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Paper for the House Committee

**Report of the Subcommittee on Statutes of the University of Hong Kong
(Amendment) (No. 2) Statutes 2003**

Purpose

This paper reports on the deliberations of the Subcommittee on Statutes of the University of Hong Kong (Amendment) (No. 2) Statutes 2003.

Background

2. In May 2001, the Secretary for Education and Manpower commissioned the University Grants Committee (UGC) to conduct a review of higher education in Hong Kong. In July 2002, the Council of the University of Hong Kong (HKU Council) responded to a key recommendation of the UGC Report on Higher Education in Hong Kong that the governing body of each UGC-funded institution should review the fitness for purpose of its governance and management structures by appointing an independent and international panel of external experts to undertake such a review. The panel spent six months on the review, during which extensive consultations with stakeholders were undertaken, before submitting its report (the Fit for Purpose report) to the HKU Council in February 2003. Following a two-month period of further consultation with members of the University and other stakeholders, the Fit for Purpose report was approved by the HKU Council on 29 April 2003 for immediate implementation as a package. In the course of the implementation process, the HKU Council has identified a number of statutory amendments that are necessary for the recommendations of the Fit for Purpose report to take effect. These amendments have been approved by the Chancellor on the recommendation of the HKU Council and the Court of HKU (the Court), in accordance with the University's normal due process.

The Statutes of the University of Hong Kong (Amendment) (No. 2) Statutes 2003

3. The Statutes of the University of Hong Kong are contained in the Schedule to the University of Hong Kong Ordinance (Cap. 1053) (the Ordinance). Section 13 of the Ordinance provides that subject to the provisions of the Ordinance, the University shall be governed in accordance with the provisions of the Statutes. The Ordinance also provides that the HKU Council may propose to the Court additions to, or the amendment or repeal of, any of the Statutes, whereupon on the recommendation by the Court to the Chancellor, the Chancellor may make any such addition, amendment and repeal as recommended by the Court.

4. The Statutes of the University of Hong Kong (Amendment) (No. 2) Statutes 2003 (the Amendment Statutes) were gazetted on 8 July 2003 and tabled in the Legislative Council (LegCo) on 9 July 2003. The amendments to the Statutes concern the following aspects -

- (a) the reduction of the size of the HKU Council and the Senate of the university;
- (b) the modes of appointment of the Dean of each Faculty and the Head of a Teaching Department;
- (c) the delegation to any person or committee of the HKU Council's powers to adjudicate upon complaints from members and employees of HKU and to deal with appeals from the Disciplinary Committee; and
- (d) some other technical amendments.

The Subcommittee

5. The House Committee agreed at its meeting on 3 October 2003 to form a subcommittee to study the Amendment Statutes. To allow time for the Subcommittee to scrutinise the subsidiary legislation, the Chairman of the House Committee moved a motion at the Council meeting on 15 October 2003 to extend the scrutiny period of the subsidiary legislation to the Council meeting on 5 November 2003. The motion was passed.

6. The membership list of the Subcommittee is in **Appendix I**. Hon Mrs Selina CHOW, Dr Hon TANG Siu-tong and Hon IP Kwok-him have declared that they are members of the Court. Under the chairmanship of Hon Tommy

CHEUNG, the Subcommittee has held two meetings with representatives of the Administration, UGC and the Implementation Working Party for the Reform of the University's Governance and Management Structures of HKU (the Implementation Working Party). The Subcommittee also met with representatives of the HKU Academic Staff Association, the HKU Non-Academic Staff Association and the HKU Students' Union (the Students' Union) at one of the meetings.

Deliberations of the Subcommittee

Recommendation 2 of the Fit for Purpose report

7. Members note that some staff members and students of the University have expressed concern about Recommendation 2 of the Fit for Purpose report that "No student or staff member shall serve on Council whilst an officer holder of the Students' Union or Staff Associations respectively". To implement Recommendation 2, the HKU Council intends to provide in the relevant regulations for elections to the HKU Council that an elected person, if holding office in the Students' Union or staff associations, will have to resign from such office. The person will be considered ineligible for membership of the HKU Council if he/she fails to do so. In this connection, the Subcommittee notes that the new paragraph 1(f) to (i) of Statute XVIII provides that the staff and student members of the HKU Council have to be elected "in accordance with regulations". These members, if holding office in the Students' Union or Staff Associations, will have to resign from such office as required by the regulations.

8. Representatives of the Implementation Working Party have explained that the regulations to be made are administrative regulations which are not subsidiary legislation. The HKU Council is conferred the incidental and necessary power to make such administrative regulations under the Interpretation and General Clauses Ordinance (Cap.1).

Concept of "trustee"

9. Representatives of the Implementation Working Party have explained that the proposal set out in paragraph 7 above is based on the concept of "trustee" put forward by the review panel. The first recommendation in the Fit for Purpose report is that each member of the HKU Council should serve in a personal capacity "as a trustee rather than delegate or representative of a particular constituency". The above proposal is deemed necessary to ensure that the student and staff members of the HKU Council will objectively consider the views and any formally adopted positions of the student or staff bodies, without being

bound to adopt a pre-determined stance or to act as a proxy for another body. It is believed that the proposal will enable the student and staff members of the HKU Council to avoid, and also be seen to be protected from, any potential conflict of interests when dealing with business of the HKU Council relating to student and staff affairs.

10. Members have asked why an elected member of the HKU Council who holds another position in the University (e.g. dean of a faculty) will not be required to resign from such office in order to serve on the HKU Council. Representatives of the Implementation Working Party have explained that many responsibilities in a university are administrative in nature and there is no direct conflict of interests between such responsibilities and the HKU Council (the governing body). However, bodies such as staff associations often hold certain positions that put the interests of their members first, sometimes against a background of continuing reduction of funding resources for universities, which may give rise to salary adjustment or staffing re-arrangements. It would be difficult for representatives of such bodies to adopt a position of the HKU Council that goes against their members even if it might be in the best interests of the University as a whole.

11. Hon CHEUNG Man-kwong considers that the proposal will not achieve its desired effect in practice since the HKU Council cannot prevent its members, even though they are not holding office in the Students' Union or staff associations, from being related to these bodies in other ways and are therefore more inclined to adopt the positions of these bodies. Mr CHEUNG has pointed out that the proposal also appears to have singled out the Students' Union and the staff associations. He opines that there can be better ways to avoid conflict of interests, such as the mechanisms of declaration of interests and of requiring a HKU Council member to abstain from speaking/voting on matters in which his/her interests are involved. In addition, as suggested by the HKU Non-Academic Staff Association, the HKU Council can stipulate that each of its members serves on the Council in a personal capacity.

12. Representatives of the Implementation Working Party have argued that it is hard to imagine that a Council member who is, e.g. concurrently the chairman of a staff association will vote on a matter in a personal capacity, if the association has already reached a unanimous consensus on that matter. They have also pointed out that they are not saying that the proposed "trustee" model is a perfect one, but it will minimise the possibility of conflict of roles that may arise.

13. Hon Mrs Selina CHOW opines that there is a fundamental difference between the views of Hon CHEUNG Man-kwong and the concept of "trustee" put forward by HKU. She agrees that in order for the HKU Council to function

properly, it is necessary for the Council members to serve as trustees whose primary concern is the interests of the University at large rather than the interests of a particular group of University members. She stresses that the ultimate responsibility of a governing body is to bring diverse viewpoints together to reach a consensus. It will undermine the HKU Council's effective governance if there is an obvious conflict of roles for some of its members.

14. Hon Mrs Selina CHOW has suggested that members should take note of the fact that the Fit for Purpose report is submitted by an independent panel of external members and has been formally considered and approved by the HKU Council and Court. Moreover, given the principle of full autonomy of the University, the HKU Council should be allowed the freedom to take its own decisions on important matters, such as those concerning its governance and management structures. In any case, it is most important that there are communication channels in HKU for staff members and students to express their views, and for their views expressed to be thoroughly considered by the University and adopted as appropriate.

15. Representatives of the two staff associations and Students' Union are of the view that the proposal that office holders of the Students' Union or staff associations cannot concurrently serve on the HKU Council will deprive these office holders' right to serve on the HKU Council. A staff representative considers that the proposal contravenes the principle advocated by the United Nations Educational, Scientific and Cultural Organization that "Higher-education teaching personnel should have the right and opportunity without discrimination of any kind, according to their abilities, to take part in the governing bodies". The staff representatives have pointed out that for some universities, including the Hong Kong Polytechnic University, City University of Hong Kong and Hong Kong Institute of Education, there are also representatives of their respective staff associations serving on the governing bodies of these universities.

16. Members have queried whether the regulations to be made to provide for the above proposal will be inconsistent with the provisions of other ordinances such as the Trade Unions Ordinance (Cap. 332) and the Hong Kong Bill of Rights Ordinance (Cap.383).

17. Representatives of the Implementation Working Party have undertaken that the concerns raised by members on the problems relating to the regulations will be taken into full consideration in the drafting of the regulations. They have also undertaken to avoid any inconsistency between the regulations and the provisions of any ordinance.

Way forward

18. Members note that the reforms being introduced by the HKU Council in accordance with the recommendations of the review panel are considered progressive as a whole and well accepted by staff members and students. For example, the new membership, as recommended in the Fit for Purpose report and proposed under the Amendment Statutes, will enable staff members to elect to the HKU Council four full-time teachers and one full-time employee who is not a teacher. Members consider that as the internal consultation process of HKU on the drafting of the regulations is still in progress, the HKU Council should strive to further consult staff members and students with a view to smoothing out their residual differences on the concept of trustee. In response to members' requests, Professor TSUI Lap-chee, HKU Vice-Chancellor and chairman of the Implementation Working Party, has undertaken to convey the views and comments of the Subcommittee to the HKU Council for consideration.

Other issues discussed

Hearing of complaints, appeals and grievances

19. Representatives of the Implementation Working Party have explained that the intention of revisions introduced in paragraph 2(1) of Statute XIX is to enable an independent group of experts, consisting both external and internal members of the University, to deal with individual cases through a transparent due process. This revision will enable the Council, on a case by case basis, either to delegate the adjudicating power to a person or committee or to retain its own adjudicating power and exercise it on the recommendation of a person or committee that has entertained the complaints or grievances, in line with Recommendation 5 of the Fit for Purpose report.

20. Members consider that the wording of paragraph 2(1) seems to indicate that the Council shall delegate entirely the power to entertain and adjudicate complaints to any person or committee appointed by the HKU Council for the purpose. Representatives of the Implementation Working Party have agreed to revise paragraph 2(1) to clearly reflect the intention as explained in paragraph 19 above.

21. Members have enquired about the distinction between "academic" and "non-academic" issues in the context of Recommendation 5 in the Fit for Purpose report which proposes that "the Council should avoid adjudicating in cases of a purely academic nature". Representatives of the Implementation Working Party have explained that matters of an academic nature are matters such as the grading of assignments, methods of teaching, contents of a course, etc. that require an

academic judgment. They are dealt with by the Senate. The HKU Council is responsible for non-academic matters like procedures in resourcing, employment and administrative issues.

22. Members are also concerned about the complaints procedures of the University to deal with complaints from staff and students. Representatives of the Implementation Working Party have explained that there are separate procedures for dealing with complaints from the two groups. Both involve an independent external person (who is neither an employee of the University nor a member of the HKU Council) as the chairman of the panel in dealing with complaints.

23. UGC has informed the Subcommittee that UGC is fully aware of the importance of transparency and external participation in respect of grievance and complaint handling in UGC-funded institutions. UGC has advised that pursuant to the relevant recommendation in the Higher Education Review 2002, UGC-funded institutions have already initiated reviews of their governance structures and many of the reviews are still in progress. UGC has undertaken to report to the Panel on Education on the outcome of the reviews in due course.

Appointment of LegCo Members to the University Council

24. Hon CHEUNG Man-kwong has suggested that the HKU Council can make reference to the composition of the governing bodies of other universities and consider appointing LegCo Members to the HKU Council. He considers that such appointments will help channel the views of the community to the HKU Council.

25. Representatives of the Implementation Working Party have responded that the new composition of the HKU Council provides for members to be appointed by the HKU Council itself on a personal basis as a trustee. The Fit for Purpose report has recommended that a nominations committee should be set up to identify suitable candidates for appointment to the HKU Council, based on an assessment of the areas of expertise needed for the HKU Council and the persons who meet the criteria. It is probable that the nominations committee may identify individual LegCo Members as meeting the needs of the HKU Council in certain areas of its responsibility, and recommend them for appointment by the HKU Council.

Amendment

26. The Administration intends to move a motion to amend paragraph 2(1) of

the amended Statute XIX at the Council meeting on 5 November 2003 (paragraphs 19 and 20 above refer). A copy of the letter from HKU explaining the proposed amendment to paragraph 2(1) is in **Appendix II**.

Recommendation

27. Subject to the amendment to be moved by the Administration, the Subcommittee recommends support of the Amendment Statutes.

Advice sought

28. Members are invited to note the recommendation of the Subcommittee in paragraph 27 above.

Council Business Division 2
Legislative Council Secretariat
23 October 2003

**Subcommittee on Statutes of the University of Hong Kong
(Amendment) (No. 2) Statutes 2003**

Membership list

Chairman	Hon Tommy CHEUNG Yu-yan, JP
Members	Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP Hon CHEUNG Man-kwong Dr Hon TANG Siu-tong, JP Hon IP Kwok-him, JP (Total : 5 Members)
Clerk	Miss Flora TAI Yin-ping
Legal Adviser	Mr Arthur CHEUNG
Date	15 October 2003

October 20, 2003

Mr Arthur Cheung
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(BY FAX: 2877 5029)

Dear Mr Cheung,

**Statutes of the University of Hong Kong
(Amendment) (No. 2) Statutes 2003**

Further to the meeting this morning of the Subcommittee set up to examine the above-captioned Statutes, we would like to propose the following revision:

Under Section 7 on the **Powers of the Council**,

Statute XIX is amended –

- (a) in paragraph 2(*l*), by repealing “to entertain and adjudicate upon” and substituting “to appoint any person or committee to entertain and, *if appropriate*, adjudicate upon, on its behalf.”;

[revision in italics]

[(b) and (c) remain unchanged].

This revision will enable the Council, on a case by case basis, *either* to delegate the adjudicating power to a person or committee *or* to retain its own adjudicating power and exercise it on the recommendation of a person or committee that has entertained the complaints or grievances, in line with Recommendation 5 of the *Fit for Purpose* report on the review of HKU’s governance and management structures:

To enable the Council to function most effectively and to focus more on strategic issues, the Council should review how the hearing of complaints, appeals and grievances could be streamlined so that, without compromising fairness, not every case would necessarily be heard by the full Council. In particular, Council should avoid adjudicating in cases of a purely academic nature.

I should mention that at its meeting on June 30, 2003, when the University Court, under the presidency of the Chancellor, approved the amended Statutes, including Statute XIX, it also authorised the Implementation Working Party for the Reform of the University's Governance and Management Structures subsequently to make any necessary changes of a technical nature to the wording of the Amendment Statutes during the legislative process following Government and legal advice. I am pleased to report that the Vice-Chancellor, acting as Chairman on behalf of the Implementation Working Party, has approved the revision above.

I should be grateful therefore if you would report to the House Committee the revision we have proposed. Many thanks.

Yours sincerely,

H. W. K. Wai
Registrar

c.c. Miss Linda So, Education and Manpower Bureau