

**For discussion
on 11 December 2008**

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

Review on 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.

Review on the Administration of Internet Domain Names

2. In 2002, the Government designated the Hong Kong Internet Registration Corporation Limited (HKIRC), an independent, non-profit making, membership-based company, to manage and administer “.hk” Internet domain names through a Memorandum of Understanding (MOU).

3. In 2006, the Government commissioned a consultancy study on how to improve the existing institutional framework and arrangements of the administration of “.hk” domain names in light of international and regional developments, and subsequently conducted a public consultation between 4 May 2007 and 15 June 2007. We briefed Members of this Panel in June 2007 on the recommendations set out in the public consultation paper. The recommendations are highlighted as follows:

- Delegation by the Government of the country code top level domain (ccTLD) management function to an arms-length, not-for-profit organisation, i.e. HKIRC, should be retained;
- HKIRC should establish a Consultative and Advisory Panel (CAP) that engages a broad set of stakeholders to advise the Board;
- With the strategic engagement of key stakeholders being undertaken via the new CAP, the number of directors on the Board can be reduced to allow more effective strategic and operational management;

- HKIRC should publish a comprehensive corporate governance framework;
- HKIRC should introduce a “registry-registrar” model, whereby appropriate bodies may provide “.hk” users with registrar services on an equal and competitive basis; and
- HKIRC should collaborate with the Government on a formal review of the MOU, to be undertaken five years after execution.

4. A total of 26 submissions were received from the public during the consultation period. The feedback received indicated that the public generally supported the recommended changes. In particular, they generally agreed with the proposed Board structure but with various views on matters such as the ratio of appointed and elected directors, the source of appropriate candidates to take up the director role and the chairman role. Some made specific suggestions, such as - the new Board to comprise more elected directors; the chairman to be elected amongst the Board members; appointed directors to come from professional associations (e.g. management, legal, accounting, or compliance practice) and with substantial management experience, or from relevant community sectors (such as information security, commercial and industrial); and elected directors from the overall membership without distinction of classes. Specifically, HKIRC itself responded that the consultation paper had addressed the key issues and was helping the company progress in the right direction. All the submissions received, unless otherwise requested by the author, have been made available for reference by the public on the Government’s website.

5. With the general support received during the consultation and having regard to Members’ comments, the Government engaged HKIRC to work out the detailed implementation arrangements. In October 2007, shortly after the annual election of Board Members in September 2007, HKIRC started the discussion on taking forward the recommended institutional changes. HKIRC conducted its own consultation with its members on the way forward. The Office of the Government Chief Information Officer has been holding regular meetings with HKIRC management since December 2007 to monitor progress on implementation of the recommendations. As it was considered that there were no substantial changes to the recommendations after the consultation, we planned to brief Members of this Panel on the progress in the second quarter of 2008, anticipating that by then there would be more substantial information on which to brief Members, including the

membership class structure, composition of the new Board, market analysis by the HKIRC based on the registry-registrar model, and the implementation timetable.

6. However, it was noted that HKIRC Board's attention was diverted when there was public debate in February 2008 about its effectiveness in promoting ".hk" domain names and processing applications, and about the Board being slow in taking forward the recommendations set out in the public consultation. This diversion had developed to the point where there was not much further progress in working out the detailed implementation arrangements.

7. In view of the above, the Government wrote in April and May 2008 respectively to HKIRC urging the Board to expedite the settlement of the detailed implementation arrangements for the recommended changes, and to ensure confidence in the effectiveness of governance arrangements during the transition period. The Board responded positively to the Government and resumed discussion on the matter, and continued liaison with the Government. The Board of HKIRC came to a resolution in June 2008 on the way forward on restructuring the Board and the governance arrangements: There would be four Government-appointed directors and four directors elected by members of the company. Of the four elected directors, two would be elected by the Supply Class of members and two by the Demand Class. There would also be a CAP as recommended in the consultation paper.

8. The Board also resolved that the proposed changes would be put forward for approval at an extraordinary general meeting (EGM) in a few months' time so that the new arrangements could be implemented before the end of 2008.

9. The Board of HKIRC informed the Government of the changes it proposed to make shortly before an oral question on the subject of HKIRC governance was due to be answered in the Legislative Council. On 25 June 2008, the Government took this immediate opportunity to update the Legislative Council about the Board resolutions on the way forward and governance arrangements.

10. An EGM was subsequently held by HKIRC on 23 August. The detailed changes to the Memorandum and Articles of Association of HKIRC were approved by the members of HKIRC, who comprise domain name holders, service providers, IT industry, chambers of commerce and industry, tertiary institutions and the Government.

HKIRC then held part of its 2008 Annual General Meeting (AGM) on 25 September, and adjourned the business of electing directors so that it could take place under the new arrangements. The Board subsequently appointed 15 December 2008 as the effective date for the changes to come into force, and continuation of the adjourned AGM.

11. Formalities for the appointment of independent directors by the Government are in progress and it is intended to complete these before the resumption of the AGM.

Guiding Principles

12. The role of government in the administration of ccTLD is set out in the United Nation's World Summit on the Information Society Plan of Action of December 2003, which invites each government "to manage or supervise, as appropriate, their respective ccTLD".

13. Another document adopted by the global Internet community, the "Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains", gives more detailed guidance. The key principles include:

- The Internet naming system (including ccTLD) is a public resource;
- Ultimate public policy authority over a particular ccTLD rests with the relevant government or public authority;
- The relevant government or public authority is strongly encouraged to ensure that the ccTLD is being administered in the public interest, within the framework of its public policy and relevant laws and regulations; and
- The ccTLD registry is a trustee for the delegated ccTLD, and has a duty to serve the local and global Internet communities.

14. In practice, most governments exercise a measure of supervision over ccTLD administration. This takes a number of different forms. Some governments operate the domain registry themselves, others appoint board members or attend board meetings, and some governments use legislation or contracts to supervise the ccTLD registry. Countries with some form of formal government supervision include Australia, Finland, France, Japan, Singapore, South Korea and the USA. In Hong Kong, we have chosen to designate HKIRC to

administer “.hk” domain names. Under the new institutional arrangements, HKIRC will remain an independent, not-for-profit company.

Corporate Governance

15. The current governance arrangements seek – within a single thirteen-member board – to canvass the views of several different stakeholder groups, as well as to govern the operations of HKIRC. This poses a risk to HKIRC’s ability to make timely strategic and operational decisions in the interests of the community as a whole.

16. The new arrangements involve a smaller Board to focus on strategic and operational governance, with equal numbers of Government-appointed independent directors and directors elected via a simplified structure of membership classes. There will no longer be any Government official sitting on the Board. The number of elected directors has increased from three as recommended in the public consultation paper to four under the new arrangements. The chairman will also be elected among the directors. Only in the event that no chairman is elected, the Government shall be entitled to appoint a director from within the Board to be the chairman.

17. As regards the appointment of directors, the Government’s intention is to appoint independent non-executive directors who will give HKIRC access to professional corporate governance expertise. The appointed directors should, when taken together, have 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.

18. A separate CAP will be established to ensure that stakeholder groups have a voice in the way HKIRC is run. The CAP will advise the Board on major issues and facilitate the interaction of the Board with the stakeholders. The CAP will comprise an ex-officio member from the Government and members from the Internet community including the following main stakeholder groups:

- end users;
- education/academia;
- information and communications technology (ICT) industry;
- professionals; and
- relevant Government departments and related organisations.

19. In order to enhance transparency and involve stakeholders' participation, nomination for candidates will be sought from a number of organisations that are considered representatives of the stakeholder groups as mentioned above. The stakeholder groups to be represented in the CAP will be reviewed from time to time in order to align with the development of the ICT industry and the Internet community in Hong Kong.

20. It is also proposed that HKIRC should form a selection committee, comprising the Board members (under the new Board structure) and the representative from the Government who is an ex-officio member of the CAP, to consider the nominations from the invited organisations in order to ensure a balanced mix of representation from the stakeholder groups. We will also allow other individuals and organisations to make nominations. The selection committee will develop and publish the combination of stakeholder groups and selection criteria before inviting nomination.

Public Accountability

21. The new structure will also improve openness and transparency about the way HKIRC is run. There will be a new MOU between the Government and HKIRC that will set out the duties of HKIRC. The Board of HKIRC will also be required to consult the CAP on major issues and account for its decision in the event that it decides not to follow the advice of the CAP.

22. The Government agrees that freedom of expression is one of the core values of Hong Kong and is essential to our economic welfare and way of life. Freedom of expression is guaranteed under the law. It must also be seen to be protected in practice. To that end, we intend to reflect the importance of freedom of expression in the new MOU with HKIRC. We propose using the MOU to give HKIRC an explicit duty to uphold the rights of individuals and businesses to freedom of expression under the law. The public, and the new CAP, will have an opportunity to comment on the MOU before it is finalised.

23. We also propose using the new MOU to put in place other arrangements to build confidence that HKIRC will act to uphold freedom of expression – for instance, the company might be required to publish its policies and procedures relating to approval of domain names, its conditions of use of domain names, and policies and procedures for cancellation of registration for breach of conditions of use. All these documents could be adopted and reviewed following consideration by the CAP in an open and transparent manner.

Way Forward

24. We plan to brief this Panel again when the new institutional arrangements of HKIRC are wholly in place. We have already tentatively scheduled with the Legislative Council Secretariat to report on this item at the Panel meeting to be held in April 2009.

**Office of the Government Chief Information Officer
Commerce and Economic Development Bureau
December 2008**