

LEGISLATIVE COUNCIL BRIEF

Prevention of Bribery Ordinance
(Chapter 201)

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

INTRODUCTION

At the meeting of the Executive Council on 28 February 2012, the Council ADVISED and the Chief Executive ORDERED that, under section 35 of the Prevention of Bribery Ordinance (Cap 201) (the Ordinance), the Prevention of Bribery Ordinance (Amendment of Schedules 1 and 2) Order 2012 (the Amendment Order) at Annex should be made to designate the following four organisations as public bodies under the Prevention of Bribery Ordinance –

Annex

- (a) Hong Kong Internet Registration Corporation Limited (HKIRC);
- (b) Hong Kong Domain Name Registration Company Limited (HKDNR);
- (c) Hong Kong Applied Science and Technology Research Institute Company Limited (ASTRI); and
- (d) Hong Kong Cyberport Management Company Limited (HKCMCL).

JUSTIFICATIONS

2. The Ordinance and its subsidiary legislation provide a legislative framework for bribery prevention. Under the Ordinance, public bodies, which under section 2(1) include

“any board, commission, committee, or other body specified in Schedule 1”,

are subject to more stringent control than private organisations. Under sections 4 and 5 of the Ordinance, members and employees of a public body are prohibited from soliciting or accepting any advantage relating to their work in the public body concerned. Furthermore, persons doing business with a public body are subject to sections 4, 5, and 8 of the Ordinance, which make bribery and corrupt dealings in connection with public bodies and public servants under various circumstances an offence.

3. For a public body which is included in Schedule 1 and not in Schedule 2, and is not a club, association or an education institution, all its members and employees will become public servants for the purposes of the Ordinance and are subject to sections 4 and 5 of the Ordinance. However, some public bodies, such as the Hong Kong Stock Exchange, have members who have no management responsibility for running the public body in question. Hence, for these public bodies, only their employees, office holders (other than honorary ones) and members vested with responsibility for the conduct of the affairs of the public body are subject to sections 4 and 5 of the Ordinance. These public bodies are set out in both Schedules 1 and 2 of the Ordinance.

4. In considering whether an organisation should be designated as a public body under the Ordinance, the following criteria are relevant –

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

Since the four companies perform important public missions and meet one or more of the above criteria, they should be designated as public bodies.

HKIRC and HKDNR

5. Established in 2001, HKIRC and its wholly-owned subsidiary, HKDNR, are designated by the Government through a Memorandum of Understanding to manage and administer the “.hk” and “.香港” Internet domain names for Hong Kong, which are important public resources. They are in a position of special trust by the Government.

6. HKIRC has a Board comprising eight directors (four appointed by the Government and four elected by members), a body of 2 680 ordinary members comprising 307 Internet-related service providers and more than 2 370 subscribers of domain names, as well as a management team of 25 staff members. In an assignment study conducted in 2007, the Corruption Prevention Department of the Independent Commission Against Corruption (ICAC) recommended that HKIRC and HKDNR be designated as public bodies. While HKIRC agreed that it should be designated as a public body under Schedule 1 of the Ordinance, it has been considering in consultation with ICAC the justification to include it in Schedule 2 as well so that ordinary members who have no responsibilities for the management of HKIRC will not be made public servants. We recommend including HKIRC in both Schedules 1 and 2.

7. Being HKIRC's subsidiary, HKDNR is run by the Board of Directors and the staff of HKIRC. As it has no members who do not have management responsibility, there is no need to include it in Schedule 2.

ASTRI

8. ASTRI is a company set up in 2000 and wholly owned by the Government. Its mission is to enhance Hong Kong's competitiveness and sustainable growth in technology-based industries by undertaking innovative and customer-focused research and development (R&D) to meet the needs of industry. In 2010-11, ASTRI received over \$376 million from the Government for its operation and R&D work. It is the largest publicly-funded R&D centre in Hong Kong.

9. The operation of ASTRI is overseen by a Board of Directors appointed by the Government. The management team headed by the Chief Executive Officer is responsible for the daily operation. As at end 2011, ASTRI had 588 staff members. As ASTRI has no members who do not have management responsibility, there is no need to include it in Schedule 2.

HKCMCL

10. Established in 1999, HKCMCL is fully owned by the Government. It is tasked to carry out important public missions to promote Hong Kong's development into a digital economy. It has a staff of 59 members and is governed by a Board of 12 Directors appointed by the Government. In 2010-11, its total revenue and operating expenses before depreciation were \$397 million and \$317 million respectively.

11. In recent years, HKCMCL has devoted considerable resources in terms of expertise, manpower, sponsorship and funds (\$100 million from 2011 to 2013) into nurturing information and communications technology (ICT) industry start-ups and fostering local talents. Its various funding schemes, notably the Incubation Programme and its leasing business (90% has to be ICT set-ups), involve screening and selection. Besides, organisations and enterprises often approach HKCMCL for sponsorship and support in kind. We consider it appropriate to designate HKCMCL as a public body. As it has no members who do not have management responsibility, there is no need to include it in Schedule 2.

THE AMENDMENT ORDER

12. The Amendment Order amends Schedules 1 and 2 of the Ordinance by -

- (a) adding HKIRC, HKDNR, ASTRI and HKCMCL to Schedule 1 of the Ordinance to designate these four companies as public bodies; and
- (b) adding HKIRC to Schedule 2 of the Ordinance to exclude its members who have no responsibility for the management of company affairs from the definition of public servants.

LEGISLATIVE TIMETABLE

13. Subject to the Chief Executive in Council's approval for the making of the Amendment Order, the legislative timetable will be -

Publication in the Gazette	16 March 2012
Tabling the Amendment Order at the Legislative Council for negative vetting	21 March 2012
Commencement	11 May 2012

IMPLICATIONS OF THE PROPOSAL

14. On economic implications, the proposal would provide

safeguard against possible corruption, abuse and malpractice in the management and operations of the four organisations, thereby achieving a more efficient use of public resources. It is in conformity with the Basic Law, including the provisions concerning human rights. It has no environmental, sustainability, productivity, financial or civil service implications. The binding effect of the Ordinance will not be affected by the proposal.

PUBLIC CONSULTATION

15. The Boards of Directors of ASTRI, HKIRC and HKDNR and HKCMCL have been consulted and agreed with the proposal.

PUBLICITY

16. The Amendment Order will be published in the Gazette on 16 March 2012.

ENQUIRY

17. Any enquiries on the brief should be addressed to Mr Gary Tsang, Administrative Officer (E-Government Service Delivery), of the Office of the Government Chief Information Officer, on 3655 5607.

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

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

(Made by the Chief Executive in Council under section 35 of the Prevention of Bribery Ordinance (Cap. 201))

1. Commencement

This Order comes into operation on 11 May 2012.

2. Prevention of Bribery Ordinance amended

The Prevention of Bribery Ordinance (Cap. 201) is amended as set out in sections 3 and 4.

3. Schedule 1 amended (public bodies)

(1) Schedule 1, English text, item 111—

Repeal

“Kolwoon”

Substitute

“Kowloon”.

(2) At the end of Schedule 1—

Add

“118. Hong Kong Internet Registration Corporation Limited.

119. Hong Kong Domain Name Registration Company Limited.

120. Hong Kong Applied Science and Technology Research Institute Company Limited.

121. Hong Kong Cyberport Management Company Limited.”.

4. Schedule 2 amended (public bodies specified for purposes of definition of “public servant”)

At the end of Schedule 2—

Add

“9. Hong Kong Internet Registration Corporation Limited.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2012

Explanatory Note

This Order amends Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) to specify certain companies as public bodies for the purposes of the Ordinance. The Order also amends Schedule 2 to the Ordinance to specify “Hong Kong Internet Registration Corporation Limited” as a public body for the purposes of paragraph (aa) of the definition of *public servant* in the Ordinance.

2. Section 3(1) of the Order rectifies a clerical error in an existing item in Schedule 1.