

香港特別行政區政府

政府資訊科技總監
辦公室

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灣仔政府大樓十五樓



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OFFICE OF THE
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THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

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5 February 2010

Assistant Legal Adviser
Legal Service Division, Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central, Hong Kong
(Attn: Mr Bonny LOO)

Dear Mr Loo,

**Information Requested by the Panel on Information Technology and
Broadcasting (ITB Panel) at the Meeting on 14 December 2009**

Thank you for your letter of 29 January 2010.

2. The Government and the Hong Kong Internet Registration Corporation Limited agree to your suggestions on Clause 7.1(a) and (b) of the revised draft Designation Agreement to improve clarity of the Clause. The further revised version of the draft Designation Agreement is attached at **Annex** for your information please. Please note that the Chinese version remains unchanged.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jason PUN'.

(Jason PUN)

for Government Chief Information Officer

Encl.

c.c. 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

Clerk to Panel on Information Technology and Broadcasting (Attn: Ms YUE Tin-po)

(Draft)
**Designation Agreement
for the Management and Administration of Internet Domain Names
in Hong Kong**

THIS **DESIGNATION AGREEMENT** (this “**Agreement**”) is made in the Hong Kong Special Administrative Region on [*insert date*] by and between:

- (1) **THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION (“HK Government”)**; and
- (2) **HONG KONG INTERNET REGISTRATION CORPORATION LIMITED**, a company incorporated and existing under the laws of Hong Kong with its registered office at Unit 2002-2005, 20/F ING Tower, 308 Des Voeux Road Central, Sheung Wan, the Hong Kong Special Administrative Region (“**HKIRC**”).

(HK Government and HKIRC, each a “**Party**” and collectively, the “**Parties**”).

Recitals

- (i) HKIRC is a not-for-profit company limited by guarantee and not having a share capital incorporated on December 14, 2001.
- (ii) Prior to March 25, 2002, all Internet domain names under .hk country code top-level domain were managed and administered by Joint Universities Computer Centre Limited (“**JUCC**”) through its wholly-owned subsidiary, Hong Kong Domain Name Registration Company Limited (“**HKDNR**”).
- (iii) Pursuant to the Sale and Purchase Agreement dated March 15, 2002 between JUCC and HKIRC, on March 25, 2002, JUCC transferred all the issued shares in HKDNR to HKIRC and relinquished any interest arising from its management and administration of Internet domain names under .hk country code top-level domain (the “**Operational Transfer Date**”).
- (iv) Under an earlier Memorandum of Understanding signed on April 22, 2002 (the “**First Memorandum**”), HK Government designated HKIRC to manage and administer all Internet domain names under .hk country code top-level domain in English or its

equivalents as from the Operational Transfer Date upon the terms and conditions therein.

- (v) Following a review of international good practices on domain name administration and public consultation, HK Government and HKIRC were desirous to restructure the Board of Directors of HKIRC (the “**Board**”), establish a consultative and advisory panel and revise the First Memorandum.
- (vi) Pursuant to the special resolutions of HKIRC passed on August 23, 2008, HKIRC restructured the Board on December 15, 2008.
- (vii) Pursuant to the special resolutions of HKIRC that were passed on August 23, 2008 and took effect on December 15, 2008, a consultative and advisory panel was established on June 17, 2009 in relation to the management and affairs of HKIRC.
- (viii) The Parties have reached an understanding on the arrangements for the management and administration of .hk domain names, as documented in a second Memorandum of Understanding to be signed by the Parties.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Parties agree as follows:

1. Definitions

In this Agreement, except where the context otherwise requires:

“domain name registration” means the process through which an individual or organisation obtains a domain name, and which enables the individual or organisation to use that particular domain name for a specified period of time, provided certain conditions are met and payment for services is made;

“domain name system” means a system which helps users to find their way around the Internet and makes using the Internet easier by allowing a familiar string of letters (the "domain name") to be used instead of IP address;

“.hk country code”	means the Hong Kong country code in English, i.e. .hk, or its equivalents in other languages (including, without limitation, .香港), in the country code top-level domain of the Internet domain name system, in connection with the delegation by ICANN of the right to operate the registration of the Hong Kong country code top-level domain;
“.hk domain names”	means all Internet domain names under .hk country code top-level domain of the Internet domain name system;
“HKIRC member”	means a person admitted to membership of HKIRC by the Board and whose name appears on the Register of Members for the time being;
“Hong Kong”	means the Hong Kong Special Administrative Region;
“ICANN”	means the Internet Corporation for Assigned Names and Numbers;
“intellectual property rights”	means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights of whatever nature and wheresoever arising, whether now known or hereafter created, and in each case whether registered or unregistered and including applications for the grant of any such rights;
“person”	means such person as defined in the Interpretation and General Clauses Ordinance (Cap 1), association, organisation, body, or HK Government;
“registrant”	means a person that has entered into registration agreement with HKIRC for .hk domain names;
“registrar”	means a person which has entered into an agreement with a registry concerning the right to submit applications and notifications of amendments to the registry on behalf of applicants for and holders of domain names under country code top-level domains;
“registry”	means a person which, as designated by the relevant government or public authority and by agreement with the international administrator of top-level domains, is entitled to assign domain names under country code

“subsidiary” top-level domains;
has the meaning ascribed to it in Section 2 of the Companies Ordinance (Cap 32) and any modifications thereto.

2. Designation

- 2.1 HK Government reconfirms the exclusive designation of HKIRC, and HKIRC reconfirms its acceptance of HK Government’s designation, to manage and administer .hk domain names, subject to the terms herein.
- 2.2 HK Government and HKIRC agree that upon the execution of this Agreement, the First Memorandum shall expire and become void.

3. Management and Administration of Domain Names

- 3.1 The duties of HKIRC in managing and administering .hk domain names shall be as follows:
- (a) Providing services of domain name registration and conversion of domain names into IP addresses, and services incidental or related to services in respect of .hk domain names;
 - (b) Operating and maintaining a stable, secure and interoperable domain name system which abides by the policies and technical requirements laid down by ICANN;
 - (c) Establishing and maintaining an alert mechanism which will inform HK Government promptly of the following:
 - (i) serious or prolonged disruption of domain name system operation for .hk domain names and of domain name registration services, and
 - (ii) incident leading to a failure on the part of HKIRC to perform duties in accordance with the terms set out in this Agreement;
 - (d) Establishing and maintaining complaint handling process to provide for conciliation or redress of grievances arising from domain name registration service and other services provided by HKIRC;
 - (e) Establishing and maintaining domain name dispute resolution process, with

reference to industry practice such as ICANN's Uniform Domain Name Dispute Resolution Policy; and

- (f) Liaising with national and international bodies on issues relating to the development and administration of domain name system.
- 3.2 In discharging its duties in managing and administering .hk domain names, HKIRC shall not restrict the rights of any persons under the laws of Hong Kong of freedom of speech, of publication, of communication and of religious belief, and shall comply with the laws of Hong Kong related to privacy including without limitation the Personal Data (Privacy) Ordinance (Cap 486).

4. Intellectual Property Rights

- 4.1 Any claim by HKIRC of intellectual property rights in or to the .hk country code and .hk domain names and in all expressions of information and data relating to, in connection with, or arising from the management and administration of .hk domain names shall not impede any possible future change of registry of .hk domain names or termination of the designation under this Agreement.

5. Contracting with Third Parties

- 5.1 HKIRC may enter into a written agreement with third party(ies) (the “**third party contractor(s)**”) to perform the duties in managing and administering .hk domain names, as long as HKIRC remains responsible for all duties under this Agreement to the same extent as if those duties were performed by HKIRC.
- 5.2 HKIRC shall ensure that the third party contractor meets the technical qualifications and requirements set forth by ICANN from time to time if the duties performed by the third party contractor are related to the registry operation of Internet domain names. HKIRC shall also meet requirements set forth by ICANN for the arrangement of such third party contractor.
- 5.3 In the written agreement between HKIRC and the third party contractor, HKIRC shall ensure that the terms of the written agreement are consistent with, and include duties at least as onerous on the third party contractor as, those imposed on HKIRC in this Agreement.

6. No Assignment of this Agreement

6.1 HKIRC shall not assign this Agreement and any rights and obligations under this Agreement to any person unless HKIRC obtains prior written consent of HK Government.

7. Termination

7.1 Upon occurrence of any of the following events, HK Government may at its sole discretion terminate this Agreement by giving ninety (90) days prior written notice to HKIRC:

- (a) Failure by HKIRC to remedy a breach of the Agreement (if capable of remedy) within 90 days of HK Government giving notice to HKIRC requiring it to remedy such a breach.
- (b) Failure by HKIRC to make reasonable arrangements to prevent recurrence of a breach of the Agreement within 90 days of HK Government giving notice to HKIRC requiring it to make such arrangements.
- (c) The levying of any distress or execution against HKIRC or the making by it of any composition or arrangement with its creditors or if HKIRC shall pass a resolution, or the court shall make an order that HKIRC be wound up otherwise than for the purposes of reconstruction or amalgamation, or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle a court or a creditor to appoint a receiver or manager or which entitle the court otherwise than for the purposes of amalgamation or reconstruction to make a winding up order;
- (d) Finding by a court of law of offering or giving any advantage, gratuity, commission, bonus, discount, bribe or loan of any sort or in any form whether directly or indirectly by HKIRC or its agents (including third party contractors), directors or employees to any agent or employee of HK Government; and
- (e) Conviction by a court of law of a director or officer of HKIRC of any serious dishonesty or other serious offences which, in HK Government's reasonable opinion, could adversely affect HKIRC's capacity to manage and administer .hk domain names.

- 7.2 Notwithstanding anything provided under this Agreement, HK Government may at any time terminate this Agreement without giving any cause by giving HKIRC twelve (12) months prior written notice of such termination.
- 7.3 HKIRC may at any time terminate this Agreement by giving HK Government twenty-four (24) months prior written notice of such termination to allow HK Government to make the necessary arrangements to designate another person to manage and administer .hk domain names and for that other person to take over from HKIRC the management and administration of .hk domain names.
- 7.4 Upon termination of this Agreement all rights and duties of the Parties shall automatically terminate except for such rights of actions as shall have accrued prior thereto and any duties which expressly or by implication are intended to come into or continue in force on or after such termination.
- 7.5 The provisions of Clauses 4 and 8 shall survive the termination of this Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.
- 7.6 Notwithstanding anything provided under this Agreement, upon termination of this Agreement the exclusive designation of HKIRC to manage and administer the .hk domain names shall be forthwith terminated. If HK Government or HKIRC gives notice to terminate this Agreement pursuant to this Clause, HK Government may designate any other person to manage and administer the .hk domain names (“the new designated person”) without making any compensation to HKIRC.

8. HKIRC’s Duties after Termination Notice

- 8.1 If HK Government or HKIRC gives notice to terminate this Agreement pursuant to Clause 7, HKIRC shall transfer and assign to the new designated person within the time specified by HK Government at HKIRC’s own costs and expenses and without seeking compensation from HK Government and the new designated person:
- (a) all assets and properties of HKIRC which are necessary for provision of part of or all services of domain name registration and conversion of domain names into IP addresses, and services incidental or related to services in respect of .hk domain names (including without limitation its ownership of property of hardware and

software and its ownership of all its subsidiaries which provide part of or all services of domain name registration and conversion of domain names into IP addresses, and services incidental or related to services in respect of .hk domain names),

- (b) all licences of software, documentation, data and information, present and future intellectual property rights in or to the .hk country code and .hk domain names and in all expressions of information and data relating to, in connection with, or arising from the management and administration of .hk domain names which are necessary for provision of part of or all services of domain name registration and conversion of domain names into IP addresses, and services incidental or related to services in respect of .hk domain names; and
- (c) all intellectual property rights and any rights under agreements with third party contractors which are necessary for provision of part of or all services of domain name registration and conversion of domain names into IP addresses, and services incidental or related to services in respect of .hk domain names.

8.2 If HK Government or HKIRC gives notice to terminate this Agreement pursuant to Clause 7, HKIRC shall, within the time specified by HK Government, consult HK Government and the new designated person, develop and deliver to HK Government and the new designated person a transition plan which ensures that the new designated person could take over the management and administration of .hk domain names from HKIRC and that there will not be any failure or disruption in provision of services of domain name registration and conversion of domain names into IP addresses and services incidental or related to services in respect of .hk domain names to registrants and users of .hk domain names. The transition plan shall include without limitation an arrangement, which preserves the rights of registrants under their registration agreements and complies with the privacy laws including without limitation the Personal Data (Privacy) Ordinance (Cap 486) and with other applicable laws in force in Hong Kong, for the transfer of registrants and their identities and other information to the new designated person. The transition plan shall also include arrangements for refunding registrants who elect not to be transferred to the new designated person any amount of money which they have pre-paid for services which have not been provided to them. HKIRC shall execute the transition plan to ensure that there is no failure or disruption in provision of services of domain name registration and conversion of domain names into IP addresses and services incidental or related to services in respect of .hk domain names to the registrants and users of .hk domain names.

- 8.3 HKIRC shall, within the time specified by HK Government, assign without consideration all rights, titles and interests in and to the mark .hk or its equivalents in other languages (including, without limitation, .香港) (the “.hk mark”) to the new designated person and cease to use or have any right in or to the .hk mark, including, if HKIRC has registered or applied to register in its name the .hk mark with the Hong Kong Trade Marks Registry or other trade marks registries, the relevant rights in or to the .hk mark.
- 8.4 If HKIRC does not have the right to assign or novate any licences or contracts with third party contractors, HKIRC shall, at its own costs and expenses, use its best endeavours to procure the assignment or novation of such licences and contracts for the benefits of the new designated person.
- 8.5 Following the termination of this Agreement pursuant to Clause 7, if there remains, after the satisfaction of all HKIRC’s debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the HKIRC members but shall be given or transferred to the new designated person.

9. **Notices**

- 9.1 All notices to or by the respective Parties hereto shall be in writing and shall be deemed to have been duly given when delivered by hand, posted by recorded delivery post or sent by confirmed email to the Party to which such notice is required to be given under this Agreement addressed as follows:

HKIRC:

CONTACT:

EMAIL:

HK Government:

CONTACT:

EMAIL:

or to such other address or email address as each Party hereto may hereafter specify to the other in writing.

9.2 Notices delivered by hand shall be deemed received the first working day following such delivery or sending. Notices sent by email must be confirmed to have been received. Notices posted by recorded delivery post shall be deemed received on the second working day following posting.

10. Waiver

10.1 Failure or neglect by HK Government to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of HK Government's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice HK Government's rights to take subsequent action.

11. Severability

11.1 In the event that any of these terms, conditions or provisions shall be determined by a court of competent jurisdiction in Hong Kong to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

12. Governing Law

12.1 The validity, interpretation and implementation of this Agreement shall be governed by the laws of Hong Kong, and disputes arising from this Agreement shall be determined by a court of competent jurisdiction in Hong Kong.

13. Miscellaneous

13.1 This Agreement shall become effective upon execution.

13.2 Except as otherwise provided herein, no addition to, amendment to, or modification of, this Agreement shall be effective unless it is in writing and signed by, and on behalf of, both Parties.

13.3 This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first above written.

**THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION**

By: _____

Name:

Title: Government Chief Information Officer

HONG KONG INTERNET REGISTRATION CORPORATION LIMITED

By: _____

Name:

Title: Chairman