

**For discussion
on 7 April 2009**

**Legislative Council Panel on
Information Technology and Broadcasting**

**Progress Update of the Review of the Administration of
Internet Domain Names in Hong Kong**

Purpose

This paper briefs Members on the progress of implementing the recommendations arising from the review of the administration of Internet domain names in Hong Kong, and on measures to address concerns expressed at the Panel's special meeting on 11 December 2008.

Background

2. In 2006, the Government commissioned a consultancy study on how to improve the institutional framework and arrangements of the administration of “.hk” Internet domain names¹, and subsequently conducted a public consultation exercise from May to June 2007 on the recommendations. We briefed Members of this Panel on the recommendations set out in the public consultation paper in June 2007. We subsequently updated the Legislative Council on the resolution of the Board of the Hong Kong Internet Registration Corporation Limited (HKIRC) regarding the way forward and governance arrangements in June 2008.

3. At the Panel's special meeting on 11 December 2008, we briefed Members on the progress of the review on the administration of Internet domain names in Hong Kong, including, among other things, the following –

- the new institutional framework and corporate governance arrangements;
- the progress of implementation of the arrangements by HKIRC; and

¹ In 2002, the Government designated the Hong Kong Internet Registration Corporation Limited to manage and administer “.hk” Internet domain names through a Memorandum of Understanding.

- the proposed enhancement of HKIRC's public accountability through a new Memorandum of Understanding (MOU).

4. At the Panel meeting, some members expressed concern that the new arrangements might pose a risk to freedom of speech, or be seen to do so. The Government stressed that it had no intention to interfere with the way HKIRC operated; moreover it would take the opportunity of the institutional changes to secure greater openness and transparency about the way HKIRC made sensitive decisions such as whether to permit or cancel a domain name registration.

5. Members also suggested that the Government should not take an active role in the formation of the Consultative and Advisory Panel (CAP).

Progress Update

(i) New Board of Directors of HKIRC

6. The new institutional changes, which were approved at the extraordinary general meeting (EGM) of HKIRC in August 2008, took effect on 15 December 2008. At the Annual General Meeting (AGM) of HKIRC for year 2008 held on 15 December 2008, the new Board of Directors of HKIRC was formed, with four directors elected by the members of HKIRC (two elected by the Supply Class of members and two by the Demand Class) and four directors appointed by the Government. The old Board of 13 directors stepped down at the AGM. There is no longer any Government official sitting on the Board.

7. The intention of the Government's appointing directors is to give HKIRC access to professional knowledge and corporate governance expertise of non-executive directors for the effective management and administration of Internet domain names as a public resource. In appointing independent directors to the Board of HKIRC, the Government has adopted the prevailing principles and mechanisms similar to those used in making appointments to the Government's various advisory and statutory bodies. The four appointed directors when taken together have, among others, the following expertise and professional experience –

- strong corporate management and financial management experience;

- experience in good corporate governance practice;
- experience in accounting, internal and security audit; and
- experience in the business of administration of Internet domain names.

8. The Chairman was elected from among the Board members themselves at a Board meeting in January 2009. As determined by HKIRC, two directors were additionally elected as Deputy Chairmen.

(ii) Setting up of Consultative and Advisory Panel

9. The Memorandum and Articles of Association (M&A) of HKIRC stipulates that a CAP will be established in relation to the management and affairs of the company and its subsidiaries and to advise the Board on major issues on administration of “.hk” domain names and facilitate the interaction of the Board with the stakeholders in general and with specific interest groups.

10. The M&A gives the Government the duty to determine the composition of the CAP, its terms of reference and the timing of its establishment. Having regard to the views expressed at the Panel’s special meeting, the Government has decided to minimise its role and has invited the Board to take the lead in the process.

11. The Government has asked the Board to propose the composition, terms of reference and timing of establishment of the CAP and has set out a minimal set of expectations about the nature of the Board’s proposals. These expectations, which are attached at **Annex A**, give the Board wide discretion to formulate proposals as they see fit. In order to ensure that the proposals enjoy wide support amongst directors, we have asked the Board to ensure that its proposals are approved by at least 75% of the directors of HKIRC (and preferably adopted unanimously).

12. We expect that HKIRC will form the CAP as soon as practicable. We understand that HKIRC is arranging to publish the list of organisations it initially plans to invite to make nominations (as attached at **Annex B**), and it aims to establish the CAP in June 2009. In addition to the CAP members to be selected from the nominations, HKIRC will also invite the former Directors serving on the HKIRC Board in 2007-08 (unless they are still on the HKIRC Board) to join the CAP for the first two years.

13. The CAP will become the major forum to ensure views of different stakeholder groups on policy and strategic issues (e.g. domain name registration rules, pricing, internal governance arrangements, etc.) are taken fully into account. The Terms of Reference of the CAP as agreed with HKIRC is at **Annex C**.

(iii) Renewal of MOU

14. The new MOU is expected to set out, openly and transparently, the Government's expectations of HKIRC, and the mechanisms for assuring that they are being met. To kick-start the renewal process, the Government and the Board of HKIRC has communicated and agreed in principle on a draft outline of the new MOU (**Annex D**). Paragraphs 15-18 below highlight some of the principles under the corresponding sections of the draft outline.

Principles of management and administration

15. HKIRC has an explicit duty to uphold the rights of freedom of speech, of publication, of communication and of religious belief in accordance with the laws in force in Hong Kong.

Openness and transparency

16. HKIRC will operate in an open and transparent manner. For instance, the Board should consult the CAP on major issues, and where the Board decides not to follow CAP's advice and where so asked by CAP or any member of HKIRC, the Board will explain its reasons. HKIRC will also publish its policies concerning the governance and operations of the company about openness and transparency.

Strategic plan

17. HKIRC is expected to, following market analysis, financial implication assessment and consultation with stakeholders via the CAP, determine whether and, if appropriate, how a "Registry/Registrar" model shall be introduced, whereby appropriate bodies may provide .hk users with registrar services on an equal competitive basis.

Relationship with the Government

18. HKIRC is expected to operate independently of the Government. If the Government wishes to express its views on the strategy or policy of HKIRC or other matters within the terms of reference of the CAP, we will communicate those views either (a) through the CAP by virtue of the Government's representative on the CAP or (b) in writing addressed to the Chairman of HKIRC.

Way Forward

19. Members are invited to comment on the draft outline of the MOU. HKIRC and the Government will take all comments and suggestions into consideration when finalising the MOU.

20. As well as considering Members' and public comments on the draft outline of the MOU, HKIRC intends to consult the CAP once it is established. The Government and HKIRC will then consider whether any changes are needed to the principles set out in the draft outline of MOU, and will prepare a final MOU that specifies which elements of the MOU are to be legally binding and uses appropriate legally-binding language for those provisions. The new MOU is expected to be in place by September 2009.

**Office of the Government Chief Information Officer
Commerce and Economic Development Bureau
March 2009**

Government's Expectations
on the composition, terms of reference and timing of establishment
of the Consultative and Advisory Panel ("CAP")
of the HKIRC
(4 February 2009)

Composition of the CAP

1. The members of the CAP should be chosen so that, in the opinion of the Board, they are collectively able to give advice from the perspectives of relevant stakeholder groups, including:

- (i) Different classes of Internet user, such as the commerce and industry sector, small-and-medium enterprises, consumers, and disadvantaged groups;
- (ii) The education sector and academia;
- (iii) The ICT industry and related sectors;
- (iv) The legal, accounting and corporate management professions; and
- (v) Government and public bodies concerned with relevant issues such as ICT policy, intellectual property rights, crime prevention, data privacy, etc.

2. The processes for nomination and selection of individuals proposed to serve on the CAP should:

- (i) Be approved by at least 75% of the directors of HKIRC (and preferably adopted unanimously);
- (ii) Be documented and published by HKIRC;
- (iii) Be based on clear criteria for selecting individuals to serve.

3. In addition to the members chosen according to paragraph 2 above, for the first two years of the CAP, HKIRC should consider inviting those former directors who retired from the Board at the 2008 Annual General Meeting to serve on the CAP.

Terms of Reference of the CAP

4. The initial terms of reference of the CAP should be as set out in the **Appendix**, or an alternative version approved by at least 75% of the Directors of HKIRC.

Timing of forming the CAP

5. HKIRC to form the CAP as soon as practicable and preferably no later than the end of May 2009.

Appendix to Annex A

**Initial Terms of Reference
of the Consultative and Advisory Panel**

- (1) Advise the Board on major issues such as domain name registration rules, pricing, internal governance arrangements, etc.
- (2) Launch consultation process on issues that the Board directly refers to the CAP given their policy implications to Internet stakeholders.
- (3) Monitor the degree to which the Board provides feedback to and seeks the views and opinions from existing and potential customers bearing in mind the requirements and good practices of digital inclusion.
- (4) Facilitate the interaction of the Board with the stakeholders in general and with specific interest groups.

Relationship with the Board:

- (5) The Board has a duty to take full account of CAP's advice when reaching decisions, but would not be bound by the advice since the Board is responsible for the organisation. However, the Board shall, if required by any HKIRC member or the CAP, explain its reasons if it decides not to follow the advice of the CAP.

Frequency of Meeting: At least twice a year, and as and when required

Annex B

A list of the organisations/associations initially planned to be invited by HKIRC for nominations to the Consultative and Advisory Panel

1. The Hong Kong General Chamber of Commerce
2. The Hong Kong Chamber of Small and Medium Business
3. The Consumer Council
4. The Hong Kong Council of Social Service
5. The University of Hong Kong
6. The Institution of Engineering and Technology, Hong Kong
7. The Communications Association of Hong Kong
8. The Law Society of Hong Kong
9. The Hong Kong Institute of Certified Public Accountants
10. The Hong Kong Management Association
11. The Office of the Telecommunications Authority
12. The Office of the Privacy Commissioner for Personal Data
13. The Office of the Government Chief Information Officer

Note: HKIRC will also invite the former Directors serving on the HKIRC Board in 2007-08 (unless they are still on the HKIRC Board) to join the CAP.

**Agreed Terms of Reference
of the HKIRC Consultative and Advisory Panel (“CAP”)**

- (1) Advise the Board on major issues such as domain name registration rules, pricing, internal governance arrangements, etc.
- (2) Launch consultation process on issues that the Board directly refers to the CAP given their policy implications to Internet stakeholders.
- (3) Monitor the degree to which the Board provides feedback to and seeks the views and opinions from existing and potential customers bearing in mind the requirements and good practices of digital inclusion.
- (4) Facilitate the interaction of the Board with the stakeholders in general and with specific interest groups.

Relationship with the Board:

The Board has a duty to take full account of CAP’s advice when reaching decisions, but would not be bound by the advice since the Board is responsible for the organisation. However, the Board shall, if required by any HKIRC member or the CAP, explain its reasons if it decides not to follow the advice of the CAP.

Frequency of Meeting: At least twice a year, and as and when required

Draft
Outline of Memorandum of Understanding (MOU)
between the Government of the Hong Kong Special Administrative Region
(HKSARG) and
the Hong Kong Internet Registration Corporation Limited (HKIRC)
for the Management and Administration of Internet Domain Names
in Hong Kong

In this Memorandum, except where the context otherwise requires, “HKIRC” includes all its subsidiaries that perform the duties and observe the obligations under this MOU.

Designation

The HKSARG reconfirms the exclusive designation of HKIRC to manage and administer all Internet domain names under .hk country code top level domain in English or other equivalentents (collectively, “.hk domain names”).

Principles of Management and Administration

HKIRC will follow these principles in managing and administering .hk domain names in the public interest -

- (a) Independence: HKIRC shall act, and be able to demonstrate that it acts, in the interests of the local Internet community and the global Internet community, without undue interference by any single group of stakeholders or by the HKSARG.
- (b) World-class standards: HKIRC shall perform all activities in connection with the domain name registration system with quality, security, stability and reliability.
- (c) Competition: HKIRC shall support competition and consumer choice in the sourcing and management of .hk domain name holders.
- (d) Stakeholder involvement: HKIRC shall ensure that balanced attention will be given to the interests of all stakeholders in the Hong Kong Internet community when making decisions in connection with the domain name registration system.

- (e) Transparency: HKIRC shall conduct its activities in an open and transparent manner that ensures wide public access to all relevant information.
- (f) Future orientation: HKIRC shall seek to be innovative in the provision of new services, and to anticipate and respond flexibly to new technological and market developments which may impact domain name sourcing, registration and usage.
- (g) Protection of rights of individuals and organisations: HKIRC shall in its management and administration of .hk domain names uphold the rights in accordance with the laws in force in Hong Kong of freedom of speech, of publication, of communication and of religious belief.

Roles and responsibilities

The roles and responsibilities of HKIRC are -

- (a) to manage .hk domain names and provide services for registration and conversion into IP addresses in an efficient and effective manner so as fully to meet stakeholders and users needs;
- (b) to maintain and promote a stable, secure and interoperable domain name system which abides by the policies and technical requirements laid down by the Internet Corporation for Assigned Names and Numbers;
- (c) to maintain an alert mechanism which will inform HKSARG promptly of any incidents which either (i) disrupt the smooth operation of the Internet in Hong Kong or (ii) lead to a failure of HKIRC to perform the duties or to discharge the responsibilities set out in this MOU;
- (d) to maintain efficient and effective complaints handling and dispute resolution processes; and
- (e) to liaise with national and international bodies on issues relating to the development and administration of domain name systems.

Openness and transparency

The HKIRC will operate in an open and transparent manner including -

- (a) Maintaining a Consultative and Advisory Panel (CAP) as required by HKIRC's Memorandum and Articles of Association Article 47A;
- (b) Consulting the CAP on matters where HKIRC may have to make decisions and

where the consequence of such decisions are of legitimate public interest;

- (c) Giving attention to advice given by the CAP, whether solicited or unsolicited. Where the Board of HKIRC decides not to follow such advice and where so asked by CAP or any member of HKIRC, HKIRC will provide a written explanation of its reasons to CAP and the members of HKIRC without unreasonable delay;
- (d) Developing and publishing a framework for the administration of domain names including such matters as
- Eligibility for licensing of .hk domain names including general principles and procedures for the application and registration of .hk domain names,
 - Measures to preserve the legitimate interest of users and ensuring user satisfaction,
 - Conditions of use of domain names, and policies and procedures for cancellation of registration for breach of conditions of use,
 - Rules and procedures for domain name modification, change and transfer,
 - Permitted .hk domain name formats, and
 - Reserved .hk domain names; and
- (e) Publishing its policies concerning the governance and operations of HKIRC and its subsidiaries about openness and transparency. The policies should, in particular, require the disclosure of information related to the following:
- Statistics of .hk domain names: total at period end plus new, renewed, discontinued during the month each by category;
 - Incidents of registration applications refused and registrations suspended or cancelled with reasons (but not revealing the names of the involved parties); and
 - Incidents of complaints or disputes.

Strategic plan

HKIRC will develop and publish a three year rolling strategic plan. This plan will include -

- (a) Increasing the number of HKIRC members, by promoting membership and streamlining the process for becoming an HKIRC member, so as to broaden the membership base for participating in the governance of HKIRC; and

- (b) Following market analysis, financial implication assessment and consultation with stakeholders via the CAP, to determine whether and, if appropriate, how a “Registry/Registrar” model shall be introduced, whereby (i) appropriate bodies may provide .hk users with registrar services on an equal competitive basis and (ii) Internet Service Providers may provide a complete service to their customers removing the necessity for those customers also to have to interact with HKIRC.

Assuring performance

HKIRC will introduce measures to assure interested parties that it is delivering its obligations under this MOU. These measures will include system performance statistics including those of domain name servers, registration servers and servers hosting HKIRC’s website, in respect of those performance indicators stipulated in a document of system performance monitoring and measurement, which is to be updated in consultation with the CAP.

Relationship with Government

HKIRC is expected to operate independently of the HKSARG. If the HKSARG wishes to express its views on the strategy or policy of HKIRC or other matters within the terms of reference of the CAP, it will communicate those views either (a) through the CAP by virtue of the HKSARG’s representative on the CAP or (b) in writing addressed to the Chairman of the Board of Directors.

HKIRC will provide the HKSARG with information described above under Assuring Performance plus quarterly financial reports and reports of human resource issues.

HKIRC will submit an annual report to the HKSARG confirming that HKIRC has abided by its obligations under this MOU.

HKSARG will have the right to commission an independent audit of HKIRC’s compliance with the terms of this MOU and HKIRC will cooperate with this audit.

HKIRC will seek the approval of the HKSARG for any amendments to HKIRC’s Memorandum and Articles of Association.

HKIRC will cooperate with HKSARG in connection with any formal review of this MOU that the HKSARG wishes to conduct or commission.

It is recognised that the HKSARG may wish to communicate with HKIRC on the following or similar matters. Where the matter is strictly non controversial and will not involve significant consumption of HKIRC resources, the HKSARG may communicate in writing or other appropriate means directly with the CEO of HKIRC. Where these conditions do not apply, the HKSARG will in the first instance communicate with the Chairman of the Board.

- (a) Providing the HKSARG with the information it needs in order to report to the Legislative Council on issues relating to the administration of .hk domain names
- (b) Coordinating the position to be taken by the HKSARG and HKIRC in ICANN forums in which they participate
- (c) Providing input for discussions between the HKSARG and other interested parties on current and future Internet policy issues
- (d) Liaising on certain operational issues including but not limited to incident or crime investigation, prevention of phishing and spamming, complaints from the public and consumer related matters
- (e) Liaising on matters of mutual interest related to the industry, including but not limited to partnership or participation in industry events

Reserved Rights

Any claim of intellectual property rights in or to the .hk two-letter code and .hk domain names shall not impede any possible future change of registry of .hk domain names or termination of the designation under this Memorandum.

Sub-contracting

HKIRC may sub-contract part or all of its technical or administrative operation as long as HKIRC remains responsible for all obligations and duties performed by any sub-contractors to the same extent as if those obligations and duties were performed by HKIRC.

Termination

The HKSARG has the right to terminate this MOU in any of the following circumstances:

- (a) Fundamental breach of this MOU,
- (b) In its reasonable opinion, HKIRC is unable effectively to continue to manage and administer.hk domain names with integrity,
- (c) On giving twelve months notice.

HKIRC has the right to terminate this MOU by giving to the HKSARG what the HKSARG considers to be sufficient notice to allow it to make the necessary arrangements to designate another party to manage and administer .hk domain names.

Post Termination Obligations

If this MOU is terminated as provided above, HKIRC accepts the obligation to, at its own costs and expenses and without seeking compensation from HKSARG, take all necessary steps to transfer the management and administration of .hk domain names, including the domain name system and related hardware, software, documentation, data and information, intellectual property rights and sub-contracts, if any, to such party as the HKSARG may designate.

Notwithstanding the exclusive designation of HKIRC under the section **Designation**, HKSARG reserves the right to designate another party to manage and administer .hk domain names during any transition period of HKIRC's prior to termination of this MOU.

Upon such termination, and HKIRC shall refund to its registrants any payment for service not received if it is in the HKSARG's opinion that such refund is in the public interest under the circumstances surrounding the termination.

Following such termination, if there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the Members of HKIRC but shall be given or transferred to such party having objects similar to the objects of HKIRC and having been designated by HKSARG.