



立法會秘書處 法律事務部
LEGISLATIVE COUNCIL SECRETARIAT
LEGAL SERVICE DIVISION

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電 話 TELEPHONE : 2869 9216
圖文傳真 FACSIMILE : 2877 5029

10 December 2009

Mr Jeremy R. Godfrey
Government Chief Information Officer
Commerce and Economic Development Bureau
15/F Wanchai Tower
12 Harbour Road
Wanchai
Hong Kong

BY FAX
Fax No. : 2511 5359

Dear Mr Godfrey,

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

**Progress update of the review of the Administration of
Internet domain names in Hong Kong
(for discussion on 14 December 2009)**

We refer to the draft Designation Agreement for the Management and Administration of Internet Domain Names in Hong Kong (the draft Agreement) and the draft Memorandum of Understanding for the Management and Administration of Internet Domain Names in Hong Kong (the draft MOU) annexed to LC Paper No. CB(1)602/09-10(03) (the Paper) tabled for discussion by the Panel on Information Technology and Broadcasting (the Panel) at its meeting on 14 December 2009. Paragraph 16 of the Paper invites Members of the Panel to comment on the draft Agreement and the draft MOU.

To assist the Panel's discussion of the draft Agreement and the draft MOU, we have set out in **the Annex** a number of suggested comments for the Administration's consideration.

We look forward to receiving the Administration's reply in both languages as soon as possible.

Yours sincerely,

A handwritten signature in black ink that reads "Bonny Loo" with a small flourish at the end.

(Bonny LOO)
Assistant Legal Adviser

Encl.

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ANNEX

The draft Agreement

- Recital (vii) The word "was" should be inserted between "that" and "passed" in the first line.
- Clause 1 The definition of ".hk country code" refers to "the Hong Kong country code in English, i.e., .hk, or its equivalents in other languages". As paragraph 15 of the Paper states that Hong Kong Internet Registration Corporation Limited (HKIRC) has submitted an application for the Chinese language country code top level domain for Hong Kong, i.e., ".香港", the Administration may wish to amend the definition by adding the expression "(including, without limitation, .香港)" after the words "other languages".
- Clause 3.1 (i) The word "administrating" in the first line should be changed to "administering".
- (ii) According to paragraph 8 of the Paper, the draft Agreement imposes "a legally-enforceable duty on the part of HKIRC to ... establish and maintain a complaint handling process to provide for conciliation or redress of grievances arising from domain name registration service", which "will help to uphold the principles in managing and administering '.hk' domain names in the public interest, including in particular upholding the rights of freedom of speech, of publication, of communication and of religious belief in accordance with the laws in force in Hong Kong". While Clause 3.1(d) of the draft Agreement requires HKIRC to establish and maintain a complaint handling process, there is no requirement that such complaint handling process must have regard to the principles referred to in paragraph 8 of the Paper. Those principles are only set out in Clause 2.1 of the draft MOU which, by Clause 8.3, specifically provides that the MOU does not create any legally-binding obligations on either party. The Administration may wish to consider including in Clause 3 of the draft Agreement a provision to the effect that HKIRC must have regard to the principles set out in Clause 2.1 of the draft MOU in managing and administering the .hk domain names.
- Clause 7.1 (i) In paragraph (a), the word "him" before "of any composition" should be replaced by "it" as the possessive pronoun "its" is used in the context of "creditors" in the same paragraph.

(ii) Apart from the circumstances identified in paragraphs (a) and (b) of Clause 7.1, the Administration may wish to consider including other terminating events including, for example:

- the conviction of a director or officer of HKIRC of any dishonesty or other serious offences which, in the Administration's opinion, could adversely affect HKIRC's capacity to manage and administer .hk domain names; and/or
- the failure by the parties to resolve a dispute pursuant to the procedures under Clause 7 of the draft MOU.

Clause 7.3 The phrase "what HK Government considers to be sufficient prior notice" may be too vague. We suggest that the clause provides for a more certain notice period (e.g., 12 months) which should be sufficient to allow the Government to make the necessary arrangements to designate another person to take over from HKIRC the management and administration of .hk domain names.

Clause 8.2 For the sake of clarity, we suggest that the first sentence be recast as follows: "Within three months from the date of the notice of termination of this Agreement, HKIRC shall, in consultation with HK Government and such person ('the new designee') as HK Government may designate to take over from HKIRC the management and administration of .hk domain names, develop and deliver to HK Government and the new designee a transition plan to the satisfaction of HK Government and the new designee."

Clause 8.3 All references to "the mark .hk" should be substituted by "the mark .hk or its equivalents in other languages (including, without limitation, 香港)".

Clause 10.1 The expression "competent authority" is not defined. Subject to the Administration's decision as regards dispute resolution (see our comments on Clause 11.1 below), the Administration may wish to clarify the meaning of "competent authority", i.e., a court of competent jurisdiction, an arbitral tribunal, etc.

Clause 11.1 While selecting Hong Kong law as the governing law, the clause is silent as to jurisdiction. The Administration may wish to specify whether disputes are to be determined by the Hong Kong courts or referred to arbitration.

Clause 12.2 The word "to" should be inserted after "addition". We also note that the comma which appears after "behalf" has been misplaced: It should appear after the word "of" in the context of "on behalf of".

Clause 12.3 There should be a comma after the expression "and shall inure to the benefit of".

The draft MOU

Clause 1 The definition of ".hk country code" should be amended by adding the expression "(including, without limitation, .香港)" after the words "other languages" .

Clause 4.1 It is unclear how often (e.g., annually) or when (e.g., no later than 3 months before the beginning of each year) HKIRC is required to develop and publish a rolling plan for the next three years.

Clause 6.2 The Clause does not say how often (e.g., quarterly) and when (e.g., within one month after the end of each quarter) HKIRC is required to provide HK Government with system performance statistics under Clause 5.1 and reports of human resource issues. It is also not clear when (e.g., within one month after the end of each quarter) the quarterly financial reports are to be provided to HK Government.

Clause 6.3 Again, it is not clear when (e.g., within 3 months after the end of each year) HKIRC is required to submit the annual report on its compliance with its obligations under the MOU.

Clause 6.6 The word "by" should be inserted before the expression "other appropriate means".

Clause 7 All references to "parties" and "party" should be capitalized. Please refer to the reference to "Party" and "Parties" in the preamble of the draft MOU. The same comment also applies to Clause 8.3.