

For Information

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

Hong Kong Internet Registration Corporation Limited

Purpose

At the meeting of the Sub-committee on 30 March 2012, Members requested information on the governance structure of the Hong Kong Internet Registration Corporation Limited (HKIRC), the rationale of its proposed inclusion in Schedule 2 of the Prevention of Bribery Ordinance (Cap. 201) (POBO) and details of the corruption prevention study mentioned in paragraph 6 of the Legislative Council Brief on this subject. This paper provides the requisite information.

Background

2. HKIRC is a non-profit and non-statutory organisation designated by the Government to administer the registration of country-code top level Internet domain names “.hk” and “.香港”. The management of HKIRC is vested with its Board of Directors, which comprises four Directors appointed by Government and four Directors elected by HKIRC members. Among the elected Directors, two are elected by members of the Supply Class (i.e. Internet-related service providers maintaining “.hk” and “.香港” domain names who opt to be members) and two by members of the Demand Class (i.e. other “.hk” and “.香港” domain name holders who opt to be members).

Governance of HKIRC

3. The Board of Directors, which meets quarterly, is responsible for the governance of HKIRC on behalf of its members and stakeholders. Issues considered at the Board are matters that concern HKIRC as a

whole, e.g. registration of the Chinese domain name “.香港”, and implementing the back-up site of computer equipment to enhance resilience of services, etc.

4. Matters concerning individual applications for registration or domain names are handled by the HKIRC management team in accordance with the policies and guidelines set out by the Board. In case of disputes such as alleged infringement of brand names, domain name squatting, etc., HKIRC has appointed the Hong Kong International Arbitration Centre as the dispute resolution service provider to arbitrate between the parties in dispute. The Board, individual Directors and staff members of HKIRC do not play any part in dispute resolution, nor can they exert any influence in this independent process.

Inclusion of HKIRC in Schedule 2

5. The Sub-committee asked the rationale of including HKIRC in Schedule 2 of POBO, which will make its Directors and employees, but not its ordinary members, public servants. The ordinary members of HKIRC are “.hk” and “.香港” domain name holders maintaining a valid registration with HKIRC¹. They have no responsibility for the management of HKIRC, the administration and allocation of domain names, or dispute resolution. As members, they have a right to attend the Annual General Meeting (AGM) held every year to consider the accounts, balance sheets and the reports of the Directors and auditors, as well as to elect Directors and appoint and fix the remuneration of the auditors. They can also move resolutions in accordance with the Memorandum and Articles of Association for consideration and decision at Extraordinary General Meeting (EGM), which can only be passed by a majority of members present. Given their indirect and limited role in HKIRC’s affairs, they should not be made public servants under POBO. This arrangement applies to eight public bodies set out in Schedule 2 of POBO, a list of which is at **Annex A**. In effect, the eight Directors on the HKIRC Board and 25 staff members of HKIRC and its wholly owned subsidiary, Hong Kong Domain Name Registration Company Limited (HKDNR), who are responsible for the management and operation of

¹ As at 4 April 2012, ordinary members comprise 365 Internet-related service providers and 2 566 Internet users who have opted to be HKIRC members.

HKIRC, will become public servants after designation of HKIRC and HKDNR as public bodies.

Corruption Prevention Department's Recommendations

6. To bring in best practices in corporate governance, HKIRC invited the Corruption Prevention Department (CPD) of the Independent Commission Against Corruption (ICAC) in 2007 to advise it on its procedures for vendor selection, procurement and engagement of unpaid advisors, and recommended a series of corruption prevention measures. A summary of CPD's recommendations is at **Annex B**. Separately, CPD also suggested to the Government to make HKIRC and HKDNR, public bodies under POBO, given that the ".hk" domain name is an important public resource and HKIRC is designated by the Government as the sole service provider. HKIRC has implemented all the recommendations concerning operational procedures tendered to it by CPD. We consulted HKIRC in October 2009 on the proposal to designate it and HKDNR as public bodies under POBO after its re-organisation from 2007 to 2009. In May 2010, HKIRC confirmed its agreement to be included in both Schedules 1 and 2. Legislative amendment is now in progress.

**Office of the Government Chief Information Officer
Commerce and Economic Development Bureau
April 2012**

**Public Bodies in
Schedule 2 of the Prevention of Bribery Ordinance (Cap. 201)**

1. The Stock Exchange of Hong Kong Limited
2. Hong Kong Futures Exchange Limited
3. Hong Kong Securities Clearing Company Limited
4. The SEHK Options Clearing House Limited
5. HKFE Clearing Corporation Limited
6. Hong Kong Exchanges and Clearing Limited
7. A company recognized as an investor compensation company under section 79(1) of the Securities and Futures Ordinance (Cap 571) *
8. Financial Reporting Council

Note:

- * The Investor Compensation Company Limited has been recognised as an investor compensation company.

**Summary of Corruption Prevention Department's
Recommendations to HKIRC
(English version only)**

CURRENT PRACTICES / CONCERNS	RECOMMENDATIONS/REFERENCE MATERIALS
Approval Authority	
<p>The procedural guidelines for procurement of goods/services have not included the levels of approval authority and their corresponding financial limits.</p>	<p>To ensure consistency in procurement practices, you should include this in your guidelines.</p>
Approved Lists of Suppliers/Services Providers	
<p>Your Corporation does not maintain a list of suppliers for its procurement activities.</p> <p>From a corruption prevention angle, there could be concerns about favouritism in the selection of suppliers.</p>	<p>Your Corporation may wish to consider adopting the following measures to enhance control :</p> <ul style="list-style-type: none"> ◆ An approved list of suitable suppliers/service providers should be compiled for each procurement category to ensure that only reliable suppliers/service providers are used and to minimise the overhead costs and time required for sourcing on individual occasions. ◆ Suppliers/service providers on the list should be invited to bid based on a fair share basis (e.g. by rotation). Any deviations from the rotation mechanism should be justified and documented. ◆ The criteria for inclusion in the list should be pre-defined (e.g. size of firm, profiles of the firm's senior staff and jobs handled by the firm).

	<ul style="list-style-type: none"> ◆ The admission to or deletion from the approved list should follow established procedures and be approved by a senior staff member or a panel. ◆ The lists should be systematically maintained and updated by a designated staff member and an appraisal system should be established to assess the performance of suppliers/service providers. ◆ Suppliers/service providers should be advised of the Corporation's procurement policies, including prohibition for its employees to accept unauthorised fees or commissions.
High-Value Purchases	
<p>The Corporation requires its staff to obtain three quotations from vendors for purchases over \$20,000.</p>	<ul style="list-style-type: none"> ◆ For greater control, you may wish to review your purchasing methods for high-value items and consider conducting a tender exercise when the purchase value exceeds a specified amount. ◆ For competitive bidding, you may publicise your tender exercise on your corporate website besides sending invitations to your listed suppliers/service providers.

<p>Procuring specialist items (equipment or services) often calls for highly specialised knowledge and professional judgement. Such activities are vulnerable to malpractice and corruption, particularly in the drawing up of specifications and evaluation of bids.</p>	<p>We suggest the following measures for your consideration as your Corporation draws up its tender procedures :</p> <ul style="list-style-type: none"> ♦ specifications should preferably be drawn up by a panel, with input from experienced professional staff and members of the Corporation; ♦ a panel should also be formed to conduct tender evaluation, with staff and members possessing the expertise; ♦ if price is not the only consideration, the bidders should be required to submit the technical/ quality proposals and price offers in separate envelopes to facilitate evaluation of the technical proposals before the price offers are compared. The weightings for the technical proposal and the price offer should be specified (e.g. a ratio of 40:60) and technical assessment should be conducted according to a marking scheme based on pre-determined criteria; and ♦ the recurrent cost of proprietary items (e.g. maintenance cost) should also be taken into account when evaluating a bid. <p>We have compiled a series of Best Practice Modules on a wide range of procedures prone to corruption or malpractice for distribution to organizations on request. We enclose a copy of the module on Procurement Practices for your reference.</p>
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<p>Both your staff and Board Directors may be involved in high-value purchases. In particular, you have Directors who are representatives of your Service Provider Class, Information Technology Industry Class, Commerce and Industry Class, and Tertiary Institution Class. You should have an effective declaration of interest system to mitigate the risk of favouritism, or perceived favouritism, if Board Directors take part in the procurement process.</p>	<p>You may wish to consider adopting the following measures:</p> <ul style="list-style-type: none"> ✦ all persons involved in the procurement process should be required to declare any conflict of interest; ✦ your guidelines should specify clearly what a Board Director should do after making a declaration of interest. We understand that he is not permitted to be involved in the selection process but there should be a Board decision as to whether he should remain in a meeting to give technical comments on the proposals under consideration; and ✦ there should be proper documentation on the justifications for the final award of tender.
<p>Unpaid Advisors</p>	
<p>You may engage some unpaid advisors to provide specialist or professional advice to assist decision-making by the management. You would like to know if you should impose any requirements on these unpaid advisors.</p>	<p>To ensure that the advisors are committed to ethical practices in discharging their duties, you may consider drawing up some rules for their compliance :</p> <ul style="list-style-type: none"> ✦ rules on acceptance of advantages; ✦ guidelines on conflict of interest, procedures to declare conflicts and to handle such declarations; and ✦ handling of confidential or proprietary information.