

Superannuation Schemes of
UGC-funded Institutions

- Employers' Responsibilities and
Power to Make Changes

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Purpose

This paper, prepared at the request of the Legislative Council Panel on Education, is supplementary to the one entitled "Superannuation Schemes of UGC-funded Institutions", presented to the Panel on 7 June 1995. It examines in greater detail employers' responsibilities and power to make changes in the superannuation schemes of the institutions funded by the University Grants Committee (UGC). These institutions include the University of Hong Kong (HKU), Chinese University of Hong Kong (CUHK), Hong Kong Polytechnic University (PolyU), Hong Kong Baptist University, City University of Hong Kong (CityU), Hong Kong University of Science and Technology (HKUST) and Lingnan College (LC).

2. Where references to the CUHK and PolyU schemes are made, they refer to the situation prior to the scheme amendments made in April 1995.

Governing documents

3. All of the schemes were established under trust, by a Deed Poll made by the Board of the University in the case of PolyU, and, for the other six institutions, by trust deeds between the universities' councils or boards and the trustees.

4. The rights and responsibilities of the universities vis-à-vis members under the schemes are stipulated in the relevant Trust Deeds or Deed Poll and in the Regulations or Rules of the superannuation schemes/funds. Members of the scheme may be provided with a member's handbook, which usually contains a statement that where its contents differ from the trust deed and rules/regulations, the latter documents shall prevail; or they may be given a copy of the trust deed and rules/regulations.

5. Relevant provisions of the schemes of the seven institutions are summarised in Appendix I and discussed below.

Benefit calculations

6. All the seven institutions operate defined benefit schemes. The basic formula for the calculation of benefits (i.e. Benefits = Factor x Final Monthly Salary x Years of Scheme Service), together with the applicable factor value(s) are stated in the scheme regulations or rules.

Employer's contribution

7. For all seven institutions, the employer's obligatory contribution is stated as fifteen per cent of the salary of members in the trust deed or rules/regulations.

8. It should be noted that UGC grants are normally disbursed to the institutions as block grants, and the institutions have the freedom and responsibility for deciding in detail on how the resources are to be used. The UGC has made clear to the institutions, however, that public funding support for employer's contributions towards their superannuation schemes should not exceed 15% of average salaries.

Employer's guarantee of benefits/funding of deficiencies

9. In the schemes of HKU and CUHK, members' benefits are referred to as "Guaranteed Benefits", implying that benefits calculated based on the benefit formula are guaranteed by the universities.

10. The schemes of HKBU and LC provide that, if an actuarial valuation should disclose a material deficiency or anticipated deficiency in the scheme, the institution shall, having regard to the advice of the actuary, either make up the deficiency or increase its future contribution rate.

11. Also, as part of their application to register under ORSO, the two institutions have given their undertaking as employer to contribute as recommended by the actuary in order to meet ORSO requirements for solvency and adequacy. The institutions will have to provide a new undertaking each time the actuary issues a full or qualified certificate in line with ORSO requirements.

12. CityU and HKUST have also given their undertaking upon application to register under ORSO.

Amendment of schemes

13. There are provisions for the schemes to be amended, at the discretion of the university in the cases of CUHK, PolyU, CityU, HKBU and LC, by the University Council and Trustees acting jointly in HKU's case, and by the Trustees with the University's consent for HKUST.

14. The trust deeds and scheme regulations contain terms that protect members' rights when the scheme is amended. Consent by at least a majority, and in some cases 90 or 100 per cent of members, is required for alterations of the scheme that affect members' *vested benefits* and *accrued rights* (in the cases of CityU, HKBU and HKUST), *antecedent rights* (in the cases of PolyU, HKBU and LC), or *rights* (in the cases of HKU and CUHK).

15. The term *antecedent rights* or *rights* is not defined in the scheme documents concerned. In the context in which the term appears, it is capable of a broad interpretation and would seem to mean simply all rights existing at the material time. It could therefore include any accrued rights, right to vested

benefits or any other right (whether substantive or procedural) enjoyed by a member at the point of time when a change is proposed to be made to the regulations of a scheme.

Termination of schemes

16. The governing documents provide that the schemes can be terminated by the universities. For HKU, CUHK, PolyU and CityU, termination is solely at the discretion of the university. For HKBU, HKUST and LC, the institution can dissolve the scheme if it considers that the scheme no longer fulfils its purpose. HKUST can also terminate its scheme if it believes that it is unable to make further contributions.

17. Except for HKUST and LC, the decision to terminate the scheme is followed by a period of notice, after which contributions shall cease. The notice period is six months for HKU, CUHK, PolyU and HKBU, and one month for CityU.

Funding upon termination of the scheme

18. For HKU, upon termination of the scheme, the Trustees may require the university to make good any deficiency between the scheme's assets and what the actuary certifies to be the value of the Guaranteed Benefits of all members. Similarly, for HKBU and LC, if the scheme's assets are not sufficient to pay members' benefits, the institutions shall make up the deficiency.

19. The trust deeds of CityU and HKUST provide that, should such a deficiency occur upon termination of the scheme, members' benefits shall be reduced proportionately. There is no such provision for CUHK and PolyU.

Concluding remarks

20. The terms and conditions of the superannuation schemes of the UGC-funded institutions are clearly stipulated in the trust deeds and scheme rules or regulations.

21. Where there is a need to make amendments or to terminate a scheme, the employers may do so but only with the necessary consent of the scheme members and by giving the requisite notice to members respectively.

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Selected Provisions of the Staff Superannuation Schemes of UGC-funded Institutions

Institution	HKU	CUHK*	PolyU*	CityU	HKBU	HKUST	LC
Governing documents of scheme	Trust Deed ("T.D.") and Rules	Trust Deed; Scheme Regulations	Deed Poll ("D.P."); Fund Regulations	Trust Deed ("T.D.") and Rules	Deed of Trust ("D.T.") and Rules	Trust Deed ("T.D.") and Rules	Deed of Trust ("D.T.") and Rules
Prescribed contribution by employer	15% of members' salary [T.D. 10.01, Rule 3.3.]	15% of members' salary [Reg. 4.2]	15% of members' salary [D.P. 7(b). Reg. 8]	15% of members' salary [Rule 3(b)]	15% of members' salary [Rule 3.2(a)]	15% of members' salary [Rule 4(b)]	15% of members' salary [Rule 3.2]
Reference to benefit formula and multiplication factor	Rule 5.2	Reg. 7.2	Reg. 15.3 (a), (b)	Rule 5(a), (f)	Appendix A-D to Rules	Rule 6	Rule 4
Guarantee of final salary benefits	Benefits referred to as "Guaranteed Benefits" [Rule 5.2]	Benefits referred to as "Guaranteed Benefits" [Reg. 2]	-	-	-	-	-
Funding of deficiency arising	-	-	-	In case of deficiency, the University may amend scheme to increase its contribution rate and/or reduce members' prospective benefits [T.D. 14(d)]	University to make up deficiency or increase its contribution rate as per actuary's advice [D.T. 14.4]	University shall amend scheme to increase its &/or members' contributions, &/or make special contribution, &/or reduce benefits, provided vested and accrued benefits not reduced [T.D. 16(d)]	University to make up deficiency or increase its contribution rate as per actuary's advice [D.T. 14.4]

* The information here relates to the schemes of CUHK and PolyU before changes to those schemes took effect on 1.4.1995.

Selected Provisions of the Staff Superannuation Schemes of UGC-funded Institutions

Institution	HKU	CUHK*	PolyU*	CityU	HKBU	HKUST	LC
Employer's undertaking for application to register under ORSO	-	-	-	University gave employer's undertaking to contribute as recommended by actuary.	University gave employer's undertaking to contribute as recommended by actuary.	University gave employer's undertaking to contribute as recommended by actuary.	University gave employer's undertaking to contribute as recommended by actuary.
General covenant to comply with ORSO	-	-	-	-	University to comply as employer [D.T. 8]	University to comply as employer [T.D. 5(b)]	-
Authority to amend scheme	Trustees and Council jointly [T.D. 13.01]	University at its discretion [Reg. 16]	University at its discretion [D.P. 8, Reg. 28]	University at its discretion. [T.D. 15]	University at its discretion [D.T. 15.1]	Trustees with University's consent [T.D. 14]	University at its discretion [D.T. 15.1]
Preservation of members' rights upon amendment	Members' majority consent required where their rights would be diminished [T.D. 13.01]	Members' majority consent required where their rights would be diminished [Reg. 16]	Members' consent required if their antecedent rights are affected [D.P. 8, Reg. 28]	Consent of 90% of members required to alter accrued rights, and 100% to alter vested benefits [T.D. 15.B(i)]	Members' written consent required to alter antecedent rights, accrued rights or vested benefits [D.T. 15.1(c), (i)]	Consent of 90% of members if accrued rights or vested benefits diminished by alteration [T.D. 14 (i)]	Members' written consent required if their antecedent rights are affected [D.T. 15.1(c)]
Authority to terminate scheme	University giving 6 months' notice (or less if Trustees accept [T.D. 10.03, Rule 12.1])	University giving 6 months' notice [Reg. 14.1]	University giving 6 months' notice [D.P. 11, Reg. 18]	University giving one month's notice [T.D. 16]	University giving 6 months' notice [D.T. 17, 18]	University at its discretion [T.D. 12]	University at its discretion [D.T. 17(b)]
Funding upon termination of scheme	Trustees may require University to make good any deficiency. [Rule 12.3]	After 6 months' notice, contributions shall cease. [Reg. 14.1, 14.2]	After 6 months' notice, contributions shall cease. [Reg. 18]	In case of deficiency, benefits shall be reduced proportionately. [T.D. 17(a)(v)B]	University shall make up any deficiency. [D.T. 19.2]	In case of deficiency, benefits shall be reduced proportionately [T.D. 12(b)(B)]	University shall make up any deficiency. [D.T. 18.2]