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Panel on Education

Background brief prepared by the Legislative Council Secretariat for the meeting on 9 November 2009

Governance of the Hong Kong Polytechnic University

Purpose

This paper summarizes the areas of concern of the Public Accounts Committee (PAC) and the Panel on Education (the Panel) on the governance of the University Grants Committee (UGC)-funded institutions relevant to the Hong Kong Polytechnic University (PolyU).

Background

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 corporate governance of the UGC-funded universities. In March 2002, the UGC published the review report entitled "*Higher Education in Hong Kong*" (the Report). After 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 institutions 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.

Audit Report

3. Against this background, the Audit Commission (Audit) conducted a value for money audit on the UGC-funded institutions including their corporate governance. The findings were contained in Report No. 40 of the Director of Audit which was released in March 2003. As far as PolyU was concerned, Audit recommended that the UGC should request PolyU and another five institutions to review the size and composition of their governing bodies and make necessary changes.

4. Audit also 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%. It recommended to the UGC and the institutions that, as a matter of principle, they should not appoint those Council/Court members whose attendance at Council/Court meetings was low. As for PolyU, the average attendance rate of external members at Council meetings was 80% for the three financial years.

5. To strengthen the internal audit function and the corporate governance structure of the institutions, Audit recommended that the UGC should request five institutions including PolyU to set up an audit committee. The UGC should also request the eight institutions to take account of the findings of the audit reports on governance arrangements and good practices in their review of their governance structures, and conduct periodic reviews, say every five years, on the effectiveness of their governing bodies.

PAC Report

6. Pursuant to the tabling of Report No. 40 of the Director of Audit in the Legislative Council (LegCo), PAC published Report No. 40A in November 2003. The conclusions and recommendations of PAC concerning the corporate governance of the UGC-funded institutions relevant to PolyU are summarized below.

Attendance of external members at Council meetings

7. PAC expressed serious concern that the attendance rates of external members at Council meetings of some institutions were generally low. As a result, when decisions were required to be made at Council meetings, there might be over-reliance on internal members. PAC recommended that the UGC should request -

- (a) all the institutions to adopt measures to ensure that external members would constitute a majority at their Council meetings;
- (b) all the institutions to consider publishing the attendance records

of their Council members and uploading the records onto their websites for the information of the public; and

- (c) that, as a matter of principle, the institutions should not re-appoint those Council and/or Court members whose attendance at Council and/or Court meetings was low.

Audit committee

8. PAC also expressed serious concern that five institutions including PolyU had not established an audit committee, which was not in line with good corporate governance practices. PAC recommended that the UGC should request these institutions to set up an audit committee to strengthen their audit function and the corporate governance structure.

Pay Structure

9. PAC raised serious concern that the Presidents' Personal Affairs Committee (PPAC) of PolyU had not sought the Council's prior approval to pay the President a monthly cash allowance in lieu of housing benefits and leave passage, which appeared to be in breach of section 9(3)(c) of the Hong Kong Polytechnic University Ordinance (the Ordinance) as it specified that the Council should not delegate to any committee the power to approve the terms and conditions of service of persons in the employment of the University, other than persons in part time or temporary employment. PAC considered that even putting the legal considerations aside, it would have been prudent for the PPAC to seek the Council's prior approval. PAC recommended that PolyU should further review the effect of section 9(3)(c) of Ordinance and its proper application.

Follow-up actions

10. PAC published Report No. 43 to follow up on its recommendations in February 2005. On the "fitness for purpose" review of the governance structure of the institutions, PAC noted that the Governance and Management Review Committee (the Review Committee) of PolyU had completed its review of institutional governance and management structure in June 2004. In addition, PolyU had set up an audit committee comprising three members under its Council. To enhance the independence of the audit committee, the three members would not participate in the work of any committees established under the Council.

Deliberations of the Panel

11. Over the past few years, the Panel held a number of meetings to discuss matters relating to the governance of the UGC-funded institutions and receive

views from deputations including the management and staff of the institutions. The deliberations of the Panel on the governance of the UGC-funded institutions in general and of PolyU in particular are summarized below.

Governance structure

12. Members had all along expressed concern about the composition and representation of the governing bodies of the UGC-funded institutions. When the Panel discussed the subject of academic freedom and institutional autonomy of the UGC-funded institutions in May and July 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 PolyU, the Hong Kong Institute of Education 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) 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 the appointment and dismissal of university Presidents and senior staff members and to vote on such matters; and
- (d) members of university Councils should be drawn from different sectors of the community including 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.

13. According to the Administration, the UGC-funded institutions were autonomous bodies governed by their own ordinances. Owing to historical, cultural and traditional differences 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 operation of the institution, the institution should be in the best position to decide on the most appropriate composition of its Council.

14. 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 related to conferment of degrees and other honorary awards.

15. 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. The provisions in the respective ordinances differed in respect of the involvement of student(s) and staff who served on the Councils. 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.

16. The UGC advised the Panel in June 2008 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.

17. As regards PolyU, it had completed the review and concluded that its governance structure was fit for the purpose and it had an effective management structure. Nonetheless, a number of recommendations had been approved for implementation by the Council to refine PolyU's governance structure. These included, among others, instituting a process of self-evaluation to review the performance of the Council as a whole once every two years and initiating necessary legislative amendments regarding the size and composition of its Council in collaboration with the Administration.

Transparency and accountability

18. Members called for the enhancement of the accountability and transparency of the UGC-funded institutions. At the Panel meeting on 11 January 2005, members suggested that the governing bodies of the UGC-funded institutions should make public the agendas for 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. In their written responses to the Panel, the institutions indicated objection to make public the agendas, papers and minutes of meetings of their governing bodies. PolyU indicated that its Council adopted the recommendation of the Review Committee to upload its major decisions, other than those on confidential items, onto the University's Intranet.

19. At the Panel meeting on 17 July 2008, the Panel passed a motion urging the governing bodies of the UGC-funded institutions to enhance public accountability and transparency of the institutions by, among others, making public the minutes of and papers for their meetings. Members requested the institutions to improve their information flow by considering the compilation of a code of practice which should be made available to the public. Pursuant to the motion and the request of the Panel, the governing bodies of each of the UGC-funded institutions further considered the suggestion. The Council of PolyU resolved to continue its practice since January 2006 of uploading major decisions at Council meetings, other than those classified as confidential, onto the University's Intranet. A summary of the written response of the UGC-funded institutions is in **Appendix I**.

Establishment of an independent inter-institutional redress mechanism

20. Members noted with concern that many staff associations of the UGC-funded institutions had no confidence in the existing mechanisms for handling complaints lodged by staff against individual UGC-funded institutions and considered the mechanisms ineffective. Staff complaints often led to legal proceedings or were widely reported in the media. While most deputations called for the establishment of an independent inter-institutional redress mechanism to resolve staff complaints and grievances, there was a view that given the unique history, mission, tradition and characteristics of each institution, an inter-institutional redress mechanism would obscure its uniqueness, and there might be difficulties for it to function properly and effectively. Instead of setting up such a mechanism, each institution should refine its own redress mechanism that was tailored to its unique characteristics.

21. Members in general supported the establishment of an elected inter-institutional complaints body to handle staff complaints of the UGC-funded institutions, and considered that such establishment would provide a stable working environment for staff to concentrate on teaching and

research work. The Panel passed a motion at its meeting on 17 July 2008 urging the Councils and the administrative arms of all UGC-funded institutions to establish an elected independent inter-institutional complaints committee.

22. In its written response to the motion, HUCOM stated that it did not support the proposal to establish such a committee. In its view, review and appeal mechanisms had been in place in all UGC-funded institutions for handling staff and student grievances and complaints. These mechanisms involved elaborate procedures conferring on the parties concerned substantial rights and opportunities to be heard, to defend and to appeal. Considering the complexities of institution operation and management as well as the wide range of institutional differences that existed across the UGC-funded sector, it would be extremely difficult if not impossible for such an institutional complaints committee to function effectively and achieve its intended purpose. All UGC-funded institutions enjoyed institutional autonomy and their Councils were vested with statutory powers to deal with appeals. Any parties who felt aggrieved could also lodge appeals to judicial bodies. If an inter-institutional complaints committee could super-impose its rulings on these bodies, it would be tantamount to usurping the legal powers of the institution Councils, infringing on the autonomy of the institutions, and slighting the judgements of the courts. It was also questionable whether the mediation or decision from the committee would carry enough weight to be binding on the parties concerned.

23. The Administration respected the views of HUCOM and the Councils of the UGC-funded institutions concerning the establishment of an inter-institutional redress mechanism. It remarked that the institutions had conducted the "fit for the purpose" reviews and the reviews were not one-off. Similarly, the UGC supported the HUCOM's view to protect institutional autonomy. It was of the view that individual institutions were in the best position to handle complaints lodged by their staff. It also doubted the efficacy of such a mechanism, given that the policies and practices adopted by different institutions varied according to their respective roles, missions and needs. At the same time, the UGC considered it important that the established grievances and complaints handling mechanisms should be transparent and made known to staff. The grievances and complaints mechanism of PolyU is detailed in **Appendix II**.

24. Members remained of the view that the Administration and the UGC should assume a more proactive role to ensure fairness, openness and impartiality in handling staff grievances and complaints in the UGC sector. The Administration and the UGC could not shirk their responsibility under the shield of institutional autonomy. At the Panel meeting on 6 July 2009, the UGC indicated that it was studying the redress mechanisms adopted by universities/institutions in other jurisdictions and would, on the basis of the findings, explore with the UGC-funded institutions on ways to improve their redress mechanisms, including coming up with the best practices of local and

overseas institutions.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
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**Summary of written responses from the UGC-funded institutions to the motion passed at the meeting on 17 July 2008
concerning the enhancement of the transparency of their governance**

Institution	Response
The University of Hong Kong (HKU) (Letter dated 19 December 2008)	The Council is of the opinion that the best way of achieving the objective of enhancing public transparency is to reinforce the existing communication channels. The Council has therefore agreed to release in future, through internet and after each meeting, a report summarizing all its decisions, except those on personal matters relating to individuals and plans and proposals not yet finalized, on the understanding that for the latter, the disclosure would be made at a later stage when the proposals are finalized.
The Hong Kong Institute of Education (HKIEd) (Letter dated 31 December 2008)	There are established channels for decisions of the HKIEd Council to be promulgated within the Institute and, if appropriate, also to the public. These communication channels include placing of the Council meeting agenda, Council papers other than those classified as confidential and summaries of the Council's decisions on the intranet and in the Staff Newsletters. The Council has resolved to place on the Institute's website and make available to the public relevant open documents of the Institute.
The Hong Kong Polytechnic University (PolyU) (Letter dated 8 January 2009)	The PolyU Council resolved to continue its practice since January 2006 of uploading major decisions at Council meetings, other than those classified as confidential, onto the University's Intranet.
Lingnan University (Letter dated 9 January 2009)	The Council was of the view that the University should enhance the existing communication channels to the public. It was however yet to decide whether the minutes of or a report summarizing the decisions of a Council meeting should be put on the web. It is anticipated that the Council at its next meeting on 16 February 2009 will reach a decision.

Institution	Response
Hong Kong Baptist University (HKBU) (Letter dated 12 January 2009)	Major decisions made by the Council and other administrative bodies have always been communicated to stakeholders through different channels (such as announcements, messages from the presidential officers to the University community, press releases, publications and meetings stakeholders) in a timely manner. The Council decides that decisions made at Council meetings (except those which are classified confidential) would be posted on the University website for public viewing.
City University of Hong Kong (Letter dated 14 January 2009)	It has been the practice for the past couple of years for copies of the minutes and papers of the Council, which are not of a confidential nature, to be lodged in the University library for the information of members of the University.
Hong Kong University of Science and Technology (HKUST) (Letter dated 21 January 2009)	The Council will further enhance the transparency of governance and reinforce the existing communication channels, by announcing through the intranet after each Council meeting the decisions taken, except where it relates to personnel or other sensitive matters that are subject to protection. Press releases will continue to be used as appropriate for communication outside of the University. The Council trusts that the above measures constitute a more pragmatic approach than making public the meeting documents of the Council.
The Chinese University of Hong Kong (Letter dated 21 January 2009)	In addition to the efforts to enhance the existing communication channels, the Council has agreed that in future, a summary report of the Council's decisions will be placed on the University's web after each Council meeting, except decisions relating to personal privacy, plans and proposals not yet finalized and any item the immediate release of which after the meeting or disclosure of such an item is considered inappropriate by the Council. The Council believes these measures will be an effective way to achieve the objective of enhancing transparency relating to university governance.

Grievances and Complaints Mechanism of the Hong Kong Polytechnic University (PolyU)

- The University has established procedures for handling grievances and complaints which have proven to have worked well over the years. In order to further refine these procedures and consequent upon the Report of the Governance and Management Review Committee appointed by the University Council, the University Management appointed a working group to conduct a comprehensive review of all existing regulations governing appeals and grievances by staff in PolyU. The PolyU Council approved in June 2007 a new Policy on handling staff grievances and appeals as proposed by the University Management. A set of new Procedures for handling grievances and appeals established in accordance with the approved Policy has been implemented since March 2008.
- The new Procedures handle all staff grievances including allegations concerning sexual harassment and violation of the University Code of Ethics, and appeals against decisions on human resources-related issues.
- The new Policy puts greater emphasis on facilitating the conciliation of a grievance at an early stage. All parties concerned including staff members, supervisors, Heads of Department and the Senior Management Committee members are expected to make every attempt to resolve a complaint, as informally as possible, to the satisfaction of all parties concerned.
- The relevant authority, the Grievance and Appeal Committee, the Review Committee or the Director of Human Resources and the Legal Counsel as appropriate, will investigate the complaint by scrutinising and considering all relevant documents. During the investigation process, the Grievance and Appeal Committee may take any action it deems appropriate or necessary including interviewing the parties concerned or seeking further information/evidence on the case.
- The decisions of the Grievance and Appeal Committee, the Review Committee or the Director of Human Resources together with the Legal Counsel (or as the case may be, a small group chaired by a senior staff member and comprising the Director of Human Resources and the Legal Counsel) on complaints under their purview shall be final.
- The new Procedures were announced to the University community in January 2008. They are also included in the Staff Handbook which is accessible by staff members any time via the University Portal.
- The University will review the implementation of the new Procedures from time to time.

**Relevant papers on
governance of the Hong Kong Polytechnic University**

Meeting	Date of meeting	Paper
Public Accounts Committee	--	Chapter 8 of the Report No. 40 of the Director of Audit Chapter 1 of the Supplemental Report of the Public Accounts Committee No. 40A Chapter IV of the Report of the Public Accounts Committee No. 43
Panel on Education	26.3.2002 (Item I)	Minutes
Panel on Education	7.5.2002 (Item I)	Minutes
Panel on Education	2.12.2002 (Item I)	Minutes
Panel on Education	14.5.2007 (Item VI)	Minutes Agenda
Panel on Education	12.11.2007 (Item VIII)	Minutes Agenda
Panel on Education	17.7.2008 (Item II)	Minutes Agenda
Panel on Education	9.2.2009 (Item IV)	Minutes Agenda
Panel on Education	6.7.2009 (Item I)	Minutes Agenda