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Panel on Education

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 12 March 2012**

Academic freedom and institutional autonomy of higher education

Purpose

This paper summarizes the deliberations of the Panel on Education ("the Panel") on issues relating to academic freedom and institutional autonomy of higher education.

Background

Legal protection of academic freedom and institutional autonomy

2. In Hong Kong, direct legal protection of academic freedom and institutional autonomy is mainly through the Basic Law ("BL"). In the governmental level, Article 136 of BL provides the Government with the autonomy to maintain its own educational system and to set its own policies. In the institutional level, Article 137 of BL provides that educational institutions of all kinds may retain their autonomy and enjoy academic freedom. In the individual level, Article 34 of BL states that Hong Kong residents shall have freedom to engage in academic research, literary and artistic creation, and other cultural activities. Furthermore, Article 27 of BL provides that Hong Kong residents shall have freedom of speech, of the press and of publication, etc. BL aside, there is no reference to academic freedom in other laws of the Hong Kong Special Administrative Region.

3. According to the Administration, academic freedom is an important social value treasured by Hong Kong and is a cornerstone of the higher education sector. The Administration is vigilant in upholding academic freedom and institutional autonomy, as well as ensuring a free academic atmosphere, in strict

accordance with BL, so that academics can pursue their scholarly activities in accordance with their own will and aptitude. The Notes of Procedures of the University Grants Committee ("UGC") set out the five main areas of institutional autonomy, namely selection of staff; selection of students; curricula and academic standards; acceptance of research programmes; and allocation of funds within the institutions.

UGC-funded institutions

4. At present, there are eight institutions of higher education funded by UGC, namely City University of Hong Kong, Hong Kong Baptist University, Lingnan University, The Chinese University of Hong Kong, The Hong Kong Institute of Education ("HKIED"), The Hong Kong Polytechnic University ("PolyU"), The Hong Kong University of Science and Technology, and The University of Hong Kong ("HKU"). Each of these institutions is governed by a separate piece of ordinance and has a council as the supreme governing body. The Chief Executive of the Hong Kong Special Administrative Region ("CE") is the Chancellor of the eight institutions, who also appoints the chairman of the respective councils. The number of council members appointed by the Administration varies among institutions.

Members' concerns

5. The Panel discussed the alleged Government interference with academic freedom and autonomy of HKIED at the meeting on 28 February 2007. It also invited deputations to give views on the subject of academic freedom and institutional autonomy at the meeting on 13 April 2007. At the request of the Panel, the Research Division of the Legislative Council ("LegCo") conducted a research on academic freedom and institutional autonomy of higher education in overseas places and Hong Kong. The research report entitled "Academic freedom and institutional autonomy of higher education in the United Kingdom, New Zealand and Hong Kong" (LC Paper No. RP01/07-08) was issued to members in November 2007.

6. Members had also raised concern on issues relating to academic freedom and institutional autonomy at a number of Panel meetings in the context of the discussions on the recurrent funding for and redress mechanism of UGC-funded institutions. Members' major views and concerns are summarized in the following paragraphs.

Governance of UGC-funded institutions

7. Members expressed concern that institutional autonomy might be adversely affected as the Government appointed a significant number of members to the councils of the UGC-funded institutions. Such appointments provided a ready opportunity for the Administration to interfere with the internal affairs of the institutions. To safeguard institutional autonomy, some members considered that council members should be drawn from a wide sector of the community including LegCo, alumni and school sponsoring bodies, etc. Members echoed the view of some deputations that the Administration should legislate to implement the relevant provisions of BL to protect academic freedom and institutional autonomy. It should also set up a task force to conduct a review on ways to protect and enhance academic freedom and institutional autonomy and a Human Rights Commission with powers to investigate infringement of academic freedom and institutional autonomy.

8. The Administration explained that UGC-funded institutions were autonomous bodies governed by their respective ordinances. Due to historical and other reasons such as the different philosophy, religion, culture and circumstances of individual institutions, the ordinances of the eight UGC-funded institutions, including the provisions setting out the composition of the councils, did vary. Moreover, as the duties and responsibilities of the council of an institution were primarily concerned with the operations of the institution itself, the institution should be in the best position to decide on the most appropriate composition of its council. The Administration also advised that members appointed by CE were usually lay members who came from a wide spectrum of the community, including but not limited to LegCo Members, the business and industry community, the school sector, professional bodies, community leaders, etc. Pursuant to the recommendations of the Higher Education Review conducted by UGC in March 2002, UGC-funded institutions had reviewed their own governance and management structures to ensure that they were suitable for modern day needs.

9. Noting that some local higher education institutions were running schools in the Mainland in collaboration with their Mainland counterparts, some members expressed concern as to whether academic freedom of local institutions would be hampered by such co-operation, given the differences in the education system in Hong Kong and the Mainland.

Role, functions and composition of UGC

10. Members were of the view that UGC should act as a "buffer" between institutions and the Government, safeguarding academic freedom and

institutional autonomy on the one hand and ensuring value for money for taxpayers on the other. Members were concerned that UGC had lost its autonomy in allocation of resources to higher education and its role had changed from a middleman to an interfering regulator under the influence of the Education Bureau ("EDB").

11. According to the Administration, UGC's main function was to offer impartial and expert advice to the Government on the funding and development of higher education in Hong Kong, and to provide assurance to the Government and the community on the standards and cost-effectiveness of the operations and activities of UGC-funded institutions. Specifically, UGC made grant recommendations having regard to the overall student number targets and the Academic Development Proposals submitted by the institutions. In conducting the above activities, UGC sought to preserve institutional autonomy and academic freedom taking into account appropriate financial and public accountability.

12. As regards the composition of UGC, members were concerned that UGC's members tended to share the beliefs and ideals of the Administration as all UGC members were appointed by CE. Both members and deputations considered this arrangement inappropriate. To enhance the independence of UGC, it had been suggested that UGC members, including ex-officio members, to be appointed by CE should not be more than 50% of its total membership.

13. The Administration advised that all members of UGC were appointed by CE in their personal capacity and based on the individuals' merits, taking into account their expertise and experience, and their likely contribution to the higher education sector in Hong Kong in terms of local and international networking and professional input. The size of UGC was flexible, but traditionally had been kept to around 20-25 members, with about half of the membership from outside Hong Kong to ensure that there was a right mix of local and overseas expertise.

14. The motion on "comprehensively reviewing the role and functions of the UGC" was passed at the Council meeting of 18 March 2009. In its progress report on the motion, the Administration informed that UGC had embarked on the Higher Education Review 2010 aiming to examine, among others, the role of UGC. In its Review Report "Aspirations for the Higher Education System in Hong Kong", UGC concluded that the current arrangements remained appropriate and that it would not make sense significantly to change the structure or functions of UGC. According to UGC, during its consultation with stakeholders in the review, it had heard the view that UGC played a useful role as an intermediary between its funded institutions and the Government, but stakeholders also wished that UGC would focus more on macro and strategic issues.

Funding and research grants for UGC-funded institutions

15. Another concern of members was that the Government could interfere with academic freedom and institutional autonomy through funding allocations by UGC. Members were concerned that for the purpose of enhancing the chance of publication of research in international journals and applications for research grants, institutions often focused on international issues rather than local issues, hence affecting academic freedom. There was also a view among some deputations that the inclusion of a performance and role-related element in the recurrent grants to UGC-funded institutions had affected institutional autonomy, as this element was closely related to the performance of the role of the institutions as delineated by UGC. During the discussion on the Report of the Higher Education Review 2010, some members expressed concern about UGC interfering with the autonomy of institutions through the funding allocation mechanism such as the competitive allocation of First-Year-First-Degree places.

16. According to the Administration, the level of recurrent grants for the UGC sector was primarily based on student number targets as submitted to UGC by individual institutions by means of Academic Development Proposals. UGC then assessed the funds required, using its funding methodology, and submitted its recurrent grant recommendations to the Government. Once the level of recurrent grants had been approved by the CE in Council and subsequently by the Finance Committee of LegCo, UGC would allocate the recurrent grants among its funded institutions. UGC's funding methodology provided an assessment of the resources required to meet the teaching and research targets of each institution, and included an element of funding specifically related to the institutions' performance in research. Once allocations were approved, institutions had the freedom and responsibility to determine the best use of their resources.

17. According to UGC, it was not prejudiced against research on local issues. It pointed out that in the 2006 Research Assessment Exercise ("RAE"), when examining research output items of a local nature, UGC advised its RAE panel members to assess whether the item represented a contribution to the work of the international research community in terms of its intellectual content, as well as rigour of process and methodology, instead of whether the nature of the item was international or local.

Employment of staff of UGC-funded institutions

18. Members shared the views of deputations that employment of university staff on tenure or substantiated terms was vital for academic freedom. Such

employment terms would allay the concern of academics about possible jeopardy to their job for expression of dissenting voices. They noted that with the deregulation of university salaries in July 2003, new remuneration policies were implemented in the institutions. Members were concerned that employment of staff on contract terms and award of salary increments on the basis of performance assessment created uncertainty and anxiety among staff and had adverse impact on academic freedom.

19. The Administration responded that to provide UGC-funded institutions with maximum flexibility in determining the remuneration packages for their staff to suit individual circumstances, the linkage between various salary scales of the staff of the institutions and civil service pay had been removed with effect from 1 July 2003. Since then, institutions were free to determine the appropriate remuneration packages for their own staff. As staff recruitment and remuneration matters fell squarely within the autonomy of institutions, the Government would not interfere with the internal affairs of individual institutions. UGC did not subscribe to the view that having different terms of appointment of staff was a factor affecting academic freedom, pointing out that many excellent universities around the world had a mixture of academic staff on substantiated and non-substantiated terms.

Redress mechanism of UGC-funded institutions

20. Members had all along been concerned about the effectiveness of the redress mechanism of individual institutions to resolve complaints lodged by staff. Members had called for the establishment of an independent inter-institutional redress mechanism.

21. According to the Administration, all UGC-funded institutions were separate legal entities and had established appeal and grievances mechanism in place that were tailored to the particular circumstances of individual institutions. Establishment of an independent inter-institutional redress mechanism would undermine institutional autonomy in handling staff matters and complaints having regard to their own policies, practices and individual circumstances.

22. In September 2009, UGC conducted a research on the grievance procedures of 10 overseas institutions and the UGC-funded institutions. Based on the research findings, UGC developed the best practice guidelines for consideration by UGC-funded institutions. The four main recommendations were (a) appointment of mediators; (b) stipulating the time limits for handling grievances; (c) guarding against retaliation; and (d) involvement of external parties in the final level of appeal. According to information provided by UGC in July 2011, a number of institutions had already completed the reviews of their grievance procedures and had incorporated UGC's four specific

recommendations; while three institutions (i.e. HKIEd, PolyU and HKU) were revising their procedures along the lines suggested in UGC's recommendations. UGC would continue to monitor the progress of the institutions in improving their grievance/complaint handling procedures.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
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Appendix

Relevant papers on Academic freedom and institutional autonomy of higher education

Meeting	Date of meeting	Paper
Panel on Education	28.2.2007	<u>Agenda</u> <u>Verbatim record of the proceedings</u>
Panel on Education	13.4.2007	<u>Agenda</u> <u>Verbatim record of the proceedings</u>
Panel on Education	14.5.2007 (Item VI)	<u>Agenda</u> <u>Minutes</u>
Panel on Education	11.6.2007 (Item VII)	<u>Agenda</u> <u>Minutes</u> <u>CB(2)2071/06-07(06)</u> <u>CB(2)2357/06-07(04)</u> <u>CB(2)2357/06-07(05)</u>
Panel on Education	12.11.2007 (Item VIII)	<u>Agenda</u> <u>Minutes</u> <u>RP01/07-08</u> <u>CB(2)2668/07-08(01)</u> <u>CB(2)186/08-09(01)</u>
Council	18.3.2009	<u>Motion on "Comprehensively reviewing the role and functions of the University Grants Committee"</u>
Panel on Education	11.1.2010 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Panel on Education	14.6.2010 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Panel on Education	12.7.2010 (Item III)	<u>Agenda</u> <u>Minutes</u>
Panel on Education	14.11.2011 (Item V)	<u>Agenda</u> <u>Minutes</u>

Council	18.1.2012	[Question 5] Asked by : Hon Fred LI Wah-ming <u>Academic freedom in Hong Kong</u> <u>Reply</u> <u>Hansard (English) (page 59 - 70)</u>
Council	22.2.2012	[Question 5] Asked by : Hon LEE Wing-tat <u>Surveys on the popularity of the 2012 Chief Executive potential candidates conducted by the Hong Kong Baptist University</u> <u>Reply</u> <u>Handsard (Floor) (pages 47 - 55)</u>

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