

# **The Report of the Review Panel on University Governance**

**February 2017**

## TABLE OF CONTENTS

<b>I. The Review</b> .....	<b>3</b>
<i>Two main catalysts</i> .....	3
<i>Terms of reference</i> .....	4
<i>Our process</i> .....	4
<i>Expression of thanks</i> .....	7
<b>II. The Historical Development of the University Ordinance and Statutes</b> .....	<b>7</b>
<i>The historical development until 1964</i> .....	7
<i>Effect of the 1997 constitutional changes</i> .....	10
<i>Implications for future arrangements</i> .....	11
<b>III. Other Considerations</b> .....	<b>12</b>
<i>The political context</i> .....	12
<i>Institutional performance</i> .....	13
<i>The Research Assessment Exercise</i> .....	15
<b>IV. Governance in General</b> .....	<b>16</b>
<i>Accountability framework</i> .....	16
<i>Rebuilding trust</i> .....	19
<b>V. The Chancellor</b> .....	<b>20</b>
<i>The role of the Chancellor elsewhere</i> .....	20
<i>The role in Hong Kong</i> .....	21
<b>VI. The Council</b> .....	<b>22</b>
<i>Composition of the Council</i> .....	22
<i>The functions of the Council</i> .....	23
<i>Risk management</i> .....	26
<i>Training and professional development of new Council members</i> .....	27
<i>Frequency of meetings and setting of agendas</i> .....	27
<i>Delegation to committees</i> .....	28
<i>The key Council committees</i> .....	29
<i>Report of the Working Group on Confidentiality</i> .....	30
<i>Appointment by the Chancellor of members of the HKU Council</i> .....	30
<i>Towards an honorary Chancellorship</i> .....	32
<i>The Nominations Committee</i> .....	32
<i>Award of honorary degrees</i> .....	36
<b>VII. The Senate</b> .....	<b>37</b>
<b>VIII. The Court</b> .....	<b>38</b>
<b>IX. The Convocation</b> .....	<b>38</b>
<b>X. The President &amp; Vice-Chancellor and the Senior Management Team</b> .....	<b>38</b>
<b>XI. Other Aspects</b> .....	<b>39</b>
<i>Statutory provision on “membership” of the University</i> .....	39
<i>Disciplinary matters</i> .....	40
<b>XII. Conclusions</b> .....	<b>40</b>
<b>ANNEX</b> .....	<b>42</b>

[Note: An executive summary is provided separately.]

## I. The Review

1. This is the report of the independent Review Panel on University Governance, which was formally established by the Council (“**Council**”) of the University of Hong Kong (“**the University**” or “**HKU**”) at its meeting on 26 April 2016 for the purpose of reviewing the effectiveness of the University’s current governance structure.
2. The Review Panel was chaired by Professor Sir Malcolm Grant (Chancellor of the University of York and former President and Provost of University College London) and its other members were Professor William C. Kirby (T.M. Chang Professor of China Studies and Spangler Family Professor of Business Administration at Harvard University) and Mr Peter Van Tu Nguyen (former High Court judge of the HKSAR). See Annex for more information about the members of the Review Panel.

### *Two main catalysts*

3. There were two main catalysts for the establishment of the Review Panel:
  - (1) Firstly, good governance is a critical element of the success of any university, and there is widespread acceptance of the need for periodic reviews of its effectiveness. In Hong Kong, a high-level review of the effectiveness of current governance structures of all Hong Kong’s 8 UGC-funded universities was recommended by the 2015 study conducted by Professor Sir Howard Newby for the UGC. The report recommended that, in line with international best practices, the University should regularly review its governance and management structures. The last such complete review of HKU’s governance was in 2002-03, resulting in a report titled *Fit for Purpose*, which was followed-up in 2009. So the time is right for a further review.
  - (2) Secondly, the past 30 months have seen unusually high levels of political tension in Hong Kong, including the Occupy Central movement. There has been significant student involvement, and these tensions have inevitably spilled over into university life, particularly at HKU. The politics of Hong Kong have become intertwined with the internal affairs of the University and hence with its governance. Meetings of the University Council have been disrupted by protestors and its confidentiality rules have been breached. The consequent feelings of mistrust, dismay and contention have fuelled demands from several quarters for governance reform, including amongst staff, students, alumni and other stakeholders. The University Council has been alive to these issues and at its meeting in January 2016 resolved unanimously to set up an independent Review Panel to study the governance of the University and its effectiveness. At its meeting in April 2016, the Council further resolved on the appointment of the members of the Review

Panel and upon the terms of reference for our work.

*Terms of reference*

4. The terms of reference of the Review Panel were:

*To conduct an overall review of the governance structure of the University, and specifically*

*(a) to review the effectiveness of the current governance structure of the University, following the implementation of the recommendations in the Niland Reports (2003 and 2009);*

*(b) for the purpose of the review, to*

*(i) receive information, advice and suggestions from relevant committees and members of the University (including staff, students and alumni) and other stakeholders of the University;*

*(ii) take into consideration findings and recommendations of relevant reviews of university governance in recent years (including the review conducted by Professor Sir Howard Newby commissioned by the UGC) and the review by the University's Working Group on Confidentiality, as well as best practices of publicly funded universities around the world;*

*(iii) review the provisions in the University Ordinance and Statutes relating to the University's governance, management and operations, and their appropriateness; and*

*(iv) conduct reviews in any other areas which relate or affect the effectiveness of the University's governance;*

*(c) to make recommendations which would enhance the effectiveness of the governance of the University as appropriate.*

*Our process*

5. We were required by our terms of reference to receive information, advice and suggestions from relevant committees and members of the University (including staff, students and alumni) and other stakeholders of the University. To do this, we requested the University to:

(1) set up for us an e-mail address ([reviewgv@hku.hk](mailto:reviewgv@hku.hk)) so that stakeholders could submit information, advice and suggestions, and

(2) invite staff, students, alumni and other stakeholders to meet with us in an

intensive week-long schedule of meetings in Hong Kong, several of which were in public forums.

6. In order to secure an open and honest discussion, we offered guarantees of confidentiality. The written submissions, many of them quite extensive, thoughtful and extremely helpful, have been kept confidential to the members of the Review Panel and its Secretary. The same is true of the exchanges that we had at the various meetings we conducted, though of course several were in the public domain. We indicated at the commencement of each meeting that we would operate under so-called Chatham House rules, meaning that views expressed to us might be quoted directly but would not be attributed to any individual. Our Secretary prepared for us a summary note of each meeting, in which speakers were identified only by the order of their speaking and not by name.
7. In the result, we received written submissions from over 40 people and held 33 meetings during the week of 20-24 June 2016.
8. We also requested and obtained information from the University's administration and management, including the agendas and minutes of recent meetings of the Senate, the Council and the Court.
9. As also required by the terms of reference, we took into consideration the findings and recommendations of relevant reviews of university governance in recent years, including:
  - (1) the 2003 *Fit for Purpose* report ("**the 2003 Niland Report**")<sup>1</sup> of the three-person independent review panel comprising Professor John Niland (Vice-Chancellor of the University of New South Wales and convener of the review panel), Professor Neil Rudenstine (President Emeritus of Harvard) and the Hon. Chief Justice Andrew Li. Amongst the 17 recommendations of the 2003 Niland Report was a recommendation that the responsibility of supreme governing body of the University should be focused on the Council, which should be reconstituted with a size not exceeding 24 members (down from 54), each member appointed *ad personam* and serving as trustee rather than as delegate or representative of a particular constituency. It was also recommended that the function of the Court should be recast as a sounding board for the wider interests of the communities served by the University, including its alumni. The 2003 Niland Report sought to embed a distinction between governance whereby the University is held accountable to the public, and management, which is the responsibility of the Vice-Chancellor and his senior managers.

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<sup>1</sup> J. Niland, N. Rudenstine and A. Li, *Fit for Purpose: A review of governance and management structures at The University of Hong Kong*, February 2003.

- (2) the 2009 *Five Year Review of Fit for Purpose* report (“**the 2009 Niland Report**”).<sup>2</sup> This follow-up review was undertaken by Professor Niland alone. It recorded that the central recommendations of the earlier report had been implemented through amendments to the Statutes, so that the Council was now confirmed as the de facto supreme governing body of the University, operating to the trustee model; that the Senate had been reconstituted and confirmed as the principal academic authority; and that the remit of the Court had become that of an advisory body. Professor Niland identified several areas calling for further attention, including a review of the committee structure and several important management reforms.
- (3) the 2015 *Governance in UGC-funded Higher Education Institutions in Hong Kong* report (“**the Newby Report**”)<sup>3</sup> of Professor Sir Howard Newby. This was a comprehensive study of the elements of successful governance in universities, including a review of experiences in different countries and a focus on the particular needs of the 8 UGC-funded universities in Hong Kong. There were 9 main areas identified in his terms of reference:
- (i) the appropriate level and extent of the involvement of the councils in key decision-making processes;
  - (ii) the oversight of self-financing, commercial and outreach activities;
  - (iii) the role of the councils in sustaining the academic integrity of teaching and research, including the freedoms of inquiry and expression;
  - (iv) the identification of council members with appropriate skills and experience;
  - (v) the relationship between the council and the executive, including the reporting lines of committees;
  - (vi) the role of councils in performance management;
  - (vii) the ways in which effectiveness of governance can be reviewed;
  - (viii) improvements in accountability and transparency; and
  - (ix) the induction and support of council members.

Sir Howard made several recommendations of particular importance to the University, and to which we return later in this Report, including in particular, arrangements for the induction and training of Council members and the strategic role of the Council.

10. As also required, we took into consideration the findings and recommendations of the report of the Council’s *Working Group on Confidentiality* (to which we return below), as well as the best practices of publicly funded universities around the

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<sup>2</sup> J. Niland, *Five Year Review of Fit for Purpose*, May 2009.

<sup>3</sup> H. Newby, *Governance in UGC-funded Higher Education Institutions in Hong Kong*, September 2015.

world.

11. Our review of the provisions in the University Ordinance and Statutes relating to the University's governance, management and operations, and their appropriateness began with an understanding of how the University Ordinance and Statutes developed historically, which we share in Section II of this Report.
12. Whilst making our recommendations (which are set out in Sections IV-XI) to enhance the effectiveness of the University's governance, we were mindful of other considerations such as the political context of the University and the University's recent performance in terms of ranking and research assessments (elaborated further in Section III).

### *Expression of thanks*

13. We should like to express our thanks to all who contributed to this review with ideas and suggestions, and for the positive sense in which the review was set up and supported. Although it was common for the meetings to focus on some key themes and for there to be an element of repetition in the messages we heard, they were notable for a sense of good order, decency and respect for the views of others. Inevitably the political backcloth to the review surfaced from time to time in the submissions that we heard, but we were impressed by the extent to which all participants demonstrated a deep concern about the toll that recent events had taken on the self-confidence of the University and on the sense of trust and respect within it; and by the widely shared wish for solutions that would allow everyone to get back to a more stable normality, and to a peaceful and safe environment for scholarship.
14. The Chairman of the Council, Professor Arthur Li, and the President & Vice-Chancellor, Professor Peter Mathieson, were both extremely generous with their time and ideas. We had high quality professional support from the Registrar, Mr Henry Wai, and his team. Particular thanks go to our secretariat and especially Dr Bethany Chan, our Panel Secretary, for her constant support, efficiency and professionalism.

## **II. The Historical Development of the University Ordinance and Statutes**

### *The historical development until 1964*

15. The University of Hong Kong was first incorporated under the University Ordinance 1911 (“**the 1911 Ordinance**”), which was later repealed and replaced by the current instrument, The University of Hong Kong Ordinance (“**the**

**Ordinance**”) in 1964 (Chapter 1053 of the Laws of Hong Kong). It is the Ordinance that defines, in broad terms, the main offices of the University (such as the Chancellor, Pro-Chancellor, Vice-Chancellor, Deputy Vice-Chancellor, Treasurer, and Registrar) and the main constitutional bodies (the Court, the Council, the Senate and the Convocation), and prescribes their functions. The original 1911 Ordinance had annexed to it a set of Statutes that prescribed more detailed arrangements, and could be amended by the University itself with approval of the Governor.

16. Given Hong Kong’s history as a British colony, it is not surprising that all of these arrangements should closely reflect those that were current in Britain – and in particular, in Scotland – at the time of the University’s founding. In Scotland to this day, it is the Court that is the governing body of universities such as Glasgow, Saint Andrews, Aberdeen and Edinburgh, whilst in England, at least for those universities that have not abolished it altogether, the Court is more of an occasional ceremonial stakeholder gathering with at best very limited constitutional responsibilities.
17. Bernard Mellor in his history of the University recounts that, after much discussion and study, its constitution was modelled not on Oxford and Cambridge, but on the newly founded civic universities in England, principally Leeds, Birmingham and Sheffield. Indeed the first Vice-Chancellor, Sir Charles Eliot, was recruited from the vice-chancellorship of Sheffield.<sup>4</sup> The first Chancellor was Sir Frederick Lugard, who was also not only the colonial Governor of Hong Kong from 1907 to 1912 but also effectively the founder of the University. It was perhaps his greatest achievement, and the University’s formal opening in 1912 was his last public act as Governor and the culmination of his governorship.
18. The 1911 Ordinance reflects the power structure of Hong Kong’s colonial era, and most of those elements have survived successive amendments and have been carried through to the present day. It created the office of Chancellor, and although it does not appear to have specifically prescribed that the office should be held *ex officio* by the Governor, that arrangement was implicit in Article 7 which provided that whenever the office of Governor was vacant or the incumbent was unable through absence from the Colony or otherwise to act, then “the officer for the time being administering the Government of the Colony shall be Pro-Chancellor and shall exercise all the functions of the Chancellor.”
19. The Governor was also to be a Patron of the University, and the Governor in Council (i.e. in legislative mode) was given a power of “veto if he should disapprove of any decision of the Court of the University on the grounds that the interests of

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<sup>4</sup> Bernard Mellor, *The University of Hong Kong* (Hong Kong University Press 1980), 36.

the Colony would be injuriously affected, or that the proposal is ultra vires or unconstitutional, or for other good cause, but the said Court may appeal to the Secretary of State [in London] against the veto of the Governor in Council.”<sup>5</sup>

20. The Chancellor was to be the President of the Court,<sup>6</sup> which was the supreme governing body<sup>7</sup> and a large stakeholder body of originally around 40 members. The Court was empowered to appoint its own members. The Chancellor was also to be the Chairman of the Council, defined as the executive body of the University, with the Vice-Chancellor as Vice-Chairman.<sup>8</sup> The Vice-Chancellor was to be the chief administrative officer of the University.<sup>9</sup>
21. The subsequent history of the Ordinance and Statutes discloses shifts over time in the relationship between the University and the colonial Government. By the time of the 1923 consolidation of the Ordinance,<sup>10</sup> several amendments had been made to the original design. The Governor had become explicitly the Chancellor ex officio<sup>11</sup> and the remit of the Court had been expanded to give it a power of veto over any decision of the Council or of the Senate.<sup>12</sup> The constitution of the Court had been changed and prescribed by the amended Statutes. There were to be four classes of members. They included two categories of ex officio members, one of which was the Chancellor, Vice-Chancellor and Treasurer, and the other included local and university office-holders including all the members of the Colony’s Executive Council and Legislative Council.
22. A third category was life members (those principally involved in the foundation of the University or subsequently closely supporting it). A new category, Class 4, comprised nominated members. The powers of the Court to determine all matters relating to the appointment of future members, though retained in the Ordinance, was constrained by the Statutes which instead conferred on the Governor the exclusive power to nominate in this category four British and six Chinese members, plus two additional members,<sup>13</sup> all being resident in the Colony.
23. Further amendments had been made by the time of the 1937 consolidation.<sup>14</sup> The Chancellor had become the “head, and principal officer, of the University”<sup>15</sup> and the Statutes had been transferred to the Regulations of Hong Kong (1937 edition).

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<sup>5</sup> Article 3(3).

<sup>6</sup> Article 6.

<sup>7</sup> Article 10(1).

<sup>8</sup> Article 11(4).

<sup>9</sup> Article 8(1).

<sup>10</sup> <http://oelawhk.lib.hku.hk/archive/files/c998b4344dc7865bd8223f0cea87d9d4.pdf>

<sup>11</sup> Article 6.

<sup>12</sup> Article 10(5).

<sup>13</sup> Statute 4.

<sup>14</sup> <http://oelawhk.lib.hku.hk/archive/files/22fdacc142d32a3ef1981ad2274aa308.pdf>

<sup>15</sup> Article 12(2).

24. By the 1950 consolidation,<sup>16</sup> the roles of the principal officers had remained constant but membership of the Court had expanded. The number of nominated members had grown to 34, all of them to be appointed by the Governor.<sup>17</sup> The Chancellor continued to be president of the Court, but chairmanship of the Council had transferred to the Vice-Chancellor. Moreover, power of appointment of all 9 non-ex officio members to the Council had transferred to the Chancellor.<sup>18</sup>
25. In 1964, the 1911 Ordinance was repealed and replaced by the University of Hong Kong Ordinance 1964, and by the time of the revised edition of 1989,<sup>19</sup> the Ordinance had been simplified, and the constitutional arrangements for the principal bodies were spelled out instead in the Statutes. The Ordinance continued to prescribe that the Chancellor should be the chief officer of the University and that the Governor should be the Chancellor,<sup>20</sup> whilst expanding the role of the Vice-Chancellor to be the principal academic as well as administrative officer of the University,<sup>21</sup> reflecting current British practice. Membership of the Court now included elected members from different constituencies, and the number for which exclusive appointment rested with the Chancellor reduced to 20. Likewise the constitution of the Council had changed to allow for 6 persons to be appointed by the Council itself, together with 4 elected members and a member of Senate. The Chancellor maintained the power to appoint 6 members directly.<sup>22</sup>

*Effect of the 1997 constitutional changes*

26. The Ordinance and its prescription of the relationship between University and Government remained largely unchanged through Hong Kong's transition in 1997 from being a British colony to a "one country, two systems" Special Administrative Region (SAR) of China. The structures designed for a colonial model of government were simply transferred to the new political leadership. It is striking that the current edition of the Ordinance is identical in almost all respects to that of the 1989 revised edition, except for the substitution of "Chief Executive" for "Governor" in relation to the role of Chancellor.
27. The new 1997 constitutional settlement was prescribed by the Basic Law,<sup>23</sup> under which the Chief Executive is appointed by the Central People's Government (**CPG**) in accordance with prescribed procedures, which have been subsequently revised

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<sup>16</sup> <http://oelawhk.lib.hku.hk/archive/files/5a790ad22c84c0749453ea13329f9e11.pdf>

<sup>17</sup> Statute 7.1(4).

<sup>18</sup> Statute 11.1.

<sup>19</sup> <http://oelawhk.lib.hku.hk/archive/files/e8e265e8391bb666cd90d38b04465ac9.pdf>

<sup>20</sup> Article 12(2) and (3).

<sup>21</sup> Article 12(5).

<sup>22</sup> Statute XVIII.

<sup>23</sup> The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

to extend universal suffrage from 2017 whilst maintaining control of the electoral college over candidacy, restricted to no more than three.<sup>24</sup> The Chief Executive is held accountable to the CPG and to the Hong Kong SAR.<sup>25</sup>

28. Although the Basic Law makes no mention of universities, nor of the role of the Chief Executive as Chancellor, it does provide a guarantee that “educational institutions of all kinds may retain their autonomy and enjoy academic freedom.”<sup>26</sup>

#### *Implications for future arrangements*

29. From this brief legislative history, we note particularly that the intertwining between the colonial leadership (and more recently the SAR Government) and the University has varied from time to time. At various stages in the University’s history, the Governor had almost direct control. Indeed, the Ordinance has over time prescribed the functions in two ways. Some powers have at different times been conferred directly on the Governor; others on the Chancellor, even though throughout the history of the University they have been the same individual. It would be unwise to assume this was accidental. It will have been a deliberate distinction. It made clear which functions could be exercised as part of the broader functions of the Governor, having regard to the interests of the Colony as a whole, on the one hand; and those that, by virtue of having been conferred on the Chancellor as a member of the University, were to be exercised solely in the interests of the University.
30. We note in this context that the current edition of the Ordinance and the Statutes departs from the historical model in that it confers no powers in respect of the University on the Chief Executive as such; only on that individual as Chancellor. As we outline below, there are today various other mechanisms through which the accountability of the University to the Government of Hong Kong for its use of public money and achievement of economic and social outcomes is secured.
31. Today the Ordinance may be amended by the Legislative Council of Hong Kong, with the consent of the Chief Executive of Hong Kong. But the Statutes can be amended by the University itself. This latter process is relatively straightforward. The Ordinance currently provides that proposed amendments should begin with proposals in the Council, which may be endorsed (with or without amendment) as recommendations in the Court, which may then in turn be approved (with or without amendment) by the Chancellor acting as such (and not as Chief Executive of Hong Kong). The Statutes are in turn supplemented by regulations (“**the Regulations**”), which provide detailed rules for the orderly conduct of the

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<sup>24</sup> Annex I, revised 2016.

<sup>25</sup> Article 43.

<sup>26</sup> Article 137.

University's day-to-day affairs.

### **III. Other Considerations**

#### *The political context*

32. The University is one of Hong Kong's most well-known and significant institutions. Its staff and students have long been participants in local politics. Since the 1997 handover, the two dominant and related issues have been Hong Kong's ongoing relationship with the CPG and the political means by which Hong Kong exercises the "high degree of political autonomy" guaranteed under the Basic Law, particularly the mode of election of the Chief Executive of Hong Kong. So not only is the University no stranger to local political controversy, it often finds itself at the centre of political disputes and at the heart of a media storm.
33. In our various meetings, four instances were commonly cited as a collision between institutional autonomy and politics. For each instance, it was said that the University had suffered seriously damaging impact on its reputation and its management. The first was in 2000 when the Government was alleged to have put pressure on the University to suppress the work of the Director of Public Opinion Programme (POP), thereby interfering with academic freedom. Following an internal inquiry, the incident resulted in the resignation of the Vice-Chancellor and a Pro-Vice-Chancellor.
34. The second arose out of the visit of the Vice-Premier of the State Council of the People's Republic of China to HKU in August 2011. There were complaints made in the media as to the University's handling of the visit and the behaviour of the police at the event, including a serious allegation that certain students had been detained on campus. Despite a rigorous internal inquiry concluding that there had in fact been no such detention and that the students concerned had been free to leave at all material times,<sup>27</sup> there were criticisms of the University's competence in event planning and crisis management, and of a silo management structure. This incident also resulted in media criticism of the Vice-Chancellor and other senior officers.
35. The third incident was the Council's refusal in 2015 to endorse the appointment of a candidate for the post of Vice-President & Pro-Vice-Chancellor (Academic Staffing & Resources), notwithstanding that his appointment had been recommended through proper process by an appointments panel chaired by the President & Vice-Chancellor. It happened that the candidate had been alleged by some media to be a prominent supporter of the Occupy Central movement, and

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<sup>27</sup> *Report to the Council of the University of Hong Kong by the Review Panel on the Centenary Ceremony held on 18 August 2011* (3 February 2012)

this made it easy to conclude that the Council had allowed its judgement to be swayed by this factor. Unauthorised disclosure of details of the Council's confidential deliberations, including an illicit recording, led to court proceedings resulting in the grant of an injunction against the Hong Kong Broadcasting Corporation and certain other parties whose names were unknown, to restrain them from using, publishing or communicating or disclosing to any other person all or any part of the information involved.<sup>28</sup>

36. The fourth instance was the appointment by Hong Kong's Chief Executive, in his capacity as Chancellor of the University, of a new chairman of the Council. Notwithstanding Professor Arthur Li's distinguished career as a leading surgeon and academic leader as a former Vice-Chancellor of the Chinese University of Hong Kong, his appointment was portrayed and attacked in the media as being political in purpose and intended to bring the University under tighter Government control.
37. These incidents illustrate the atmosphere of heightened political tension and volatility within Hong Kong within which the University functions, and which forms an important part of the backcloth to our review. There is a large and lively news media presence in Hong Kong and the University has been a major source of material for them over the past 30 months. There has been intense interest in the meetings of the University Council, and we heard directly from Council members about a violent student protest at a meeting of the Council in January 2016 which gave rise to fears about their personal safety, and that subsequently led to criminal prosecution.
38. We are sensitive to the current political situation in Hong Kong, which has become if anything even more polarised since our meetings in June, following the elections to the Legislative Council and in the run-up to the choice of the next Chief Executive.

#### *Institutional performance*

39. The University of Hong Kong is a remarkable institution with a long history of powerful academic achievement. It has survived, and thrived, over the course of a century that witnessed three Chinese revolutions; the Japanese occupation; and now the return to Chinese rule. Despite the uncertainty caused by the 1997 retrocession, the University is significantly stronger in research and teaching than it was 20 years ago. By the standards of most of its public competitors in other countries, the University has been, and continues to be, extremely well-funded by the Government. It also enjoys extensive capital assets and liquid reserves. Its dominant position not only in Hong Kong, but also in Asia and in the world has

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<sup>28</sup> *University of Hong Kong v Hong Kong Commercial Broadcasting Co Ltd and person or persons unknown*, Decision 8 July 2016; Lam J; HCMP 2801/2015.

been reflected by a high ranking in university global league tables. Its position and its reputation grew steadily in the 2000s, and it looked set for continuing future advance, notwithstanding the highly globally competitive environment of modern higher education.

40. Although we are sceptical of the accuracy of league tables in capturing the qualities of such complex institutions as universities,<sup>29</sup> we noted some significant concern and bemusement both within and outside the University at recent trends. Reputation as perceived by scholars around the world is a significant element of some of the global league tables and that of HKU appeared to be slipping. HKU enjoyed a period of sustained rapid rise up the league tables until around 7 years ago. As Table 1 illustrates in relation to *Times Higher Education*, the peak was reached around 2011, but then fell back significantly over three years and since then has remained stable for the past four years.
41. Up until 2010 the *Times Higher* rankings were developed in collaboration with Quacquarelli Symonds, but following a parting of the ways the *Times Higher* developed a new methodology, and QS set out to produce its own rankings following its pre-existing method, the *QS World University Rankings*. These nonetheless portray a similar trend for HKU though at a higher point than the *Times Higher*, as Table 1 demonstrates.

**Table 1: league table measures of performance - Times Higher and QS**

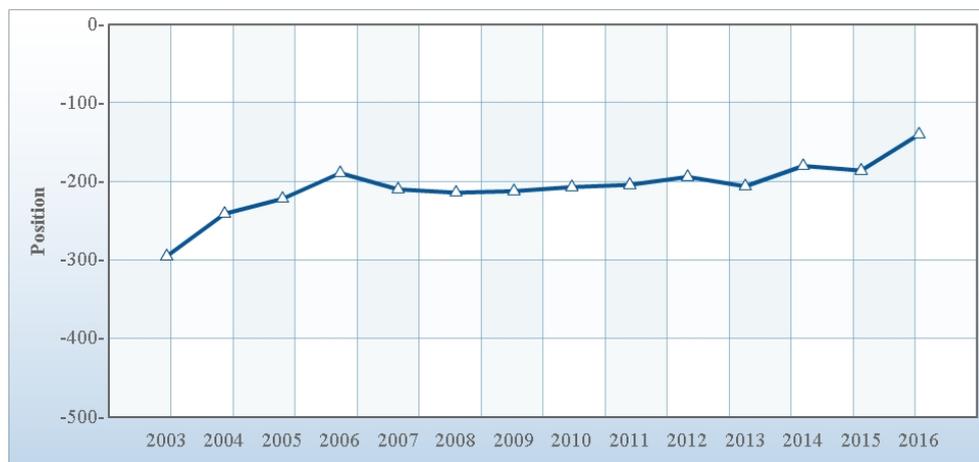
Times Higher		QS World University Rankings	
Year	HKU ranking	Year	HKU ranking
2017	=43	16/17	27
2016	=44	15/16	30
2015	43	14/15	28
2014	43	13/14	26
2013	35	12/13	23
2012	34	11/12	22
2011	21	10/11	23

42. The Shanghai table of *Academic Ranking World Universities* (ARWU), which is in general subject to less annual volatility than the other rankings, and is based wholly on research performance, demonstrates a more consistent performance over the same period with a recent uplift, but the University's overall place is significantly lower than in the other rankings above.

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<sup>29</sup> See e.g. Malcolm Grant, "University world rankings are pointless, UCL president says", *Guardian*, 21 September 2010.

**Table 2: Academic Ranking World Universities 2016 – performance of HKU**



43. Universities across the world place great emphasis on these league tables and we understand why the trend suggested by the *Times Higher* results has been disappointing to supporters of HKU. It is true of course that league tables are not based upon a consistent science of measurement but upon the drawing together and weighting of multiple variables. Different league tables come up with different rankings. Changes in weightings and methodology can cause shifts in the rankings, without any change in the underlying position. Improvement in performance of great institutions is not achieved overnight, but is the product of years of strategic leadership and investment. In this context, we believe that the University's position amongst the top 50 in the world in both the *Times Higher* and the *QS* rankings is remarkable and impressive, given the strength of global competition, but that its position is precarious and will require all its resources and focus if further improvement is to be brought about. There is a vital role here for clear and strategic leadership to which we return below.

#### *The Research Assessment Exercise*

44. Of somewhat greater concern in our opinion is the University's performance in the 2014 Research Assessment Exercise (**RAE**) that was undertaken by the UGC. This exercise involves a rigorous examination through international peer-review of all the research outputs of the 8 UGC-funded universities in Hong Kong. It is the basis for determining future research funding for the universities, with the UGC reallocating its funding to the best performing units. It provides no hiding place for poor performance.
45. It had been widely expected that HKU would emerge with glory, but the results in fact were disappointing. Indeed, in the University's own internal circulars, the exercise was said to have given rise to a "much needed wake-up call". The exercise

revealed some surprisingly widespread weaknesses in research performance.<sup>30</sup>

- about half (49%) of the University's research activity was judged to rise no higher than the standard of 2 star; of that, 27% was judged 1 star or unclassified and was expected to attract minimal if any future funding support;
  - 24% of the University's cost centres had 20% or more of their research activity judged 1 star or unclassified;
  - for 30% of the University's cost centres, the percentage of research activity judged 1 star or unclassified was more than the sector-wide average; and
  - for 26% of the University's cost centres, the 4 star ranking was below the mean among all institutions.
46. The RAE has provided the leadership of the University with the clearest possible independent assessment of its strengths and weaknesses in research. Tackling areas of weakness is seldom easy, but it is essential, whether through additional investment, staff development, departmental mergers, closures or some other reorganisation. Standing still is not an option for any disciplinary area within the university. There is a need for strong strategic leadership, supported and facilitated by improved governance structures.

#### **IV. Governance in General**

##### *Accountability framework*

47. There is no simple international model of university governance. It is a phenomenon that varies hugely not only across the globe but also within national systems. The governance arrangements of several of the world's most successful universities are deeply rooted in their long history and have often proved resistant to reform. The governance models of Harvard, Oxford and Cambridge have remained unchanged in their main elements for so long as to appear quite idiosyncratic in the modern world. This is principally due to their institutional autonomy and their continued renown and success. In high-performing institutions it is difficult to make the case for reform and even more difficult to carry it through. In the United States there are many different models within the state-funded institutions from state to state, often with significant involvement of the state legislature and governor; and quite different approaches again in the private universities, commonly with heavy engagement of alumni.

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<sup>30</sup> The RAE classifies an institution's research outputs into five categories (listed from high to low): 4 star, 3 star, 2 star, 1 star and unclassified.

48. There are however many common themes. The increased focus in recent years on good governance in the commercial sector, as a protection for the interests of shareholders and other stakeholders, as a safeguard against fraud and as a means of holding executives to account, has inevitably had a knock-on impact on the university sector. In all universities, but especially in those that are significantly publicly funded, there is an entirely legitimate expectation of accountability for the use of public money. There are various ways in which this can be secured. Contractual mechanisms commonly play a major part. Research grants, awarded in competitive conditions, today make up a major part of any leading university's income. They have specific inputs, and they also typically specify the desired outputs, reporting deadlines, publication protocols and the allocation of intellectual property rights. These are specific hypothecated income streams to the university around which it is possible and customary to erect specific accountability mechanisms.
49. But much of a university's other public income is allocated by block grant, a model which explicitly acknowledges the benefits of institutional autonomy by allowing the university itself to allocate the funding internally at its discretion in advancing the interests of the institution. The formula for calculating the grant, and for dividing up a fixed budget between different institutions falling within it, can be quite simple, perhaps using a multiplier such as student numbers or staff headcount. It may be conditioned with reference to another variable, such as the submission and approval of an academic development plan for the institution, or overall research performance. For example, the Hong Kong Research Assessment Exercise 2014 reflects the policy of the UGC to move steadily away from the traditional simple model of research funding allocation to one in which research funding is earned competitively through a peer-review assessment of each university's performance across each academic disciplinary area.
50. As recognised by the Newby Report, governments have further legitimate expectations of universities for which accountability is necessary, such as ensuring the quality of education, promoting entrepreneurship amongst staff and students and ensuring that talented potential students are not excluded from a university education by reason of funding, race, gender or social class. The trick lies in balancing these needs of a modern society against the requirement of institutional autonomy which resists political interference. As the historical experience across totalitarian regimes in the 20<sup>th</sup> century demonstrates, universities struggle to thrive and innovate when they are kept under close political supervision or control.
51. Overall, the Hong Kong model reflects the generally hands-off British approach to institutional autonomy. The universities work closely with the Government but

they are not under the direct supervision of the Education Bureau. There is an important body, the UGC, which sits between the universities and the government. It is modelled on the England model, formerly also known as the UGC and now as the Higher Education Funding Council for England<sup>31</sup> (HEFCE), though the UGC's remit is more advisory than executive. Its membership includes both local and international experts. Its role is to advise on the performance, needs and funding of universities in Hong Kong, and on the distribution of funding and other matters as may be referred to it by the Chief Executive. The UGC's mission statement maintains that it seeks "to preserve institutional autonomy and academic freedom, in the context of appropriate financial and public accountability."<sup>32</sup> It has recently reinforced this commitment in a public statement as follows:

*"Academic freedom and institutional autonomy are core values treasured by Hong Kong and are cornerstones of our higher education sector. All eight higher education institutions funded by the UGC are autonomous bodies with their own Ordinances and governing Councils. The UGC Notes on Procedures clearly state that institutions enjoy autonomy in the development of curricula and academic standards, selection of staff and students, initiation and conduct of research, internal allocation of resources, etc. The UGC has all along supported and safeguarded academic freedom and institutional autonomy in accordance with the Notes on Procedures, in the context of appropriate financial and public accountability."*<sup>33</sup>

52. **Hong Kong has steadily developed a strong model for government oversight of universities that now properly balances the need for public accountability against the Basic Law's guarantee of institutional autonomy and academic freedom, quite independently of the role of the Chief Executive as Chancellor.**
53. **The proposal advanced by Sir Howard Newby that the UGC should develop a written accountability framework through which the university leadership should report publicly every year will further underpin that accountability and we endorse it.**
54. **Indeed, we would go further, in suggesting that in the interests of mutuality the framework also spell out the Government's strategic commitment to the values and ambitions of the universities on behalf of Hong Kong, bearing in mind their importance to the economy, intellectual and cultural base of Hong**

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<sup>31</sup> At the time of submission of this Report, the Government had introduced to the British Parliament the Higher Education and Research Bill which proposes the abolition of HEFCE, and the transfer of its regulatory responsibilities to a new Office for Students, and its responsibilities in relation to research to a new independent body called UK Research and Innovation.

<sup>32</sup> See <http://www.ugc.edu.hk/eng/ugc/about/overview/mission.htm>.

<sup>33</sup> University Grants Committee's response to enquiries on result announcement of Research Assessment Exercise 2014 ( <http://www.ugc.edu.hk/eng/ugc/publication/press/2015/pr05022015.htm>)

**Kong and its global competitive advantage.** International experience demonstrates that governments have most impact when their primary focus shifts from political control to accountability and to driving global competitive advantage in the university sector.

### *Rebuilding trust*

55. Good governance is critical to the success of any institution, and especially a university competing in a global environment for the best staff and students, and research funding. This calls for a truly strategic approach. There was a strong feeling expressed in all our campus meetings that governance and management attention has been seriously distracted by the political turbulence in which the institution has found itself. In particular, some members of the Council complained that the tensions in HKU were a reflection of the tensions in Hong Kong, but had been blown out of proportion; that HKU had become a battleground with the involvement of members of the Legislative Council; that they had felt intimidated by violence; and that Council meetings had become too dominated by politics to the crowding out of other proper business. There has been an undermining of trust, and of the mutual respect, that had previously prevailed between various parties. The Council has been divided.
56. From some of the staff and student members of the Council we heard of a sense of distrust in the lay members, believing them to be acting not in the best interest of the University but according to some sort of secret political agenda; and believing them to be unqualified to handle the affairs of an institution of higher learning. Lay members in turn reported their dismay at the politicisation of the agenda: indeed, one commented that he had never seen such a circus in all his experience as a member of other governing boards. The process of appointment and transition to a new chairman towards the end of 2015 and early 2016 had been difficult, but we understand that normality has subsequently been largely resumed.
57. It is appropriate to acknowledge that behind every formal governance scheme there is a network of informal relations, through which much of the effective governance is undertaken. Despite the noise and passion of the public debate, we found a positive and respectful day-to-day working relationship between the current key players – in particular the President & Vice-Chancellor and the Chairman of Council; but also with the Chief Executive and the Secretary of the Education and Development Bureau.
58. Yet our responsibility is to make recommendations as to governance reform that can assist in establishing the conditions under which trust may be most effectively positively rebuilt. An important element of this must be to allow the Council to set aside the turbulent politics of Hong Kong and get on with its job of strategic

governance. We approach this aspect with a clear sense of the current challenges, but aware that our recommendations must look entirely to the future and to the longer-term advancement of the University. Governance structures have to be fit for purpose; and such as to allow great leadership to emerge, to be supported and to be held to account in a way that engages all stakeholders in commitment to the common mission of the advancement of the University, its students, staff, alumni, Government and the public at large.

59. We turn now to examine the allocation of governance functions between the principal offices and bodies, and the effectiveness of their discharge.

## **V. The Chancellor**

### *The role of the Chancellor elsewhere*

60. The title of Chancellor has ancient origins, and as a consequence of different trails of historical evolution, it is used today in a variety of different contexts. It denotes a very senior office: for example, in government (as in the Chancellor of Austria or of Germany, the Bundeskanzler); in fiscal contexts (as in the Chancellor of the Exchequer, the British finance minister); in religious institutions (as in the Chancellor of the Consistory Court of the Church of England); and in universities.
61. There is a wide variety of functions assigned to the title within universities. We find three completely different usages in different countries. The first is as an executive role. For example, in the California university system, the chancellor of each university, such as Berkeley and UCLA, is its academic executive head, who would have that title of University President in other states of the United States, but in California that title of President is given instead to the head of the California system, a political appointment. Elsewhere in the United States, the chancellor is often a more subordinate executive office within a university and accountable to the president of the university.
62. The second is in a formal governance role. In many if not all Australian universities, such as Melbourne and New South Wales, the title of Chancellor is conferred on the chairman of the university council, which is the principal non-executive role in the university.
63. Third, as in Britain, although it is ostensibly the highest office in the university,<sup>34</sup> the role of the Chancellor is in practice purely honorary and ceremonial. The Chancellor customarily presides at degree ceremonies and other formal events.

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<sup>34</sup> Hence the oddity that the person actually responsible for the executive leadership of a British university is commonly titled the Vice-Chancellor.

The role is separate from the chairmanship of the Council (for which the title of Pro-Chancellor is often conferred). The role of Chancellor is often undertaken by a member of the Royal Family: the Duke of Edinburgh served for over 60 years as Chancellor of the University of Cambridge, and the Queen Mother gave similar service to the University of London.

*The role in Hong Kong*

64. Hong Kong is different again. In colonial times, the Governor was the Queen’s representative and his ex officio role as Chancellor of the universities was for them a mark of high esteem. The role was akin in some respects to that of a constitutional monarch, but unlike the UK model, the post in Hong Kong was not internally elected, nor was it purely honorary. As we have seen, it was initially an important aspect of colonial government that a supervisory power was conferred on the Governor through appointment also as Chancellor. Over time, however, the position became largely ceremonial. With the 1997 constitutional changes, the formal powers of the Governor were transferred directly to the Chief Executive.
  
65. The Chief Executive is ex officio Chancellor of the 8 publicly funded universities in Hong Kong but the role is more than purely honorary. It falls to the Chief Executive as Chancellor to appoint the chairmen of the university councils together with a certain number of members of each council. The number and the processes vary between the institutions. In the case of HKU, the Chancellor may appoint 7 members of the Council and appoint one of them to be the chairman; in addition, the Chancellor’s approval is required to the award of honorary degrees. Other functions are also assigned to the Chancellor, several of them largely formalistic and/or honorary. The full array of powers is set out in Table 3 below.

**Table 3: formal functions of the Chancellor**

<ol style="list-style-type: none"> <li>1) Appointment of:             <ol style="list-style-type: none"> <li>a. a Pro-Chancellor (HKU Ordinance, section 12(4));</li> <li>b. Chairman of the Council (Statute XVIII.1(a));</li> <li>c. six external members to the Council (Statute XVIII.1(b));</li> <li>d. not more than 20 lay members to the Court (Statute XV.1(e))</li> </ol> </li> <li>2) Endorsing the addition to, amendment or repeal of any of the Statutes as recommended by the Council through the Court (Statute XVII(a))</li> <li>3) Considering appeals against decision of the Council to terminate the appointment of any officer or teacher (HKU Ordinance, Section 12(11))</li> <li>4) Depriving persons of any degree, diploma, certificate or other academic distinction on the joint recommendation of the Council and the Senate under the Disciplinary Committee procedures (Statute XXXI4 (1(A))</li> <li>5) Conferring of Honorary Degrees on the recommendation of the Honorary Degree Committee (HKU Ordinance, Section 10; Statute III.4 and Statute XX.4)</li> <li>6) Filling vacancies in the Disciplinary Committee (Including the Chairman) from members of HKU in the event of failure to constitute a full committee (Statute</li> </ol>
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XXX.2(3)), Statute XXX.6)

- 7) Giving consent to the Council to assign to any officers or teachers powers and duties in addition to those prescribed by the HKU Ordinance, the Statutes, or the terms of their respective appointment (HKU Ordinance, Section 12(14))
- 8) Determining the time, place and procedure for the congregations of HKU (Statute II.1)
- 9) Other powers and duties are conferred on the Chancellor which may be carried out by alternative persons in the absence of, or instead of, the Chancellor, including:
  - a) Signing instruments under seal: these can also be signed by the Pro-Chancellor, the Vice-Chancellor, the Deputy Vice-Chancellor or the Treasurer (HKU Ordinance, Section 5(4))
  - b) Presiding at congregations, and conferring degrees at congregations: in his absence the Pro-Chancellor, or in the absence of both, the Vice-Chancellor, presides (Statute II.2, II.3)
  - c) Presiding at Court meetings: in his absence the Pro-Chancellor, or in the absence of both, the Vice-Chancellor, presides (Statute XVI.2)
  - d) Presiding at meetings of Convocation, if present (Statute XXVIII.4).

66. It is important to note that, although *ex officio*, the role of the Chancellor is in fact a full and formal office within the University. In consequence it carries a fiduciary duty to the institution. Under the Ordinance, the Chancellor is the chief officer of the University.<sup>35</sup> It follows that his or her powers as Chancellor may be exercised only in the interests of the University and not for any other purpose.
67. We believe that the best way of reflecting this, and building on the other current public accountability arrangements outlined above, is for the role of the Chancellor to become largely honorary. We return to this below. It is an important step in securing a fresh approach to governance structures that will enable the Council to begin again in a new footing; to set aside the political polarisation of the past and focus exclusively on the exceptional challenges that lie ahead.

## **VI. The Council**

### *Composition of the Council*

68. There are 16 lay members of the Council. The Vice-Chancellor serves as an *ex officio* member of the Council, and the Treasurer is appointed by the Council itself.<sup>36</sup> The other members are elected from different constituencies: 2 by the Court; 4 full-time teachers, 1 full-time employee other than a teacher; 1 full-time undergraduate student; and 1 full-time postgraduate student.

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<sup>35</sup> Ordinance 12(2).

<sup>36</sup> Statute VIII.

69. These arrangements are in line with common practice but it is important to note again that any process of elections sits uneasily with the trustee responsibilities and strategic conceptions of the role. Candidates may campaign for election to pursue a factional rather than collective interest, and **we emphasise the sheer importance, for HKU in particular, of ensuring through proper process and leadership that the trustee responsibilities are fully observed by every Council member. The well-founded Council is not a quasi-legislature in which constituency representation plays out alongside partisan politics, but a strategic body focused on achieving the best governance for the University. With those important principles in mind, we would not support calls for change in the balance of constituencies.**

*The functions of the Council*

70. In accordance with the Niland reforms, the Council is now designated as the supreme governing body of the University and is responsible for ensuring the effective management of the financial, property, human and other resources of the University and for planning the University's future development.<sup>37</sup> Subject to the responsibilities of the Senate for academic affairs, the Council carries ultimate responsibility and accountability for all the affairs of the University. We believe this to be an appropriate delineation of two related functions: the governance of the University in its broadest sense, drawing together all its elements, and the proper oversight of the University's management. **Its members serve as trustees, and it is their responsibility, both individual and collective, to ensure that the interests of the University always prevail over individual, factional or political self-interest.**
71. The formal responsibilities of the Council extend to the proper conduct of public business, with the concomitant duties of integrity and objectivity, and of openness and transparency; engagement in the future development of the University and approving the University's strategic plan; monitoring the performance of the University against its planned strategies and operational targets; finance; audit; and overseeing estate management, human resources and health and safety.
72. We share the concern expressed by many stakeholders that the attention of the Council and the Senior Management Team has over the past 18 months been distracted from the University's core business. The situation is by no means terminal. We found a deep well of goodwill amongst all Council members and a desire to set the recent turmoil to one side and return to the necessary collective

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<sup>37</sup> Ordinance 7(3): "The Council shall be the supreme governing body of the University, and . . . is to perform all the duties of the University other than those vested or imposed by this Ordinance or the statutes in some other authority of the University or in an officer."

team working. **We do not underestimate the importance of joint leadership that can come only from the Chairman and the President & Vice-Chancellor. It is no exaggeration to observe that their relationship lies at the heart of the University's future.** Any rupture between individuals in these key positions is liable to be immediately apparent not only to those around them, but to the wider community.

73. To assist in these tasks the Council has adopted its own *Guide and Code of Practice for members of the Council*.<sup>38</sup> We found it impressively clear in its approach to the respective roles of officers and members, and the duties falling on all Council members. Where the Review Panel on the Centenary Ceremony had found “considerable ambiguity” regarding the relationship between the Vice-Chancellor and the Council,<sup>39</sup> the *Code of Practice* is now clear. It holds that the roles are formally distinct, that, in effect, the President & Vice-Chancellor runs the University, and the Chairman runs the Council, to which the President & Vice-Chancellor is accountable. The *Code*<sup>40</sup> specifies that:

*“Through leadership of the Council, the Chairman plays a key role in the business of the University without being drawn into the day-to-day executive management. For the Council to be effective, there must be a constructive working relationship between the Chairman and the President & Vice-Chancellor. This relationship will depend on the personalities involved, but is based on the recognition that the roles of Chairman and the President & Vice-Chancellor are formally distinct.”*

74. **The Council is not an executive body. Executive functions reside with the President & Vice-Chancellor and his team. Outside its formal decision-making responsibilities, neither the Council collectively nor any of its members individually has power to direct any member of the University other than the President & Vice-Chancellor as head of the executive. The job of the Council is supervisory, not executive:** to oversee the proper functioning of the University, to ensure propriety in its financial management and to hold the executive to account. **The Council may delegate responsibility to the Chairman to act on its behalf between meetings, but this is confined to routine business which would not have merited discussion at a meeting of the Council.** If other matters should arise, the Chairman has the option of calling a special meeting, inviting members to consider the matter in circulation, or dealing with it by Chairman’s action. The *Code* is clear that: “The Chairman has to be careful not to take decisions by Chairman’s action where it is inappropriate to do so, and not to exceed the scope of the delegated authority granted by the Council. Chairman’s action on matters of strategic importance should only be taken where delaying a

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<sup>38</sup> [https://www.hku.hk/f/page/7538/guide\\_n\\_code\\_2015.pdf](https://www.hku.hk/f/page/7538/guide_n_code_2015.pdf)

<sup>39</sup> Op cit paragraph 8.20

<sup>40</sup> *Code* 5.19

decision would disadvantage the University.”<sup>41</sup>

75. **An important component of governance is to secure formally the accountability of the President & Vice-Chancellor to the Council**, not just in formal meetings but also through a confidential annual review process. The usual approach to this, common throughout British and Australian universities, is through devising an agreed set of objectives prior to each academic year, and an end-of-year report by the incumbent of his or her performance against them. It is an important discipline, whether or not accompanied by power to increase remuneration. It cannot be done by the whole Council, but needs to be done on its behalf. **We recommend the establishment of a Senior Appointments Committee, chaired by the Chairman of Council or his/her nominee and comprising a small number of other Council members appointed by the Council, and charged with overseeing all matters relating to the employment of the President & Vice-Chancellor.**
76. In principle such an arrangement should only come into effect following the adoption of the reforms recommended below relating to the appointment of lay members to the Council, but the foundations should be established prior to and in anticipation of the appointment of a future President & Vice-Chancellor so as to ensure its incorporation into future contractual arrangements. We would hope that sufficient trust and confidence existed already between the principal parties for it to be given earlier effect by agreement.
77. **We recommend further that the appointment and terms and conditions of Vice-Presidents & Pro-Vice-Chancellors, Deans and other senior officers should be reviewed by the Senior Appointments Committee before approval by the Council.** The Council needs to be able to assure itself of the strength and the appropriateness of the remuneration of its senior executive management.

#### *Strategic oversight*

78. An important function of the Council is the oversight of strategic planning, underpinned by approval of the annual operating targets relating to the strategy’s implementation. We were surprised to find that the last strategic development plan for 2009-2014 had lapsed without a replacement. There had been a long period of planning blight whilst leadership changes were being made. Not surprisingly, the failure to develop an overarching and compelling strategy and vision had come to be the top-most risk identified for the University. So we were pleased to see that a draft strategic vision statement had been released in March 2016, and subsequently published in final form in August 2016.<sup>42</sup> It is a high-level

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<sup>41</sup> Code 5.14

<sup>42</sup> <http://www.sppoweb.hku.hk/vision2016-2025/index.html>

10-year strategic vision for “Asia’s Global University”, appropriately confident and aspirational in tone, focused around internationalisation, innovation and interdisciplinarity. However, **it is essential that the University’s strategic plan is underpinned by measurable objectives, an implementation strategy and a timetable.**

79. **This is a huge task and there is an urgent need for it. To realise the objectives of the 10-year Vision will call for significant reform across the University.** It is likely that it will require at the least:
- (1) reform of the internal funding allocation model so as to make allocations, costs and investments fully transparent, and to bring all of the University’s considerable resources, including those held in faculties and departments, in behind the goal;
  - (2) a review of human resources strategies to ensure they are focused on the recruitment and retention of outstanding staff against global competition;
  - (3) enhanced provision for centrally funded strategic pump-priming investment in innovative new academic initiatives; and
  - (4) a fundamental review of all senior management functions and remits to ensure joined-up leadership across the University and clear prioritisation for future funding and investment.
80. **A critical component will be securing cross-university integration with the plan, transcending and drawing together the plans of Faculties and Vice-Presidents & Pro-Vice-Chancellors, and creating a strategic framework for development of the University as a whole. The complexity of achieving this in the face of the University’s current fragmentation should not be underestimated, and will call for clear and persuasive leadership.**
81. In order to enable the Council to oversee the process **it will be necessary, as recommended in the Newby Report’s Recommendation 3, to establish and keep under review a set of performance indicators which are timely and relevant and which allow the Council to assess the progress towards the priorities agreed in the plan and to benchmark against globally comparative universities.** Success will not be achieved without a united Council working in support of the President & Vice-Chancellor, rebuilding trust and respect around common objectives for the University, and securing their delivery.

#### *Risk management*

82. The Newby Report is critical of the absence of a practice of rigorous risk-management across the Hong Kong university sector as a whole. He

encountered no risk registers at the institutional level, and little awareness of the importance of risk assessment when it comes to identifying and managing risk.<sup>43</sup> We learned that **work has now been undertaken at HKU on the development of a risk register, and recommend that it become a regular item on the agenda of the Audit Committee and the Council itself. It will also be an essential component of successful implementation of the 10-year Vision.**

*Training and professional development of new Council members*

83. **The first recommendation of the Newby Report (September 2015) concerns training and professional development of members of the Council so that they may discharge their duties in a more informed manner and induction for new Council members.** On the basis of submissions made to us, and of the provisions of the Council's *Code*, **we warmly commend this to the University.** The Council has responsibility for an enterprise with an annual income exceeding HK\$8.3bn, for over 28,000 undergraduate and postgraduate students (with a further 80,000-plus enrolled in programmes run by HKU SPACE) and for over 7,000 staff.<sup>44</sup> **Council membership is not a job for amateurs. We understand that the UGC is taking forward this recommendation on a cross-Hong Kong basis, which we also warmly commend, but it will be essential for the University to ensure continual updating of members' insight and expertise in matters pertaining particularly to HKU.**

*Frequency of meetings and setting of agendas*

84. For a supervisory Council to meet too frequently risks it interfering with the day-to-day management of the University. A strategic Council needs to be reflective, to allow time and space for the executive to respond to its decisions and to prepare properly for forthcoming meetings. **We recommend adoption of a Council meetings cycle of no greater frequency than two months, with proper planning of forthcoming business over the coming year.** The Council is entitled to require high quality briefing from the executive, so it needs to agree its future business and draft agendas well in advance. We learned that practice has been uneven, not least because of the events we cite above, and an important component of restoring stability and trust to the Council's functioning will be a process of long-term planning of its work. **We therefore recommend that a draft agenda for each meeting should be proposed well in advance by the President & Vice-Chancellor, for agreement with and formal approval by the Chairman. Any member should be able to propose an item for inclusion on the agenda, but the final decision must rest with the Chairman.**

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<sup>43</sup> Op cit 29-31.

<sup>44</sup> Based on statistics from <http://www.cpaohku.hk/qstats/overview>.

85. **It is the responsibility of the Chairman, working closely with the President & Vice-Chancellor, to maintain the Council's focus on its strategic business, to ensure that all its members are able to participate in discussion and debate in respectful manner, without intimidation or risk of media embarrassment, and that each meeting of the Council brings added value to the University.**

*Delegation to committees*

86. The Council discharges much of its responsibility through five main strategic and governance committees (to which we have recommended the addition of a Senior Appointments Committee):
- (1) the Audit Committee,
  - (2) the Campus Development and Planning Committee,
  - (3) the Human Resource Policy Committee,
  - (4) the Nominations Committee, and
  - (5) the Finance Committee.
87. There are a further 13 Council committees designated as management and operational/liaison and user, plus two committees established jointly between the Council and the Senate.<sup>45</sup> Each standing committee formally established by the Council has formal terms of reference, prescribing its powers and duties, membership and other relevant factors. They do not report regularly to the Council, but the minutes of their meetings are available at each Council meeting for the perusal of Council members.
88. Then there are a further 39 Senate committees which work closely with the Senate and/or report regularly to the Senate (e.g. Academic Board) as well as committees set up by the Senate but which do not report regularly to the Senate, apart from the submission of an annual report (e.g. committees of management of different centres, or the Discontinuation Committee which deals with students with poor performance). These numbers do not include sub-committees of Senate and Council committees, or committees set up by Faculties/Faculty Boards, or working parties and task forces.
89. In sum, the University is particularly committee-heavy, all serviced by a highly professional secretariat furnishing agendas and minutes in full detail. Reform of these structures was recommended in the 2003 Niland Report, when there were around 100 university committees, and reiterated in his 2009 follow-up report, when the number had fallen to 83. There is still some way to go: one respondent told us that he was a member of 35 committees, and that he encountered layers of

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<sup>45</sup> Equal Opportunity; University Health Service Committee.

bureaucracy that made HKU very slow and uncompetitive, lacking professional management and governance. We agree that **the management-by-committee syndrome needs to be tackled comprehensively. It carries an unacceptably high overhead.** We do not believe that the 10-year Vision adopted by the Council can be attained without radical change in the committee culture. It calls for a reorientation from deliberation to action, and to a single-minded focus on achieving the academic mission of the University.

90. **We therefore concur with the recommendation in the Newby Report that as a starting point the Council should publish a complete scheme of delegation, which sets out the sub-structure of all university committees, together with the lines of accountability through which the Council can satisfy itself that its strategic oversight of University's activities, both directly and indirectly through the Senate and the Faculties, is sufficiently focused, including appropriate delegation and reporting mechanisms.<sup>46</sup> We recommend that the need for each committee should be tested against two criteria: is it essential that this function be discharged by a committee rather than an individual, held properly and transparently accountable; and is it aligned to, and does it add real value to, the attainment of the strategic plan?** There is always some resistance to the abolition of committees. Some argue that they provide an introduction and training opportunity for younger academics in university administration. We disagree. Ineffectual committees are more likely to have the opposite effect. The better approach to developing the next generation of university leaders is to adopt a practice of continually identifying those who will benefit from focused training and development through special programmes. We recommend that this become a function of the Human Resource Policy Committee.

#### *The key Council committees*

91. Much of the Council's business must of necessity be undertaken by its key committees. Given the very real problems for the Council over the past year in guaranteeing confidentiality amongst its members, **we recommend that all business of a restricted or confidential nature should, wherever possible and at the discretion of the Chairman, first be considered in these committees. We also recommend that acceptance and observance of the undertaking as to the principles of trusteeship and confidentiality prescribed in the Code<sup>47</sup> should be a pre-condition of becoming and remaining a member of these committees.** The observance of confidentiality is fundamental to the credibility of governance. Reporting back to the Council should be in a form that conveys the substance of decisions yet continues to protect confidentiality.

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<sup>46</sup> Newby Report, Recommendation 5.

<sup>47</sup> Paragraph 5.7.

92. **This would also make it possible for the agenda, the bulk of the papers and the minutes of the Council’s meeting to be made publicly available, delivering enhanced transparency about the Council’s manner of handling its business.** We believe that such an approach would help build confidence in the University’s governance, enhance internal communication, and empower participation. The Council has nothing to hide. Sunshine is a powerful antidote to the shadows of suspicion.

*Report of the Working Group on Confidentiality*

93. We have reviewed closely the paper on confidentiality that has been prepared by a working party and submitted to the Council, and which is referred to in our terms of reference. We agree with its general thrust, but on careful reflection, **we have concluded that it would be unwise for the Council to adopt further formal restrictions on confidentiality that will create further division, when what all parties seek is a restoration of trust and respect. It is inappropriate for any member of Council to breach confidentiality, and no member of Council other than those authorised by the Council, such as the Chairman and the President & Vice-Chancellor, is entitled to brief the media on Council business.** We stress again the heavy responsibility that goes with the trustee status of each member of Council and their legal duties in respect of the strategic governance of a complex and globally reputable institution. The Council needs to get back to being a long-term strategic governing body and away from a focus on current media excitement.

*Appointment by the Chancellor of members of the HKU Council*

94. We concluded earlier in the Report that the time was now right for the powers of the Chancellor to become largely honorary, and we turn now to consider how that might be best achieved. The Chancellor’s power under the Statute to appoint not only the chairman but also a further 6 members of the Council<sup>48</sup> is the most significant substantive power, and in our consultations it was the most widely criticised part of the current arrangements. It was argued that the governing Council of a modern university could only do its job properly if it were able to appoint its own members, and on the basis of them bringing much-needed skills and an independent mind to the Council table. Appointments by the Chief Executive, on the other hand, were wholly external and unilateral. We learned that many fine individuals have served in this capacity but in the deeply polarised politics of modern Hong Kong, the fact that the power could be used for political patronage has led to deep suspicion. Not surprisingly, current members who had been appointed under these powers were equally concerned about the impression

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<sup>48</sup> Statute XVIII 1(a).

that the power was – or could be – used to advance purposes other than the good of the University, and that they were not seen as the independent and politically impartial people they believed themselves to be. They find it difficult to displace the impression that they owe loyalty to the Chancellor in his role as Chief Executive rather than to the University.

95. This is conspicuously unfair to distinguished people whose contribution to the University in this role is of great value yet is unremunerated, unrewarded and largely unrecognised. We need to protect members of Council from this implication. Appointment by the Governor historically brought great distinction, but that aura is inevitably diminished in what has become a fiercely political system, and it was suggested to us that it was now discouraging able people from serving. Ironically, the objectivity assumed of a Governor appointed from London fades as the post becomes more politically accountable, and as the choice of Chief Executive emerges from the politics of Hong Kong.
96. We note also the comment in the Newby Report<sup>49</sup> that “traditionally, in Hong Kong, the appointments to a university council have often been regarded as a civic honour, which means that appointments are made without a systematic consideration of the needs of the university to fill the requisite range of skills and expertise which they feel the council needs to discharge its responsibilities. In addition, there is not always a clear recognition on the part of new members of the time commitment which membership of the council will involve.”
97. We learned that there is in fact a process by which appointments to the Council are made by the Chief Executive. We understand that advice is in practice taken from the Government’s Education Bureau (EDB) as to appropriate candidates, but neither the EDB nor the Chancellor is required to consult either with the Chairman of the Council or its members before making appointments, and we were told of several instances when appointments were made without any such consultation.
98. We believe that the current approach requires review. The role of the Council has changed significantly. Up until 2003 executive and oversight authority within the University was distributed across different bodies within the University, but under the Niland reforms the Council became the supreme governing body. The extensive powers of the Chancellor to appoint members mattered less when the Council had less responsibility. The University today has a more concentrated and centralised model of power and responsibility that places a premium on the appointment of the best people, with an appropriate mix of skill-sets, to provide the strategic oversight of the executive led by the President & Vice-Chancellor, that is appropriate to a modern university with significant resources and responsibilities.

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<sup>49</sup> Page 20

### *Towards an honorary Chancellorship*

99. Reform of the current arrangements for appointment to the Council is key to the success of our recommendations above, and the forthcoming election of a new Chief Executive of Hong Kong provides an opportunity for a reappraisal and adjustment of the relationship between the government and the University.
100. Critically, nothing that we propose detracts from the role of the Chief Executive of Hong Kong or the accountability of the University to the government of Hong Kong. We are addressing the specific roles of a Chancellor of the University - who happens historically also to be the Chief Executive of Hong Kong - with a view to re-characterisation of the relationship.
101. **We recommend that the role of Chancellor should become largely honorary. This can be achieved through some relatively simple steps, notably through delegation of powers. We recommend that the incoming Chancellor should delegate to the Council itself the power to appoint future members to the University Council, including its future Chairmen.** In legal terms, this change would be within the current powers of the Chancellor and the Council and would not require approval from the Legislative Council.
102. We have considered an alternative approach to bring about a similar end result, but which would we believe would require an amendment to Statutes (which can be done by the University itself with the Chancellor's consent). It would be to follow and extend the precedent of the Chinese University of Hong Kong, where the Chancellor is required to appoint as chairman of the Council a person nominated by the Council itself from certain classes of its membership.<sup>50</sup> That model could be built upon to confer on the Council nomination rights at HKU, not only for the Chairman but also in respect of any new members of Council falling currently to be appointed by the Chancellor. Although it has attractions (and is the preferred option for one of our members), it lacks the flexibility and clarity of simple delegation, which is the majority's preferred course.
103. The agency of change should not be law reform, but co-operation and collaboration between the new Chancellor and the University Council.

### *The Nominations Committee*

104. The Nominations Committee is one of the most important governance committees of the Council. Its establishment was recommended in the 2003 Niland Report:<sup>51</sup>

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<sup>50</sup> The Chinese University of Hong Kong Ordinance (2012), Statute 11(1).

<sup>51</sup> Recommendation 3.

*“A nominations committee should be established to assist the Council in identifying suitable candidates for appointment as lay members. The committee should communicate any vacancies on Council to the University community and invite nominations on a confidential basis. In considering candidates, the committee should bear in mind the expertise needed in the different areas (e.g. finance, audit, investments, strategic planning, human resources, estate, health and safety) to enable the Council to discharge its responsibilities effectively and the lay members to add value to their active participation in the University’s decision making processes.”*

105. The desirability of such an approach is echoed in the Newby Report. We learned that the Nominations Committee has to date focused only on membership of committees and that it has tended to undertake its work mainly by circulation rather than formal meetings. **We recommend that the Council now review the Nominations Committee’s remit and establish it on a more formal footing, ready to assume the responsibilities recommended by us for nominating all lay member appointments to the Council as well as populating the Council’s committees and sub-committees. In making nominations the Nominations Committee should ensure that a good balance of expertise is evident in the skills set composition of the Council as a whole, and it should periodically review the composition to ensure the balance is maintained. We recommend the adoption of a process that is open and transparent, including the advertisement of vacancies.**
106. This is immensely important. These are roles of great complexity. We heard criticisms from some academic stakeholders of the presence and dominance of non-academics on the Council, on the ground that external members could not be expected to comprehend the values and complexities of a major university. That is an obvious overstatement. Academic and external members bring complementary skills and insights, and both are necessary for good governance. But it would be a mistake to underestimate how difficult it is for external members to fulfil this function in a way that brings real value to the institution. What external members can bring are the very qualities which are rarely to be found amongst academics, in particular an understanding of how large organisations function, the complexities of finance and financial control and audit, of risk and its management, and of the university’s external stakeholders and social responsibilities.
107. Also necessary is the development of a programme of induction and training, as recommended in the Newby Report, and to involve all members, not simply external members. We understand that the UGC is developing such a programme for all 8 publicly funded universities, and we fully support the exercise. University governance is not an amateur sport, but calls for expertise and understanding, not only of the complexities of the particular university and its immediate operating

environment, but of global trends in higher education, and Hong Kong's competitive advantage.

108. **Subject to the proposals being developed by the UGC for the training and induction of members of the Council across the sector, as envisaged by the Newby Report, we recommend that the Nominations Committee should be responsible within the University for overseeing this function.** In particular, financial literacy is so important a skill for all that we recommend it should be a part of training given to both new and existing members of the Council.
109. **We also recommend that the Nominations Committee should oversee appointments of members to all Council committees in consultation with the various chairmen, and should work systematically to change the committee-heavy University culture towards one of academic leadership by Deans with a reduction in the number of committees overall and in the bureaucracy surrounding their work.** Lengthy minutes, no matter how professionally they are presented, can in most cases yield to a brief summary of arguments and action points.
110. Currently, the Nominations Committee comprises the Chairman of the Council, the President & Vice-Chancellor of the University, a lay member of the Council and an academic staff member of the Council. **We recommend enlarging the membership of the Nominations Committee to include at least two further lay members with relevant skills sets.**

#### *Towards an independent Chancellorship*

111. This need not be the final step. Looking to a politically uncertain future we see distinct advantages in separating the Chancellorship from the Government of Hong Kong, with the effect that the Chancellorship itself should become a post appointed by the Council on the recommendation of its Nominations Committee following extensive consultation with all stakeholders within and outside the University. We believe the incoming Chief Executive will wish to appraise carefully the advantages and disadvantages of continuing the historic practice of acting automatically as Chancellor of HKU, and whether to abandon the historic machinery of state intervention, and rely instead on Hong Kong's well-developed instruments of accountability to the state.
112. Our recommendations above regarding the current powers of appointment of members of Council will go a long way to mitigate the concerns we heard. Many of those who participated in our review argued that the Chief Executive – no matter who it was – should no longer be automatically the Chancellor of HKU, because there was a potential conflict of interest between the two roles, and a risk of

political interference by the head of government in the functioning of the University, contrary to the principle of institutional autonomy and potentially of academic freedom. One respondent wrote:

*“Since the transfer of sovereignty in 1997, Hong Kong’s Chief Executive has been chosen through a process of political election, albeit on the basis of a very small number of electors. As a matter of principle, it is not appropriate for him or her to combine the role of head of government with that of an autonomous academic institution. Even if the Chief Executive sticks to convention and is content to assume a largely figurehead role, concerns at the potential for conflicts of interest will inevitably remain.”*

113. The contrary view was also expressed: that to have as Chancellor the holder of the highest office in Hong Kong brought prestige to the university, helped to ensure continuing government interest in and support for the UGC-funded universities and was an important part of the accountability arrangements for the spending of public money.
114. We are sympathetic to these arguments, but we observe that where the Chancellor is also the political head of the government, there is an unavoidable potential conflict of interest between the expectations of his or her chancellorship and the other demands of his or her high office, and this can make it difficult for the dual roles to be undertaken without attracting criticism. All those exercising power in public life in modern political systems are conscious of the risk of potential conflicts of interest and the need to manage them with scrupulous care so as to ensure not only that any actual conflict is avoided, but also that there can be no reasonable impression to the contrary effect. Imputation of improper motive is otherwise too easily assumed and almost impossible to rebut.
115. But we do not accept that to have the Chief Executive as ex officio Chancellor enhances accountability for the investment of public money. There is no such accountability specified or presumed in the Ordinance in the functions of the Chancellor, and there is no internal reporting line. It would not in our opinion be appropriate for the Chancellor to use that office as a means of holding the University to account to the Hong Kong Government. The implication would be that the Chancellor’s appointees to the Council should report to the Chancellor. But that would be in conflict with their fiduciary duty to the University, and contrary to the Basic Law guarantee of institutional autonomy.
116. The roles are separate, and the Chancellorship should not be conceived of as an instrument of political control. As we have noted above, Hong Kong has over many years developed well-established lines of accountability for universities through

the UGC, through the Audit Commission<sup>52</sup> and through the Government's Education Bureau, all of which the Chief Executive holds to account. We have heard no criticism of the adequacy of these mechanisms. Were the Chief Executive no longer to be ex officio Chancellor, his/her ability as head of government to hold the university properly to account would remain unchanged and undiminished.

117. For the incoming Chief Executive to release the current ties would symbolise not only the trust that the Hong Kong government has in its other various instruments for holding the University to account, but also its commitment to the guarantees of institutional autonomy and academic freedom in the Basic Law. It would open a new chapter of trust in the government-university relationship.
118. The new model of Chancellor would not hold any executive or governance responsibility in the University, but would be empowered to play a major role in reaching out to staff and students, in relations with alumni and as an independent ambassador for the institution in its external relationship. This formal step would however require legislative amendment of the University Ordinance with the approval of the Chief Executive and the agreement of the Legislative Council.
119. Such a move would strengthen the autonomy of the University and achieve better separation of its governance from the politics of Hong Kong. It would also protect future Chief Executives against allegations of improper interference in university affairs, and reinforce the Chief Executive's role of outward-looking leadership as an external champion for the University and its contribution to the advancement of Hong Kong as a global city. It is entirely possible that the person whose name emerges from such a process might be the current, or a potential future, Chief Executive. But in such a case, their appointment would be personal and not ex officio, the two roles would be wholly separate and their tenure as Chancellor would not be co-terminous with their term of office as Chief Executive.
120. If this formal separation could be achieved during the term of the incoming Chief Executive, it would be a significant step towards rebuilding trust.

#### *Award of honorary degrees*

121. All successive Ordinances have laid down clear criteria for the award of honorary degrees and prescribed that there should be an Honorary Degrees Committee. In the 1989 revised edition of the Statutes the Chancellor was to chair the Committee, but that responsibility was subsequently transferred to the Pro-Chancellor.<sup>53</sup>

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<sup>52</sup> See e.g. the two recent Audit Commission reports *Funding of Universities by Universities Grants Committee* and *Funding of Academic Research Projects by Research Grants Council* (both published October 2016).

<sup>53</sup> See current Statute XX.

However, the committee does not have power of final decision. Their function is to recommend names to the Chancellor following a rigorous internal process. We were told that, until recently, securing the Chancellor's approval had been a formality, but that current practice was for the Chancellor to review each case and on occasion to reject the Honorary Degrees Committee's recommendations.

122. This causes us concern, and we note that no such power exists in the case of the Chinese University of Hong Kong<sup>54</sup> and believe that there is a straightforward remedy: **we recommend that the Chancellor's authority in respect to honorary degrees should be delegated by him/her to the Council, which would act on the recommendation of the Honorary Degrees Committee chaired by the Pro-Chancellor.** The Council will wish to review the criteria and internal processes leading to recommendations for the award of honorary degrees to assure itself that only the names of honorary graduands of the highest quality will be brought to it for recognition in this way.

## **VII. The Senate**

123. The Senate is the principal academic authority of the University. It is responsible for all academic matters and the welfare of students. It has been slimmed down from around 200 members to 50, mainly academic staff together with student representatives. Its remit and functioning is comparable to that of other universities. It is important that academic matters are independently assessed and that the independence of the Senate is respected. It has a reporting line to the Council but the Council would be slow to review or interfere in the academic business of the University.
124. We were told that, from the perspective of an average member of academic staff, the Senate was largely unknown and irrelevant, but that in terms of the University's administration it did play an important role, particularly in teaching reform, new degree programmes and changes in degree programmes. Over the past year, business coming to the Senate has included the draft University Vision, the Academic Development Plan, Human Resources reforms and certain structural changes. Attendance is around 70-80%, or 30-40 attendees, and it meets every two months.
125. We understand that the Senate is effective at catching blind-spots in proposals coming to it, but that it added less value to discipline-specific proposals that had already been through Faculty scrutiny. However, given that all the Deans are members, it contributes valuably to communications within the University.

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<sup>54</sup> CUHK Statute 26 (11) and (12) allows the Council to award honorary degrees after considering recommendations from its Honorary Degrees Committee.

**Consistent with the remit of the Provost & Deputy Vice-Chancellor for academic leadership in the University, we recommend that the chairmanship of the Senate be delegated to him by the President & Vice-Chancellor, whilst retaining the President & Vice-Chancellor's overall responsibility for academic affairs and accountability to the Council.**

#### **VIII. The Court**

126. We note that, as a consequence of the recommendations of the 2003 Niland Report, the principal responsibilities of the Court were transferred to the Council. We view that step as entirely right, and are not persuaded by suggestions that were made to us for its reversal. Whilst some universities in the United Kingdom have abolished the Court, at HKU it continues to serve a ceremonial function and provides a platform for exchange of information and networking with the wider community. It also acts as a constituency for election of members of the Council. **We propose no change to the responsibilities and structure of the Court.**

#### **IX. The Convocation**

127. The Convocation Standing Committee has 24 elected members and the Convocation itself comprises all alumni, totalling some 160,000 people. Alumni support is of growing importance to universities around the world, not simply as donors, where alumni loyalty and generosity have proved to be of great importance, but also as a live network of support for students, employment, staff and the institution's own development. Alumni organisations have much to contribute, not through the lens of memory and nostalgia, but through active support for the University's future vision. **We recommend that the Convocation Standing Committee review its remit and functioning with a view to becoming a more vibrant organisation under the umbrella of its formal status in the University, working closely with the Vice-President & Pro-Vice-Chancellor (Institutional Advancement) and focusing on attracting new graduates and establishing a functioning network across all alumni.**

#### **X. The President & Vice-Chancellor and the Senior Management Team**

128. The executive management of the University is led by the President & Vice-Chancellor and has been significantly revised over the past year. Clarity in remits and accountabilities is of critical importance to leadership across the University, and to countering the silo-mentality that is the default affliction in all large and complex organisations. The Senior Management Team (**SMT**) team now

includes the Provost & Deputy Vice-Chancellor, together with 5 Vice-Presidents with remits for, respectively, Academic Staffing and Resources; Institutional Advancement; Research; Teaching and Learning; and Global. These academic leadership roles are supported by the post of Executive Vice-President (Administration and Finance). Only the President & Vice-Chancellor is a member of the Council, but the Vice-Presidents & Pro-Vice-Chancellors and Deans are from time to time invited to make presentations to the Council. There is division of reporting lines, with the Deans and the internal-facing Vice-Presidents reporting to the Provost & Deputy Vice-Chancellor, and the others to the President & Vice-Chancellor.

129. In another set of changes the University has moved from having elected Deans of the Faculties, to appointment being made by the SMT, with appointment being made for 5-year terms, and with significant devolution of executive responsibility to the Deans. All of these are in our opinion essential steps of modernisation, and the shift within the University from a concept of administration, to a concept of leadership.
130. Such developments also in our opinion require a change in relations with the Council. There is too little joining-up, and we encountered frustration on both sides with the gap in understanding that results. **We recommend that the Chairman of the Council and President & Vice-Chancellor work together to ensure that the Council is better sighted on the work and priorities of the SMT and the Faculties, fully informed of the work of the University, and able to assure itself appropriately about the University's activities, but without inviting interference in matters that are the province of the President & Vice-Chancellor and his team.** The adoption of the 10-year Vision and the processes of its further development provide a strong framework for a fresh approach.

## **XI. Other Aspects**

### *Statutory provision on "membership" of the University*

131. The current Statutes contain a provision<sup>55</sup> that dates back in almost identical terms to the original 1911 Ordinance, and which defines "membership" of the University. It includes all officers, academic staff and students. But it excludes almost all the non-academic staff, notwithstanding their vital role in the functioning of the University. We find no useful purpose in the classification, and have concluded that it is anachronistic and discriminatory. **We recommend its**

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<sup>55</sup> Statute IV

**repeal.**

*Disciplinary matters*

132. Student debate and protest is a feature of universities around the world, and is properly protected by the University's commitment to freedom of speech on campus. But there are limits. Violence and intimidation, often pursued through obscene and vile language and other threatening behaviour, have no place in any university and the Council has a duty to protect all those on its campus from it. To the extent that violent action involves criminal activity, we recommend that, in the absence of adequate provisions in the University's disciplinary code, the University should not hesitate to involve the police in the same way as would be the case if the activity occurred otherwise than on the campus. Serious crime should always be referred to the civil authorities.
133. Although the University's Code<sup>56</sup> encompasses "assault or battery against the person of any officer, member, employee or student of the University", and damage to property, we were told that it was insufficient to capture the behaviours involved in the violent disruption of the Council's meetings, and does not extend to non-students. **The University may, of course, choose to extend its disciplinary code, and the remit of the University's Disciplinary Committee, so as to allow a wider range of less serious instances of student behaviour to be handled internally and without the prospect of a student earning a criminal record. But reviews of university disciplinary processes are almost always controversial. We recommend therefore that such an approach should only be initiated with the full support of student representatives so as to promote the internalisation of disciplinary processes rather than police intervention, and with rigorous process and appropriate penalties where necessary.** Otherwise, the default option for violent behaviour, consistent with the Council's duty to ensure the safety and security of all staff, students and visitors, must always be police intervention.

**XII. Conclusions**

134. We were asked to respond to a universally perceived need to review the governance at the University of Hong Kong, and at the Council's invitation we have done so. We have been deeply impressed by what we have seen of the life of the University: by its commitment to academic excellence, by the liveliness and passion of all who contributed to our review, and by the unique opportunities presented to The University by virtue of its Hong Kong location and its special

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<sup>56</sup> Statute XXXI.2.

place in the history and the future of Hong Kong. We find a strong university — one of the leaders in Asia — that is in need of continuing governance reform that builds on the changes introduced in recent years (in response to the two Niland reports). We are clear that, for The University of Hong Kong to advance as a leader in higher education, it needs modern governance structures that are aligned with its ambition for global excellence, that insulate it as far as possible from the distortive influences of local politics, and that promote and empower the President & Vice-Chancellor, the Council, the staff and students to advance research, teaching, learning and broader societal benefit of the highest order.

## **ANNEX**

### **Professor Sir Malcolm Grant, chairman**

Sir Malcolm was for 10 years (2003-13) the President and Provost of University College London, and previously the Pro Vice Chancellor of the University of Cambridge, where he also held the Chair and Headship of Department of Land Economy, and a professorial fellowship of Clare College. His academic specialty and extensive publications have been primarily in land-use and environmental regulation. He served for 8 years as a member of the University Grants Committee of Hong Kong and chaired its Strategy Committee. He also served for two terms as a member of the Higher Education Council for England and as a member of the Economic and Social Research Council, and was chairman of the Russell Group of the UK's research-intensive universities. He was knighted in 2013 for services to higher education. He is a Fellow of the Academy of Social Sciences and an Honorary Fellow of the Royal Institution of Chartered Surveyors, the Royal Town Planning Institute and the Royal College of Physicians. He is a barrister, and a Master of the Bench of Middle Temple.

He has also served as chairman of the Local Government Commission for England and the UK Agriculture and Environment Biotechnology Commission.

He is currently the Chairman of NHS England and Chancellor (an honorary role) of the University of York. He is President of the Council for Assistance of At-Risk Academics, senior adviser to Arizona State University, chair of the Global Advisory Board of the PLuS Alliance, a trustee of Somerset House and a UK Business Ambassador.

### **William C. Kirby**

William C. Kirby is Spangler Family Professor of Business Administration at Harvard Business School and T. M. Chang Professor of China Studies at Harvard University. He is a University Distinguished Service Professor. He is Chairman of the Harvard China Fund and Faculty Chair of the Harvard Center Shanghai. A historian by training, his work examines contemporary Chinese business, education and politics in an international context. The author or editor of ten books, he is presently completing a book-length study of higher education in China, Europe, and the United States.

Before coming to Harvard in 1992, he was Professor of History, Director of Asian Studies, and Dean of University College at Washington University in St. Louis. At Harvard, he has served as Chair of the History Department, Director of the Harvard University Asia Center, Director of the Fairbank Center for Chinese Studies, and Dean of the Faculty of Arts and Sciences. As Dean he led Harvard's largest school, with 10,000 students, 1,000 faculty members, 2,500 staff, and an annual budget of \$1 billion. He initiated major reforms in undergraduate education in Harvard College; enhanced Harvard's international studies at home and abroad; increased substantially financial aid for students; supported the growth of the Division (now School) of Engineering and

Applied Sciences; and oversaw the construction of major new buildings in the Life Sciences, Engineering, and the Arts.

Professor Kirby holds degrees from Dartmouth College, Harvard University, and (Dr. Phil. Honoris Causa) from the Freie Universität Berlin and the Hong Kong Polytechnic University. He has been named Honorary Professor at Tsinghua University, Peking University, Nanjing University, Fudan University, Zhejiang University, Chongqing University, East China Normal University, the Shanghai Academy of Social Sciences, and National Chengchi University. He has held appointments also as Visiting Professor at University of Heidelberg and the Freie Universität Berlin. He has served on the University Grants Committee of Hong Kong, chaired the Academic Advisory Council for Schwarzman Scholars at Tsinghua University, and served as Senior Advisor on China to Duke University. He is a Fellow of the American Academy of Arts and Sciences.

### **Peter Nguyen**

Mr Peter Van Tu Nguyen is a Senior Counsel and was called to the Bar in England by the Honourable Society of the Middle Temple in 1970. He was an Assistant Crown Counsel and Crown Counsel in the Legal Department of Hong Kong during the period from August 1970 to November 1974. After leaving Government service Mr Nguyen was in private practice as a Barrister-at-law in Hong Kong for approximately twenty years.

Mr Nguyen was appointed the Director of Public Prosecutions of Hong Kong and served from July 1994 to October 1997 and he was the first and only Chinese to hold such a position under British rule. Mr Nguyen was appointed Queen's Counsel in 1995. Mr Nguyen was appointed a Judge of the Court of First Instance of the High Court, Hong Kong, from February 1998 to April 2009.

Currently, Mr Nguyen is an adjudicator of the Torture Claims Appeal Board. Mr Nguyen also engages in various charitable organisations, such as The Friends of Scouting, Scout Association of Hong Kong, Care of Rehabilitated Offenders Association, and the Hong Kong Diabetes Health Association.

## **Mr Peter Nguyen's Addendum**

1. I regarded it as the ideal that there should be unanimity reflected in our Report. However, it would be inconsistent with our joint or individual responsibility to simply agree for the sake of harmony. In the event of disagreement as to any specific recommendation by any one of us, it is incumbent on that person to give voice to his opinion.
2. I considered the original draft Report with very great care, bearing in mind that it was properly and accurately described as a draft. I am grateful to Sir Malcom Grant for his work in preparing the draft and it is a tribute to his chairmanship that we are unanimous about all but two matters. These are:
  - i. The continuation of the ex officio role of the Chief Executive as Chancellor of the University of Hong Kong
  - ii. Some aspects of the grant of honorary degrees.
3. In seeking to find common ground I was concerned not to compromise principle for the sake of unanimity, to reflect Hong Kong's unique history and respect for tradition, to pay sufficient regard to the place of the University of Hong Kong, to caution against change for change's sake and to note that what we recommend may be regarded by other universities and colleges as a template for their own governance.
4. In doing this I did not prevaricate or take undue time in responding to proposals from my colleagues. I respect their experience in the governance of prestigious institutions in England and the US and hope they respect my local knowledge. (I might add that Chinese New Year is not a good time to impose a deadline for a response.)
5. The summary of the historical background and the events leading to commissioning this report are summarised in the main part of this Report.

6. The Report establishes that there is no basis for the belief that the present governance contributed to any of these events.

7. Paragraph 94 of the report states:

*“We learned that many fine individuals have served in this capacity (as members of the HKU Council) but in the deeply polarized politics of modern Hong Kong, the fact that the power (by the Chief Executive to appoint the Chairman and six members of the Council) could be used for political patronage has led to deep suspicion. Not surprisingly, current members who had been appointed under these powers were equally concerned about the impression that the power was – or could be – used to advance purposes other than the good of the university, and that they were not seen as the independent and politically impartial people they believed themselves to be. They find it difficult to displace the impression that they owe loyalty to the Chancellor in his role as Chief Executive rather than to the university.”*

8. Paragraph 95 states:

*“This is conspicuously unfair to distinguished people whose contribution to the university in this role is of great value yet is unremunerated, unrewarded and largely unrecognized. We need to protect members of Council from this implication.”*

9. This is a most significant approach and I unreservedly confirm my endorsement of it.

10. Paragraph 112 of the report refers to the concerns by some members of Council about a potential conflict of interest between the two roles of Chief Executive and Chancellor and a risk of political interference by the head of government.

11. Paragraph 114 mentions that where the Chancellor is also the political head of the government, there is an unavoidable potential conflict of interest, and paragraph 115 states, *“It would not in our opinion be appropriate for the Chancellor to use*

*that office as a means of holding the university to account to the Hong Kong Government. The implication would be that the Chancellor's appointees to the Council should report to the Chancellor."*

12. It is important that we highlight the fact that the widely-expressed concerns of "political interference" were found to be totally without foundation.
13. Since the majority propose moving towards the eventual removal of the Chief Executive from this post, this finding is of very great significance. I oppose that recommendation. I see no reason whatsoever to make such a drastic change. The formula that leaves a final decision up to a future Chief Executive imports uncertainty.
14. We should emphasise there was no basis for the perception of political interference and not provide fertile ground for a continued debate over such an emotive issue.
15. Since its foundation, the chief executive of Hong Kong has been the Chancellor of HKU. Before 1997 this was the Colonial Governor and thereafter the Chief Executive of the Special Administrative Region.
16. I have looked at many overseas models and note that there is no apparent correlation between the governance model and either international ratings or politicisation.
17. Singapore is seen as a rival to Hong Kong in many respects. The national University of Singapore (**NUS**) is ranked 12<sup>th</sup> in QS World University Rankings, and first in the QS University Rankings: Asia (2016).
18. The Constitution of NUS is found in the First Schedule to the National University of Singapore Act. "The President of the Republic of Singapore shall be the Chancellor of the University, who shall preside when present at meetings of the Council; and any Commencement and shall have the authority to confer degrees and to grant diplomas and certificates at any Commencement and such other powers and

perform such other duties as may be conferred or imposed upon him by this Constitution or any statute or regulation.”

19. Politicisation at times of political or civil upheaval are commonly reflected in heightened student concern and involvement. At Berkeley, the protests of the 1960's escalated to violence. Down the years, Berkeley continues to be a focus of protest. Reports today are of post inauguration protests, show that Berkeley remains politically involved.
20. Across the Atlantic to Paris. The Sorbonne is known as a French focus of political dissent. The May 1968 riots started with the right for sexual freedom but the tradition of protest continues as the clash between riot police and student protestors about labour laws in May 2016 illustrates.
21. I am not suggesting that the success of NUS is the consequence of its constitution and I would not presume to advise that either the constitution of the Universities of California or Paris needs reform because of protests that led to violence.
22. There is a disconnect between politicisation and governance and between rankings and governance.
23. Of course, political interference, such as Council Members acting as puppets of the Chief Executive, is not acceptable. This has never happened. There is no political interference from the Chief Executive or from his office.
24. Not only am I convinced that there are positive reasons for retaining the Chief Executive as the Chancellor (with his role largely ceremonial) I am also convinced that it would be wrong in principle to make a change that will be perceived as recognising that the Chief Executive was implicit in some way with interfering with academic freedoms.

Public Interest

25. There is a very significant public interest aspect since this “remarkable institution” holds a special place in the regard in which it is held by the people of Hong Kong.

26. It is publicly funded. All the other higher education institutions and, most particularly, the seven funded by the UGC, will have a direct interest in these recommendations.

### The Overriding Objective

27. Our overriding objective is to promote the good governance of HKU.

### Our Approach

28. Our approach should be “conservative” in the sense we should avoid a “root and branch” approach that might damage the institution that we seek to improve and “radical” in the sense that we should not fear making any recommendation that goes to promoting good governance.

29. Change for change’s sake is a bad taskmaster as is pandering to any pressure group. In this sense, our recommendations should avoid cosmetic changes.

### Consistency

30. Consistency is important. Other institutions will look to these recommendations and they may be used as a precedent. Also, we should look to the constitutions of other institutions. The Report refers at paragraph 102 to the Chinese University of Hong Kong (CUHK) model under the heading “Towards an Honorary Chancellorship” (See: Paragraphs 99 – 103). This needs very careful appraisal.

31. I have concluded that there are persuasive and cogent reasons to propose that the CUHK model is used as a model whereby “a list of possible names is prepared by the university Council and submitted to the Chancellor”.

32. To allay any suspicion or “to allow justice to be seen to be done”, my proposal is to adopt the present procedure adopted by Chinese University whereby a list of possible names is prepared by the university Council and submitted to the Chancellor <sup>1</sup>, and the Chancellor is required to appoint as Chairman of the Council a person mentioned in the list.

33. This approach has many advantages:

- i. It is a tried model that works in Hong Kong at another prestigious university that has climbed world rankings and is increasingly recognised for its academic excellence internationally
- ii. CUHK has largely avoided the sort of controversies that are set out at paragraphs 33 to 36 of the Report. Although the Report does not directly relate the present governance as causative of any of the four incidents, its recommendations must be aimed at satisfying critics. Adopting the CUHK model should have that effect. It is questionable whether the best approach is to pander to satisfying those whose criticisms have no basis.
- iii. Since the recommendations we make will be considered by the public at large and by pressure groups, we must take account of how our recommendations will be perceived.
- iv. They will be used by activists who have their sights on other institutions. Adopting the CUHK model satisfies those who want reform and avoids the danger of recommendations that will be seen as a prototype for other institutions.
- v. Change within the framework of an existing system is the preferred approach if it addresses all legitimate concerns. It enables change to take place without controversy or disruption. Evolution is to be preferred to revolution.
- vi. This will allay any suspicion and “allow justice to be seen to be done”

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<sup>1</sup>Report paragraph 102

## Particular Considerations

34. Particular considerations include that:

- i. “The University is one of Hong Kong’s most well-known and significant institutions”<sup>2</sup>
- ii. “The University of Hong Kong is a remarkable institution with a long history of powerful academic achievement”<sup>3</sup>
- iii. Where there is substantial public funding, there is an entirely legitimate expectation of accountability for the use of public money.
- iv. There is a duty to exonerate those who have been wrongly accused as well as to lay blame. In this context, the Report should exonerate the Chief Executive. There was no evidence whatsoever of any political interference.

35. It would be wrong in principle to react, or appear to react, to false or unwarranted concerns. Had there been any evidence of any interference with academic freedom or the administration of the university, we should act. However, we found no basis for criticism of the Council or its members. There is no reason to suspect that the Chief Executive had appointed people who felt that they owed loyalty to the Chancellor in his role as Chief Executive rather than to the university.

36. I wish to emphasise that we all unreservedly reject the proposition that the Chief Executive had appointed any such people.

37. The catalysts for the establishment of the Review Panel reflect underlying public interest. It follows that promotion of HKU’s good governance must be considered in the context of the legitimate public interest considerations as well as its wider impact.

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<sup>2</sup> Report Paragraph 32

<sup>3</sup> Report Paragraph 39

## THE RECOMENDATIONS

38. There is a helpful summary of the present position at paragraph 65 of the Report.

*“The Chief Executive is ex officio Chancellor of the 8 publicly funded universities in Hong Kong but the role is more than purely honorary. It falls to the Chief Executive as Chancellor to appoint the chairmen of the university councils together with a certain number of members of each council. The number and the processes vary between the institutions. In the case of HKU, the Chancellor may appoint 7 members of the Council and appoint one of them to be the chairman; in addition, the Chancellor’s approval is required to the award of honorary degrees. Other functions are also assigned to the Chancellor, several of them largely formalistic and/or honorary. The full array of powers is set out in Table 3 below.”*

39. With that in mind I turn to my recommendations as regards the role of the Chief Executive at HKU.

### **The Chief Executive as Chancellor of HKU**

40. No conflict of interest or political interference in the functioning of the University has been demonstrated. Institutional autonomy and academic freedom are not at risk. This much is plain and obvious from our inquiries. Future risks are necessarily matters of speculation.

41. I consider there are compelling reasons to retain the Chief Executive as ex officio Chancellor of the University of Hong Kong.

42. There is the public interest aspect. Having the Chief Executive as Chancellor brings prestige to the university locally and internationally. It signifies the wide public support for and continuing government interest in HKU (and other UGC-funded universities).

- i. There is public interest in the accountability as to the spending of public money.
- ii. There is no demonstrated conflict of interest and suspicion that there could be in the future presents an inappropriate basis for change.

iii. The role of Chancellor will be essentially honorary so there can be no conflict.

**I recommend that the Chief Executive continues to be the Chancellor of the University of Hong Kong.**

**I do not recommend inviting an incoming Chief Executive at some unspecified time in the future to bring about the separation of the Chancellorship from the Government of Hong Kong, so it becomes a post appointed by the Council on the recommendation of the Nominations Committee.**

**The recommendation in the main body of the Report has the disadvantage of leaving this important matter subject to future extensive consultation with all stake holders within and outside the university. I opt for clarity, certainty and consistency with the other publicly funded institutions.**

### **Honorary Degrees**

43. I agree that the Chancellor should act on the advice of the Honorary Degrees Committee and recent practice of review by the Chancellor leaves him open to criticism in the event that he rejects a recommendation.

**I recommend that the Chancellor's authority in respect to honorary degrees should be retained. If the Chancellor considers that there is good reason to reject a recommendation, he may refer that nomination to the Pro-Chancellor for reconsideration. In the event that the nomination is confirmed he will delegate his authority to the Council, which will act on the recommendation of the Honorary Degrees Committee.**

44. In relation to the other matters in the Report the members are unanimous. I mention the Council and Strategic Oversight only to emphasis the fact that these are matters of priority. These recommendations go to the internal administration of the University and are very important for the reasons given.

### The Council

45. I agree with the recommendations as to the establishment of a Senior

Appointments Committee and as to the review of the appointment and terms and conditions of pro-vice-chancellors, deans and other senior officers by the Senior Appointments Committee before approval by the Council.

#### Strategic oversight

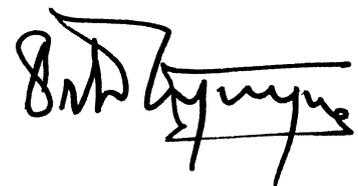
46. I agree with all that is said as to the significance of the Council's oversight of strategic planning, underpinned by approval of the annual operating targets relating to the strategy's implementation. It is indeed a huge task and there is an urgent need for it. Proper risk management and training and professional development of new Council members is particularly important. These are matters that should receive immediate attention.

#### Conclusion

47. Although I disagree profoundly with the proposals relating to the Chief Executive being removed as Chancellor it will be seen that on the important aspects of the Report there is complete agreement.

- i. I recommend that those matters be dealt with as a priority.
- ii. I am grateful for the opportunity of taking part in this review of the Governance of the University of Hong Kong. It is an institution that the people of Hong Kong are justly proud. Playing a part in safeguarding its future is a privilege.

Dated the 9<sup>th</sup> day of February 2017.



(Peter V T Nguyen)

SBS QC SC