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Panel on Education

Background brief prepared by the Legislative Council Secretariat for the special meeting on 27 June 2008

Governance structure and grievance and complaint mechanisms of the University Grants Committee-funded institutions

Purpose

This paper summarizes the major concerns expressed by the Panel on Education (the Panel) on the governance structure and grievances and complaints mechanisms of the University Grants Committee (UGC)-funded institutions.

Background

Report on Higher Education in Hong Kong

2. In May 2001, the then Secretary for Education and Manpower commissioned the UGC to launch a comprehensive review of higher education in Hong Kong. The review covered all aspects of higher education provision, including the governance of the UGC-funded universities. In March 2002, the UGC published the review report entitled "*Higher Education in Hong Kong*" (the Report). After extensive consultation with the Panel and the stakeholders on the Report, the UGC submitted its final recommendations to the Secretary for Education and Manpower in September 2002. 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 universities were required to review their governance and management structures including the grievances and complaints mechanisms 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.

Report No. 40 of the Director of Audit

3. Against the above background, the Audit Commission (Audit) conducted a value for money audit on the UGC-funded institutions including their governance. The findings were contained in Report No. 40 of the Director of Audit which was released in March 2003. Audit observed that the overall attendance rates of external members of the Councils of the eight UGC-funded institutions for the three financial years from 2000-2001 to 2002-2003 ranged from 50% to 80%. Audit recommended that the UGC should advise the eight institutions to ascertain, where necessary, the reasons for the low attendance rates of external members at their Council meetings and to take appropriate action to improve their attendance rates. Audit also recommended that the Government and the institutions, as a matter of principle, should not appoint those Council/Court members whose attendance at Council/Court meetings was low.

4. To strengthen the corporate governance structure of the institutions, Audit recommended that the UGC should request the eight institutions to take account of the findings of the audit report on governance arrangements and good practices in their review of governance structures, and conduct periodic reviews, say every five years, on the effectiveness of their governing bodies.

Report No 40A of the Public Accounts Committee (PAC)

5. Pursuant to the publication of Report No. 40 of the Director of Audit, PAC conducted public hearings on the findings contained therein. In November 2003, PAC published Report No. 40A, and recommended, among others, that the UGC should request the institutions -

- (a) to adopt measures to ensure that external members would constitute a majority at their Council meetings;
- (b) to consider publishing the attendance records of their Council members and uploading the records onto their websites for public information;
- (c) as a matter of principle, not to re-appoint those Council and/or Court members whose attendance at Council and/or Court meetings was low;
- (d) to set up an audit committee to strengthen internal audit function and their corporate governance structure; and
- (e) to conduct periodic review, say every five years, of the effectiveness of their governing bodies.

Deliberations of the Panel

6. Over the past few years, the Panel held a number of meetings to discuss and receive views from deputations on matters relating to the governance structure and grievances and complaints mechanisms of the UGC-funded institutions. The major concerns raised on the subject are summarized in the ensuing paragraphs.

Governance structure

7. Members had all along expressed concern about the composition and representation of the governing bodies of the UGC-funded institutions. When the Panel last discussed the subject in the course of deliberating the issue of academic freedom and institutional autonomy of the UGC-funded institutions in February and April 2007, members received the following views from deputations -

- (a) universities were managed by executives and not academics. Management of universities was becoming market driven and politicized;
- (b) over half of the Council members of some UGC-funded institutions, including the Hong Kong Institute of Education, the Hong Kong Polytechnic University and the Lingnan University, were appointed by the Chief Executive (CE). Such an arrangement, together with the provision in the relevant ordinances for CE to be the Chancellor of universities, provided a ready opportunity for the Administration to interfere with the internal affairs of the institutions;
- (c) students were not represented in the existing Councils of the Chinese University of Hong Kong, the Hong Kong University of Science and Technology and the Shue Yan University. To enhance transparency, independence and accountability of the institutions, students and staff members should be adequately represented in their Councils. Student representatives in university Councils should enjoy the same rights as other Council members, including the right to participate in any deliberations relating to and to vote on the appointment or dismissal of university Presidents and senior staff members; and
- (d) members of university Councils should be drawn from different sectors of the community including the Legislative Council (LegCo), alumni and school sponsoring bodies, etc. The relevant provisions in the existing ordinances concerning

Chancellor, composition of university Councils and the appointment of Council chairman should be reviewed.

8. According to the Administration, the UGC-funded institutions were autonomous bodies governed by their own ordinances. Owing to historical and other reasons such as the different philosophy, religion, culture and circumstances of individual institutions, the ordinances for the eight UGC-funded institutions, including the provisions setting out the composition of the Councils, varied. Council membership might consist of senior staff of the institutions, deans, student and staff representatives, alumni, members appointed by the Council, and members appointed by CE, etc. Members appointed by CE were usually lay members who came from a wide spectrum of the community. 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.

9. The Administration also pointed out that traditionally, CE was the titular head of the institutions to maintain the linkages between the Administration and the institutions and to demonstrate the Administration's support for the higher education sector. The powers and duties of the Chancellor were specified under the governing ordinances of the institutions, which primarily concerned conferment of degrees and other honorary awards.

10. As regards the appointment of Presidents/Vice-Presidents, the Administration explained that institutions might draw up their own procedures in accordance with the relevant ordinances. Specifically on involvement of student(s) and staff who served on the Councils, the provisions in the respective ordinances differed. In view of the transient nature of the student body and the need to prevent conflict and partisanship among students of the institutions, and in order to ensure that decisions in relation to the choice of the heads and senior staff of the institutions were made on the basis of the long-term needs and interests of the institutions, the provisions which treated student Council members differently from other Council members and which excluded student representatives from direct participation in the appointment/removal of the President and Vice-Presidents were justified. Nevertheless, all UGC-funded institutions had engaged students in the process for selecting their heads through measures such as informal consultations, opportunities for candidates to meet with student representatives, and presentation of views to the Council for consideration.

11. The UGC Secretariat advised the Panel lately of the completion by all the UGC-funded institutions of their internal reviews on governance and management structure. These reviews covered the size and composition of the governing bodies, the fitness for purpose of the governance structure, the relevant governing ordinances and codes of practices where applicable, and the

need for periodic reviews of the effectiveness of the governing bodies. The institutions decided to conduct further reviews of their governance structure on a need basis. The latest position on the review of governance and management structure of the eight UGC-funded institutions is in **Appendix I**.

Role of the UGC in governance of universities

12. Members sought clarification on the role of the UGC in the governance of universities. According to the UGC, it was inappropriate to equate UGC with the Government. The UGC should act as a buffer between the Government and the institutions, safeguarding freedom and autonomy of the institutions on the one hand and ensuring value for money for the taxpayers on the other. The UGC acknowledged that there was room for improvement within the existing governance and management structures of the institutions, but it should not be the task of the UGC to dictate how exactly the structures should be improved. In the view of the UGC, the Report had enumerated the basic ingredients of good governance and provided some examples of high performance of overseas universities for reference.

Transparency and accountability

13. How the accountability and transparency of the UGC-funded institutions could be enhanced had all along been the concern of members. It was suggested at the meeting of the Panel on 11 January 2005 that the governing bodies of the UGC-funded institutions should make public the agendas and minutes of their meetings. The Convenor of the Heads of Universities Committee (HUCOM) was requested to consult the governing bodies of the UGC-funded institutions on the suggestion. The written responses of the UGC-funded institutions are summarized in **Appendix II**.

Redress mechanisms

14. While agreeing that LegCo should not interfere with the internal administration of the UGC-funded institutions, members considered it necessary to provide a channel for staff to seek redress of their grievances. Some staff associations of the institutions considered the existing mechanisms for handling complaints lodged by staff against individual UGC-funded institutions ineffective. These complaints often led to legal proceedings or were widely reported in the media. In their view, neither the Court nor LegCo was the appropriate forum for handling complaints against institutions. Resorting to the Court would involve huge legal cost, whereas turning to the media or LegCo would politicize the matter.

15. For the purpose of effectively resolving complaints and grievances lodged by staff of the UGC-funded institutions, some deputations suggested that the establishment of an independent inter-institutional redress mechanism

should be the way forward. This mechanism should work like an arbitration system under which respectable persons from individual institutions such as professors and eminent members of the community should be appointed as arbitrators to resolve complaints concerning tertiary institutions. Such a mechanism would save resources and ensure effectiveness as persons with good understanding of the operation of tertiary institutions would assume the role of arbitrators.

16. In the Administration's view, all the UGC-funded institutions had established appeal and grievances mechanism which were unique to the particular circumstances of each institution. The Administration considered that the suggestion to establish an independent inter-institutional redress mechanism to deal with complaints from staff of all the UGC-funded institutions would undermine the institutions' autonomy in handling staff matters and complaints having regard to their own policies, practices, and individual circumstances.

17. Similarly, the UGC was of the view that individual institutions were in the best position to handle complaints lodged by their staff. The UGC was concerned about the possible effect of the suggestion on institutional autonomy as currently the authority and responsibility for handling complaints laid with the individual institutions. It also doubted the effectiveness of such a mechanism, given that the policies and practices adopted by different institutions varied according to their respective roles, missions and needs.

18. The details of the existing grievances and complaints mechanisms adopted by the UGC-funded institutions are in Annex B to LC Paper No. CB(2)1655/07-08(01) issued to members on 17 April 2008.

Extension of The Ombudsman's remit to cover the UGC sector

19. Members noted the recommendation in the Report to explore the possibility of extending the remit of The Ombudsman's to cover the UGC sector. Some members considered that extending the jurisdiction of The Ombudsman to cover the UGC sector could not resolve the problem of staff grievances and complaints since The Ombudsman could only handle procedural but not academic matters. Increasing external participation and transparency in handling grievances by the institutions should be a better approach.

20. The UGC advised that it had received mixed reactions about the proposal of extending the jurisdiction of The Ombudsman to cover the UGC-funded institutions during the consultation. The university Councils held a strong view that in line with the spirit of institutional autonomy, institutions should handle internal personnel matters themselves. The university Councils also pointed out that section 8 of The Ombudsman

Ordinance (Cap. 397) specifies that The Ombudsman shall not undertake investigation in, among other things, personnel matters such as appointments, dismissals, pay and conditions of service, etc.

Relevant papers

21. A list of the relevant papers on the Legislative Council website is in **Appendix III**.

Council Business Division 2
Legislative Council Secretariat
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**Summary of the Present Situation on the
Review of Governance and Management Structures of the
University Grants Committee-funded Institutions**

<u>Institution</u>	<u>Present Position</u>
City University of Hong Kong (CityU)	<ul style="list-style-type: none"> • CityU has completed its review and the recommendations of the Review Committee have been implemented, including the restructuring of the Council Committees, and the issue of a Code of Practice for Council Members. • One of the recommendations of the Review Committee was to reduce the size of the Council with a clear majority of lay members. The corresponding changes to the CityU Ordinance were approved by the Legislative Council in June 2007.
Hong Kong Baptist University (HKBU)	<ul style="list-style-type: none"> • HKBU has completed its review and concluded that the University Court and Senate have been functioning effectively, and that the University Court and Council have been playing complementary roles in governing the University. Furthermore, the Senate, with its existing powers and duties, is fit for its purpose as the highest academic body of the University.
Lingnan University (LU)	<ul style="list-style-type: none"> • It is the practice of the LU Council to conduct a “fitness for purpose” review of its function whenever there is significant change to Council membership. The Council completed a review in 2004. No amendment to the Council composition has been proposed by LU.

<p>The Chinese University of Hong Kong (CUHK)</p>	<ul style="list-style-type: none"> • CUHK has completed the review and some of the recommendations, including the establishment of an Executive Committee under the Council and an audit committee have been implemented. It has also decided to reduce the size of its Council for effective governance. The precise composition of the Council remains to be finalized. To allow the existing members to complete their present terms of membership, CUHK intends to implement the recommendation over a period of two to three years. As an interim measure, an Executive Committee of the Council has been established since December 2003 to discharge on behalf of the Council such duties and powers as delegated to it by the Council.
<p>The Hong Kong Institute of Education (HKIEd)</p>	<ul style="list-style-type: none"> • The HKIEd has completed a review and decided to streamline the structure of the Council Committees by dissolving some Committees and subsuming some Sub-committees under other Committees, and to reduce the number of Council members.
<p>The Hong Kong Polytechnic University (PolyU)</p>	<ul style="list-style-type: none"> • PolyU has completed the review and concluded that its governance structure was fit for purpose, and that the University has an effective management structure. Nonetheless, to refine PolyU's governance and management structure, a number of recommendations have been approved for implementation by the Council, e.g. the institution of a process of self-evaluation to review the performance of Council as a whole once every two years, review of the University's committee structures, etc. It has also proposed reducing the size of its Council and adjusting Council's composition to achieve the reduction in size. • The University will initiate necessary legislative amendments regarding the size and composition of its Council in collaboration with the Administration.

<p>The Hong Kong University of Science and Technology (HKUST)</p>	<ul style="list-style-type: none"> • HKUST has further reviewed its governance and management structures, and is working on proposed amendments to the Hong Kong University of Science and Technology Ordinance to implement the recommendations arising from the review, including changes in the size and composition of the Council.
<p>The University of Hong Kong (HKU)</p>	<ul style="list-style-type: none"> • HKU has completed its review of the governance and management structures, and put in place processes and mechanisms to implement all the 17 recommendations arising from the review. The majority of the required measures, including the reconstitution of Council and Senate, have already been implemented. Implementation of the remaining recommendations is being carried out in phases. • Amendments to the Statutes of the University of Hong Kong Ordinance to reconstitute the University Council and Senate were introduced to the Legislative Council and became effective from November 2003. • HKU is working on amendments to the University of Hong Kong Ordinance so that the descriptions of the respective roles of the Council and the Court therein would be fully consistent with their powers as set out in the relevant statutes. HKU plans to submit their legislative amendments to the Administration for consideration, with a view to presenting the amendments to the Legislative Council in its 2007/08 session.

Summary of written responses from the UGC-funded institutions concerning the suggestion of making public the agendas and minutes of meetings of their governing bodies

Institution	Response
<p>City University of Hong Kong (CityU) (Letter dated 28 January 2005)</p>	<p>The CityU Council approved a Code of Practice for Council members at its meeting on 22 November 2004 which incorporated the following statement :</p> <p><i>"In general, the principle of openness applies to the operation of the Council and students and staff of the University have access to information about the proceedings of the Council. The Council Secretariat issues a summary report of Council meetings in the university newsletter. The agenda, draft minutes, if cleared by the Chairman, and the signed minutes of Council meetings, together with the papers considered at meetings, are made available for inspection in the University Library. There may, however, be matters, covered in the rules and procedures, where it is necessary to observe confidentiality. Such matters are likely to concern individuals or have a commercial sensitivity."</i></p> <p>The CityU Council agreed that printed copies of the agendas, papers and minutes should be placed in the University Library for the time being.</p>
<p>The Chinese University of Hong Kong (CUHK) (Letter dated 1 March 2005)</p>	<p>According to established practice, agendas and minutes of meetings of the CUHK Council are treated as confidential documents. The CUHK Council deals with a lot of institutional management matters related to individual staff and students and certain matters such as business arrangements or contracts which are subject to non-disclosure clauses.</p> <p>According to customary practice, the CUHK Council would make public announcement of its decisions which are of public interest. The CUHK Council considers it not advisable or practicable to make public all the agendas and minutes of its meetings.</p>

Institution	Response
The University of Hong Kong (HKU) (Letter dated 23 April 2005)	Given the sensitivity of issues discussed and the practice to inform the public of its decisions and policies through appropriate channels, and in the interest of full freedom of discussion, the HKU Council considers it neither necessary nor appropriate to make public all the agendas and minutes of their meetings. Nevertheless, the HKU Council welcomes further deliberations by the HUCOM with the aim of arriving at a common policy.
The Hong Kong Institute of Education (HKIEd) (Letter dated 24 May 2005)	It has been the practice of the HKIEd Council to report a summary of its discussions/decisions to staff through the monthly Staff Bulletin. The HKIEd Council considers it not necessary to make public all the agendas and minutes of its meetings.
The Hong Kong Polytechnic University (PolyU) (Letter dated 14 July 2005)	The PolyU Council has adopted the recommendation of the Governance and Management Review Committee to upload its major decisions, other than those on confidential items, onto the Intranet.
Hong Kong University of Science and Technology (HKUST) (Letter dated 27 July 2005)	Given the existing channels to publicize its decisions, the HKUST Council takes the view that a balance should be struck between public accountability and academic freedom/institutional autonomy. In the interest of freedom of discussions at meetings, the HKUST Council does not consider it appropriate to make public the agendas and minutes of its meetings.
Hong Kong Baptist University (HKBU) (Letter dated 10 August 2005)	HKBU holds the view that releasing the agendas and minutes of its Council meetings to the public might inhibit discussions at those meetings and would not be in the overall interest of the work of the Council and consequently the University. Under the established practice, information on major decisions made by the Council and development of HKBU is disseminated to various sectors through a number of well-publicized channels.

Institution	Response
Lingnan University (Letter dated 13 September 2005)	The University Council does not consider it appropriate to make public all agendas and minutes of its meetings as the items discussed are mainly of academic nature or about personnel matters. For issues or resolutions of public interest, the Council would make them known to the public through proper channels such as press release, conference or the University homepage on the Internet.

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**Relevant papers on
governance structure and grievance and complaint mechanisms
of the University Grants Committee-funded institutions**

Meeting	Date of meeting	Paper
Panel on Education	17.5.1999 (Item IV)	Minutes Agenda
Panel on Education	27.9.1999	Minutes CB(2)2875/98-99(01) CB(2)2895/98-99(01) CB(2)2895/98-99(02)
Panel on Education	17.4.2000 (Item VIII)	Minutes Agenda
Panel on Education	18.3.2002 (Item IV)	Minutes Agenda
Panel on Education	26.3.2002 (Item I)	Minutes
Panel on Education	2.4.2002 (Item I)	Minutes Agenda
Panel on Education	7.5.2002 (Item I)	Minutes
Panel on Education	2.12.2002 (Item I)	Minutes
Panel on Education	17.2.2003 (Item IV)	Minutes Agenda
Panel on Education	3.3.2003 (Item II)	Minutes Agenda
Finance Committee	11.4.2003	Minutes Agenda
Panel on Education	21.6.2004 (Item IV)	Minutes Agenda
Panel on Education	5.7.2004 (Item I)	Minutes Agenda

Meeting	Date of meeting	Paper
Panel on Education	11.1.2005 (Item I)	Minutes Agenda
Panel on Education	26.1.2006 (Item III)	Minutes Agenda
Bills Committee on City University of Hong Kong (Amendment) Bill 2006	1.11.2006	CB(2)219/06-07(03) CB(2)219/06-07(04) CB(2)219/06-07(05)
Panel on Education	14.5.2007 (Item V)	Minutes Agenda
Panel on Education	9.7.2007 (Item III)	CB(2)2071/06-07(06) CB(2)2357/06-07(04) CB(2)2357/06-07(05)
Panel on Education	-	CB(2)1655/07-08(01)

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