

LEGISLATIVE COUNCIL BRIEF

Munsang College Incorporation Ordinance
(Chapter 1094)
Council of Heep Yunn School Incorporation Ordinance
(Chapter 1099)

**MUNSANG COLLEGE AND HEEP YUNN SCHOOL
(CHANGE OF CORPORATE NAMES AND
GENERAL AMENDMENTS) BILL 2008**

INTRODUCTION

At the meeting of the Executive Council on 11 December 2007, the Council ADVISED and the Chief Executive ORDERED that the Munsang College and Heep Yunn School (Change of Corporate Names and General Amendments) Bill 2008 should be introduced into the Legislative Council to -

- (a) change the corporate name of “Munsang College”;
- (b) change the corporate name of “The Council of Heep Yunn School”;
- (c) bring the provisions of the Munsang College Incorporation Ordinance (Chapter 1094) and the Council of Heep Yunn School Incorporation Ordinance (Chapter 1099) into conformity with the Education Ordinance; and
- (d) make miscellaneous amendments to Chapter 1094 and Chapter 1099.

JUSTIFICATIONS

General Background

2. The Education (Amendment) Ordinance 2004, which came into operation on 1 January 2005, amended the Education Ordinance to make provisions for the establishment of an incorporated management committee (IMC) to manage certain types of schools. The governing

authorities or school sponsoring bodies (SSBs) of a number of schools were incorporated under private ordinances. Some of these ordinances may contain provisions which are inconsistent with the Education Ordinance as amended. As such, the governing authorities of these schools should either repeal or make consequential amendments to their incorporation ordinances. If they want to keep their own ordinances, the ordinances have to be amended.

3. Chapter 1094 and Chapter 1099 need amendments to bring their provisions into conformity with the Education Ordinance as amended. As the required amendments are necessitated by the Education (Amendment) Ordinance 2004, the Administration considers that it would be more appropriate for it to introduce the Bill.

Corporate Names

4. Under the Education Ordinance, the SSBs of all aided schools have to submit for each school under their sponsorship a draft constitution of the IMC by 1 July 2009 for the purpose of setting up an IMC to manage the school.

5. “Munsang College” is incorporated under section 2 of Chapter 1094 and is the SSB of the Munsang College on the Kowloon side and the Munsang College (Hong Kong Island). The Munsang College on the Kowloon side consists of an aided secondary section, a private primary school section and a kindergarten section while the Munsang College (Hong Kong Island) is an aided secondary school. The present corporate name, “Munsang College”, is confusing as it gives the impression that the school, Munsang College, is an incorporated body. But in fact, it is the SSB which is the body corporate incorporated under Chapter 1094. The SSB, “Munsang College”, proposes to restructure its organisation and Chapter 1094 has to be amended to reflect this so that an IMC can be established in respect of each of the aided schools now under its sponsorship. Also, “Munsang College” will adopt a new corporate name, “Munsang Education Council” (民生教育機構委員會) under Chapter 1094.

6. The Council of Heep Yunn School incorporated under section 3 of Chapter 1099 is the SSB of the Heep Yunn School, the Heep Yunn Primary School and the Heep Yunn School Private Kindergarten. Both the Heep Yunn School and the Heep Yunn Primary School are aided schools. The Council of Heep Yunn School does not have a Chinese corporate name though there is a Chinese name for Chapter 1099, “協恩學校校董會法團條例”. The Council now wishes to adopt one. As the

Chinese name of the future IMCs of the Heep Yunn School and the Heep Yunn Primary School will be “協恩中學法團校董會” and “協恩中學附屬小學法團校董會” respectively, confusion may arise if the Council retains its Chinese name, “協恩學校校董會”. To avoid confusion, The Council of Heep Yunn School will adopt the Chinese name, “協恩學校管治委員會” .

Powers of corporations

7. Section 57A of the Education Ordinance provides for the selection and recommendation of the principal of an IMC school and section 55 does not allow removal of the principal by the SSB. Thus, section 6 of Chapter 1094 which empowers “Munsang College” to appoint and remove school principals is inconsistent with sections 57A and 55 of the Education Ordinance and should be repealed.

8. Section 40AD of the Education Ordinance provides that where an IMC has been established in respect of a school, the school shall, subject to section 40AE, be managed by the IMC. The Heep Yunn School and the Heep Yunn Primary School, both aided schools, will establish their respective IMCs. Section 4(a) of Chapter 1099 which provides that The Council of Heep Yunn School has full power to manage, administer and operate the Heep Yunn School is inconsistent with section 40AD of the Education Ordinance and should be amended.

Amendments to Incorporation Ordinances

9. To pave the way for the establishment of the IMCs for the aided schools currently under the sponsorship of “Munsang College” and The Council of Heep Yunn School, the two SSBs sought assistance from the Administration to introduce a Bill to amend Chapter 1094 and Chapter 1099. When the Administration introduced to the Legislative Council the Education (Amendment) Bill 2002, we were aware that a few SSBs had their own incorporation ordinances. We undertook to the Legislative Council to provide assistance to these SSBs to help them to comply with the Education Ordinance. In this regard, a government bill was introduced in 2005 and was passed by the Legislative Council in May 2006 to amend the St. Stephen’s College Incorporation Ordinance.

Other Options

10. There are no other options to bring Chapter 1094 and Chapter 1099 to be consistent with the Education Ordinance except by legislation.

THE BILL

11. The main provisions of the Bill (at Annex) are to -

Part 2

- (a) change the corporate name of “Munsang College” (**clause 5**);
- (b) set out the purposes of the Munsang Education Council (**clause 6**);
- (c) make provision for the internal management of the Munsang Education Council (**clause 12**);

Part 3

- (d) repeal the Munsang College Rules;

Part 4

- (e) change the corporate name of “The Council of Heep Yunn School” (**clause 19**);
- (f) set out the object, powers and duties of The Council of Heep Yunn School (**clause 20**);
- (g) make provisions for the Constitution of The Council of Heep Yunn School (**clause 22**); and
- (h) make provisions for the protection of members, officers and office-bearers of The Council of Heep Yunn School (**clause 25**).

LEGISLATIVE TIMETABLE

12. The legislative timetable approved by the Chief Executive in Council is -

Publication in the Gazette	4 January 2008
First Reading and commencement of Second Reading debate	16 January 2008
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

13. The proposal has no financial, economic or civil service implications. It has no productivity, environmental or sustainability implications either. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposed amendments will not affect the current binding effect of Chapter 1094 and Chapter 1099.

PUBLIC CONSULTATION

14. As the Bill only concerns “Munsang College” and The Council of Heep Yunn School, no public consultation is required. The Administration has consulted both SSBs on the Bill and they have agreed to it. For The Council of Heep Yunn School to adopt, alter, amend, add to or repeal the constitution, it has to have the prior approval of the Standing Committee of the Synod of the Diocese of Eastern Kowloon of the Hong Kong Sheng Kung Hui. The Council of Heep Yunn School has confirmed that the Standing Committee has no objection to the proposed amendments to Chapter 1099.

PUBLICITY

15. The Bill will be gazetted on 4 January 2008.

ENQUIRIES

16. Enquiries about this brief may be directed to –

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Education Bureau
2 January 2008

**MUNSANG COLLEGE AND HEEP YUNN SCHOOL
(CHANGE OF CORPORATE NAMES AND
GENERAL AMENDMENTS) BILL 2008**

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A BILL

To

Amend the Munsang College Incorporation Ordinance and the Council of Heep Yunn School Incorporation Ordinance –

- (a) to change the corporate name of “Munsang College”;
- (b) to change the corporate name of “The Council of Heep Yunn School”;
- (c) to make miscellaneous amendments to the 2 Ordinances;
and
- (d) to bring the provisions of the 2 Ordinances into conformity with the Education Ordinance.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Munsang College and Heep Yunn School (Change of Corporate Names and General Amendments) Ordinance 2008.

PART 2

AMENDMENTS TO MUNSANG COLLEGE INCORPORATION ORDINANCE

2. Long title amended

The long title to the Munsang College Incorporation Ordinance (Cap. 1094) is amended by repealing “the incorporation of the council of the Munsang College, Hong Kong” and substituting “the incorporation of Munsang Education Council”.

3. Short title amended

Section 1 is amended by repealing “College” and substituting “Education Council”.

4. Section added

The following is added –

“1A. Interpretation

In this Ordinance, unless the context otherwise requires –

“Constitution” (章程) means the Constitution of the Council;

“Council” (委員會) means Munsang Education Council.”.

5. Section substituted

Section 2 is repealed and the following substituted –

“2. Incorporation

(1) The body corporate incorporated under this section as in force immediately before the commencement of the amending Ordinance as “Munsang College” is preserved and continues in existence as a body corporate under the corporate name of “Munsang Education Council” in English and “民生教育機構委員會” in Chinese.

(2) The enactment of the amending Ordinance does not affect the legality or validity of anything done by the body corporate referred to in subsection (1) before the commencement of the amending Ordinance.

(3) The Council –

- (a) has perpetual succession under its corporate name;
- (b) is capable of suing and being sued in its corporate name; and
- (c) has and may use a seal.

(4) In this section, “amending Ordinance” (《修訂條例》) means the Munsang College and Heep Yunn School (Change of Corporate Names and General Amendments) Ordinance 2008 (of 2008).”.

6. Section substituted

Section 3 is repealed and the following substituted –

“3. Purposes of Council

The purposes of the Council are –

- (a) to offer to the youth of Hong Kong a modern liberal education; and
- (b) to encourage them to lead a Christian life.”.

7. Section substituted

Section 4 is repealed and the following substituted –

“4. Members of Council

(1) The Council shall consist of such members as provided for in the Constitution.

(2) The members of the Council shall be appointed and removed from office in accordance with the Constitution.”.

8. Sections repealed

Sections 5 and 6 are repealed.

9. Powers of corporation

(1) Section 7 is amended, in the heading, by repealing “**corporation**” and substituting “**Council**”.

(2) Section 7(1) is amended by repealing “corporation” where it first appears and substituting “Council”.

(3) Section 7(2) is amended by repealing “corporation” wherever it appears and substituting “Council”.

10. Execution of deeds

(1) Section 8 is amended by repealing “corporation” and substituting “Council”.

(2) Section 8 is amended by repealing “officers” where it twice appears and substituting “members of the Council”.

11. Power to make rules

Section 9 is repealed.

12. Section added

The following is added –

“9A. Internal management of Council

All matters of internal management of the Council, including any amendment of the Constitution, shall be settled and carried out in accordance with the Constitution.”.

13. Registration with Registrar of Companies

Section 10 is repealed.

14. Prohibition against payment of dividend or bonus

(1) Section 11 is amended by repealing “corporation” where it twice appears and substituting “Council”.

(2) Section 11 is amended by repealing “council” where it twice appears and substituting “Council”.

PART 3

REPEAL OF MUNSANG COLLEGE RULES

15. Repeal

The Munsang College Rules (Cap. 1094 sub. leg. A) are repealed.

PART 4

AMENDMENTS TO COUNCIL OF HEEP YUNN SCHOOL INCORPORATION ORDINANCE

16. Long title amended

The long title to the Council of Heep Yunn School Incorporation Ordinance (Cap. 1099) is amended by repealing “the incorporation of the Council of Heep Yunn School” and substituting “the incorporation of The Council of Heep Yunn School”.

17. Short title amended

Section 1 is amended by repealing “the Council of Heep Yunn School” and substituting “The Council of Heep Yunn School”.

18. Section substituted

Section 2 is repealed and the following substituted –

“2. Interpretation

In this Ordinance, unless the context otherwise requires –

“Constitution” (章程) means the Constitution of the Council;

“Council” (管委會) means The Council of Heep Yunn School.”.

19. Section substituted

Section 3 is repealed and the following substituted –

“3. Incorporation

(1) The body corporate incorporated under this section as in force immediately before the commencement of the amending Ordinance as “The Council of Heep Yunn School” is preserved and continues in existence as a body corporate under the corporate name of “The Council of Heep Yunn School” in English and “協恩學校管治委員會” in Chinese.

(2) The enactment of the amending Ordinance does not affect the legality or validity of anything done by the body corporate referred to in subsection (1) before the commencement of the amending Ordinance.

(3) The Council –

- (a) has perpetual succession under its corporate name;
- (b) is capable of suing and being sued in its corporate name; and
- (c) has and may use a seal.

(4) In this section, “amending Ordinance” (《修訂條例》) means the Munsang College and Heep Yunn School (Change of Corporate Names and General Amendments) Ordinance 2008 (of 2008).”.

20. Sections substituted

Section 4 is repealed and the following substituted –

“4. Object of Council

The object of the Council is, subject to sections 32 and 40AD of the Education Ordinance (Cap. 279), to establish, sponsor, operate and manage –

- (a) Heep Yunn School;
- (b) Heep Yunn Primary School;
- (c) Heep Yunn School Private Kindergarten; and
- (d) other educational institutions in Hong Kong and elsewhere.

4A. Powers and duties of Council

(1) The Council shall have all powers and duties specified in the Constitution which do not conflict with this Ordinance.

(2) Without limiting subsection (1), the Council may –

- (a) oversee the performance of –

- (i) the management committee or the incorporated management committee of Heep Yunn School; and
 - (ii) the management committee or the incorporated management committee of Heep Yunn Primary School; and
- (b) upon the establishment of the incorporated management committee of Heep Yunn School and the incorporated management committee of Heep Yunn Primary School, grant, sell, assign, demise, let or license to the incorporated management committee of Heep Yunn School or the incorporated management committee of Heep Yunn Primary School or both the whole or any part of the relevant lands together with all or any part of the erections and buildings on those lands and together with any rights, easements and appurtenances belonging to those lands, upon such terms as the Council may deem fit.

(3) In this section –

“incorporated management committee” (法團校董會) –

- (a) in relation to Heep Yunn School, means the incorporated management committee established in respect of the school under section 40BN of the Education Ordinance (Cap. 279);
- (b) in relation to Heep Yunn Primary School, means the incorporated management committee established in respect of the school under section 40BN of the Education Ordinance (Cap. 279);

“management committee” (校董會) –

- (a) in relation to Heep Yunn School, means the managers of the school;
- (b) in relation to Heep Yunn Primary School, means the managers of the school;

“relevant lands” (有關土地) means the following lands that are vested in the Council –

- (a) all that piece or parcel of ground known and registered in the Land Registry as Kowloon Inland Lot No. 3394 and the Extension thereto; and
- (b) all that piece or parcel of ground known and registered in the Land Registry as Kowloon Inland Lot No. 6272.”.

21. Section substituted

Section 5 is repealed and the following substituted –

“5. Members of Council

- (1) The Council shall consist of such members as provided for in the Constitution.
- (2) The members of the Council shall be appointed and removed from office in accordance with the Constitution.”.

22. Section substituted

Section 6 is repealed and the following substituted –

“6. Constitution

- (1) The constitution of the pre-existing body corporate in operation immediately before the commencement of the amending Ordinance shall, as from the commencement of the amending Ordinance, be the Constitution of the Council.

(2) Subject to the provisions of this Ordinance and the Constitution and to the prior approval of the Standing Committee, the Council may from time to time adopt, alter, amend, add to or repeal the Constitution.

(3) In this section –

“amending Ordinance” (《修訂條例》) means the Munsang College and Heep Yunn School (Change of Corporate Names and General Amendments) Ordinance 2008 (of 2008);

“Church” (香港聖公會) means the Hong Kong Sheng Kung Hui, a body corporate existing under and by virtue of the Hong Kong Sheng Kung Hui Ordinance (Cap. 1157) and includes its predecessor, the Diocese of Hong Kong and Macao of the Chinese Anglican Church in Hong Kong;

“pre-existing body corporate” (先前法人團體) means the body corporate incorporated under section 3 as in force immediately before the commencement of the amending Ordinance;

“Standing Committee” (常備委員會) means the Standing Committee of the Synod of the Diocese of Eastern Kowloon of the Church or its successor or its replacement from time to time.”.

23. Registration with Registrar of Companies

Section 7 is repealed.

24. Sealing of deeds

Section 8 is amended by repealing “corporation” wherever it appears and substituting “Council”.

25. Section added

The following is added –

“8A. Protection of members, officers, etc.

(1) A member, officer or office-bearer of the Council, acting in good faith, shall not be personally liable for any act done or default made by –

(a) the Council; or

(b) any such member, officer or office-bearer,

in the exercise or purported exercise of the powers conferred by this Ordinance on the Council or in the performance or purported performance of the functions or duties imposed by this Ordinance on the Council.

(2) The protection conferred by subsection (1) on any member, officer or office-bearer of the Council in respect of any act or default shall not affect any liability of the Council for that act or default.

(3) In this section, “officer” (主管人員) includes a member of any sub-committee of the Council and any person to whom the Council has delegated any of its powers.”.

Explanatory Memorandum

The purposes of this Bill are to amend the Munsang College Incorporation Ordinance (Cap. 1094) and the Council of Heep Yunn School Incorporation Ordinance (Cap. 1099) to change the corporate name of “Munsang College” and to change the corporate name of “The Council of Heep Yunn School”, to bring the provisions of those 2 Ordinances into conformity with the Education Ordinance (Cap. 279) and to make miscellaneous amendments.

2. Part 2 amends the Munsang College Incorporation Ordinance (Cap. 1094) to –

(a) change the corporate name of “Munsang College” (clause 5);

- (b) set out the purposes of Munsang Education Council (clause 6); and
 - (c) make provision for the internal management of Munsang Education Council (clause 12).
- 3. Part 3 repeals the Munsang College Rules (Cap. 1094 sub. leg. A).
- 4. Part 4 amends the Council of Heep Yunn School Incorporation Ordinance (Cap. 1099) to –
 - (a) change the corporate name of “The Council of Heep Yunn School” (clause 19);
 - (b) set out the object, powers and duties of The Council of Heep Yunn School (clause 20);
 - (c) make provisions for the Constitution of The Council of Heep Yunn School (clause 22); and
 - (d) make provisions for the protection of members, officers and office-bearers of The Council of Heep Yunn School (clause 25).