

Legislative Council

LC Paper No. CB(2)1738/98-99

(These minutes have been
seen by the Administration)

Ref : CB2/SS/3/98

Subcommittee on Statutes of the University of Hong Kong (Amendment) Statutes 1998

Minutes of Meeting held on Thursday, 24 September 1998 at 2:15 pm in Conference Room B of the Legislative Council Building

- Members Present** : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon SZETO Wah
- Members Absent** : Hon CHEUNG Man-kwong
Hon YEUNG Yiu-chung
- Public Officers Attending** : Mr Nigel J FRENCH, JP
Secretary General, University Grants Committee
- Attendance by Invitation** : The University of Hong Kong

Professor Y K CHEUNG
Acting Deputy Vice-Chancellor

Professor R T T YOUNG
Acting Pro-Vice-Chancellor

Mr H W K WAI
Deputy Registrar
- Clerk in** : Mrs Constance LI

Attendance Chief Assistant Secretary (2) 2

Staff in Attendance : Miss Anita HO
Assistant Legal Adviser 2

Mr Stanley MA
Senior Assistant Secretary (2) 6

The Chairman welcomed representatives of the University of Hong Kong (HKU) to the meeting.

I. Meeting with the University of Hong Kong
[LC Paper No. CB(2)334/98-99]

The method of selection of Faculty Deans

2. The Chairman informed members that the reply from HKU received on 23 September 1998 had been circulated to members vide LC Paper No. CB(2)334/98-99. It was noted that the Senate, Council and Court of HKU had indicated no objection to an amendment to Amendment Statute IX(1) modelled on the Subcommittee's proposal at the meeting on 11 September 1998. The Chairman said that members had carefully considered the amended version and were of the view that the proposed amendment would require refinement in order to reflect accurately the intention and the existing practice of HKU.

3. The Acting Deputy Vice-Chancellor of HKU enquired about the reasons of members' dissatisfaction with the proposed amendments. The Chairman explained that the Subcommittee's main concern was that the drafting of the Statute should clearly reflect that the recommendation on selection of Faculty Deans should originate from Boards of Faculties, while the Senate and the Council were only the institutional authorities to endorse and approve the recommendation. The use of a conjunction word "and" between "the Senate" and "the Board of Faculty concerned" might give the impression that the recommendation was to be made by the Senate in the first place, and the relevant Board of Faculty would then consider whether to agree or disagree with the Senate's recommendation. Mr Martin LEE commented that even if the recommendation was to be made jointly by the Senate and the Faculty Board concerned, the Senate could still exert pressure on the Faculty Board, and this would adversely affect the autonomy of the Faculty Board.

4. The Chairman said that to address members' concern, he had drafted two new versions (Appendix I) before the meeting to make textual amendments to the Statute. The revised versions were then tabled at the meeting. Mr Martin LEE said that the point at issue was that the recommendation on the method of selecting a Faculty Dean must first come from the concerned Faculty Board before it was passed to the Senate and Council respectively for endorsement and approval. He stated that Members of the Democratic Party would prefer Alternative A in Appendix I as this resembled more with the previous practice of HKU. As regards Alternative B in Appendix I, the steps in making the recommendation and decision were also quite clear and the version was also acceptable to the Democratic Party.

5. Representatives of HKU clarified that the Faculty Boards had all along enjoyed autonomy in selecting their Deans and there was no intention to undermine their independence. However, Alternative A would involve more substantive amendments to the new Statutes and would need further consultation with the Senate, Council and Court of HKU. Representatives of HKU said that they were inclined to adopt Alternative B which was more in line with the intention of HKU, and that only slight textual amendment was involved. Moreover, given the time limit for the scrutiny of the Statutes of the University of Hong Kong (Amendment) Statutes 1998, it would not be possible for HKU to complete the necessary consultation process for Alternative A before the deadline.

6. In response to the Chairman, Assistant Legal Adviser 2 (ALA2) advised that the version proposed in HKU's letter dated 22 September 1998 would require refinement to reflect members' concern, and that Alternative B proposed by the Chairman was clearer in meaning.

Clerk 7. In view of the fact that the Subcommittee now proposed a new version for Statute IX(1) subsequent to HKU's letter of 22 September 1998, representatives of HKU requested the Subcommittee to provide a letter to HKU explaining the concerns of members and the rationale of the proposed amendments, so that the Senate, the Council and the Court of HKU could be adequately briefed on the background when considering the Subcommittee's further amendments. Deputy Registrar of HKU also pointed out that they would need time to arrange gazetting of the proposed amendment after the Senate, the Council and the Court had agreed to the revised version proposed by the Subcommittee.

8. Considering that representatives of HKU had undertaken at the meeting to make their best endeavours to seek the agreement of the Senate, the Council and the Court of HKU to the Subcommittee's proposed revisions to Amendment Statute IX(1) as given in Alternative B in Appendix I, Mr Martin LEE considered that the Subcommittee should seek

HKU

extension of the scrutiny period by one week pending HKU's confirmation of its acceptance of the revision. Mr SZETO Wah added that the Chinese version of the Statute in question would also require amendment. In this connection, ALA2 advised that HKU could clear the draft amendments with the Department of Justice and herself before circulating the revised version to the Senate/Council/Court of HKU. Responding to the Chairman, ALA2 provided the Chinese translations adopted by the Administration for the phrase "subject to the decision of the Council". She also explained the difference in meaning between the words "approval" and "decision". Representatives of the HKU considered that the word "approval" was more appropriate in reflecting the purpose of HKU's amendment.

(Post-meeting note : The HKU has provided the finalised English version of the proposed amendment based on legal advice (Appendix II).)

9. At the invitation of the Chairman, ALA2 explained to representatives of HKU the legislative steps for making amendments to the HKU Amendment Statutes.

Way forward

Chairman

10. In order to allow time for the University approval process, members agreed that the Chairman should move a motion in the Legislative Council to extend the scrutiny period of the Amendment Statutes to the Council meeting on 14 October 1998, in accordance with Section 34(4) of the Interpretation and General Clauses Ordinance (Cap.1). In view of the time constraint, the Chairman said that he would initially give notice to move an amendment to the HKU Amendment Statutes based on the version proposed in HKU's letter dated 22 September 1998. If a positive response was received from HKU before 14 October 1998 on the revised amendment as agreed at this meeting, the Chairman would withdraw his original notice for amendment based on the version of 22 September 1998, and would instead seek the President's approval to waive the notice for moving amendment based on the new version (Alternative B). The Clerk to the Subcommittee would write to the HKU to confirm the proposed amendment and the legislative arrangements as agreed at the meeting.

Clerk

(Post-meeting note : The Clerk to the Subcommittee had faxed a letter to the Acting Registrar of the Hong Kong University on 25 September 1998 to confirm the amendment and legislative arrangements.)

11. Members also agreed that the Chairman should make a verbal report on the deliberations of the Subcommittee to the House Committee at its

Chairman meeting on 25 September 1998. The Chairman would explain to the House Committee the reason for an amendment to the HKU Amendment Statutes and the arrangements in paragraph 10.

(Post-meeting note : HKU had confirmed on 12 October 1998 its acceptance of the new version at Appendix II. The Chairman made a verbal report to the House Committee on 25 September 1998 and a written report was circulated to Members subsequently.)

12. The meeting ended at 3:20 pm.

Legislative Council Secretariat
19 April 1999

Alternative amendments to Statutes IX(1) proposed by
Hon Andrew WONG, Wang-fat, JP
at the Subcommittee meeting on 24 September 1998

(Alternative A)

"The Dean of each Faculty shall:

- (a) be elected, for a period of three years, by members of the Board of the Faculty, from among the teachers in the Faculty, or
- (b) subject to the decision of the Council, on the recommendation of the Board of Faculty concerned and endorsed by the Senate, be appointed by the Council, for such period as the Council shall determine.

A Dean shall be eligible for re-election or re-appointment."

(Alternative B)

"Subject to the decision of the Council, on the recommendation of the Board of Faculty concerned and endorsed by the Senate, the Dean of each Faculty shall either

- (a) be elected, for a period of three years, by the members of the Board of the Faculty, from among the teachers in the Faculty; or
- (b) be appointed by the Council, for such period as the Council shall determine.

A Dean shall be eligible for re-election or re-appointment."

Finalised version of amendment to Statute IX(1) by HKU

"Subject to the approval of the Council, on the recommendation of the relevant Board of Faculty and endorsed by the Senate, the Dean of each Faculty shall either be

- (a) elected, for a period of three years, by the members of the relevant Board of the Faculty, from among the teachers in the Faculty; or
- (b) appointed by the Council, for such period as the Council shall determine.

A Dean shall be eligible for re-election or re-ppointment."