



**The Hong Kong University of Science and Technology**

**Guidelines  
and  
Code of Practice  
for  
Council Members**

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# **1 Introduction**

- 1.1 All Hong Kong universities are statutory bodies, in the terms laid down in their respective ordinances. The Hong Kong University of Science and Technology (HKUST) is no exception - it was incorporated in 1988 under [HKUST Ordinance](#)<sup>1</sup> (hereinafter “the Ordinance”), Chapter 1141 of the Laws of Hong Kong, and officially founded in 1991. Within its legal framework, the HKUST functions independently in the control of curricula and academic standards, the selection of staff and students, initiation and acceptance of research, and the internal allocation of resources.
- 1.2 The Ordinance and [Statutes](#)<sup>2</sup> of the University stipulate the machinery of governance, setting out the bodies and the Officers in whom all powers are vested and upon whom all duties devolve. The University’s Statutes are approved by the University Council and then published in the Hong Kong Government Gazette. The Ordinance can only be amended by resolution of the Legislative Council of the Hong Kong Special Administrative Region (HKSAR). Supplementary to the Ordinance and Statutes are the Regulations, which provide for the orderly conduct of day-to-day operations. Regulations are under the custodianship of the University.
- 1.3 The principal governing bodies for which the Ordinance and Statutes provide are the Court, the Council, the Senate, the Boards of the Schools, and the Convocation. All of these bodies may form committees and delegate their powers as they see fit. Government control over the University is exercised through the provision of public funds, based on the advice of the [University Grants Committee \(UGC\)](#)<sup>3</sup>. According to its Ordinance, the University must furnish an annual report and audited financial statements to the Chancellor of the University.
- 1.4 The University’s governance structures, including the size and composition of the Council and Senate, are modelled on international governance practice. There is an increasing recognition of the distinction between governance (whereby the University is held accountable to the public) and administration (which is the responsibility of the President and his senior officers).
- 1.5 These *Guidelines and Code of Practice for Council Members of HKUST* (hereinafter the “*Guidelines & Code*”) comprise Part A and B, and incorporate and supersede the *Guidelines for Council Members of HKUST* (approved by Council on 1 December 2005 and last revised on 25 February 2011). The *Guidelines & Code* set out the powers, authority, responsibilities and accountability of Council Members as provided in the University’s Ordinance and Statutes, with the powers and responsibilities of the Council being exercised in a collective manner.
- 1.6 Council Members are either non-executive Members (the majority) or employees of the University. All non-executive Members serve on the Council on a *pro-bono* basis as they receive no remuneration from the University. Although non-executive Members are volunteers, once appointed to serve on the Council, they are expected to fulfil the obligations and observe the rules and regulations as spelt out in the *Guidelines & Code*.

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<sup>1</sup> The HKUST Ordinance outlines the University’s powers and mission, duties, privileges and constitution.

<sup>2</sup> The Statutes of the University (“Statutes”) set out in detail important constitutional and procedural matters.

<sup>3</sup> The UGC is a non-statutory body which advises the Government of the HKSAR on the funding and strategic development of higher education in Hong Kong and distributes the funds.

- 1.7 The *Guidelines & Code* provide a broad overview of the University's governance and management, and aim to assist Council Members in the discharge and performance of their duties. Members may refer to the Secretary of the Council for more detailed information and further guidance about the internal arrangements and operations of the University or about this document. The *Guidelines & Code* will be updated from time to time to take into account of changes in the University and related governance issues in Hong Kong and internationally.
- 1.8 On top of its function to allocate funding to its funded institutions, and to offer advices to the Government on the strategic development and resources requirements of higher education in Hong Kong, the UGC undertakes periodic assessments of the universities' research performance and academic quality assurance of their educational provision. The UGC was commissioned by the Education Bureau of the Government of HKSAR in 2013 to conduct a study on governance of all UGC-funded institutions. The study aimed to identify international good practices for enhancement of the effectiveness and transparency of institutions' governance, and to better equip Council Members of institutions in the discharge of their duties. The Report<sup>4</sup> of the study, commonly known as the *Newby Report*, contains six major recommendations which are addressed in relevant sections of the *Guidelines & Code*, as appropriate.

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<sup>4</sup> The full report could be found at: <http://www.ugc.edu.hk/eng/ugc/about/publications/report/report30032016.html>

**PART A**

**GUIDELINES**

**ON**

**GOVERNANCE**

## **2 The Governance Framework of the University**

- 2.1 In accordance with the HKUST Ordinance, the Court, Council and Senate are the University's supreme advisory, governing and academic bodies, respectively. The Council is vested with powers and devolved with duties, and may delegate its powers to persons or committees, according to the HKUST Ordinance and University Statutes. With reference to its terms of reference and scope of responsibilities, committees established by the Council are empowered to make recommendations to the Council and decisions.

### **(A) Court**

- 2.2 The University Court (hereinafter the "Court") is the University's supreme advisory body. Inaugurated in May 1994, the Court is mainly responsible for steering the University in its general direction, promoting the University's interests and raising funds. The functions of the Court shall be to receive an annual report from the President and any reports made to it by the Council; as well as to discuss any motion made at the Court on general University policy.

### **(B) Council**

- 2.3 The University Council (hereinafter the "Council") is the supreme governing and executive body of the University. It exercises the powers and duties of the University as specified in the Ordinance. It is mainly responsible for oversight of the following aspects: finance and investments; budget allocation; financial audit, risk management and public accountability; major contracts; property and the University's estate; senior appointments; the making of statutes; strategic planning; knowledge transfer.
- 2.4 The Council consists of 27 seats. 17 Members who are not employees of the University are appointed by the Chancellor. Together with the Chairman of the Convocation, these 18 Members are the non-executive Members of the Council. Internal members of the University include the President, the Provost, 1 Vice-President and 2 Deans by annual rotation, 2 academic members nominated by the Senate, 1 elected full-time employee and 1 elected full-time student. The Council is presided over by the Chairman who is an external Member. The Council normally meets in plenary session at least three times each year.

#### ***Rotation of Members***

- 2.5 Continuity of membership, particularly of key Members, is important to the University but so is the need for periodic injection of new blood. The Ordinance prescribes that external Members normally are appointed for three years and their appointment can be renewed. Among the 17 external Members, 9 shall be appointed by the Chancellor directly, and 8 shall be appointed by the Chancellor on recommendation of the Council. For the appointment and re-appointment of these 8 external Members, Council's recommendations to the Chancellor would be made upon the review by the Standing Committee. In the process, candidates'/Members' background and professional expertise; their skills and interests; and their attendance record and performance (for re-appointment) would all be taken into consideration. Subject to the Chancellor's

decision, continuous service of the 17 external Members would usually not be more than two terms of three years. However, it is a practice that in the case that a Member becomes appointed as Chairman, Vice-Chairman, or Treasurer of the Council by the Chancellor, the Member's term of membership starts anew.

### **(C) Senate**

- 2.6 The University Senate (hereinafter "Senate") is the supreme academic body of the University. It is responsible for setting and reviewing academic policies; regulating the studies, welfare and discipline of students; and necessary approval leading to the conferral of degrees (other than honorary degrees) and other academic awards. Members of the Senate, being employees and students of the University, include the President, the Provost, Vice-Presidents, Deans, Heads of Academic Departments, Heads of Units and Centers, elected academic staff and student representatives. Chaired by the President, the Senate currently has over 55 Members, together with a number of Co-opted Members. Its powers and duties are detailed in Statute 2 of the Statutes of the University. The Senate has delegated some of its powers to its committees according to the same Statute.
- 2.7 All students, whether undergraduate or postgraduate, full-time or part-time, are registered in programs offered by the four Schools (Science, Engineering, Business & Management, Humanities & Social Science) or the Interdisciplinary Programs Office (IPO). The Boards of Schools/IPO are responsible to Senate for teaching respective subjects and to advise Senate on the work of the Schools/IPO. Each School/IPO may establish its own committees to exercise the powers and perform the duties delegated to them by the Boards/IPO. Whereas the HKUST Fok Ying Tung Graduate School is currently charged to oversee the administration of postgraduate education of the University.

### **Delegation to Committees and the Administration**

- 2.8 The Council may in writing, with or without restrictions or conditions as it thinks fit, delegate to any of its committee or the Administration some of its responsibilities and duties, except for those which are specified by the Ordinance<sup>5</sup> as not delegable. In any case, Council is ultimately accountable for responsibilities whether delegated or not, and has the power to withdraw its delegation.
- 2.9 As recommended in the *Newby Report*, "Each Council should publish a scheme of delegation which sets out the sub-structure of its committees and includes the mechanism whereby councils satisfied that the related managerial oversight of university activities is being effectively handled, including appropriate delegation and reporting mechanism." Council's delegation is clearly spelt out in the terms of reference and scope of responsibilities of individual Committees.

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<sup>5</sup> See sections 11(4) and 13(2) of HKUST Ordinance.



## *Committee Structure of Council*

- 2.10 Council Committees normally include non-executive Members of the Council and internal Members (*ex-officio*). When the requisite skill-set is needed in a Committee, Council approves to include as Committee Members other external Members who are not Council Members. Membership of Committees also provides a particular opportunity for Members to contribute their expertise to the University.
- 2.11 In deciding which tasks should be delegated to Committees, the Council devises the specific scope of responsibilities of Committees under which their roles and responsibilities are defined. All Council Committees have their terms of reference stating a clear remit; and scope of responsibilities stating the extent and limits of the committee's duty and responsibilities; and a membership composition, all to be approved by the Council. Committees must not exceed their terms of reference and should be so advised by the Secretary of the Council. Committees should distinguish between issues on which they are empowered to take decisions, and issues which they must report back to the Council for decision. Where a committee is acting under delegated powers, it should submit written reports to the Council on the decisions which it has taken on the Council's behalf.
- 2.12 The Council has established the following Committees to play a central role in supporting the proper conduct of the Council's business and ensuring that the University conforms to the highest standards of corporate governance for universities. Summaries of the functions of the Committees are provided below. The Committees' terms of reference and membership are available at <https://ccss.ust.hk/council/committees>.
- [Standing Committee;](#)
  - [Audit Committee;](#)
  - [Campus Development Committee;](#)
  - [Committee on HKUST\(GZ\);](#)
  - [Finance Committee;](#)
  - [Honorary Awards Committee;](#)
  - [Human Resources Committee;](#)
  - [Institutional Advancement and Outreach Committee;](#)
  - [Knowledge Transfer Committee;](#)
  - [Legal Affairs Committee;](#)
  - [Senior Executives Affairs Committee.](#)

### **Standing Committee**

- 2.13 The Standing Committee, which comprises of the Council Chairman, Vice-Chairman, Treasurer, the Chairmen and Vice-Chairmen of Council Committees, as well as the President, the Provost, and the Vice-Presidents, reports and makes recommendations to the Council on matters requiring policy and executive decisions. It performs any tasks delegated by the Council and takes on the role of the Nomination Committee in seeking and recommending external Members to the Council for appointment by the Chancellor and by the Council itself.

### **Audit Committee**

- 2.14 The Audit Committee recommends for Council's approval the selection and appointment of internal and external auditors, and matters in relation to risk management of the University. On an independent stance, the Audit Committee reviews internal audit reports to assure adequacy and effectiveness of the internal control system and value for money in University operation, as well as the Whistleblowing Policy of the University. The Audit Committee recommends for Council's approval the consolidated financial statements. Together with Finance Committee, it also reviews the financial statements of subsidiary companies, prior to their approval by the local board of the subsidiary companies.

### **Campus Development Committee**

- 2.15 The Campus Development Committee advises Council on matters relating to the planning and physical development of University facilities, including acquisition and disposal of property and facility capital expenditure which requires confirmation of affordability by Finance Committee. The Committee is responsible for updating the Council and overseeing the preparation of the University's Campus Master Plan.

### **Committee on HKUST(GZ)**

- 2.16 The Committee on HKUST(GZ) is charged to consider various governance issues of HKUST(GZ), as well as matters handled by the Governing Board of HKUST(GZ) and the Joint Preparatory Committee, on behalf of the Council. It focuses on matters which are not covered by the scope of responsibilities of other Council Committees and on issues which may involve more than one Council Committees.

### **Finance Committee**

- 2.17 The Finance Committee oversees and advises Council on matters related to the financial operations of the University, including the setting of financial strategy and budget and review of financial statements. It reviews for Council's approval key financial matters of the University, including but not limited to issues of its investment and liquidity, income and expenditure, group structure, and borrowings and cash management. Together with Audit Committee, it also reviews the financial statements of subsidiary companies and would report to Council for noting if there are any significant findings.

### **Honorary Awards Committee**

- 2.18 The Honorary Awards Committee considers and makes recommendations to the Council matters related to conferring of honorary degrees and awards, which include honorary doctorates and fellowships.

### **Human Resources Committee**

- 2.19 The Human Resources Committee advises Council on staffing policies of the University including grading and salary structures at all levels, provision of staff fringe benefits as well as other terms and conditions of service including but not confined to employment tenure, retirement age, code of conduct, staff grievances and disciplinary, and redundancy and termination policies.

### **Institutional Advancement and Outreach Committee**

- 2.20 The Institutional Advancement and Outreach Committee advises Council on matters related to promotion of University, university development, stakeholders' engagement and fundraising.

### **Knowledge Transfer Committee**

- 2.21 The Knowledge Transfer Committee advises the Council in developing the University's policies and strategies on knowledge transfer and governing their implementation. It supports the Administration in maximizing its impact to society through knowledge transfer while maintaining proper governance to ensure public accountability, and advises the Council in developing the University's policy and strategies on knowledge transfer.

### **Legal Affairs Committee**

- 2.22 The Legal Affairs Committee advises Council on policy and regulatory matters from a legal perspective, and looks into cases on which Council's consideration or action are expected. It also reviews from the legal perspective, the mandates of the University including the HKUST Ordinance, Statutes, University's policies and regulations, and makes recommendations to the Council accordingly.

### **Senior Executives Affairs Committee**

- 2.23 The Senior Executives Affairs Committee advises Council the appointment and re-appointment of the President, the Provost and Vice-Presidents of the University as well as their terms and conditions of service.

### **3 Summary of the Responsibilities of the Council**

- 3.1 The powers of the University are laid down in, and limited by, The HKUST Ordinance. The Council should ensure that the University does not extend its activities beyond those permitted. The Council is *de facto* the supreme governing body of the University and carries responsibility for ensuring the effective governance and management of the University, and for planning its future development. Subject to the Senate being the principal academic authority, the Council has ultimate responsibility for all the affairs of the University.
- 3.2 The powers, duties and responsibilities of the Council, as specified in the University Ordinance, are listed below in general terms.

#### **(A) Proper Conduct of Business**

- 3.3 The Council is entrusted with both public and private funds, and therefore has a particular duty to ensure that the University conforms to the highest standards of corporate governance for universities. This includes the assurance and demonstration of integrity and objectivity in the transaction of business and, wherever possible, adoption of the policy of openness and transparency in the dissemination of its decisions.

#### **(B) Strategic Planning**

- 3.4 The Council is responsible for enabling the University to achieve and develop its primary objectives of teaching, research and service. This responsibility includes consideration and approval of the University's strategic plan, which sets the academic aims and objectives of the University and identifies the financial, physical and staffing strategies necessary to achieve the objectives.
- 3.5 According to the *Newby Report*, Council has a "vital role" in strategic planning and assessment of institutional performance, and to discharge this role, "*each university should draw up a set of key performance indicators (KPIs) which are timely and relevant and which allow Council to assess the progress towards the priorities agreed in the strategic plan*".

#### **(C) Monitoring Performance**

- 3.6 The Council is responsible for regularly monitoring the performance of the University against its planned strategies and operational targets.

#### ***Annual Reports***

- 3.7 Similar to other publicly-funded institutions, it is a mandatory requirement for the University to submit to the University's Chancellor a report of the University's activities annually. Since July 2016, information such as governance arrangements, the responsibilities of Council Committees, a summary of risk assessment and management, the University's management structure and brief biographies and attendance records of Council Members have been featured in the University's annual reporting exercise to the UGC, according to the requirement under the UGC's Statement of Recommended Practice (SORP)<sup>6</sup>.

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<sup>6</sup> <http://www.ugc.edu.hk/doc/eng/ugc/publication/fguide/SORP.pdf>

## **(D) Finance and Audit**

- 3.8 The Council is responsible for directing and overseeing the University's financial matters and arrangements for external and internal audit. The primary funding for the University comes from the University Grants Committee (UGC) in the form of a block grant, to be allocated normally on a triennium basis.
- 3.9 The UGC, via its "Notes on Procedures"<sup>7</sup>, places a number of requirements on the University to ensure sound financial practices and control in relation to UGC funds; the latter includes the tuition fees for students on UGC-funded programs.
- 3.10 In essence, the UGC requires that the University has a sound system of internal financial management and control: this, ultimately, is the responsibility of the Council, which is also responsible for ensuring that the funds allocated by the UGC are used in accordance with the terms of the "allocation letter" and the UGC's "Notes on Procedures".
- 3.11 External auditors refer to auditing activities which are directly relevant to financial reporting in the financial audit of the University's financial statements. Whilst the focus of the external auditors is on the University's statutory financial reporting and on compliance with UGC Notes on Procedures, the internal auditors is on the University's internal management control effectiveness.
- 3.12 External auditors are mainly required to carry out the statutory audits of the financial statements of the University and its subsidiaries in accordance with the Auditing Standards issued by the Hong Kong Institute of Certified Public Accountants (HKICPA), and to review other financial information contained in the relevant financial reports. They also conduct audits of the financial statements of trust funds and superannuation schemes of the University, and projects of the University that are funded by the Government's Innovation and Technology Fund. In addition, they are required to perform assurance engagement in accordance with the Hong Kong Standard on Assurance Engagements issued by the HKICPA to ensure that UGC funds are accounted for and used in accordance with the "Notes on Procedures" and the terms of the "allocation letter" issued by the UGC. They are also expected to give proactive advice on auditing and accounting matters, and to provide feedback on possible internal control issues, especially those concerning financial reporting, in the course of their external auditing and assurance engagements.
- 3.13 The internal audit function is part of the University's control environment with the objective of assisting the University to discharge its responsibilities for managing risks through appraising and analyzing the adequacy, effectiveness and efficiency of its internal control systems and operations, as well as ensuring reliable financial and management reporting. The internal audit function aims to accomplish this objective by ascertaining compliance with the University's internal policies and procedures and with the applicable laws and regulations pertaining to the University's activities, and by reviewing the internal control and operation systems from accountability and value-for-money perspectives. In devising the internal audit plan, which is primarily risk-based, and carrying out audit assignments, internal auditors make reference to the relevant audit findings of the external auditors.

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<sup>7</sup>The "Notes on Procedures" was covered in the *Statement of Recommended Practice for the UGC-Funded Institutions* (SORP), a guideline which was drawn up for implementation of recommendations as concluded in the UGC's Financial Affairs Working Group (FAWG) Report 2013.

- 3.14 To ensure good governance and to preserve their independence, members of the Audit Committee must not have any executive responsibility for the day-to-day management of the University. They should not serve on the Finance Committee unless, exceptionally, it can be demonstrated that this is unavoidable for practical reasons. Care is taken to ensure there is no overlap of the activities of the Audit Committee and the Finance Committee.

### **(E) Monitoring of Subsidiary Companies**

- 3.15 The Council may establish wholly owned subsidiary companies if it considers that such a course of action is beneficial to the University. Such companies may limit the liability of the University and may be particularly appropriate to manage self-financing operations. Notwithstanding the fact that such companies may limit the liability of the University, the Council should ensure that the actions of subsidiary companies, subject to Council's approval of its objectives and governance structure, do not adversely affect the University's reputation or standing in the community. In particular, the activities of subsidiary companies should complement those of the University and any possibility of overlap or direct competition with the University proper should be avoided. The reason for creating a subsidiary company and its business objective should be endorsed by the relevant Council Committee. Finance Committee will then endorse the governance structure and funding arrangements before Council approves the creation of the subsidiary.

### **(F) Campus Development and Maintenance**

- 3.16 The Council is responsible for oversight of the University's campus plan, planning and physical development, estate management, as well as monitoring of the time, cost, quality and functionality of all facility projects.

### **(G) Human Resources/Staffing**

- 3.17 The Council has responsibility for the Administration's employment policies. This includes ensuring that pay and conditions of employment are properly determined and implemented. The Council considers the recommendations from Human Resources Committee on staffing policies including but not limited to grading and salary structure, fringe benefits, and other employment conditions.
- 3.18 The Council is also responsible for appointing and setting the terms and conditions of service for the President, the Provost and the Vice-Presidents, with reference to the recommendation and advice made by Senior Executives Affairs Committee.

## **(H) Health, Safety and Sustainability**

- 3.19 The Council carries ultimate responsibility for the health and safety of employees, students and other individuals whilst they are on the University's premises and in other places where they may be affected by its operations. The Council's duties include ensuring that the University has a written statement of policy on health and safety, and arrangements for the implementation of that policy. An annual summary of health and safety performance will be presented by the Administration to the Council and a chapter on health and safety will be included in the University's Annual Report. Sustainability is at the heart of University activity. It is embraced in the strategic objectives, strategic plan and operational plans of the University. A chapter on sustainability is included in the University's Annual Report.

## **(I) Charitable Status**

- 3.20 The University enjoys charitable status under the Inland Revenue Ordinance. The Council will ensure that the property and income of the institution are applied only in support of purposes which are defined as charitable. Assurance will be provided by the external auditor in this respect.

## **(J) Risk Management**

- 3.21 The *Newby Report* indicates that Council has an "irreducible responsibility" to oversee risk management of the University, whereby Council should be satisfied that major institutional risks - both financial and reputational – have been clearly identified and are being effectively managed. The UGC therefore expects that the risk register of the University be drawn up, and to be reviewed at least annually (and, ideally, more frequently) and approved by the Council, as part of the Council's oversight of risk management.
- 3.22 As part of the Risk Management policy of the University, a *Register of Strategic Risks* has been in place. Based on which, Council reviews the assessment of strategic risks by the Administration and monitors appropriate mitigation actions to exercise its overall responsibility on risk management.

## **The University Accountability Agreement and Council's Responsibilities**

- 3.23 *“To ensure that the fiduciary responsibilities of Council Members strike an appropriate and sustainable balance between institutional autonomy and public accountability”* for the public funds that institutions receive, the *Newby Report* recommended universities *“to create a mechanism to explore, drawing upon international good practice, the establishment of a written accountability framework on which the Vice-Chancellor / President and the Council report annually.”* This has led to UGC and each UGC-funded university to develop a University Accountability Agreement (UAA), an “Accountability Framework” as an overall “wrapper” to encompass formal aspects of the UGC’s relationship with UGC-funded universities, and on which University Presidents/Vice-Chancellors and Councils are required to report annually to the UGC. The UAA, which includes sector-wide performance measures and institution-specific Key Performance Indicators (KPIs), is expected to be aligned with universities’ institutional strategic plans, which require Council’s approval.

### **Review of the Effectiveness of the Council**

- 3.24 To ensure effective governance, University Councils are expected to review their own effectiveness and the University’s performance at regular intervals. The *Newby Report* recommended that the UGC should undertake a review of university governance on a regular basis, ideally every five years.



**PART B**

**CODE OF PRACTICE**

**FOR**

**COUNCIL MEMBERS**

[**Note:** In addition to this Code of Practice, Members of the Council are advised to familiarize themselves with the *Sample Code of Conduct for Members of Public Bodies*<sup>8</sup> first published by the Independent Commission Against Corruption of Hong Kong in 2014.]

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<sup>8</sup> [http://www.icac.org.hk/filemanager/en/content\\_216/cc-members.pdf](http://www.icac.org.hk/filemanager/en/content_216/cc-members.pdf)

## **4 Proper Conduct of Council Business**

### **Seven Principles of Public Life**

4.1 The seven principles of public life<sup>9</sup> given below were first published in 1995 and last updated in 2013:

#### ***(A) Selflessness***

4.1.1 Holders of public office should act solely in terms of the public interest.

#### ***(B) Integrity***

4.1.2 Holders of public office must avoid placing themselves under any obligation to people or organizations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. They must declare and resolve any interests and relationships.

#### ***(C) Objectivity***

4.1.3 Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

#### ***(D) Accountability***

4.1.4 Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

#### ***(E) Openness***

4.1.5 Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

#### ***(F) Honesty***

4.1.6 Holders of public office should be truthful.

#### ***(G) Leadership***

4.1.7 Holders of public office should exhibit these principles in their own behavior. They should actively promote and robustly support the principles and be willing to challenge poor behavior wherever it occurs.

4.2 The principle of Openness applies to the transparent operation of Council in terms of information access. The University's annual report (which incorporates an institutional governance and risk management statement) and the audited financial statements (which cover the responsibilities of the Council in relation to financial management and the financial aspects of institutional governance) are publicly available. However, it is considered necessary, at all times, for Council to uphold the principle of confidentiality in transacting its business, and to allow free discussion and exchange of views at meetings.

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<sup>9</sup> <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

## **5 Code of Practice**

- 5.1 The general rules and conventions for the conduct of Council business are outlined below, particularly those features which assist in compliance with the principles referred to above and in the *Sample Code of Conduct for Members of Public Bodies* first published by the Independent Commission Against Corruption in 2014.

### **Duties and Responsibilities of Council Members**

- 5.2 Council Members should act, and be perceived to act, impartially and avoid any situation in which their “private interests” compete or conflict with the interests of the University. They should also uphold the principle of confidentiality in respect of Council and University information preventing any unauthorized access or disclosure of such information. In discharging their duties and responsibilities, Council Members should act in the best interest of the University, properly noting the “Seven Principles of Public Life” and the *Sample Code of Conduct for Members of Public Bodies* published by the Independent Commission Against Corruption in 2014.

#### ***(A) Members as Trustees and not as Representatives***

- 5.3 Council Members, whether elected by particular constituencies or appointed by specified authorities, should not act as if delegated by the constituencies/authorities as their representatives. Regardless of how someone becomes a Member of the Council, Members are selected *ad persona* and, once on the Council, must act as trustees in the best interests of the University as a whole rather than in the interests of their appointing authorities or election constituencies. No Member may be bound, when speaking or voting, by mandates given to him/her by others, except when acting under approved arrangements as a proxy for another Member of the Council.

#### ***(B) Corporate Decision Making***

- 5.4 The Council should exercise its responsibilities in a corporate manner: that is to say, decisions should be taken collectively by the Members acting as a body. Members should not act individually or in informal groupings to take decisions on Council business on an *ad hoc* basis outside the constitutional framework of the meetings of the Council and its committees.
- 5.5 Members are expected to express their views and debate on issues coming before Council or its Committees in a free and open manner, including the right to disagree amongst themselves on the right decision or course of action. However, once a decision has been taken it should be regarded as a corporate decision of the Council or its Committees. Members can request that their dissent be recorded in the Minutes of a meeting but they should not reopen the debate outside the framework of the meetings of the Council or its Committees.

#### ***(C) Rules and Procedures for the Conduct of Business***

- 5.6 As the Council is responsible for the governance of the University, external Members should accordingly avoid becoming involved in the day-to-day management of the University.

- 5.7 The Council Chairman has the right to declare any item as “reserved business”: the content of such items should remain confidential and discussed only by a particular group of Council Members, as specified by the Chairman. The Minutes recording the discussion of such matters may be issued separately to Members joining the discussion and need not be incorporated into the general Minutes, which are available to other Council Members. The quorum for a meeting of the Council is 50% of the Members for the time being, plus the number of external Members on Council shall outnumber that of the internal Members.
- 5.8 In order to function efficiently, the Council has approved a set of Standing Orders which outlines issues such as the calling of meetings, the order of business, procedures and voting, etc.

***(D) Role of the Chairman of the Council***

- 5.9 The Chairman of the Council is responsible for the leadership of the Council. As Chairman of its meetings he/she should promote the well-being of the Council and its efficient operation, ensuring that Members work together effectively and have confidence in the procedures laid down for the conduct of business. The Chairman has to ensure that Members of the Council are made aware of the Seven Principles of Public Life (see Section 4 above), and that the committees of the Council that play a central role in conforming to the highest standards of corporate governance for universities and in the proper conduct of the Council’s business report appropriately to the Council. The Chairman, ultimately, is also responsible for ensuring that the Council operates effectively (which would include, among other things, handling routine and non-controversial matters on behalf of the Council between meetings), discusses those issues which it needs to discuss, and dispatches its responsibilities in a business-like manner.
- 5.10 Under extremely urgent circumstances when convening an emergency meeting, issuing a circulation paper or consultation via emails, etc. all are infeasible, the Chairman is authorized to take action on behalf of the Council. The Chairman is answerable to the Council for any action which he/she takes on the Council’s behalf. Where Chairman’s action is taken, a written report will be made to the Council as soon as practicable.
- 5.11 For the Council to be effective, there must be a constructive working relationship between the Council and the Administration, which is mutually supportive but also incorporates the checks and balances imposed by the different roles each has within the University’s constitution.

***(E) Role of the Administration/President in relation to the Council***

- 5.12 The Council should avoid involvement in the day-to-day executive management of the University and conversely the Administration should not seek to determine matters reserved for the Council.
- 5.13 The specific responsibilities of the Administration include:
- implementing the decisions of the Council or ensuring that they are implemented through the relevant part of the University’s management structure; and

- initiating discussion and consultation including, where appropriate, consultation with the staff, students and alumni as appropriate, and with the Senate on proposals concerning the University's future development; and ensuring that such proposals are presented to the Council.

5.14 As the chief academic and administrative officer, it is good practice for the President to update Members of the Council regularly of the activities and developments in various parts of the University. In this connection, the President is expected, in consultation with the Chairman of the Council, to invite his colleagues to attend meetings of the Council, from time to time, to make presentations to the Council.

***(F) Role of the Secretary of the Council***

5.15 The University shall provide the Council (and each of its Committees) with a secretary. The Council Secretary (the "Secretary") has a key role to play in the operation and conduct of the Council, and in ensuring that appropriate procedures are followed.

5.16 The Secretary is a member of staff of the University. Irrespective of any other duties that the Secretary may have within the University, when dealing with Council business the Secretary will act on the instructions of the Council itself.

5.17 In his/her role as Secretary, he/she should be solely responsible to the Council and therefore has a direct reporting link to the Chairman of the Council for the conduct of Council business (e.g. agendas, papers, minutes).

5.18 The Chairman and Members of the Council look to the Council Secretary for guidance about their responsibilities under the Ordinance, Statutes, and Regulations to which they are subject, including legislation and the requirements of the UGC, and on how these responsibilities should be discharged. It is the responsibility of the Council Secretary to alert the Council if he/she believes that any proposed action would exceed the Council's powers, be contrary to legislation or conflict with the guidelines, procedures and requirements of the UGC.

5.19 The Secretary should advise the Chairman with respect to any matters where conflict, potential or real, may occur between any Council Member and the University. Legal Counsel's advice on such matters would be obtained, if needed.

5.20 It is incumbent on each Member of the Council to support the Council Secretary's ability to carry out these responsibilities. It is important that the Council Secretary also consults and keeps the President fully informed of any matter relating to Council business. It is a good practice for the Chairman of the Council, the President and the Council Secretary to work closely together within the framework provided by the Ordinance and the Statutes, and any University regulations together with those laid down by the UGC.

5.21 If there is a conflict of interest, actual or potential, on any particular matter, between the Secretary's administrative or managerial responsibilities within the University and his/her responsibilities as Council Secretary, it is the responsibility of the Council Secretary to draw it to the attention of the Council.

## ***(G) Members of the Council***

### ***(i) Attendance Records of Members at Council Meetings***

- 5.22 The attendance records of Members at Council meetings are appended as part of the Annual Report of the University, which is accessible by the public.

### ***(ii) Induction and Development***

- 5.23 In order that they may discharge their duties in a more informed manner<sup>10</sup>, Members of the Council, when taking up office, are briefed on the terms of their appointment and made aware of the responsibilities placed on them for the proper discharge of their duties to the University. An induction or briefing session for new Members is provided, to explain their responsibilities, the function of the Council and other organizations within the Higher Education system of Hong Kong, and the strategic objectives of the University. They also receive copies of relevant background documents on appointment from Council Secretary.
- 5.24 Following initial induction, Members regularly receive copies of both the University's newsletter and appropriate publicity materials about the University to help them stay up-to-date with developments.

### ***(iii) Personal Liability and Indemnity***

- 5.25 The law relating to the personal liabilities of Members of University Councils is complex and its interpretation is ultimately a matter for the Courts of the HKSAR. The *Guidelines and Code* do not, therefore, attempt a statement of the law, but offer some general guidance on conduct, to avoid actions which could involve a personal liability.
- 5.26 Members of the Council should satisfy themselves that they understand their own position in the University and should:
- act honestly, diligently and in good faith;
  - be satisfied that the course of action proposed is in accordance with the University's Ordinance and Statutes;
  - not bind the University to a course of action which it cannot carry out;
  - seek to ensure that the University does not continue to operate if it is insolvent;
  - seek to persuade fellow Members by open debate, and register dissent if they are concerned that the action would be contrary to any of the above; and
  - avoid putting themselves in a situation where there is actual or potential conflict between their interests and those of the University.

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<sup>10</sup> Recommendation 1 of the *Newby Report*

5.27 If this advice is followed, it is unlikely that personal liability could arise, particularly since the powers and responsibilities of the Council are exercised in a collective manner and decisions are made by formal resolution. Moreover, the University is a separate legal entity, distinct from its Members or Officers. However, it is acknowledged that claims may be made against an individual Member of the Council in relation to the collective decisions and actions of the Council, and accordingly the University takes out Directors' and Officers' liability insurance (with effect from 5 July 2005) against the costs of such claims of negligence that may be made against Members of the Council in carrying out their duties and bears the full premium of the insurance policy. As soon as a Member becomes aware that such a claim could be made against him/her, he/she should inform Council Secretary in writing as soon as possible.

***(iv) Prevention of Bribery Ordinance***

5.28 Since The Hong Kong University of Science and Technology was established on 10 April 1988, the University has been included in the Schedule to the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) (POBO) and has consequently become a "public body" governed by the POBO. All Members of the Council and its Committees are, therefore, "public servants" for the purposes of the POBO and are subject to the provisions of the POBO which seek, among other things, to enforce against any abuse of entrusted power or official position by public servants through the solicitation or acceptance of a bribe or an advantage. Members have a responsibility to understand and observe the requirements of the POBO with respect to their roles as Council or Council Committee Members. The relevant sections of the POBO pertaining to public bodies are provided in the *Sample Code of Conduct for Members of Public Bodies* first published by the Independent Commission Against Corruption in 2014.

***(v) Misconduct in Public Office***

5.29 Members also have a responsibility to understand and observe that a public servant who misconduct himself/herself in relation to his official duties may commit the common law offence of "misconduct in public office" (MIPO). Members may take note that the ICAC *Sample Code of Conduct for Members of Public Bodies* (first published in 2014) provides further guidance in this area.

***(vi) Confidentiality of Information***

5.30 Members who have access to, or who are in control of, confidential information on or relating to the University, the Council and/or its Committees, which is entrusted to them or become known to them in the course of their appointment as Council or Committee Members, should at all times ensure its security and prevent any abuse, unauthorized access or disclosure or misuse of the confidential information at its discussion and confidential documents that are concerned with individuals or plans yet to be finalized or have commercial sensitivity. Members shall not disclose any confidential information that is not in the public domain without the Council/Committee Chair's authorization or except to the extent required by law or any regulatory body, or where compelled to do so by a court order.

- 5.31 Members should take special care when handling personal data, to ensure compliance with the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong)<sup>11</sup> and the University Data Privacy Policy Statement<sup>12</sup>. Members who are given personal data retained by the University to facilitate a discussion that falls within Council's jurisdictions for the purpose of Council business, are required to keep the personal data confidential.
- 5.32 Members should continue to observe their duty of confidentiality after they have left the Council or its Committees. They should not use or take advantage of any confidential information obtained in the course of their duties as Council or Committee Members that is not in the public domain.

***(vii) Declaration of Interests***

*To Avoid/Manage Conflict of Interest*

- 5.33 Managing conflict of interest is essential for good governance and maintaining trust in public bodies. Conflict of interest situations arise when the "Private Interests" of Members compete or conflict with the interests of the University or Members' official duties. A fundamental integrity requirement is that Members should avoid situations which may compromise (or which could be seen by a reasonable member of the public to compromise) their personal judgement or integrity in undertaking Council/Committee business, or which may lead to a conflict or potential conflict of interest.
- 5.34 "Private Interests", for the purpose of this *Code*, include financial and other interests of the Members themselves and, to their knowledge, those of their connections with whom they are closely associated including their close relatives, personal friends and other relations such a directorship, partnership, advisory or client relationship, employment or other significant connection with a company, firm, club, association, union or other organization.
- 5.35 Examples of conflict of interest are provided in the ICAC's *Sample Code of Conduct for Members of Public Bodies (2014)*.

*General Principles*

- 5.36 It is central to the proper conduct of public business that the Chairman and Members of the Council and Council Committees should act and be perceived to act impartially, and not be influenced in their role as Council Members by social or business relationships. The "benefits" receivable of Members are incidental to their services to the University including but not limited to free access to library services, sports and amenity facilities, and free parking on campus. Nevertheless, the University may pay travelling, subsistence or other allowances, as it may determine, when Members are engaged in Council business.
- 5.37 A Member of the Council or its Committees who has a pecuniary, family or other personal interest, whether direct or indirect, in any matter under discussion at a meeting of the Council, or one of its committees at which he/she is present, shall as soon as

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<sup>11</sup> <https://www.elegislation.gov.hk/hk/cap486!en@2014-12-05T00:00:00?p0=1&p1=1>

<sup>12</sup> <https://dataprivacy.ust.hk/university-data-privacy-policy-statement/>



practicable disclose the fact of his/her interest to the meeting. Such matters include the supply of work or goods or services to or for the purposes of the University, any contract or proposed contract concerning the University, and any other matters relating to the University.

- 5.38 A Member of the Council or its Committees is not, however, considered to have a pecuniary interest in matters under discussion merely because he/she is a member of staff of the University. Nor does the restriction of involvement in matters of direct personal or pecuniary interest prevent such members from considering and voting on proposals to insure the Council against liabilities which it might incur.
- 5.39 The Council keeps a register of interests of its members. The register should be kept up to date, at least annually, by the Secretary. New Members of the Council are invited to consider whether they have interests to declare. The Council will make available Members' registers for their reference upon request.
- 5.40 The declaration of an interest is essentially the responsibility of the individual Council Member. However, if the Secretary, on the basis of information in the register of interests, has reason to believe a Council Member has a particular interest that may need to be declared in relation to a particular item on the agenda, the Secretary will have a duty to draw this to the attention of the Chairman and to remind the Council Member before receiving any papers concerning the agenda item.
- 5.41 The Secretary's objective in identifying any possible conflict of interest is to prevent the probity of the University being called into question, which may bring the University into disrepute, embarrass the Council Member concerned or invalidate a decision.

#### *Two-Tier System*

- 5.42 The University operates a two-tier system for Council and Council Committee Members to declare their interests, as outlined below.

#### Initial and Annual Declaration

- 5.43 Members are required, on first appointment and thereafter annually (normally in July), to declare their personal or pecuniary interests (i.e. registrable interests) to the Council and its Committees, through the submission of a [\*Declaration of Registrable Interests\*](#) form to the Council Secretary.
- 5.44 Following the University Grants Committee (UGC) requirement announced in 2015/16, all UGC-funded institutions were mandated to report "any contract of significance for provision of services or goods to the institution and the subsidiary of the institution."<sup>13</sup> The financial threshold for contract of significance is agreed with the external auditor annually.
- 5.45 The *Declaration of Registrable Interests* forms may be used by the Secretary (including the secretaries of the Main Tender Board and Sub-Tender Board – see paragraphs 5.50 and 5.51 below) to assist in identifying Members' interests that might require disclosure at meetings, as outlined below.

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<sup>13</sup> See page 7 of UGC's Statement of Recommended Practice for the UGC-Funded Institutions (SORP) at <https://www.ugc.edu.hk/doc/eng/ugc/publication/fguide/SORP.pdf>

## Declaration of Interest in Meetings

- 5.46 According to Section 10(4) of the Ordinance, it is the personal responsibility of Members (including the Council/Committee Chairs) to examine whether they have an interest in a matter to be discussed by the Council or its Committees, and declare it before discussion.
- 5.47 Should Members, upon receipt of the Council/Committee papers, form the view that a conflict of interest renders it impossible for them to proffer impartial advice on an item, or that they have been given access to information which they ought not to have, they should notify the Secretary or Chairman immediately and return the papers in question.
- 5.48 Based on the interest declared, the Council/Committee Chair (or the Vice Chair if the Chair is the conflicted Member) will determine whether the Member may have a potential or real conflict of interest on the matter and decide whether the Member should participate in or withdraw from the discussion of the matter.
- (a) If the Council/Committee Chair (or the Vice Chair if the Chair is the conflicted Member) considers the conflict of interest in the circumstances applying is not serious that will not affect the interests of the University, the Member shall be allowed to participate in the meeting for the relevant matter, be counted in the quorum and have the right to vote on the particular matter.
- (b) If the Council/Committee Chair (or the Vice Chair if the Chair is the conflicted Member) determines that the Member shall not be allowed to participate in the meeting for the relevant matter, the Member shall be excused from the part of the meeting at which there is discussion of the relevant matter, not be counted in the quorum for that part of the meeting and have no right to vote on that particular matter.

The declaration of an interest by a Council Member in the course of a meeting should be recorded in the Minutes.

## *Procurement*

- 5.49 All procurements of the University should be undertaken on the basis of full and open competition so that the Offices concerned can be assured that it is securing the best that the market can provide at the most competitive price. The University has in place *Purchasing and Tendering Regulations and Procedures*<sup>14</sup> to ensure that this is the case and which are applicable to Council/Council Committee Members serving on Tender Board(s) as Members or Observers.
- 5.50 It is essential that Members of the Council or its Committees guard against conflicts of interest. Particular areas of vulnerability are the invitation to tender and the tender assessment/award of contract. Accordingly, the Administration has to ensure that procedures are laid down for the issue, receipt, opening and consideration of tenders, and for the award of contracts above a specified value. These procedures should establish whether Members or staff are to be involved at any particular stage or level; and should make specific provision to exclude from the process anyone (whether a Member or a member of staff) who might have a declarable interest in it.

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<sup>14</sup> <https://www.ab.ust.hk/puro/purten.htm>

- 5.51 The University staff responsible for procurement in the Purchasing Office and the secretaries of the Main Tender Board and Sub-Tender Board should refer to the Register of Members' Interests to check if any connections which Council or its Committee Members may have with potential suppliers.
- 5.52 Companies that do have a connection with a Member of the Council or its Committees should not automatically be debarred from tendering for business from the University. The exclusion of such companies might deprive the University of a particularly valuable supplier, and could deter individuals with industrial or commercial interests from serving on the Council or Council Committees. If, for reasons acceptable to the selection board, a company with connection with a Member of the Council should not be debarred from participating in a tender, the Member concerned must:
- (a) make a formal statement of their involvement with the company (supplementing the declaration already contained in the Register of Members' Interests) if the procurement is discussed by the Council or Council Committee. This should be recorded in the Minutes;
  - (b) disengage himself/herself immediately from any meeting, committee, working group, board etc. as the case may be, which involves that procurement; and
  - (c) refrain from providing assistance, advice or information to his/her company where this would give the company an unfair advantage over others.
- 5.53 Members of the Council or Council Committees should avoid becoming involved in procurement decisions on an informal basis (for example, by providing *ad hoc* advice to an Officer outside committee meetings). All contributions to the decision should be channeled formally through the committee system, so that they may be properly documented and open to wider scrutiny.

## **6 Applicability of the Document**

- 6.1 The *Code* is applicable to all Council and Committee Members, University staff members in attendance at meetings and persons specifically invited to attend a meeting of the Council (or part thereof). In the event that a Member or the abovementioned person/staff is found to have breached the *Code*, the Council may, subject to the University Ordinance and Statutes, decide to take action against the individual concerned, including but not limited to issuing an advice, a warning or a reprimand, imposing an investigation or other sanctions such as recommending termination of membership of the Council or its Committees, as the case may be, provided that any decision is made after a due process.

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## References

This document has been compiled with reference to the University Ordinance and Statutes of HKUST, the UGC's *Report on Governance in UGC-Funded Higher Education Institutions in Hong Kong* (the *Newby Report*) (published in March 2016), the UGC's *Statement of Recommended Practice for the UGC-Funded Institutions* (SORP), the Independent Commission Against Corruption of Hong Kong's *Sample Code of Conduct for Members of Public Bodies* (first published in 2014), the UK Government's *Seven Principles of Public Life* (first published 1995; last revised in 2013), the *Prevention of Bribery Ordinance* (Chapter 201 of the Laws of Hong Kong), the common law offence of 'Misconduct in Public Office', the *Personal Data (Privacy) Ordinance* (Chapter 486 of Laws of Hong Kong), HKUST's *University Data Privacy Policy Statement* and HKUST's *Purchasing and Tendering Regulations and Procedures*.