

LEGISLATIVE COUNCIL BRIEF

**St. Stephen's College Incorporation Ordinance
(Chapter 1049)**

**ST. STEPHEN'S COLLEGE INCORPORATION (CHANGE OF NAME OF
THE COUNCIL OF ST. STEPHEN'S COLLEGE AND GENERAL
AMENDMENTS) BILL 2005**

INTRODUCTION

At the meeting of the Executive Council on 15 November 2005, the Council ADVISED and the Chief Executive ORDERED that the St. Stephen's College Incorporation (Change of Name of the Council of St. Stephen's College And General Amendments) Bill 2005 should be introduced into the Legislative Council to –

- (a) bring the St. Stephen's College Incorporation Ordinance in line with the Education Ordinance; and
- (b) delete the archaic and out-dated terms and concepts so to bring the provisions of the St. Stephen's College Incorporation Ordinance up-to-date and make miscellaneous amendments.

JUSTIFICATIONS

Background

2. The Legislative Council enacted in July 2004 the Education (Amendment) Ordinance 2004 (27 of 2004) which made provisions for the establishment of incorporated management committee (IMC) to manage certain types of schools. That Ordinance came into operation on 1 January 2005. The governing authorities of a number of schools were incorporated under private ordinances. Some of these ordinances may contain stipulations which are inconsistent with the amended Education Ordinance. 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. The St. Stephen's College Incorporation Ordinance (the Ordinance) needs amendments to change the name of the council of St. Stephen's College and to bring the provisions of the Ordinance in line 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 Name

4. Under the Education Ordinance, all aided schools have to submit a draft constitution of the IMC by 1 July 2009 for the purpose of setting up the IMC to manage the school. St. Stephen's College is an aided school which has served Hong Kong for over 100 years. The governing authority or the sponsoring body of the College is the council of the College. The present title of the College's incorporation Ordinance is confusing as it gives the impression that the College is an incorporated body. But in fact, it is the council which is the body corporate incorporated under the Ordinance. The present Chinese name of the council is "校董會". As the future IMC of the College will be "聖士提反書院法團校董會", confusion will arise if the council retains its Chinese name.

Warden

5. Section 3 of the Ordinance provides for the appointment and removal of the warden (校長) of the College by the Church Missionary Society. This section is inconsistent with section 55 of the Education Ordinance which does not allow the removal of the principal other than by the Permanent Secretary for Education and Manpower. Furthermore, section 57A of the Education Ordinance provides for the selection of the principal of an IMC school. Section 3 of the Ordinance is inconsistent with section 57A of the Education Ordinance.

Amendment to Incorporation Ordinance

6. To pave the way for the establishment of an IMC for the College, the sponsoring body sought assistance from the Administration to introduce a bill to amend the Ordinance. When the Administration introduced to the Legislative Council the Education (Amendment) Bill 2002, we were aware that a few schools had their own incorporation ordinances. We undertook to the Legislative Council to provide assistance to these schools to help them to comply with the Education Ordinance.

Other Options

7. There are no other options to bring the Ordinance to be consistent with the Education Ordinance except by legislation.

THE BILL

8. The effect of the main provisions of the Bill (at Annex) is to -
- (a) change the name of the council of St. Stephen's College (clause 5);
 - (b) set out the objects of the St. Stephen's College Council ("the Council") (clause 6);
 - (c) set out the powers and duties of the Council (clause 7);
 - (d) make provisions for the Constitution of the Council, emblems of the Council and St. Stephen's College, registration of certain particulars with the Companies Registry, indemnity by the Council and several transitional matters (clauses 9 and 10);
 - (e) make transitional arrangement for the Constitution of the Council (clause 11); and
 - (f) repeal the St. Stephen's College Regulations (clause 12).

LEGISLATIVE TIMETABLE

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

Publication in the Gazette	18 November 2005
First Reading and commencement of Second Reading debate	30 November 2005
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

10. 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 amendments will not affect the current binding effect of the Ordinance and only concerns the council and the Church (i.e. the Hong Kong Sheng Kung Hui).

PUBLIC CONSULTATION

11. As the Bill only concerns the council and the Church, no public consultation is required. The council has consulted the Standing Committee of the Church on the proposed amendments to the Ordinance and the Standing Committee has no objection to them. The Administration has consulted the council on the Bill and it has agreed to it.

PUBLICITY

12. The Bill will be gazetted on 18 November 2005.

ENQUIRIES

13. Enquiries about this brief may be directed to –

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Education and Manpower Bureau
16 November 2005

**ST. STEPHEN'S COLLEGE INCORPORATION (CHANGE OF
NAME OF THE COUNCIL OF ST. STEPHEN'S
COLLEGE AND GENERAL AMENDMENTS)
BILL 2005**

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A BILL

To

Amend the St. Stephen's College Incorporation Ordinance to provide for the change of name of the council of St. Stephen's College; to bring the provisions of the Ordinance into conformity with the Education Ordinance; and to make miscellaneous amendments to the Ordinance.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the St. Stephen's College Incorporation (Change of Name of the Council of St. Stephen's College and General Amendments) Ordinance 2005.

PART 2

AMENDMENTS TO THE ST. STEPHEN'S COLLEGE INCORPORATION ORDINANCE

2. Long title amended

The long title to the St. Stephen's College Incorporation Ordinance (Cap. 1049) is amended by adding "Council" after "College".

3. Short title amended

Section 1 is amended by adding "Council" after "College".

4. Section added

The following is added –

“1A. Interpretation

In this Ordinance, unless the context otherwise requires –

“Chairman” (主席) means the Chairman of the Council;

“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;

“College” (書院) means the educational institutions carried on by the Council known for the time being as St. Stephen’s College and St. Stephen’s College Preparatory School;

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

“Council” (教委會) means the St. Stephen’s College Council incorporated under section 2;

“management committee” (校董會) means the managers of the College;

“Secretary” (秘書) means the Secretary of the Council;

“Standing Committee of the Church” (香港聖公會常備委員會) means the Standing Committee of the Synod of the Diocese of Hong Kong Island of the Church or its successor or its replacement from time to time.”.

5. Incorporation

(1) Section 2(1) is amended by repealing everything before “, and in” and substituting –

“(1) The Council of the College shall be a body corporate, and shall have the corporate name, “St. Stephen’s College Council””.

(2) Section 2(2), (3) and (4) is repealed and the following substituted –

“(2) The Council shall hold such meetings as are specified in this Ordinance and the Constitution.

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

(4) The Chairman and the Secretary shall be appointed and removed from office in accordance with the Constitution.”.

6. Section substituted

Section 3 is repealed and the following substituted –

“3. Objects of Council

The objects of the Council are –

- (a) to carry on and extend the work for which the College was originally founded, namely, of offering to the youth of Hong Kong and elsewhere a modern, well-balanced and liberal education upon the Christian principles as professed by the Church;
- (b) subject to the power under section 32 or 40AD of the Education Ordinance (Cap. 279), to establish, sponsor, operate and manage the College and other schools and educational institutions in Hong Kong and elsewhere;
- (c) to oversee the performance of the management committee;
- (d) to carry out and perform any other lawful act, work, enterprise or thing of a charitable nature; and

- (e) to do all things that are necessary for or incidental or conducive to any of the above objects.”.

7. Section substituted

Section 4 is repealed and the following substituted –

“4. Powers and duties of Council

(1) The Council shall have –

- (a) all powers and duties prescribed in this Ordinance;
and
- (b) all powers and duties specified in the Constitution which do not conflict with this Ordinance.

(2) The Council may delegate its powers in accordance with the Constitution.”.

8. Section substituted

Section 5 is repealed and the following substituted –

“5. Common seal

(1) The common seal of the Council shall be affixed only with the authority of a resolution of the Council.

(2) The affixing of the common seal of the Council shall be authenticated by the signatures of 2 members of the Council.”.

9. Section substituted

Section 6 is repealed and the following substituted –

“6. Constitution

(1) The Constitution may contain –

- (a) provisions to regulate –
 - (i) the composition of the Council;
 - (ii) the operation of the Council and the control of its expenditure;

- (iii) the management of the Council property and College property of all kinds; and
- (iv) the performance generally of the Council's functions;
- (b) provisions providing for the powers and duties of the Council; and
- (c) all other related or incidental provisions which do not conflict with this Ordinance.

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

(3) The Constitution is not subsidiary legislation.”.

10. Sections added

The following are added –

“6A. Emblems

Subject to the provisions of this Ordinance and the Constitution, the Council may from time to time –

- (a) adopt or change its emblem or emblems; and
- (b) adopt or change the emblem or emblems of the College.

6B. Particulars to be delivered to Registrar of Companies

(1) The Council shall forward to the Registrar of Companies for registration –

- (a) notice of the address of the Council and any change of the address;

- (b) a copy of the Constitution and any amendment to it, certified as correct by the Chairman or the Secretary; and
- (c) the names and addresses of members of the Council and any change of the names and addresses, certified as correct by the Chairman or the Secretary.

(2) Notification under subsection (1) shall be made within 28 days after the commencement date of the St. Stephen's College Incorporation (Change of Name of the Council of St. Stephen's College and General Amendments) Ordinance 2005 (of 2005) or, in the case of any amendment or change, within 28 days of such amendment or change, as the case may be.

(3) Any person may inspect any of the documents registered under this section upon payment of such fee as may be prescribed under the Companies Ordinance (Cap. 32) for the inspection of a document.

(4) The Council shall pay such fee for registering any document with the Registrar of Companies under this section as may be prescribed in the Companies Ordinance (Cap. 32) as if the Council were a company not having a share capital.

6C. Indemnity

(1) Every Council member, office-bearer and officer and any person employed by the Council as auditor shall be indemnified by the Council against all losses, costs and liabilities for any act, deed or matter done for and on behalf of the Council for which he is sued by any person (not being the Council) in his own name.

(2) In this section, "officer" (高級人員) shall include a member of any sub-committee of the Council and any person to whom the Council has delegated any of its powers.

6D. Change of name does not affect identity, etc.

For the avoidance of doubt –

- (a) the identity of the body corporate incorporated under section 2 shall not be affected by the commencement of the St. Stephen's College Incorporation (Change of Name of the Council of St. Stephen's College and General Amendments) Ordinance 2005 (of 2005);
- (b) the powers, rights, privileges, liabilities and obligations of that body corporate shall not be affected by the commencement of that Ordinance except as provided for in this Ordinance as amended by that Ordinance; and
- (c) the office of the members of that body corporate shall continue after the commencement of that Ordinance subject to the provisions of this Ordinance as amended by that Ordinance.”.

11. Transitional arrangement for Constitution

(1) The St. Stephen's College Regulations (Cap. 1049 sub. leg. A) as in force immediately before the commencement of this Ordinance shall, during such period as the Council may determine, have effect as the Constitution of the Council subject to the principal Ordinance.

(2) In this section –

- (a) “Constitution” (章程) and “Council” (教委會) have the same meaning as in the principal Ordinance;
- (b) “principal Ordinance” (主體條例) means the St. Stephen's College Incorporation Ordinance (Cap. 1049) as amended by this Ordinance.

PART 3

REPEAL OF ST. STEPHEN'S COLLEGE REGULATIONS

12. Repealed

The St. Stephen's College Regulations (Cap. 1049 sub. leg. A) are repealed.

Explanatory Memorandum

The purposes of this Bill are to amend the St. Stephen's College Incorporation Ordinance (Cap. 1049) to provide for the change of name of the council of St. Stephen's College, to bring the provisions of the Ordinance into conformity with the Education Ordinance (Cap. 279) and to introduce miscellaneous amendments.

2. The Bill –

- (a) changes the name of the council of St. Stephen's College (clause 5);
- (b) sets out the objects of the St. Stephen's College Council ("the Council") (clause 6);
- (c) sets out the powers and duties of the Council (clause 7);
- (d) makes provisions for the Constitution of the Council, emblems of the Council and the St. Stephen's College, registration of certain particulars with the Companies Registry, indemnity by the Council and several transitional matters (clauses 9 and 10);
- (e) makes transitional arrangement for the Constitution of the Council (clause 11); and
- (f) repeals the St. Stephen's College Regulations (Cap. 1049 sub. leg. A) (clause 12).