HKU, the Administration, UGC, HKU Staff Association, Academic Staff Association of HKU ("ASAHKU") and HKU Students' Union. The membership of the Bills Committee is in **Appendix I**.

### **Deliberations of the Bills Committee**

7. The major concerns of the Bills Committee are in the following areas:

- (a) the roles and powers of the Court and the Council of HKU in statute and in practice;
- (b) adoption of the new academic titles and the impact on the staff members retaining the old academic titles;
- (c) good cause protection for "Teachers";
- (d) representation of Legislative Council ("LegCo") Members in the Council of HKU; and
- (e) grievances/complaints handling mechanism of HKU.

8. The deliberations of the Bills Committee on these and related issues are set out below.

### Roles and powers of the Court and the Council of HKU

9. Members note section 7(2) of the Ordinance which provides that the Court shall be the governing body of HKU. Section 7(3) stipulates that the Council shall be the executive body of HKU. However, the powers of the Court, as provided in Statute XVII, are limited to making recommendations to the Chancellor concerning the amendments to the Statutes on the proposal of the Council; considering annual accounts and any reports made by the Council; discussing any motion on general policy; and appointing life members. Conversely, the powers of the Council, as provided in Statute XIX, are manifold. These include, among others, to administer and manage the finance and assets of HKU; draft Statutes; prescribe the duties of employees of HKU; and appoint persons to adjudicate complaints from members of HKU.

10. Members agree that the roles of the Court and the Council as provided in the existing Ordinance do not reflect the reality, and generally support the proposal in the Bill for rectification of the inconsistent descriptions of the roles of the Court and the Council with regard to their powers.

### Adoption of the new academic titles

11. The Bill provides for the replacement of the old academic titles of Readers, Senior Lecturers, Lecturers and Assistant Lecturers with the new academic titles of Chairs, Professors, Associate Professors and Assistant Professors in the definition of "Teachers" under section 12(9) of the Ordinance (clause 3 of the Bill). According to HKU, as part of its human resources reforms and following the global trend, these new academic titles have been used by HKU since 2004. After the adoption of the new academic titles, staff in the category of "Teachers" may advance to the next higher rank in the professoriate titles on merits as against the availability of posts plus merits under the old academic titles. HKU staff have been consulted and supported the adoption of the new academic titles. At present, a total of over 900 academic staff are using the new academic titles, and 12 academic staff prefer to retain their old academic titles.

12. The Bill contains a transitional provision (clause 5) which provides that staff members retaining their old academic titles shall continue to enjoy the existing protection against termination of appointment under section 12(9) of the Ordinance, i.e. they shall not be terminated 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 ("good cause protection").

13. Members note the concern of ASAHKU and University of Hong Kong Employees Union ("HKUEU") that staff members who wish to retain their old academic titles shall lose their "Teacher" status and the rights currently enjoyed by "Teachers" such as the right to vote and stand for election in the Senate and the Council and to serve on Faculty Boards. Members consider it important to ensure that the proposed amendments to the Ordinance concerning academic titles would not affect the existing rights and protection enjoyed by staff members who decide to retain their old academic titles.

14. HKU has explained that it has always been the intention of the University to allow staff members who do not wish to use the new academic titles to retain their existing titles as well as their "Teacher" status. To provide further reassurance to staff members retaining the old academic titles, HKU will propose a Committee Stage amendment ("CSA") to clause 5(2) of the Bill to provide expressly that staff members holding the old academic titles are permitted to retain the title and status of a "Teacher".

### Good cause protection

15. Members note that the inclusion of the academic staff in the definition of "Teachers" under section 12(9) of the Ordinance has a direct relationship to their entitlement to good cause protection. Members have sought information on the existing ranks of academic staff who are and are not entitled to good cause protection and the criteria for granting good cause protection to staff members.

16. According to HKU, all full-time professoriate staff members holding the title of teacher as defined in the Ordinance and who are on substantiated appointment with HKU are entitled to good cause protection. Professoriate staff members include those appointed to the grade of Chairs, Professors, Associate Professors and Assistant Professors, as well as those who are holding the old academic titles of Readers, Senior Lecturers and Lecturers. Pursuant to the Human Resource Management Reform in 2004, HKU no longer offers substantiated appointment but tenure appointment to professoriate staff. Under the current system, professoriate staff are appointed initially to the grade of Assistant Professor on "3+3" fixed-term contracts and those Clinical Assistant Professors in the Faculties of Dentistry and Medicine "4+4" fixed term contracts. After satisfactory completion of the requisite contracts, academic staff will be appointed with tenure, i.e. guaranteed permanent appointment, to the professoriate grade of Associate Professor, and be entitled to good cause protection. HKU can terminate staff on tenure appointment only in the event of misconduct and non-performance.

17. Members note that when HKU conducted its Human Resource Management reform in 2004, it was recommended that academic-related staff, such as Teaching Consultants and Language Instructors, who are contributing to the teaching of classes be accorded the new title of "Lecturer I/II/III". Some members express support for the request of ASAHKU and HKUEU for giving "Teacher" status, including good cause protection, to academic-related staff who will be accorded the new title of "Lecturer I/II/III".

18. HKU has explained the duties of two different types of academic staff to members. Professoriate staff members of HKU are required to discharge the duties of teaching, research, knowledge transfer and administration whereas academic-related staff such as Language Instructors and Teaching Consultants are responsible mainly for teaching. Good cause protection affords professoriate staff due protection to ensure

freedom in their pursuit of research activities and knowledge transfer. The proposed creation of the new title of "Lecturer I/II/III" for academic-related staff is intended to streamline the staff titles currently in use and to accord a staff title to these staff members that reflect their teaching duties. These staff members are not under good cause protection at present and the University has no intention to extend the protection to them by giving them the title of "Lecturer I/II/III". HKU has also pointed out that good cause protection is not the only means to ensure academic freedom at the University. Academic freedom is a policy adopted by the University and all staff members, be they academic, academic-related or non-academic, are assured of academic freedom. According to HKU, language instructors and teaching consultants are not entitled to good cause protection worldwide.

19. HKU has also advised that while it has 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 intends to extend to them various rights that are 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. Upon further discussions with HKU, ASAHKU and HKUEU have advised the Bills Committee in writing that they have no objection to the changes in the definition of "Teachers" proposed in the Bill, on the understanding that HKU would consider granting certain rights that are currently given to "Teachers" to academic-related staff when they are given the title of "Lecturer I/II/III".

20. Members have expressed concern about possible confusion caused by the co-existence of two types of "Lecturers", i.e. the existing 12 staff who retain their old academic titles and the new Lecturers comprising Language Instructors and Teaching Consultants. HKU has clarified that the proposal for creation of a new title of "Lecturer I/II/III" will not be put into place until after all the existing staff retaining the old academic titles no longer use the title of Lecturers, hence no confusion would arise. HKU has further advised that in its subsequent discussion with the relevant parties, including the staff associations, it has been agreed that the University will initiate discussion of this arrangement within six months after the Bill is passed.

#### LegCo representation in the HKU Council

21. Under Statute XV of the Ordinance, the Court of HKU shall consist of, among others, five persons elected by LegCo Members from among

their own number. Members note that LegCo Members sit on the Court of HKU but not its Council. Some members have expressed concern that with the change of the role of the Court from being the supreme governing body to an advisory body over the years, the representation of five LegCo Members in the Court has lost its original intended purpose. They consider that HKU should uphold the original legislative intent of having the representation of LegCo in its governing body and take the opportunity of the Bill to include LegCo Members in its Council to enhance its governance and public accountability.

22. Some other members do not consider it necessary to build in a mechanism in law to provide LegCo representation in the Council of HKU, as not all UGC-funded institutions have LegCo representation in their governing bodies and given the competing claims of stakeholders to be represented in the governing bodies the membership of which is limited. There is also a view that given the political affiliations of individual Members, the participation of LegCo Members in advisory bodies of universities would be more appropriate.

23. HKU has explained that the membership composition of its Council (**Appendix II**) comprises two major categories of members, namely, elected students and staff of the University, and external members who are not students and staff of the University. There is currently no membership category for any constituencies, and all members serve the Council as trustees on an *ad personam* basis. Having regard to the membership composition of its Council and the underlying principle of trusteeship, HKU considers it inappropriate to add a membership category for a single body. According to HKU, except in Singapore, there are no universities worldwide which provide for a special category of members from the legislature in their governing bodies. As regards the councils of UGC-funded institutions, only The Chinese University of Hong Kong has statutory provision for the election of LegCo Members to its Council. The Hong Kong University of Science and Technology and the Hong Kong Polytechnic University have appointed LegCo Members to their Councils in their personal capacity. While HKU has no objection to LegCo having a role in its affairs, it has reservations about putting a mechanism in law to institutionalize the participation of LegCo Members in its governing body. LegCo Members can participate in the HKU Council through the existing mechanism under the following membership categories:

- (a) under the category of "two persons, not being students or employees, elected by the Court";

- (b) under the category of "six persons, not being students or employees of the University, appointed by the Council"; and
- (c) under the category of "seven persons, not being students or employees of the University, appointed by the Chancellor.....".

24. The Bills Committee has sought information on the legislative intent of the provision in the Ordinance for having five LegCo Members in the Court of HKU. HKU has explained that the representation of five LegCo Members in the Court has been in place since 1958 when the University Bill was passed by LegCo. In 1953, Sir Ivor Jennings and Dr D W Logan were invited to review the constitution, functions and financial requirements of the University. The Court of HKU at the time enjoyed wide powers, including the power to veto decisions made by the Council and the Senate, conferring honorary degrees, establishing teaching positions, formulating teaching and research directions, and setting up scholarships. All Executive and LegCo Members and various Government officials were then ex-officio members of the Court. It was concluded from the review that changes should be made to the powers and composition of the Court with a view to conferring the University with a greater degree of autonomy. Subsequent to the review, the University Bill was enacted by LegCo in 1958 with one of its main objects being the conferment upon the University greater autonomy in the management of its affairs. Major changes were made to the composition of the HKU Court including, inter alia, the provision of the present membership category of five members from LegCo. Also, the powers of the Court had been reduced whereas those of the Council and the Senate had been increased. The Council had since then exercised its increased powers while the Court had continued to undertake its advisory role. According to HKU, the fundamental functions of the Court and Council of HKU have not been changed since 1958.

25. Noting the worry of HKU about the impact of the inclusion of LegCo Members in its governing body on its autonomy, members point out that being representatives of the public, LegCo Members are accountable to the public and LegCo Members sitting on the governing bodies of universities will not interfere with the academic affairs of universities. They also point out that it will be beneficial to have LegCo Members sitting on the governing bodies of universities as LegCo Members can reflect the views of members of the public to the governing bodies. Having regard to HKU's reservations about putting in place a mechanism in law to institutionalize LegCo Members' participation in its Council,



some members suggest that HKU should consider establishing a convention of appointing LegCo Members to its Council and giving an undertaking in this regard. Some of these members consider it necessary to have at least one LegCo Member in the Council of HKU either by election from among their own number or by appointment, while some other members are of the view that HKU should appoint two LegCo Members elected from among themselves to its Council as this can ensure a balanced participation of Members belonging to the pro-establishment camp and pan democratic camp.

26. Members' proposal was discussed by the HKU Council. The HKU Council passed a resolution regarding the representation of LegCo Members on the Council. According to the resolution, the Council of HKU would invite one of the five LegCo Members in the Court to be a member of the Council under Statute XVIII 1(b) (i.e. "the six persons, not being students or employees of the University, appointed by the Council") on a personal basis. According to HKU, such an arrangement can enable LegCo members to participate in the affairs of HKU on the one hand, and ensure the upholding of the principle of trusteeship of the membership of its Council on the other. While the Council of HKU retains full discretion on the member to be invited from amongst the five LegCo Members for appointment to the Council, it would take into consideration the suggestions from these Members in making its decision. HKU has also advised that as LegCo Members can participate in the Council of HKU through the existing mechanism under several membership categories, there can be more than one LegCo Member sitting in its Council. Dr Hon David LI has agreed to state expressly at the Second Reading debate on the Bill the HKU Council's agreement to appoint one of the five LegCo Members sitting on the Court to the Council. Members consider the arrangement acceptable.

#### Mechanism for handling staff grievances and complaints

27. Members consider it important for the UGC-funded institutions to put in place a fair and transparent redress mechanism for handling staff grievances and complaints on appointment and other matters. They have sought information on HKU's progress in taking forward the recommendations made by UGC for improving the grievance procedures of the UGC-funded institutions.

28. HKU has advised that UGC has put forward four specific recommendations for improving the grievance procedures of the UGC-funded institutions, namely, guarding against retaliation, stipulating

time limits for handling grievances, appointment of mediators and involvement of external parties. HKU agrees to the recommendations that there should be explicit provisions in its procedures to guard against retaliation and clear practicable time limits should be set out in the handling of grievances/complaints at different stages. Regarding the appointment of mediators, HKU has advised that its current set of procedures has relied on informal resolution, first at department and/or Faculty level, then at the Pro-Vice-Chancellor level. Its existing practice of handling grievances/complaints at department/faculty level is in essence an attempt to mediate. The University has in fact used the service of a professional mediator recently. On the recommendation of involvement of external parties, the present composition of the University's Grievances Panel already allows the appointment of external parties. HKU would make the necessary changes to its grievance procedures to take forward UGC's recommendations as appropriate. According to HKU, legislative amendments are not necessary to implement such changes.

### **Committee Stage amendments**

29. In addition to the proposed CSA mentioned in paragraph 14 above, Dr Hon David LI will also move a CSA which is textual in nature. The Bills Committee agrees to the proposed CSAs to be moved by Dr Hon David LI which are set out in **Appendix III**. The Bills Committee has not proposed any CSA to the Bill.

### **Resumption of the Second Reading debate**

30. Subject to the moving of the proposed CSAs, the Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 13 July 2011.

### **Advice sought**

31. Members are invited to note the deliberations of the Bills Committee.

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

**Membership list**

**Chairman**            Hon Cyd HO Sau-lan

**Members**            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  
Hon Starry LEE Wai-king, JP  
Dr Hon PAN Pey-chyou  
Hon Tanya CHAN

(Total : 11 Members)

**Clerk**                Ms Amy YU

**Legal Adviser**    Mr Kelvin LEE

**THE UNIVERSITY OF HONG KONG**

**The Council of the University of Hong Kong**

**Membership Composition**

- 7 persons, not being students or employees of the University, appointed by the Chancellor, one of whom shall be appointed the Chairman by the Chancellor
  
- 6 persons, not being students or employees of the University, appointed by the Council
  
- 2 persons, not being students or employees of the University, elected by the Court
  
- Vice-Chancellor
  
- Treasurer
  
- 4 full-time teachers elected in accordance with regulations
  
- 1 full-time employee of the University, not being a teacher, elected in accordance with regulations
  
- 1 full-time undergraduate student elected in accordance with regulations
  
- 1 full-time postgraduate student elected in accordance with regulations

UNIVERSITY OF HONG KONG (AMENDMENT) BILL 2010

COMMITTEE STAGE

Amendments to be moved by Dr. Hon. David LI Kwok-po

<u>Clause</u>	<u>Amendment Proposed</u>
5(1)	In the English text, by deleting "protection on termination" and substituting "protection against termination".
5(2)	By inserting "and the status of a teacher" before "after the commencement of this Ordinance...".