

Bills Committee on
Kowloon-Canton Railway Corporation (Amendment) Bill 2001
(23 November 2001)

PURPOSE

This paper sets out the supplementary information which Members requested at its meeting on 15 November 2001. It also provides some additional information on the proposed separation of the functions and duties of the Chairman and the Chief Executive of the Kowloon-Canton Railway Corporation (KCRC).

ADDITIONAL INFORMATION ON THE PROPOSED SEPARATION OF THE FUNCTIONS AND DUTIES OF THE CHAIRMAN AND CHIEF EXECUTIVE

2. The KCRC Board maintains high standards of corporate governance. Although there is no legal requirement to do so, the Corporation has complied with the Code of Best Practice as set out in the Listing Rules of the Stock Exchange of Hong Kong Limited. In the last few years, KCRC has taken the following measures to strengthen its corporate governance :-

- (a) introduced a set of manuals governing all major areas of activities, including budgetary control, treasury operations, procurement, property management, the conduct of public relations, and the management of capital projects;
- (b) the discipline of the Government's budgetary control system has been suitably adapted to the business environment of the Corporation through the introduction of a new set of Estimates of Income and Expenditure;
- (c) rewrote the rules of public tendering and contract management, and brought them into line with the requirements for government-owned corporations under the World Trade Organisation's Agreement on Government Procurement; and
- (d) to safeguard the achievement of its service standards, the Corporation worked incrementally towards achieving ISO 9000 certification. In December 1997 KCRC earned a corporation-wide ISO 9001 certificate from the Hong Kong Quality Assurance Agency, the first of its kind amongst transport undertakings in Asia.

3. The separation of the Chairman and the Chief Executive Officer (CEO) is universally recognised as conducive to good corporate governance by shareholders and investors. The objective is to achieve an appropriate balance of power, maintain the accountability of the executives and enhance the board's capacity of independent decision making. The recommendations of international corporate governance practices are at **Annex A** for Members' reference.

4. The Government has in recent years promoted this good practice amongst public bodies e.g. the Airport Authority, the Mandatory Provident Fund Schemes Authority and the Urban Renewal Authority which all adopt the same governance model.

5. After the separation of the functions and duties, the KCRC Chairman will lead the Board in working on matters such as corporate strategy, development plans and monitoring of achievements. The new CEO will focus on the management of the railway operation and the implementation of new railway projects.

6. The Board and the executives of KCRC have all pledged support to the proposed change.

SUPPLEMENTARY INFORMATION

Composition of the Board of the Kowloon-Canton Railway Corporation with information on the respective honorarium/remuneration of Chairman and individual members

7. Under the existing Kowloon-Canton Railway Corporation Ordinance (the KCRC Ordinance) (Cap. 372), the SAR Chief Executive appoints the Board of KCRC which shall consist of :-

- (a) a Chairman who is the chief executive of KCRC; and
- (b) not less than four nor more than eight other members.

8. The Annual Report of KCRC publishes the information on the remuneration of Board members, including the Chairman cum Chief Executive, as falling within a number of bands. It is not appropriate to disclose the exact remuneration of the existing Chairman cum Chief Executive as it involves the disclosure of private information. Other members of the Board do not have salaries but are paid an honorarium of \$110,000 per annum.

A list of Board members from 1991 to 2001 with information on their personal profile

9. Please see **Annex B** for the personal profile of Board Members from 1991 to 2000.

Criteria for appointment to the Board.

10. In making appointments to the KCRC Board, the Government observes some guiding principles which serve to ensure that the best available persons capable of meeting the specific needs of the Corporation are appointed. The general principles in appointing Board Members are that we should carefully assess the suitability of prospective candidates with regard to relevant factors such as personal abilities, leadership qualities, expertise, experience, integrity and commitment to public service. We would also inform prospective candidates adequately of their responsibilities in making the appointment.

Committee structure of the Board

11. Several committees have been formed to oversee specific aspects of the Corporation's operations. These are described in the following paragraphs :-

(a) Audit Committee

The Corporation's Internal Audit Department reviews the internal controls of all major financial and operational activities and reports to the Audit Committee. The Committee reviews the Corporation's annual accounts prior to their submission for approval by the Board, monitors accounting policies, considers matters relating to management and internal controls, and receives and appraises reports from the internal and external auditors.

(b) New Railway Projects Steering Committee

This Committee keeps under review and makes recommendations to the Board on subjects relating to West Rail, Phase I, the East Rail Extensions and other new railway projects.

(c) Committee on Senior Executive Remuneration

This Committee reviews and makes recommendations to the Board with respect to the appointments, terminations of appointment and remuneration of senior executives. It also recommends to the Board the appropriate levels of pay for all staff.

(d) Property Development Committee

This Committee keeps under review and advises the Board on the strategies and programmes for and progress on property developments for sale or investment. More specifically, it reviews

all property development proposals prior to their submission to the Town Planning Board, approves the evaluation criteria recommended for the selection of short-listed property developers, authorises negotiations with these developers, endorses the final selections of developers and the proposed heads of agreement for recommendation to the Board, and keeps under review the terms of the Corporation's joint venture agreements for property development projects.

(e) Finance Committee

The Corporation's Treasury Department, which reports to the Finance Committee, operates within a set of strategies, policies and guidelines, which are defined by the Board to cover funding, cash investment, and risk management. The Finance Committee deals with the investment of surplus funds and advises the Board on the Corporation's strategies for the financing of future major capital projects.

Number of Board meetings held in 1999 to 2001.

12. The Board meets monthly except in the month of August.

Organisation chart of KCRC.

13. The organisation chart of KCRC is set out at **Annex C**.

The powers and responsibilities of the Board and the executives set out in the internal governance documents including the line of business reporting, the functions and duties of the Chairman and Members and the changes proposed to tie in with the proposed separation of the functions and duties of the Chairman and Chief Executive

14. The Board is the ultimate legal authority within the Corporation. All corporate powers are exercised by or under the authority of, and the business affairs of the Corporation managed under the direction of the Board.

15. The Board is the governing body of the Corporation and the authority to exercise the duties conferred upon it by the KCRC Ordinance. The Board is responsible, inter alia, for overall company strategy, acquisition and divestment policy, approval of the Corporation's annual estimates of revenue and expenditure, major financing arrangements, passenger fares and freight charges, and for ensuring that sound administrative systems and procedures are in place. It also reviews monthly the Corporation's operating results, safety record, and the progress made towards annual targets.

16. The Corporation's Rules for Conduct of Corporation Business provide that the following matters will be considered and approved by the Board :-

- (a) Board General Standing Orders;
- (b) Rules for Conduct of Corporation Business;
- (c) By-laws;
- (d) Three Year Business Plans, including revenue, expenses and capital budgets for the ensuring year, annual manpower plan and pay review;
- (e) Annual Estimates of Revenue and Expenditure;
- (f) Annual Report and Audited Accounts;
- (g) Recommendations with respect to Dividend Payments;
- (h) Statements of Corporate Intent;
- (i) Passenger Fares and Freight Charges;
- (j) capital projects, and variations to capital projects, in excess of HK\$50 million;
- (k) all contracts, and variations to all contracts, in excess of HK\$50 million;
- (l) all consultancy contracts, and variations to consultancy contracts, in excess of HK\$10 million;
- (m) substantive appointments of Senior Directors, Directors and Deputy Directors, including prior clearance with the Board of any terms and conditions for negotiating agreements providing for pension, gratuities, settlement and other financial benefits;
- (n) opening of bank accounts;
- (o) borrowings;
- (p) purchase and sale of all real property;

- (q) formation, acquisition and disposal of companies; and
- (r) write off of fixed assets the original cost of each of which exceeded HK\$50 million, and write off of items of capitalised expenses exceeding HK\$10 million each.

17. Chairman and Members of the Board jointly carry out the duties and functions of the Board. In addition, the existing Chairman cum Chief Executive, in his capacity as the Chairman of the Corporation, also carries out the following major functions :-

- (a) sets the agenda of Board meetings;
- (b) approves issue of Board papers;
- (c) chairs Board meetings;
- (d) calls extraordinary Board meetings if necessary; and
- (e) chairs the annual strategic planning conference.

18. The Board has delegated day-to-day operations to the executives in order to implement the company's mission and strategies. The Rules for Conduct of Corporation Business, which can in a sense be likened to Articles of Association of a company incorporated under the Companies Ordinance (Cap. 32), do not specifically provide for or define the functions of executives. The Corporation follows in essence the approach taken by other commercial entities in that it is implied that all functions relating to the day-to-day running of a company are delegated to the executives, which is usually headed by a CEO or equivalent unless otherwise specified in the Articles of Association.

19. The existing Chairman cum Chief Executive in his dual capacity as the head of the executives, leads and supervises the executives in exercising the delegated powers and implementing the policies and strategies set by the Board.

20. The proposed changes will not affect the powers and responsibilities of the Board or the Chairman in his capacity as Chairman. After the separation of offices, the Chairman will retain all the powers and duties as Chairman of the Board, set out in paragraphs 16 and 17 above whereas the CEO will assume the full executive duties as set out in paragraphs 18 and 19.

Whether the existing governance structure has led to situations whereby the interest of the Corporation had overridden that of the controlling shareholder, i.e. the Government

21. The Kowloon-Canton Railway Corporation is established to implement the railway policy of the Government. Its existing governance structure has not led to any situation whereby the interests of the Corporation had overridden that of the Government.

KCRC's handling of the Hung Hom "Millennium Towers" property development proposal and whether this is, in the Administration's view, a reflection of the observation that "it is difficult to achieve optimal results by concentrating these two sets of daunting responsibilities on one single KCRC officer" as quoted in paragraph 8 of the LegCo Brief

22. A report on the Hung Hom "Millennium Towers" property development proposal will be provided under separate cover.

Board members to appear before the Bills Committee or to issue a letter to the Bills Committee to set out their views on the proposed changes to the corporate governance structure.

23. A letter setting out the views of the KCRC Board, issued under the hand of the Company Secretary, is at **Annex D**.

----- Ends -----