

# 立法會

## *Legislative Council*

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### **Report of the Bills Committee on The Hong Kong Polytechnic University (Amendment) Bill 2011**

#### **Purpose**

This paper reports on the deliberations of the Bills Committee on The Hong Kong Polytechnic University (Amendment) Bill 2011 ("the Bill").

#### **Background**

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, UGC published the review report entitled "Higher Education in Hong Kong" ("the HER Report"). The Government accepted most of 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 to ensure that they were "fit for the purpose".

3. Against this background, the Audit Commission conducted a value for money audit on the UGC-funded institutions. 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 UGC should request PolyU and five other institutions to review the size and composition of their governing bodies and make necessary changes.

4. The concern of D of A about the corporate governance of the UGC-funded institutions was echoed in Report No. 40A of the Public Accounts Committee ("PAC Report"). PAC recommended that UGC should request all the institutions to adopt measures to ensure that external members would constitute a majority at their respective council meetings. PAC also raised concern that the President's Personal Affairs Committee ("PPAC") of PolyU had not sought its 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 (Cap. 1075) ("the Ordinance") as it specified that the PolyU Council shall not delegate to any committee appointed by it the power to approve the terms and conditions of service of persons in the employment of the University, other than persons in its part-time or temporary employment. PAC recommended that PolyU should further review the effect and proper application of section 9(3)(c) of the Ordinance.

5. In response to the HER Report, Poly U set up a Governance and Management Review Committee to review its institutional governance and management. In the light of the recommendations of the HER Report, the PAC Report and PolyU's internal governance and management review, PolyU has proposed to introduce various changes to the Ordinance to improve its internal governance.

## **The Bill**

6. The Bill is a Member's Bill sponsored by Dr Hon LAM Tai-fai. Its main objects are to (a) revise the size and composition of the PolyU Council; (b) allow Council members who are employees and students of PolyU to participate in the appointment and removal of the President and

Deputy President; (c) define more clearly the PolyU Council's role to set the policy governing the terms and conditions of service of staff members; and (d) make modifications to the Ordinance in line with the University's development and changes in the social environment.

## **The Bills Committee**

7. At the House Committee meeting on 7 October 2011, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Ir Dr Hon Raymond HO, the Bills Committee has held four meetings and has met with PolyU, the Administration, UGC, the PolyU Staff Association and the PolyU Students' Union ("PUSU"). The membership of the Bills Committee is in **Appendix I**. A list of organizations/individuals which/who have submitted views to the Bills Committee is in **Appendix II**.

## **Deliberations of the Bills Committee**

### Composition of the Council

8. The Bill proposes to reduce the size of the PolyU Council from 29 to 25 members and to revise its composition, including reducing the total number of lay members from 20 to 17; increasing the number of student members from one to two; deleting the membership category of "Faculty Deans" and giving all full-time staff irrespective of rank the opportunity to be represented on the Council.

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

### *Appointment of lay members*

10. Under the existing section 10(1)(d) of the Ordinance, the Chief Executive ("CE") may appoint 20 lay members to the Council. The Bill proposes to reduce the number of lay members appointed by CE from 20 to nine and empower the PolyU Council to appoint eight lay members.

Some members have expressed concern about the proposed number of lay members appointed by CE under the Bill and its implication on the institutional autonomy of the University. They have pointed out that as the number of lay members appointed by CE constitutes more than one-third of the total number of Council members, these lay members could exercise veto power over important decisions which require two-thirds of the votes of all Council members. PolyU has been requested to consider reducing the number of lay members appointed by CE from nine to eight, and increasing that appointed by the PolyU Council from eight to nine.

11. PolyU has responded that the Bill has made significant improvements in respect of appointment of lay members to the PolyU Council. Under the existing Ordinance, the PolyU Council is not empowered to appoint any lay member. The proposed section 10(1)(d)(ii) provides for the appointment of eight lay members by the PolyU Council. The new composition for the PolyU Council has taken into consideration the autonomy required by the Council to appoint lay members in accordance with the needs of the University for expert advice. While the number of lay members appointed by CE exceeds the number of lay members appointed by the PolyU Council by one, the University is confident that the appointments made by CE will be based on the merits of the individuals concerned.

12. The existing section 10(1)(d) stipulates that CE may appoint 20 lay members to the PolyU Council, of whom not more than two shall be public officers. Members note that under the proposed section 10(1)(d)(i), CE may appoint nine members to the PolyU Council, but the section does not prohibit CE from appointing public officers as Council members. Similarly, the proposed section 10(1)(d)(ii) does not prohibit the PolyU Council from appointing public officers as Council members. Members note that according to the Interpretation and General Clauses Ordinance (Cap. 1), "public officer" means any person holding an office of emolument under the Government, whether such office be permanent or temporary. Members have sought clarification of any intention in either provision to allow any number of public officers to be appointed.

13. According to PolyU, it was informed by the then Education and

Manpower Bureau in December 2006 that it was the Administration's conscious decision not to appoint public officers to the PolyU Council. Accordingly, PolyU has taken on board the Administration's suggestion to delete the phrase "of whom not more than 2 shall be public officers" in amending the existing section 10(1)(d). As for the proposed section 10(1)(d)(ii), PolyU has advised that it is to provide the University with the autonomy to appoint members from the business, industrial and professional sectors in accordance with the need of the University for expert advice and it is not the University's intention to appoint any public officer to its Council. Members have suggested providing expressly in the Bill the policy intent of the Administration and the PolyU not to appoint any public officer to the PolyU Council. PolyU has agreed to take on board members' suggestion and Dr Hon LAM Tai-fai will move Committee Stage amendments ("CSAs") to section 10(1)(d) to this effect.

14. Members consider it important for the Administration and the PolyU Council to comply with the six-year rule and the six-board rule ("the six-six rules") in appointing lay members. PolyU has confirmed the University's intention to comply with the six-six rules in making appointment of lay members to the Council to ensure a healthy turnover of Council members and a reasonable distribution of workload for the appointees.

15. Members have requested the Administration to provide information on whether the Administration's appointments of members to the PolyU Council under section 10(1)(d) of the Ordinance made in the past were in compliance with the six-six rules and whether there were any exceptions. According to the Administration, since the incumbent CE assumed his first term of office on 25 June 2005, a total of 38 appointments/re-appointments were made to the PolyU Council. The six-board rule was adhered to on all these appointments/re-appointments. The Administration had also complied with the six-year rule on all but two occasions, when the Administration took heed of the University's advice to re-appoint two incumbent members for a seventh year respectively in 2008 and 2009 as an exceptional arrangement, in order to ensure continuity of the work of the Council amidst the transition of the presidency of PolyU. The Administration has undertaken to continue to vigorously enforce the six-six rules in making future appointments to the

PolyU Council, having regard to the principle of appointment by merit.

*Student representatives*

16. Members note that both PUSU and the PolyU Postgraduate Association have expressed support for the proposal in the Bill for increasing the number of student members on the PolyU Council from one to two, i.e. one from full-time undergraduate and sub-degree students and one from full-time postgraduate students. At a Bills Committee meeting, representatives of PUSU have suggested exploring the feasibility of extending the right to vote in the election of student Council member to part-time students. Members note from PolyU that the current number of its full-time and part-time undergraduate and sub-degree students are 14 812 and 4 736 respectively; while the current number of its full-time and part-time postgraduate students are 2 880 and 6 829 respectively. Members have pointed out that full-time students and part-time students have different expectations for the University and their areas of concerns may not be the same, and consider it necessary for representatives of PUSU to consult students on its proposal.

17. In response to the request of the Bills Committee, PUSU has conducted a consultation with all students (both full-time and part-time students) to solicit their views on the Bill. According to PUSU, the consultation exercise shows that students do not have strong views on the Bill. As such, PUSU has confirmed its support for the proposed amendments in the Bill, including the proposal of having one student Council member elected by and from among full-time undergraduate and sub-degree students.

LegCo representation in the PolyU Council

18. Members have enquired about PolyU's position on the appointment of Legislative Council ("LegCo") Members in the PolyU Council. PolyU has advised that under the proposed section 10(1)(d)(ii), eight lay members are to be appointed by the PolyU Council. After the passage of the Bill, the PolyU Council will appoint a working group to work out a mechanism for appointing lay members from different sectors of the community in accordance with the need of the University for

expert advice. The PolyU Council will appoint individuals whose expertise and experience will facilitate the long-term development of the University. LegCo Members may be invited to serve on the PolyU Council based on their own merit and in their personal capacity, but the University does not see the need to include a designated seat for LegCo Members in the PolyU Council.

#### Appointment and removal of the President and Deputy President

19. The proposed section 8(2) and (4) provide that the appointment and removal of the President and Deputy President should require the votes of not less than two-thirds of all members of the Council for the time being. Under the proposed section 8(4A) and (4B), the President or the Deputy President is not a member of the PolyU Council for the purpose of appointing or removing himself or herself. In response to members' enquiry, PolyU has confirmed the University's intention that a Council member who is proposed for appointment as President or Deputy President is not a member for the purpose of the appointment. To make the University's intention clear, Dr Hon LAM Tai-fai will move a CSA to clause 6 of the Bill to add an express provision in this regard.

20. Members have sought clarification on whether the person appointed as acting President under section 8(5) of the Ordinance, if not appointed from existing Council members, is a Council member for the purpose of appointing or removing the President and the Deputy President under the proposed section 8(2) and (4). According to PolyU, the acting President shall have full authority to act on behalf of the President including the right to vote on all Council matters unless there is conflict of interest. Following the spirit of section 8(4A) and (4B), if the acting President is a candidate proposed for appointment as President or Deputy President, he or she shall not be a member for the purpose of appointing himself or herself. Dr Hon LAM Tai-fai will move a CSA to add a new section 10(7A) to specify categorically that the acting President and acting Deputy President have the right to vote under sections 8(2), 8(4) and 10(7).

#### Joint venture and partnership

21. Clause 5 of the Bill seeks to amend section 6 of the Ordinance to provide a more accurate description of the role and powers of the PolyU Council. Clause 5 proposes, among others, to merge the existing section 6(b) ("enter into any contract") and (m) ("enter into a contract, partnership or other form of joint venture with other persons") into a new section 6(b) ("enter into any contract, partnership or other form of joint venture with other persons"). In the light of the remark of the legal adviser to the Bills Committee on the effect of merging the two subsections, PolyU has advised that the proposed section 6(b) seeks to remove the duplication in the existing section 6(b) and (m) in respect of the PolyU Council's power to enter into contracts and there is no intent to change the meaning of the original provisions. Dr Hon LAM Tai-fai will move CSAs to the effect of retaining the original section 6(b) and amending the proposed section 6(m) to "enter into a partnership or any other form of joint venture with any person".

22. With the expansion in the scale of partnership or joint venture activities undertaken by the UGC-funded institutions in recent years, members are concerned that substantial financial losses may arise from such activities which may adversely affect the financial viability of the institution proper and disrupt the operation of its publicly-funded programmes. Making reference to the existing section 6(g) and (h) relating to investments and borrowing of funds, Hon CHEUNG Man-kwong has suggested that the phrase "*in such manner and to such extent as it thinks necessary or expedient*" be added to the proposed section 6(m) with a view to alerting the University of the importance of exercising reasonable care when using the powers conferred under section 6(m) to enter into partnerships or joint ventures with other parties, particularly in respect of large-scale collaboration projects (such as joint ventures to establish universities on the Mainland) involving substantial financial resources. In Mr CHEUNG's view, the proposed amendments will not affect the institutional autonomy of the University as decisions on such matters rest with the University.

23. PolyU has advised that according to the relevant guidelines of UGC, a UGC-funded institution cannot use public funds to subsidize its self-financing activities, including joint ventures entered into with other parties. UGC-funded institutions are required to keep separate financial



accounts for their publicly-funded and self-financing operations. In the view of PolyU, the leading paragraph of the proposed section 6 has already made it clear that activities stated in section 6(a) to (o) should be "necessary for, or incidental or conducive to, the better carrying out of the objects and policies of the University" and, as such, these activities should be carried out in an appropriate manner. Specific conditions (i.e. "in such manner and to such extent as it thinks necessary or expedient") are considered necessary for section 6(g) and (h) only as both items involved substantial financial resources. For section 6(b) or (m), in case the use of substantial financial resources are involved, it will then become section 6(g) or (h) and hence the specific conditions therein will apply. Furthermore, not all partnerships and joint venture activities under section 6(m) involve significant financial resources, such as student exchange activities. Hon Audrey EU shares PolyU's view that the leading paragraph of the proposed section 6 has already provided a general condition which applies to the exercise of the powers under paragraphs (a) to (o) of the section, and consider it not necessary to add specific conditions to any of those paragraphs.

24. Both the Administration and UGC have assured members that they will continue to closely monitor the self-financing operation of the UGC-funded institutions to ensure that such operation would not impact on the operation of their publicly-funded programmes. UGC has advised that to ensure prudent use of public funds, heads of institutions are requested to provide a Certificate of Accountability to UGC annually to confirm that public funds allocated via UGC have been spent in accordance with approved Government policies. UGC has set up the Financial Affairs Working Group to work with the institutions to ensure their continuing good financial governance and sound financial planning, by, for instance, drawing up best practices for the institutions' reference.

25. Noting the increase in PolyU's collaborations with commercial organizations on transfer of knowledge and knowhow in recent years, members consider it important for the University to put in place a robust mechanism to monitor its operation of knowledge transfer and conduct periodic reviews on the mechanism.

26. PolyU has advised that its Council has conducted a review on the

operation of the University's subsidiaries and joint venture companies. A Knowledge Transfer Committee has been established by the University Council to help set broad-based policies and give recommendations on knowledge transfer to the management. Exit mechanisms have been established for the joint venture and start-up companies set up under the knowledge transfer effort. For instance, (a) by maximum time frame: PolyU will not be associated with such entities for more than six years; (b) by stage of development: PolyU will not be associated with those entities that are commercially well-established, e.g. after achieving critical mass in a well-established market with significant comparable competitors, or those facing obsolescence from other disruptive technology, or those that will no longer require PolyU for research and development support. After the exit, PolyU will cease to be a significant shareholder (i.e. less than 20% shareholding) and will not participate in any strategic development or management decisions in the entity concerned. At the request of members, PolyU has also provided information on its policies to protect intellectual property rights generated in the course of scholarly pursuit.

#### Council's role in determining the terms and conditions of service of staff

27. In response to the recommendation of the PAC Report, PolyU has reviewed the effect and application of section 9(3)(c) of the Ordinance. According to PolyU, it is the University's intention that the Council's role is to determine the policy governing the terms and conditions of service of staff, rather than the terms and conditions of service of individual staff members. The University's management, under the authority of the President, is to approve the terms and conditions of individual staff members. The proposed amendments to sections 8(3), 9(3)(c) and 11(c) seek to clarify the position. Members note that the terms and conditions of service of the President, Deputy President and all Vice Presidents are determined by a committee under the PolyU Council or the PolyU Council itself, while those of staff members below the rank of the Vice President are recommended by the relevant staffing committee and approved by the President or his/her delegate.

28. Members have sought information on PolyU's procedures for handling staff complaints on appointment, promotion and remuneration

related matters. PolyU has advised that it has accepted UGC's recommendations for improving the grievance procedures of the UGC-funded institutions, namely appointment of mediators; stipulating time limits for handling grievances; safeguards against retaliation; and involvement of external parties in the final level of appeal. The PolyU Council has approved the new grievance procedures which have been made known to all staff members at the end of 2011. The new grievance procedures involve two stages. First, a complaint will be resolved by mediation. Second, if a complaint cannot be resolved by mediation, it will be handled by the University's Grievance and Appeal Committee, which comprises a Chairman, academic and non-academic staff members of the University and one external member who is not a Council member.

#### PolyU's powers in respect of fees and charges

29. Under the existing section 12, the PolyU Council is the authority for fixing fees for all University programmes. Clause 11 of the Bill amends section 12 to empower the President to set fees for self-financed courses, while the Council will continue to hold authority for approving fees for government-funded programmes. Noting that the authority for determining fees for government-funded programmes is vested with individual institutions, members are concerned about the availability of safeguards to prevent institutions from charging excessive fees for such programmes.

30. According to the Administration, the recurrent grant to UGC-funded institutions is a deficiency subvention calculated by deducting from the estimated gross expenditure an assured income from tuition fees and other sources. The assumed tuition fee income is based on the indicative tuition fee level determined by the CE-in-Council. The present cost-recovery target for tuition fees for UGC-funded institutions is 18%. The institutions have all along followed the indicative tuition fee level in setting the fees for their UGC-funded programmes. UGC has assured members that there are clear established policies on the provision of recurrent grant to the UGC-funded institutions. UGC sees no incentive for institutions to charge excessive tuition fees for their UGC-funded programmes as individual institutions have to bear the risk of corresponding downward adjustments in the provision of recurrent

grant from UGC should they do so.

31. Under the proposed section 12(2) and (3), the President is vested with the authority to refund course fees and charges for facilities and services provided by the University. Members have discussed whether the party/parties for refund should be specified in the provisions.

32. PolyU has advised that while most refund of course fees are made to students, there are cases where refund is made to family members of a student who has died. As for the refund of charges for facilities, it can be made to students or organizations as a result of the cancellation of events or venue booking. The President will act with prudence in approving the refund of course fees and the charges for facilities. The University does not consider it necessary to specify the parties for refund in the proposed section 12(2) and (3) as the focus of these subsections should be on the approval authority for refund, rather than the recipient of the refund.

### **Committee Stage amendments**

33. Apart from the CSAs mentioned in paragraphs 13, 19, 20 and 21 above, in response to the views expressed by the legal adviser to the Bills Committee, Dr Hon LAM Tai-fai will also propose CSAs in respect of the drafting of the proposed sections 8(3) and 13(1), (2) and (3); the English text of the proposed section 18(g); and the Chinese text of the proposed sections 8(4A) and 8(4B) and 10(1)(c)(i) and (f)(i) and (ii). The Bills Committee agrees to the proposed CSAs to be moved by Dr Hon LAM Tai-fai. The Bills Committee has not proposed any CSA to the Bill.

### **Resumption of Second Reading debate**

34. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 25 April 2012.

## **Consultation with the House Committee**

35. The Bills Committee reported its deliberations to the House Committee on 23 March 2012.

Council Business Division 2  
Legislative Council Secretariat  
18 April 2012

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

**Membership list**

**Chairman** Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP

**Members** Hon CHEUNG Man-kwong  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon Cyd HO Sau-lan  
Hon Starry LEE Wai-king, JP  
Dr Hon LAM Tai-fai, BBS, JP  
Hon CHAN Kin-por, JP  
Dr Hon Samson TAM Wai-ho, JP  
Hon Tanya CHAN

(Total : 10 Members)

**Clerk** Ms Amy YU

**Legal Adviser** Miss Carrie WONG

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

A. Organizations which have given oral representation to the Bills Committee

1. The Hong Kong Polytechnic University Staff Association
2. The Hong Kong Polytechnic University Students' Union

B. Organizations/individuals which/who have provided written submissions only

1. The Hong Kong Polytechnic University Postgraduate Association
2. Mr Hans Mahncke, Senior Coordinator (Projects), City University of Hong Kong
3. Federation of The Hong Kong Polytechnic University Alumni Associations Limited
4. The Lion Rock Institute
5. Mr YEUNG Wai-sing, member of Eastern District Council

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

<b>Current composition</b>	<b>Proposed composition</b>
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>
<b>Total: 29 members</b>	<b>Total: 25 members</b>