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**Bills Committee on
The Hong Kong Polytechnic University (Amendment) Bill 2011**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper sets out the background to the Hong Kong Polytechnic University (Amendment) Bill 2011 ("the Bill") and summarizes the areas of concern of the Panel on Education ("the Panel") on the proposed legislation.

Background

Report on Higher Education in Hong Kong

2. In May 2001, the then Secretary for Education and Manpower commissioned the University Grants Committee ("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.

Director of Audit's Report

3. Against this background, the Audit Commission 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 ("D of A") which was released in March 2003. As far as The Hong Kong Polytechnic University ("PolyU") was concerned, D of A 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. D of A 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. 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, D of A 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.

Public Accounts Committee Report

6. Pursuant to the tabling of Report No. 40 of D of A in the Legislative Council ("LegCo"), the Public Accounts Committee ("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/Court members whose attendance at Council/Court meetings was low.

PolyU Council's role in determining policy governing terms and conditions of service of staff

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 President's 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 and proper application of section 9(3)(c) of the Ordinance.

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 of PolyU had completed its review of institutional governance and management 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.

The Bill

11. The Bill is a Member's Bill sponsored by Dr Hon LAM Tai-fai. It seeks to –

- (a) allow Council members who are employees and students of PolyU to participate in the appointment and removal of the President and Deputy President of PolyU;
- (b) reduce the number of Council members from 29 to 25;
- (c) change the composition of the Council, and in particular, to give all full-time academic and non-academic staff members irrespective of rank the opportunity to be represented on the Council; to reduce the total number of lay members of Council from 20 to 17 and to empower the Council to appoint eight out of the 17 lay members; to increase the number of student members on Council from one to two, specifically one each from the full-time undergraduate and sub-degree students and the full-time postgraduate students;
- (d) define more clearly the Council's role to set the policy governing the terms and conditions of service of staff members; and
- (e) make modifications to the Ordinance in line with the University's development and changes in the social environment.

A comparison of the composition of the Council under the existing Ordinance and the Bill is in **Appendix I**.

Deliberations of the Panel

12. The Panel discussed the proposed legislative amendments to the Ordinance at its meeting on 9 November 2009. The meeting was attended by representatives of the management of PolyU and the Polytechnic University Staff Association ("PUSA"). The major concerns of members are summarized below.

Size of the Council

13. Members noted that the size and composition of Councils of the UGC-funded institutions followed largely a formula. The proposal for streamlining the PolyU Council from 29 to 25 members aligned with the smaller size of the Councils of other UGC-funded institutions. Members did not have any view on the proposal.

Staff representation on the Council

14. Members noted that under the existing Ordinance, there were three elected staff members in the Council, two of whom to be elected by and from eligible staff and one of whom from Senate. Eligible staff were defined as full-time teaching and instructional staff and administration staff of equivalent ranks or grades. PolyU proposed the same number of staff members in the Council but of different constitution. Under the proposal, the three staff members were to be elected by and from full-time academic staff, non-academic staff, and Senate respectively.

15. PUSA objected to the proposal for separate representation of academic and non-academic staff in the Council. In its view, the proposal for separate election of representatives of academic and non-academic staff ran counter to PUSA's tradition of treating staff members equitably, irrespective of job nature and ranks, and would jeopardize the cordial relationship between academic and non-academic staff. PUSA stressed that both academic and non-academic staff were its members and had the same opportunity to be elected to the Council. PUSA was concerned that the proposal would provide an opportunity for the management of PolyU to manipulate staff members in the Council who were less articulate, and the voice of the Association would hence be weakened.

16. Members suggested that PUSA might consider carrying out a poll among its staff members on the method of electing staff representatives to the Council. In response to members' suggestion, PUSA had conducted a poll on the method of election of staff representatives to the Council in February 2010. On the basis of the outcome of the poll, the Council decided to amend its proposal on staff representation on the Council. Two staff representatives were proposed to be elected by and from all full-time staff instead of the original proposal of electing one representative each from academic and non-academic staff. The Panel was informed of the revised proposal in March 2010. The Bill has reflected the revised proposal.

Senate representation on the Council

17. Although the representative of the Senate was regarded as a staff member in the Council under the existing Ordinance and the Bill, the Association was of the view that the staff member elected by and from the Senate could not represent the views of frontline staff members because the Senate comprised mainly senior staff members such as Chair Professors, Deans of Faculties and Heads of Departments.

18. Members shared the concern of PUSA. Members noted that the Senate of a university normally comprised academic staff of a certain rank and above. As such, the representatives of Senate in the Councils of many universities were not regarded as the representatives of their staff members. Members urged PolyU to consider the composition and election of its Senate as this could be a point of contention.

19. PolyU acknowledged the need to improve the structure of its Senate. Members were informed that PolyU was in the process of appointing vice presidents, and one of the tasks was to review the structure of the Senate once the new vice presidents were in place.

Student representation on the Council

20. While the Association welcomed the proposal for increasing the number of student members in the Council from one to two, it was concerned that students attending taught programmes and part-time programmes as well as non-local students of PolyU were excluded as the two student representatives were to be elected by and from the full-time undergraduate/sub-degree students and full-time postgraduate students respectively.

21. Members were given to understand that the UGC-funded institutions had all along adopted a general principle to have two student representatives in their Councils, one elected by and from among full-time undergraduate students and the other from full-time postgraduate students.

Relevant papers

22. A list of the relevant papers on the LegCo website is in **Appendix II**.

**Current and proposed composition of the
Council of The Hong Kong Polytechnic University**

Current composition	Proposed composition
President of the University	President of the University <i>(no change)</i>
Deputy President of the University	Deputy President of the University <i>(no change)</i>
2 Deans of Faculty nominated by the President	Deletion of the "Faculty Deans" category
3 Elected Staff Members, 2 of whom to be elected by and from eligible staff and 1 of whom to be elected by and from Senate <i>(eligible staff being defined as full-time teaching and instructional staff and administrative staff of equivalent rank or grade)</i>	3 Elected Staff Members, 2 of whom to be elected by and from all full-time staff and 1 of whom to be elected by and from Senate
20 Members appointed by the Chief Executive of whom not more than 2 shall be public officers	17 Lay Members of whom 9 shall be appointed by the Chief Executive and 8 shall be appointed by Council
1 Student Representative elected from all full-time students	2 Student Representatives, of whom 1 shall be elected by and from the full-time undergraduate and sub-degree students and 1 of whom shall be elected by and from the full-time postgraduate students
1 member from the alumni who is not an employee of the University and appointed by Council	1 member from the alumni who is not an employee of the University and appointed by Council <i>(no change)</i>
Total: 29 members	Total: 25 members

**Relevant papers on
The Hong Kong Polytechnic University (Amendment) Bill 2011**

Committee	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	9.2.2009 (Item VI)	Minutes Agenda
Panel on Education	6.7.2009 (Item I)	Minutes Agenda
Panel on Education	9.11.2009 (Item V)	Minutes Agenda