

立法會
Legislative Council

LC Paper No. LS2/01-02

**Paper for the House Committee Meeting
of the Legislative Council
on 2 November 2001**

**Legal Service Division Report on
Kowloon-Canton Railway Corporation (Amendment) Bill 2001**

Object(s) of the Bill

To amend the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) to create the office of Chief Executive Officer of the Kowloon-Canton Railway Corporation ("KCRC").

LegCo Brief Reference

2. TBCR 3/1015/98 Pt.3 dated 27 September 2001 issued by the Transport Bureau.

Date of First Reading

3. 31 October 2001.

Comments

4. KCRC was established in 1982 under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) ("the principal Ordinance"). Section 3(2) of the principal Ordinance provides that KCRC shall consist of a Chairman appointed by the Chief Executive and not less than 4 nor more than 8 other members appointed by the Chief Executive. Section 3(2A) provides that the Chairman of KCRC shall also be the chief executive of KCRC.

5. The Bill seeks to separate the duties and functions of the Chairman and the chief executive of KCRC by creating the office of the Chief Executive Officer in KCRC. According to the LegCo Brief, the proposed separation of duties and functions is necessary to strengthen corporate governance, to help KCRC face challenges as a result of its future network expansion and to ensure that both strategic planning and day-to-day management of KCRC will receive the undivided attention they deserve.

6. Under the Bill, the new Chief Executive Officer who will be a member of KCRC's managing board will perform functions assigned to him by the principal Ordinance and any functions that KCRC may assign to him. According to the Administration, these functions include those relating to the operation of the railway and the internal administration of KCRC. The Chief Executive Officer will be appointed by KCRC and the appointment will be subject to the approval of the Chief Executive.

7. Members may wish to note that although the Administration intends to separate the functions of the Chairman and the Chief Executive Officer of KCRC in the manner set out in paragraphs 9 and 10 of the LegCo Brief, the respective functions of the Chairman and the Chief Executive Officer have not been specified in the Bill. Instead, a general empowering provision is proposed in the Bill to the effect that the functions of the Chairman and the Chief Executive officer shall be the functions assigned to them by the principal Ordinance and any functions that KCRC may assign to them. In some legislation providing for the establishment of statutory corporations for which the governing body comprises a Chairman and a Managing Director or a Chief Executive Officer, there is an express provision providing generally for the areas of responsibility of either the Chairman or the Managing Director or the Chief Executive Officer. Members may refer to Annex A for examples of such provision in the Airport Authority Ordinance (Cap. 483), the Urban Renewal Authority Ordinance (Cap. 563) and the Hong Kong Science and Technology Parks Corporation Ordinance (Cap. 565).

8. We have asked the Administration whether it would consider setting out in the Bill the duties and functions of the Chairman and the Chief Executive Officer or at least their respective areas of responsibility. The Administration has replied that this would not be appropriate as it is important for KCRC, which operates along prudent commercial principles, to retain the flexibility to determine and fine-tune the relationship between the managing board (led by the Chairman) and the executives (led by the Chief Executive Officer) to suit its operational needs and the prevailing corporate governance practices which change overtime. Apart from statutory functions specifically assigned by the principal Ordinance, the functions of the Chairman and the Chief Executive Officer should be functions assigned to them by the managing board as in the case of any other normal commercial entity.

9. To improve the drafting of the Bill, the Administration will propose a Committee Stage amendment to amend the Chinese text of proposed section 3(2A) to read "本條例授予他們及由公司指派給他們的職能". A copy of the proposed amendment (Chinese version only) is at Annex B.

Public Consultation

10. No public consultation has been conducted on the Bill.

Consultation with the LegCo Panel

11. The policy aspects of the Bill have not been referred to a LegCo Panel for discussion.

Conclusion

12. While it is legally in order to confer powers and functions on the Chairman and the Chief Executive Officer of KCRC by a general empowering provision as proposed in the Bill, Members may wish to consider whether their respective functions or areas of responsibility set out in paragraphs 9 and 10 of the LegCo Brief should be reflected in the Bill. Subject to Members' views, the Bill, with the proposed Committee Stage amendment, is legally in order and is ready for resumption of Second Reading debate.

Encl.

Prepared by

FUNG Sau-kuen, Connie
Assistant Legal Adviser
Legislative Council Secretariat
30 October 2001

DRAFT

Annex B

《2001年九廣鐵路公司(修訂)條例草案》

委員會審議階段

由運輸局局長動議的修正案

條次

建議修正案

- 3 在建議的第3(2A)條中，刪去“所委予或”而代以“授予他們及”。