

香港特別行政區政府
政府資訊科技總監
辦公室



OFFICE OF THE
GOVERNMENT CHIEF INFORMATION OFFICER
THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

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27 April 2009

Clerk to Panel on Information Technology and Broadcasting
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Attn: Ms. YUE Tin-po)

Dear Ms YUE,

**Comments on Review of the Administration of Internet Domain Names in Hong Kong
at the Meeting of the Panel on Information Technology and Broadcasting
on 7 April 2009**

At the meeting of the Panel on Information Technology and Broadcasting (ITB Panel) held on 7 April 2009, the Administration received comments from the Members and deputations on the Review of the Administration of Internet domain names in Hong Kong.

2. We would like to provide our response at **Annex** to their comments.
3. I should be grateful if you would kindly convey our response to the Members.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jeremy Godfrey'.

(Jeremy Godfrey)
Government Chief Information Officer

Encl. Response to Comments on Review of the Administration of Internet Domain Names in Hong Kong arising from the ITB Panel Meeting on 7 April 2009

c.c. Hon Andrew LEUNG Kwan-yuen, SBS, JP
Chairman, Panel on Information Technology and Broadcasting

Mr John Estmond STRICKLAND, GBS, JP,
Chairman, Hong Kong Internet Registration Corporation Limited

Miss Kathleen AU, CEO (Admin)
Communications and Technology Branch
Commence and Economic Development Bureau

**Response to Comments on
Review of the Administration of Internet Domain Names
in Hong Kong
arising from the Panel on IT & Broadcasting Meeting
on 7 April 2009**

This paper is intended to respond to the various comments made by Members and deputations during the meeting of the Panel on Information Technology and Broadcasting (ITB Panel) held on 7 April 2009 when the paper on the Review of the Administration of Internet Domain Names in Hong Kong was considered.

2. There seemed to be general agreement that the “.hk” domain, as a public resource, should be administered in the public interest of Hong Kong, and that the initiative to strengthen the governance of the Hong Kong Internet Registration Corporation Limited (HKIRC) was necessary. Members and the deputations raised a number of comments and questions at the meeting. We would like to provide our response to the comments and questions in the following paragraphs.

Memorandum of Understanding (MOU)

3. There was a question regarding the legal status of the MOU and how to enforce it. As we explained during the meeting, the text attached as Annex D of the Administration’s Paper for the meeting is a draft outline of the new MOU to facilitate the consultation on the key elements of the MOU. After consulting the Members, the public and the Consultative and Advisory Panel (CAP), the Government and HKIRC will consider what changes are needed to the principles set out in the draft outline, and will prepare a final MOU.

4. The final MOU will specify which of its provisions are to be legally binding, and will use appropriate legally-binding language for these provisions. We plan to provide a further update to this Panel when the MOU is ready.

5. Under the new MOU, HKIRC will be required to provide the

Government with information and reports regularly to ensure that the company is delivering its MOU obligations. The Government will also have the right to commission an independent audit of HKIRC's compliance with the terms of the MOU.

6. In practice, we would expect any breaches of the MOU terms to be resolved through discussion between the Government and HKIRC, with the involvement of other stakeholders where appropriate. In the unlikely event that HKIRC were to refuse to remedy a fundamental breach of its MOU obligations, the Government's options would include:

- Enforcing the legally-binding provisions of the MOU through the courts;
- Terminating the MOU and designating a different organisation to manage the ".hk" domain (the MOU will place post-termination obligations on HKIRC that will ensure a smooth transition to protect the public interest).

Freedom of Expression

7. As regards the concerns expressed over the freedom of expression and possible self-censorship in domain name registration, we would like to emphasise that the new MOU will place an explicit duty on HKIRC to uphold freedom of expression. To fulfill this duty, the company will publish its policies concerning the governance and operations of the company in respect of openness and transparency, as well as its policies and procedures relating to the approval of domain names, conditions of use of domain names, and policies and procedures for cancellation of registration for breach of the conditions of use. The company also has to maintain efficient and effective complaints handling and dispute resolution processes. This aspect of the MOU as well as the related policies and procedures will be developed in consultation with the public and stakeholders to ensure that the freedom of expression will be upheld in domain name registration in Hong Kong.

Appointment of Directors to the Board

8. There were a number of questions relating to the political

consideration and the process of appointing four directors by the Government. We would like to re-iterate that the Government has no intention to interfere with the operation of HKIRC. It is the Government's intention to ensure that the Board of HKIRC has immediate and direct access to the corporate governance skills and other relevant expertise of independent non-executive directors, in addition to those of the elected directors, for the effective management and administration of Internet domain names in the public interest.

9. In appointing the directors, the Government adopted the prevailing principles and mechanisms similar to those used in making appointments to other advisory and statutory bodies. We aimed to secure the services of the most suitable persons to meet the requirements of the Board of HKIRC. Each appointment was made on the basis of the merit of the individual concerned, taking into account the candidate's ability, expertise, experience, integrity and commitment to public service as well as the candidate's availability for appointment, and having regard to the functions and nature of the business of HKIRC. The Government's object is to ensure that the Board has people with the following aspects of expertise and professional experience as far as possible:

- strong corporate management experience and expertise;
- experience in the business of administration of Internet domain names and/or in relevant technology;
- experience in accounting, finance or auditing; and
- experience in legal or regulatory affairs.

10. In selecting appropriate candidates, we made reference to the Home Affairs Bureau's centralised database that contains the records of non-official members serving on advisory and statutory bodies as well as the personal data of those interested individuals. We also considered individuals with experience in Internet domain names business. Furthermore, we considered it desirable for the Board to have access to experience of the operation of the commercial and industrial sectors. In finding suitable candidates for appointment, we therefore also asked the representative chambers in these sectors to suggest individuals who could bring suitable experience to the Board.

11. There was a suggestion that stakeholder groups should be invited to make nominations for the Government to make appointments. We shall take this suggestion into consideration when we review the governance arrangements after two years. However, whatever process is adopted, all Board members have a duty to exercise independent judgment and act in good faith in the best interest of HKIRC and of the whole community. No Board member, whether elected or appointed, should act to promote the interests of a particular stakeholder group at the expense of the interests of the company as a whole.

Consultative and Advisory Panel (CAP)

12. There was some concern expressed that the processes for nomination and selection of individuals to serve on the CAP require the approval of at least 75% of the directors of HKIRC. This is simply to ensure that those selected enjoy wide support amongst directors, both elected and appointed.

13. We note that some deputations made suggestions on specific stakeholder groups to be invited to make nominations to the CAP. We have asked the Board of HKIRC to take these suggestions into consideration in finalising the list of the organisations to be invited.

Openness and Transparency

14. The issue of confidentiality undertaking of the directors of HKIRC was raised. There was a possibility that this might have the effect of prohibiting directors from consulting the stakeholders who elected them. It was also suggested that the meetings of HKIRC should be opened up so that the public can monitor the proceedings.

15. The Government intends that HKIRC should become a model of openness, transparency, stakeholder engagement and good corporate governance. The new MOU will require HKIRC to conduct its activities in an open and transparent manner that ensures wide public access to all relevant information. With the establishment of the CAP, stakeholders will be engaged to advise on major issues of the company.

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. In addition, HKIRC needs to publish its policies concerning the governance and operations of the company in respect of openness and transparency.

16. An implication of these arrangements is that director's confidentiality undertaking will need to be consistent with the company's obligations to disclose information and with the formal mechanism for consulting stakeholders. Even under the old arrangements, the Board always had the option of explicitly authorising directors to consult stakeholders about particular issues – an option that it exercised when asking directors to consult stakeholders about the governance changes.

17. Members may wish to note that the company has already started posting a summary of the minutes of its Board meetings on its website.

Registry-Registrar Model

18. There was an interesting discussion over the separation of HKIRC's registry and registrar functions. The deputations expressed a variety of views on the adoption of a "Registry-Registrar" model. HKIRC, as a non-profit making company, will consider this matter in the interest of the whole community, as well as the financial stability of the company. HKIRC will address this matter in accordance with the principle of openness and transparency, in consultation with its stakeholders. HKIRC should conduct market analysis and financial implication assessment, and consult the stakeholders via the CAP, before determining whether and, if appropriate, how a "Registry-Registrar" model shall be introduced. Members may wish to note that, based on the Consultancy Study conducted in 2006¹, 13 out of 14 economies under study had adopted the "Registry-Registrar" model. According to the draft outline of the new MOU, HKIRC would develop and publish a three-year rolling strategic plan and this will include a clear indication of its intentions regarding the "Registry-Registrar" model.

¹ The Consultancy Study on the Institutional Framework and Corporate Governance for the Administration of Internet Domain Names in Hong Kong.

Surplus/Reserves and Subscription Fees

19. The issues of the use to which surplus/reserves of HKIRC may be put and the level of subscription fees were also raised. We are of the view that these issues are strategic matters for HKIRC to determine and on which the CAP is to advise. We fully support the principle that HKIRC should resolve important issues in an open and transparent manner, in consultation with its stakeholders via the CAP. Nevertheless, HKIRC is expected to be prudent in financial management, including the use of reserves in the interest of the Internet community, and in accordance with the Memorandum and Articles of Association (M&A) of the company. Members may wish to note that the M&A has stipulated the conditions regarding the use of income as well as the application of excess property in the event of dissolution of the company.

Publication of the Consultancy Reports

20. There was a request that the full version of the reports of the Consultancy Study conducted in 2006 should be made available. To facilitate public access, the reports have been made available on the Office of the Government Chief Information Officer's website since May 2008.² The reports contain some material that was collected from stakeholders in confidence, and so some parts of the reports cannot be disclosed. These parts contain commercially sensitive information and are related to one or more of the following reasons with reference to provisions of the Government's Code on Access to Information: legal proceedings, management and operation of the public service, third party information and business affairs (of the company).

Other Matters

21. There were also other comments and suggestions raised by the deputations concerning company policies and operational matters, such as domain name registration process and rules, entitlement to vote, business development plans, security and stability of the systems, etc. It is undesirable that numerous issues of concern to stakeholders remain

² The uploaded version of the reports is accessible at:
http://www.ogcio.gov.hk/eng/pubpress/epubcs_aidn.htm

unresolved for a long period of time. This is a symptom of the shortcomings of the old governance mechanisms. With the establishment of the new governance mechanisms, we expect that HKIRC will be able to address these issues effectively and in accordance with the principle of openness and transparency.

22. Some deputations suggested that the Government should play a more active role in the activities of the Internet Corporation for Assigned Names and Numbers (ICANN) and the Governmental Advisory Committee (GAC) under ICANN. It was also suggested that the Government set up an advisory panel on Internet governance that could provide the Government with international perspectives and expertise in the subject. We will continue to stay in close touch with ICANN developments and participate in relevant discussions through attendance at meetings as well as through the electronic channels established by ICANN. To enhance the contribution we make, we will consider ways of accessing the views and expertise of knowledgeable members of the local community, who have active contributions to international forums on Internet governance such as those of ICANN.

Conclusion

23. The reform of the system for administering Internet domain names in Hong Kong has begun. The new structure of HKIRC is now in place and the new Board is tasked with finalising the MOU, establishing the CAP and moving forward on the various issues that have been identified during the Panel meeting. We feel that the new Board should be given some time to respond to the issues that confront them. We will, of course, report back to the Panel with the finalised MOU and will keep Members fully informed of the progress made on other issues.

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