

For Information

Subcommittee on Prevention of Bribery Ordinance (Amendment of Schedules 1 and 2) Order 2012

Administration's Response to Issues Raised by Members

Purpose

At the second meeting of the Sub-committee held on 13 April 2012, Members asked whether ordinary members of the Hong Kong Internet Registration Corporation (HKIRC) should be made public servants under the Prevention of Bribery Ordinance (Cap. 201) (POBO) and whether there is a mechanism to regularly review if any organisation should be designated as a public body under POBO. This paper sets out the Administration's response.

HKIRC

2. Members expressed the view that although HKIRC's ordinary members have no management responsibilities, they can elect half of the Directors. If they are not public servants, any bribery acts involving them in the election of Directors would not be subject to the POBO provisions applicable to public servants.

3. The HKIRC Board considered the matter on 19 April 2012, and maintained its view that its ordinary members should not be made public servants under POBO because they have no management responsibility. Moreover, given that some 70% of HKIRC's 2 931 ordinary members are companies, unlike individuals, it is impracticable to make them public servants under POBO. We support the HKIRC Board's view.

4. Under the Memorandum of Understanding between the Government and HKIRC, HKIRC has the obligation to conduct its activities in an open and transparent manner. Besides, according to a legally-binding Designation Agreement, which the Government and HKIRC entered into in March 2010, the Government may at its sole discretion terminate HKIRC's status as the designated administrator of ".hk" and ".香港" if there is conviction by a court of law of a director or officer of HKIRC of any serious dishonesty or other serious offences.

5. The HKIRC Board comprises four Directors appointed by the Government and another four elected by HKIRC's members. The quorum of a Board meeting shall not be less than half of the Directors, including at least one appointed Director. Issues arising at Board meetings are decided by a majority of votes, which are open for public information through HKIRC's website. Under such a governance mechanism, it would be unlikely for any individual Director to be able to exert undue influence on HKIRC's business.

Mechanism to Designate Organisations as Public Bodies

6. The Government has issued a circular to remind bureaux and departments to consult the ICAC on the need to designate a new organisation as public body when it is established. Bureaux and departments are requested to re-circulate the circular every year. Recent examples of new organisations being designated as public bodies upon establishment include the Financial Reporting Council, the West Kowloon Cultural District Authority and the Digital Broadcasting Corporation Hong Kong Limited.

7. For existing organisations that have not been designated as public bodies, the responsible bureaux/departments will review the need to do so, taking into account the following considerations:

- (a) whether the organisation receives substantial public funds;
- (b) whether the organisation has a monopoly or partial monopoly of a public service; or
- (c) whether the organisation is placed in a position of special trust by the Government.

In view of Members' suggestions, the Administration will consider issuing a reminder to bureaux and departments on the need to review whether the organisations under their purview should be designated as public bodies.

**Office of the Government Chief Information Officer
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