

立法會
Legislative Council

LC Paper No. CB(1)999/08-09
(These minutes have been seen by
the Administration)

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Panel on Information Technology and Broadcasting

Minutes of special meeting
held on Thursday, 11 December 2008, at 4:30 pm
in Conference Room B of the Legislative Council Building

- Members present** : Hon LEE Wing-tat (Deputy Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon WONG Yuk-man
Hon Paul TSE Wai-chun
- Member attending** : Hon James TO Kun-sun
- Members absent** : Hon Andrew LEUNG Kwan-yuen, SBS, JP (Chairman)
Hon WONG Yung-kan, SBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Cyd HO Sau-lan
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Dr Hon Samson TAM Wai-ho, JP
- Public officers attending** : Mr Kevin CHOI
Acting Deputy Secretary for Commerce and Economic
Development (Communications and Technology)
- Mr Jeremy GODFREY
Government Chief Information Officer
Office of the Government Chief Information Officer

Mr Dominic KWONG
Chief Systems Manager (IT Professional Development)
Office of the Government Chief Information Officer

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Ms Annette LAM
Senior Council Secretary (1)3

Ms Debbie SIU
Legislative Assistant (1)6

Action

I. Governance structure of the Hong Kong Internet Registration Corporation Limited

(LC Paper No. CB(1)369/08-09(01) -- Administration's paper on review on Administration of Internet Domain Names in Hong Kong

LC Paper No. CB(1)369/08-09(02) -- Hon James TO and Hon LEE Wing-tat's letter dated 8 December 2008 (Chinese version only)

LC Paper No. CB(1)369/08-09(03) -- Submission on formation and governance of Board of Directors of the Hong Kong Internet Registration Corporation Limited from the IT Voice Team dated 26 November 2008 (English version only)

LC Paper No. CB(1)380/08-09(01) -- Hon James TO's question on administration of Internet domain names at the Council meeting on 3 December 2008 and the Administration's reply

LC Paper No. CB(1)380/08-09(02) -- Hansard on Oral Question No. 2 raised by Hon Andrew LEUNG on security problem of web sites using domain names ending with ".hk" at the Council meeting on 25 June 2008 (Chinese version only)

LC Paper No. CB(1)380/08-09(03) -- Extract of minutes of meeting held on 11 June 2007)

The Deputy Chairman chaired the meeting in the absence of the Chairman who was out of town.

Presentation by the Administration

2. The Government Chief Information Officer (GCIO) briefed members on the recommendations arising from the review of the administration of Internet domain names in Hong Kong following a consultancy study in 2006 and a public consultation conducted between 4 May and 15 June 2007. He updated members on the progress of implementing the recommended institutional changes to the governance structure of the Hong Kong Internet Registration Corporation Limited (HKIRC), a non-profit making organization designated by the Government to oversee the administration and management of the ".hk" domain names. He also briefed members on the guiding principles on the role of Government in the administration of the country-code top level domain (ccTLD) generally adopted by the global Internet community. On enhancing transparency and public accountability, GCIO highlighted that the new Memorandum of Understanding (MOU) to be signed between the Government and the HKIRC would give HKIRC an explicit duty to uphold the rights of individuals and businesses to freedom of expression. The HKIRC would also be required to consult the Consultative and Advisory Panel (CAP) on major issues and account for its decision in the event that it decided not to follow the advice of the CAP. Members noted that the new institutional arrangements would be reviewed two years after operation.

Discussion

Governance structure of the HKIRC

3. Mr James TO objected strongly to the new governance structure of the HKIRC. He expressed serious reservation over the composition and the appointment mechanism of the Board of Directors and HKIRC's CAP. He also queried how the ratio of appointed and elected directors/members of CAP was arrived at. Mr TO pointed out that under the new institutional regime, the number of directors on the HKIRC Board would be reduced from 13 to eight of which only four directors would be elected by members of the company, the remaining four directors and the Board Chairman would be appointed by the Administration. Apart from the one Government representative nominated by GCIO, the remaining members of the new CAP established to advise the Board on major ccTLD domain issues would all be appointed by the Government. Mr TO was gravely concerned that the proposed appointment arrangements would enable the Government to have substantial undue influence over the operation of the Board and the CAP, which might undermine freedom of expression. He questioned whether the proposed new governance regime, together with review of the Control of Obscene and Indecent Articles Ordinance (COIAO), was a deliberate attempt of the Government to curb freedom of expression and curtail free flow of information.

4. Ms Emily LAU considered the recommended changes to the governance structure a retrograde step in corporate governance. She was disappointed that the Government had not taken on board members' concerns raised at the Panel meeting on 11 June 2007, and their suggestion to increase the industry's representation at both the Board and the CAP level.

5. In response, Acting Deputy Secretary for Commerce & Economic Development (Communications & Technology) (Atg DSCED(CT)) disagreed that the Government was trying to curb freedom of expression and free flow of information through controlling the HKIRC and the review of the COIAO. He said that arising from the review on the administration of Internet domain names in Hong Kong, changes to HKIRC's corporate structure were recommended with a view to improving the existing institutional framework and enhancing corporate governance. As regards the review of COIAO, he highlighted that the Administration did not have any pre-determined stance on the review and it was open to suggestions from members and the community on measures to improve the existing regime and enhance the operation of the COIAO. Following the first round of consultation, the Administration would draw together public views received and, as far as possible, come up with more concrete proposals for a second round of public consultation. He stressed that it was the Government's long-standing policy to preserve the free flow of information and safeguard the freedom of expression which were the core values of Hong Kong and basic rights guaranteed by law.

6. GCIO said that while various views were expressed on matters such as the ratio of appointed and elected directors and the source of appropriate candidates to take up the directorship, the feedback received during the consultation period indicated that the public generally supported the proposed board structure. He stressed that the Government had no intention to take control of the HKIRC and the administration of the Internet domain names. As recommended by the consultant, the Government would continue to delegate the ccTLD management function to HKIRC, which would remain a non-profit making, membership-based organization operating independently at arm's length from the Government. There would no longer be any Government officials sitting on the Board. He explained that the number of directors on the Board was reduced to eight as it was envisaged that a smaller board would be conducive to making timely strategic and operational decisions in the interests of the community as a whole. Having regard to members' suggestion at the Panel meeting in June 2007, the number of elected directors had increased from three to four under the new arrangements as recommended in the public consultation paper. In respect of Government-appointed directors, GCIO said that the Government's intention was to appoint independent non-executive directors with professional experience and expertise on corporate management, administration of Internet domain names, accounting and finance as well as legal or regulatory affairs to contribute to the work of the Board and to ensure good corporate governance. As regards the appointment of the Board Chairman, he clarified that only in the event that no Chairman was elected from amongst the directors would the Government exercise

the power to appoint a director from within the Board to be the Chairman. Under the new arrangements, the CAP would be a forum for stakeholder representation. To enhance transparency and stakeholders' participation, the CAP would be constituted through a transparent and open process whereby nominations for candidates would be sought from a number of organizations considered representative of the various stakeholder groups. A selection committee, comprising Board members under the new Board structure and a representative from the Government who was a member of the CAP, would consider the nominations from the invited organizations to ensure a balanced mix of representation from the stakeholder groups. Individuals and other organizations could also make nominations to the CAP.

7. The Deputy Chairman noted that while different jurisdictions might adopt different administration and management models with varying degrees of government involvement, Internet domain names in most countries were currently administered by non-profit making organizations with most or all of their members elected by the industry and end users. Although the number of elected directors was increased by one (from 3 to 4) under the new arrangement, the substantial increase in the ratio of Government-appointed directors from 1 in 13 in the past to the proposed 4 in 8 (50%) would make the Government the ultimate decision-maker. The Deputy Chairman opined that domain name registration could be a sensitive issue whereby political organizations or set-ups opposing the Government could be denied registration and the Government might restrict the registration of politically sensitive domain names through the directors appointed by it. He was concerned that the proposed board restructuring and the related appointment arrangements would be perceived as a step for Government to take control of the Board and domain name registration. He was disappointed that the Panel was not informed of the new structure earlier. Mr James TO also expressed disappointment that the Secretary for Commerce and Economic Development (SCED) did not attend this meeting to discuss this important issue on freedom of expression.

8. Atg DSCED(CT) replied that the Government attached great importance to discussing with members but given the short notice of the meeting, SCED was unable to attend due to other prior commitment. He said that as Internet domain names were a public resource, most governments exercised some degree of supervision over ccTLD administration. He stressed that the proposed changes were in line with the relevant principles and guidelines issued by the Internet Corporation for Assigned names and Numbers (ICANN). GCIO remarked that freedom of speech would be further protected and assured by putting in place a clear set of policies and procedures for the operation of the HKIRC to ensure transparency and good corporate governance. The new MOU would also incorporate arrangements to ensure that domain name registration would be processed fairly in the interests of the community and to instill confidence that the HKIRC would act to uphold freedom of expression. These arrangements would include requiring the company to publish its policies and procedures relating to approval of domain names, conditions of use of domain names, and policies and procedures for cancellation of registration due to breach of conditions of use. The

public and the CAP would be consulted on the drafting of such policies and procedures, and the Panel's views would also be heard during the process.

9. Mr James TO queried why the transition to the new structure had been accelerated. He also sought explanation as to why the implementation of the recommended changes, originally scheduled for September 2009, was brought forward without consulting the Legislative Council during its dissolution. Mr TO said that he was given to understand that the Administration and the Office of the Government Chief Information Officer had pressurized the Board to accelerate the restructuring and that the ICANN had recently expressed reservation over the proposed Board structure. He sought information on any other public corporations whose advisory or consultative committee(s) were all appointed by the Government, as in the case of the CAP. In this connection, he requested the Administration to provide the names of such bodies and details of the governance structure and appointment mechanism in due course.

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10. GCIO responded that the recommended new arrangements were originally scheduled to be in place by September 2009. However, in February 2008, there were public debates about the effectiveness of the HKIRC in promoting ".hk" domain names and in processing applications, as well as criticisms about the Board's slow progress in taking forward the recommendations following public consultation. The Board was therefore invited to review the timetable for implementation and to expedite the arrangements for implementing the recommended changes to boost confidence in the effectiveness of governance arrangements during the transition period. The Board subsequently decided the way forward in June 2008 and proposed to accelerate the implementation of the new governance arrangements before the end of 2008. At the Extraordinary General Meeting (EGM) of the HKIRC held in August 2008, the detailed changes to the Memorandum and Articles of Association of HKIRC were approved by members of HKIRC. HKIRC held part of its 2008 Annual general Meeting (AGM) on 25 September and adjourned the part for electing directors so that the election could take place under the new arrangements. The Board then appointed 15 December 2008 as the effective date for the changes to come into force, when continuation of the adjourned AGM would take place. GCIO advised that the formalities for the appointment of independent directors by the Government were expected to be completed before the resumption of the AGM. He stressed that the dates of the EGM and AGM, and the commencement of the new structure were matters for the Board, not the Government, to decide. The Government intended to brief the Panel again when the new institutional arrangements of the HKIRC had been put in place.

11. The Deputy Chairman and Ms Emily LAU enquired whether it was possible to reconsider the corporate governance mechanism to enable the industry to elect more representatives to the Board and nominate members for appointment to the CAP.

12. GCIO advised that detailed changes to the Memorandum and Articles of Association of HKIRC had already been approved by members of HKIRC at its

EGM held on 23 August 2008, and the HKIRC had held its AGM on 25 September 2008. The new Memorandum and Articles of Association of HKIRC would come into force on 15 December 2008. It was important that the new Board would be constituted in accordance to the new arrangements approved. Otherwise, it would be very damaging to HKIRC and public interests if the operation of the company was disrupted. The Government would therefore appoint four directors to the Board in accordance with the revised Memorandum and Articles of Association of HKIRC to ensure continuity of the operation of the HKIRC and the management of Internet domain names registration. Atg DSCED(CT) also highlighted that the Government had to proceed with the appointment of directors to maintain the continuity of the HKIRC as from 15 December 2008. GCIO supplemented that board restructuring was only part of the package of enhanced corporate governance which were equally important. When the MOU and the CAP were put in place, there would be ample opportunities for the public and the Panel to participate in shaping the operation of the HKIRC to ensure transparency and improve corporate governance. He added that the new MOU between the Government and the HKIRC would set out specifically the duties of the HKIRC, and the Board would also need to consult the CAP on major issues and to account for its decision should it decide not to follow the advice of the CAP (which represented the interests of a wide spectrum of the Internet community). Moreover, the HKIRC could also be required to have a policy on openness including whether to publish agenda and minutes of meetings and relevant papers. The new arrangements and the governance structure would be reviewed after two years to identify room for improvements.

13. Mr James TO remained unconvinced. He considered that the proposed board restructuring was an orchestrated attempt by the Government to control the HKIRC, which would undermine freedom of expression and free flow of information. Mr TO urged the Government not to proceed with the appointment of directors, and suggested that the Panel should move a motion to call a halt to the changes and to urge the Board of the HKIRC to reconsider the corporate structure and the related governance and appointment arrangements.

14. Ms Emily LAU moved the following motion:

"本事務委員會：

- (一) 反對香港互聯網註冊管理有限公司的新公司架構；
- (二) 反對公司下的諮詢委員會全面由政府委任；
- (三) 要求政府暫停委任公司董事；
- (四) 要求政府向公司強烈反映本事務委員會的意見；
- (五) 促請公司重新考慮改組公司架構，令政府委任董事數目大幅降低；及

(六) 要求政府停止委任四名公司董事。"

(Translation)

"That the Panel:

- (i) objects to the new structure of the HKIRC;
- (ii) objects to the arrangements for all members of HKIRC's CAP to be appointed by the Government;
- (iii) requests the Government to temporarily put on hold the appointment of directors to the Board;
- (iv) requests the Government to relay the Panel's concern and views to the Board of the HKIRC;
- (v) urges the HKIRC to reconsider the structure of the Board and to substantially reduce the number of Government-appointed directors; and
- (vi) requests the Government to stop appointing four directors to the Board."

15. The Deputy Chairman invited members' views on the motion. Mr Paul TSE and Mr CHAN Kam-lam said that a hasty decision by the Panel should not be taken as this might disrupt the operation and continuity of the HKIRC. Mr Paul TSE suggested that the matter be carefully considered, taking into account views of the industry, the ICANN and the Bar Association. Mr CHAN Kam-lam opined that it would not be in the public interest for the Panel to interfere with the decision of an independent company. He considered that there was no evidence to substantiate Mr James TO's allegation that the Government was trying to control the HKIRC and undermine freedom of expression in Hong Kong. Mr CHAN said he was against the motion. Mr WONG Ting-kwong said that he did not object to the proposed restructuring of the Board, and it would be damaging to the HKIRC if its operation was put to a halt. As the cyber world was without limits and boundaries and there were other choices such as ".com" apart from ".hk", he did not see how the proposed governance arrangement for the HKIRC would have adverse impact on the freedom of expression and free flow of information. Noting that a review of the new structure would be conducted in two years' time and that various arrangements/measures would be in place to ensure the transparency and accountability of the HKIRC, Mr WONG said he objected to the motion.

16. Mr James TO said that the three-year term of the current 13 directors had not yet expired and in theory they needed not resign until the term expired. He considered that the Government had all along consulted the Panel on the

governance regime of the HKIRC, and Internet domain names management was a matter of public interest. He refuted that the Panel's taking a position on the matter should be taken as interference with the business of a private company.

17. All members agreed to proceed with the motion. Ms Emily LAU's motion was put to vote. Two members voted for the motion. Two members voted against the motion and one abstained. The motion was not passed.

18. Ms Emily LAU suggested that the Panel should receive views from the industry, relevant stakeholders and the Bar Association at a future meeting. Mr James TO suggested that Board directors of the HKIRC be invited to the meeting.

Subscription fee for ".hk"

19. Referring to the submission from LC Paper No. CB(1)369/08-09(03), Mr WONG Ting-kwong asked why the subscription fees of ".hk" domain names were almost three times higher than those of ".com" domain names. In response, GCIO explained that ".com" was practically open to all and no checking was required, while documentation such as the certificate on business registration was required for ".hk". Therefore higher administration costs were involved for checking and processing ".hk" applications by the registrar. He advised that it was up to the individual company to determine its pricing policy, the documentation requirement and the processing of applications. However, the key stakeholders would have a say on the way the HKIRC was operated under the new arrangements, as the CAP with its broad stakeholder representation would have to be consulted on company policy matters such as subscription fees in the future. GCIO undertook to convey members' concern about the pricing level to the HKIRC for consideration.

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Summing up

20. The Deputy Chairman called on the Administration to relay members' concerns to the Board of the HKIRC for consideration. Atg DSCED(CT) assured members that the Government would ensure that the HKIRC and its domain name registration function would be managed under a fair, open and just governance regime for enhanced transparency and public accountability. He undertook to relay members' concerns to the Board of the HKIRC.

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II. Any other business

21. There being no other business, the meeting ended at 5:40 pm.