



中華人民共和國香港特別行政區立法會
LEGISLATIVE COUNCIL
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
OF THE PEOPLES REPUBLIC OF CHINA

吳永嘉 議員
Hon Jimmy NG Wing-ka
Member

立法會/教育事務委員會
葉建源主席
(傳真：2537-2514)

主席閣下：

敦請就《2019年聖約翰學院(修訂)條例草案》諮詢全體委員

聖約翰學院是根據《聖約翰學院條例》(第1089章)成立的法定機構，該條例曾經在1997年及2005年作出若干修訂，惟部分條款仍需進一步修訂，使其與類似院校一致。

本人謹此提出《2019年聖約翰學院(修訂)條例草案》(下稱“《條例草案》”)，尋求透過私人條例草案形式，修訂《聖約翰學院條例》(第1089章)，旨在保護根據該條例(學院)成立的法人團體成員及該條例所述的其他人士，並賦予學院一定的明確權力。

依循慣例，本人謹向本委員會提交《條例草案》草擬本及相關資料(詳見附件一、二、三、四)，以便能盡快進行立法程序。需特別指出，本人曾於去年10月致函教育局局長，並附上2018年《條例草案》草擬本，其內容與此次提交的草擬本並無二致。

現敦請閣下就《條例草案》諮詢全體委員。如有任何意見，歡迎於2019年4月15日前與本人聯繫。肅此奉達，並頌

鈞祺！

立法會議員

吳永嘉 謹啟

2019年4月3日

- 附件一：《條例草案》草擬本
- 附件二：《條例草案》之目的
- 附件三：參考資料摘要
- 附件四：教育局回覆信函

副本抄送：立法會教育事務委員會 總議會秘書黃安琪女士

St. John's College (Amendment) Bill 2019

**Certificate under Rule 51(2) of the Rules of Procedure
of the Legislative Council of the Hong Kong
Special Administrative Region**

I am of the opinion that the St. John's College (Amendment) Bill 2019 conforms to the requirements of Rule 50 and the general form of Hong Kong legislation.



(Gilbert Mo)
Acting Law Draftsman

24 December 2018

A BILL

To

Amend the St. John's College Ordinance to give protection to members of the body corporate incorporated under the Ordinance and some other persons mentioned in the Ordinance; and to give the body corporate certain express powers.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the St. John's College (Amendment) Ordinance 2019.

2. St. John's College Ordinance amended

The St. John's College Ordinance (Cap. 1089) is amended as set out in sections 3 and 4.

3. Section 4 amended (powers)

After section 4(2)—

Add

“(3) Without limiting subsections (1) and (2), the College has the powers to—

- (a) borrow or otherwise raise moneys and may do so on the securities or terms (including, without limitation, the giving of guarantee, the issuance of letter of support to financial and non-financial institutions) that it thinks expedient; and

- (b) invest any money belonging to the College in the manner and to the extent that it thinks expedient.
- (4) To avoid doubt, the powers contained in subsections (1) and (2) include the powers for the College to acquire, hold and dispose of interest in other corporate bodies and take part in forming corporate bodies.
- (5) In exercising any of its powers, the College may either exercise alone or in association with any other person or body corporate.”.

4. Sections 8A and 8B added

After section 8—

Add

“8A. Protection of members and other persons involved in performing functions or exercising powers

- (1) A person to whom this subsection applies, acting in good faith, is not personally liable for any liability or any claim in respect of any act done or default made—
 - (a) in the exercise or purported exercise of the powers conferred by this Ordinance; or
 - (b) in the performance or purported performance of the functions or duties imposed under this Ordinance.
- (2) The protection conferred on a person by subsection (1) in respect of any act or default does not affect any liability of the College for that act or default.
- (3) Subsection (1) applies to—
 - (a) any person who falls within the definition of *members* in section 2;
 - (b) any person who is a member of any committee established under section 8; and

- (c) any person who is an officer of the College as referred to in section 3 of the Schedule.

8B. Protection of members generally

To avoid doubt, a person who is within the definition of *members* in section 2 is not personally liable for any liability of the College solely because he or she is one of the members of the College.”.

5. Saving

Nothing in this Ordinance shall affect or be deemed to affect the rights of the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws, or the rights of any body politic or corporate or of any other person except such as are mentioned in this Ordinance and those claiming by, from or under them.

Explanatory Memorandum

The purpose of this Bill is to amend the St. John's College Ordinance (Cap. 1089) (*Ordinance*) to give protection to members of the body corporate incorporated under the Ordinance (*College*) and some other persons mentioned in the Ordinance, and to give the College certain express powers.

2. Clause 3 adds new subsections (3), (4) and (5) to section 4 of the Ordinance—
 - (a) to include express powers to the College—
 - (i) to borrow or raise moneys and to do so on the securities or terms that it thinks expedient; and
 - (ii) to invest money belonging to the College in the manner and to the extent that it thinks expedient;
 - (b) to avoid doubt, to state expressly that the powers contained in section 4(1) and (2) of the Ordinance include the powers for the College to acquire, hold and dispose of interest in other corporate bodies and take part in forming corporate bodies; and
 - (c) to provide that the College may exercise its powers either alone or in association with any other person or body corporate.
3. Clause 4 adds a new section 8A to the Ordinance to give protection to certain persons, namely, any person who is within the definition of *members* of the College, any person who is a member of any committee established under section 8 of the Ordinance and any person who is an officer of the College as referred to in section 3 of the Schedule to the Ordinance. The person acting in good faith, is not to be held personally liable for any act done or default made by the College or the person—

- (a) in the exercise or purported exercise of the powers conferred by the Ordinance; or
 - (b) in the performance or purported performance of the functions or duties imposed under the Ordinance.
- 4. The new section 8A(2) expressly preserves the liability of the College.
- 5. Clause 4 also adds a new section 8B to the Ordinance. The intention of the new section 8B is to remove any doubt by stipulating expressly that a person who is within the definition of *members* in section 2 of the Ordinance is not personally liable for any liability of the College solely because he or she is one of the members of the College.
- 6. Clause 5 is a saving provision required under Rule 50(8) of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region.

《2019 年聖約翰學院(修訂)條例草案》

根據《香港特別行政區立法會議事規則》
第 51(2)條簽發的證明書

本人認為《2019 年聖約翰學院(修訂)條例草案》符合議事規則第 50 條的規定及香港法例的一般格式。



署理法律草擬專員
毛錫強

2018 年 12 月 24 日

本條例草案

旨在

修訂《聖約翰學院條例》以保障該條例下成立的法人團體的成員及在該條例下述及的某些其他人士；及給予該法人團體某些明示權力。

由立法會制定。

1. 簡稱

本條例可引稱為《2019 年聖約翰學院(修訂)條例》。

2. 修訂《聖約翰學院條例》

《聖約翰學院條例》(第 1089 章)現予修訂，修訂方式列於第 3 及 4 條。

3. 修訂第 4 條(權力)

在第 4(2)條之後 ——

加入

“(3) 在不局限第(1)及(2)款的原則下，學院有權 ——

- (a) 借入款項或籌集款項，並可以其認為合宜的保證或條款(包括，但不限於，提供擔保，向財務與非財務機構簽發支持信)進行該等行為；及
 - (b) 按其認為合宜的規模及方式將屬於學院的任何款項用作投資。
- (4) 為免生疑問，在第(1)及(2)款所包含的權力包括學院有權獲取、持有及處置其他法人團體權益，及參與組成法人團體。

(5) 學院可以獨自或聯同其他人士或法人團體行使任何其具有的權力。”。

4. 加入第 8A 及 8B 條

在第 8 條之後 ——

加入

“8A. 保障有牽涉執行職能或行使權力的成員及其他人士

- (1) 如本款所適用的人真誠地行事，即就其有關的作為或錯失免受法律責任或任何申索，而有關的作為或錯失是指 ——
 - (a) 在行使或其意是在行使本條例賦予的權力；或
 - (b) 在執行或其意是在執行本條例賦予的職能或職責。
- (2) 按照第(1)款提述就有關作為或錯失而對個人賦予的保障，不會影響學院就有關作為或錯失的任何法律責任。
- (3) 第(1)款適用於 ——
 - (a) 任何人士符合第 2 條中**成員**的定義；
 - (b) 任何人士為依第 8 條成立的任何委員會的成員；及
 - (c) 任何人士為附表中第 3 條所指的學院主管人員。

8B. 成員保障概括而言

為免生疑問，任何人只因符合第 2 條中**成員**的定義，並不會僅因此身分而須為學院的責任負上個人法律責任。”。

5. 保留條文

本條例的條文不影響亦不得當作影響中央或香港特別行政區政府根據《基本法》和其他法律的規定所享有的權利或任何政治體或法人團體或任何其他人的權利，但本條例所述及者和經由、透過或藉著他們提出申索者除外。

摘要說明

本條例草案的主要目的，是修訂《聖約翰學院條例》(第 1089 章)(《條例》)保障《條例》下成立的法人團體(學院)的成員及《條例》下述及的某些其他人士；及給予學院某些明訂權力。

2. 草案第 3 條在《條例》中第 4 條加入新訂第(3)、(4)及(5)款——
 - (a) 給予學院明訂權力——
 - (i) 借入款項或籌集款項，並可以其認為合宜的保證或條款進行該等行為；及
 - (ii) 按其認為合宜的規模及方式將屬於學院的任何款項用作投資；
 - (b) 為免生疑問，明確指明在《條例》第 4(1)及(2)條所包含的權力包括學院有權獲取、持有及處置其他法人團體權益，及參與組成法人團體；及
 - (c) 賦予學院可以獨自或聯同其他人士或法人團體行使任何其具有的權力。
3. 草案第 4 條在《條例》中加入新訂第 8A 條，保障授予若干人士，包括任何人士符合學院成員的定義，任何人士為依《條例》第 8 條成立的任何委員會的成員及任何人士為《條例》附表中第 3 條所指的學院主管人員。該條款所適用的人如真誠地行事，即就其有關的作為或錯失免受法律責任，而有關作為或錯失是指——
 - (a) 在行使或其意是在行使《條例》賦予的權力；或
 - (b) 在執行或其意是在執行《條例》賦予的職能或職責。
4. 加入新訂第 8A(2)條明確保留學院的法律責任。

5. 草案第 4 條在《條例》中亦加入新訂第 8B 條，目的是為免除疑問，明示確定任何人士只因符合《條例》第 2 條中成員的定義，不會僅因此身分而須為學院的責任負上個人法律責任。
6. 草案第 5 條為《香港特別行政區立法會議事規則》第 50(8)條要求下的保留條文。

附件二：《條例草案》之目的

Amendment to Private Ordinance

St. John's College (Amendment) Bill 2019

The purpose of this Bill is to amend the St. John's College Ordinance (Cap. 1089) (**Ordinance**) to give protection to members of the body corporate incorporated under the Ordinance (**College**) and some other persons mentioned in the Ordinance, and to give the College certain express powers.

2. Clause 3 adds new subsections (3), (4) and (5) to section 4 of the Ordinance—
 - (a) to include express powers to the College—
 - (i) to borrow or raise moneys and to do so on the securities and terms that it thinks expedient; and
 - (ii) to invest money belonging to the College in the manner and to the extent that it thinks expedient;
 - (b) to avoid doubt, to state expressly that the powers contained in section 4(1) and (2) of the Ordinance include the powers for the College to acquire, hold and dispose of interest in other corporate bodies and take part in forming corporate bodies; and
 - (c) to provide that the College may exercise its powers either alone or in association with any other person or body corporate.
3. Clause 4 adds a new section 8A to the Ordinance to give protection to certain persons, namely, any person who is within the definition of **members** of the College, any person who is a member of any committee established under section 8 of the Ordinance and any person who is an officer of the College as referred to in section 3 of the Schedule to the Ordinance. The person acting in good faith, is not to be held personally liable for any act done or default made by the College or the person—
 - (a) in the exercise or purported exercise of the powers conferred by the Ordinance; or
 - (b) in the performance or purported performance of the functions or duties imposed by the Ordinance.
4. The new section 8A(2) expressly preserves the liability of the College.
5. Clause 4 also adds a new section 8B to the Ordinance. The intention of the new section 8B is to remove any doubt by stipulating expressly that a person who is within the definition of **members** in section 2 of the Ordinance is not personally liable for any liability of the College solely because he or she is one of the members of the College.
6. Clause 5 is a saving provision required under Rule 50(8) of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region.

附件三：參考資料摘要

Info for references:

(I) Power of Council

Section 4 of St. John's College Ordinance (Cap. 1089) states:-

“1) The College shall have power to acquire, accept leases of, purchase, take, hold and enjoy any lands, buildings, messuages or tenements of what nature or kind soever and wheresoever situate, and also to invest moneys upon mortgage of any lands, buildings, messuages or tenements, or upon the mortgages, debentures, stocks, funds, shares or securities of any government, municipality, corporation, company or person, and also to purchase, acquire and possess vessels and other goods and chattels of what nature and kind soever.

(2) The College shall further have power to grant, sell, convey, assign, surrender, exchange, partition, yield up, mortgage, demise, reassign, transfer and otherwise dispose of any lands, buildings, messuages, tenements, mortgages, debentures, stocks, funds, shares or securities, or vessels or other goods and chattels, which are for the time being vested in or belonging to the College, upon such terms as to the College may seem fit.”

The Ordinance does not expressly stipulate that the College has the power to borrow, invest, etc.

Reference is made to similar legislations that include a specific provision to state express powers.

1. University of Hong Kong Ordinance (Cap. 1053)

Statute XIX Powers of the Council Section 2 in the Ordinance about certain express powers are as follows:-

“(c) to invest the moneys of the University, including any unapplied income, in such stocks, funds, fully paid-up shares or securities, mortgages, or debentures or debenture stock as the Council shall think fit ...

(f) to borrow money on behalf of the University and for that purpose to mortgage all or any part of the property of the University ...”

2. Hong Kong Polytechnic University Ordinance (Cap. 1075)

Section 6 The Powers of the Council in the Ordinance about certain express powers are as follows:-

“(g) invest the funds of the University in such manner and to such extent as it thinks necessary or expedient;

(h) borrow money in such manner and on such securities or terms, including mortgaging the property of the University ...

(m) enter a partnership or any other form of joint venture with any person;

(n) acquire, hold and dispose of interests in other corporate bodies and take part in forming corporate bodies;"

(II) Protection of members

Section 3 of St. John's College Ordinance (Cap.1089) provides that:-

"There shall be established in Hong Kong a college affiliated to the University styled the "College of St. John the Evangelist" by which name the members of the College are hereby constituted a body corporate with perpetual succession and a common seal and with full power by and in such name to sue and be sued."

In the interpretation section (Section 2 of the Ordinance), "members" is defined as:-

"members" (成員) means the President, Master, Fellows, Honorary Fellows and treasurer, the members of the council, the graduates of the University who have been registered as undergraduate members of the College or of St. John's Hall or of St. Stephen's Hall and the undergraduates of the University registered as such and for the time being residing in the College;"

However, there is no provision in the Ordinance expressly touching upon the issue of liability of members. In the absence of a clear provision to the effect that, for example, members acting in good faith shall not be personally liable in the performance of powers conferred under an Ordinance, members of the College may be exposed to the risk of personal liability.

Reference is made to similar legislations that include a specific provision to protect its members.

1. Construction Industry Council Ordinance (Cap. 587)

This is an ordinance that provides for, inter alia, the establishment of the Construction Industry Council as a body corporate. Under this Ordinance, the Construction Industry Council is established as a body corporate with perpetual succession and is required to have a common seal, and it may sue and be sued in its corporate name.

There is a provision (Section 19) in this Ordinance about the protection of members of Council, etc, as follows:-

"(1) A person to whom this section applies, acting in good faith, is not personally liable for anything done or omitted to be done by that person in the performance or purported performance of any function conferred or imposed on the Council by or under this Ordinance or the Construction Workers Registration Ordinance (Cap. 583).

(2) The protection conferred on a person by subsection (1) in respect of an act or omission does not in any way affect any liability of the Council for that act or omission.

(3) This section applies to—

(a) any member of the Council;

(b) any member of a committee established under section 15;

(c) any member of the Training Board or the Objections Board;

(d) any member of a subcommittee appointed under section 16(6);

- (e) any member of a subcommittee appointed under section 54(3);*
- (f) any member of a subcommittee appointed under section 11 of Schedule 4; and*
- (g) any employee of the Council.”*

In essence, this Ordinance expressly stipulates that a person (such as a council member), acting in good faith, is not personally liable for anything done or omitted to be done by that person in the performance of any functions of the Council.

2. Heep Yunn School Incorporation Ordinance (Cap. 1099)

Section 8A of Cap.1099 provides for protection of members and officers, etc as follows:

- “(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.”*

There are similar provisions in other ordinances. Examples include Consumer Council Ordinance (Cap. 216), Occupational Safety and Health Council Ordinance (Cap. 398) and Hong Kong Council for Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 1150). These ordinances all include a similar clause for protection of its members. The provisions on protections of members in different ordinances in Hong Kong are not uncommon in Hong Kong law.



中華人民共和國香港特別行政區政府總部教育局
Education Bureau
Government Secretariat, The Government of the Hong Kong Special Administrative Region
The People's Republic of China

本局檔號 Our Ref. :

電話 Telephone : 3509 8501

來函檔號 Your Ref. :

傳真 Fax Line : 2804 6499

22 October 2018

The Hon Jimmy Ng Wing-ka
Room 802, 8/F,
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Hon Ng,

St. John's College (Amendment) Bill 2018 (the "Bill")

Thank you for your letter of 11 October 2018 on the captioned.

The Bill is related to internal matters of the St. John's College, which is an autonomous statutory body incorporated under the St. John's College Ordinance (Cap. 1089). We understand that you will submit to the LegCo President. Thanks for keeping us posted.

Please contact the undersigned at 3509 8501 should you need any assistance from the Education Bureau.

Yours sincerely,

(Miss Sharon Ko)
for Secretary for Education