

立法會
Legislative Council

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by the Administration)

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Panel on Transport

**Minutes of special meeting held on
Tuesday, 21 March 2006, at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon LAU Kong-wah, JP (Chairman)
Hon Andrew CHENG Kar-foo (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon LAU Chin-shek, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Albert Jinghan CHENG
- Members attending** : Hon LEE Cheuk-yan
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon TAM Heung-man
- Members absent** : Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, SBS, JP

- Public Officers attending** : Dr Sarah LIAO
Secretary for the Environment, Transport and Works
- Mr Joshua LAW
Permanent Secretary for the Environment, Transport and Works
- Miss Cathy CHU
Deputy Secretary for the Environment, Transport and Works
- Mr William SHIU
Principal Assistant Secretary for the Environment, Transport and Works
- Mr Albert YUEN
Assistant Commissioner for Transport/
Bus and Railway
- Attendance by invitation** : Kowloon-Canton Railway Corporation
- Mr Samuel LAI
Acting Chief Executive Officer
- Mr David FLEMING
Company Secretary and General Counsel
- Mrs Grace LAM
General Manager, Corporate Affairs
- Clerk in attendance** : Mr Andy LAU
Chief Council Secretary (1)2
- Staff in attendance** : Ms Sarah YUEN
Senior Council Secretary (1)6
- Miss Winnie CHENG
Legislative Assistant (1)5
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I Row between Kowloon-Canton Railway Corporation's senior management and its Chairman, and Kowloon-Canton Railway Corporation top management's variable pay

- (LC Paper No. CB(1)1131/05-06(01) - Information paper on "KCRC Corporate Governance" provided by the Administration
- LC Paper No. CB(1)1131/05-06(02) - Information paper on "KCRC Corporate Governance" provided by Kowloon-Canton Railway Corporation
- LC Paper No. CB(1)1131/05-06(03) - Information paper on "KCRC's Variable Pay Scheme" provided by Kowloon-Canton Railway Corporation
- LC Paper No. CB(1)1082/05-06 - Background brief on Kowloon-Canton Railway Corporation Top Management's Variable Pay prepared by the Secretariat
- LC Paper No. CB(1)1083/05-06 - Background brief on the governance of Kowloon-Canton Railway Corporation prepared by the Secretariat)

The Chairman explained that the item on "Kowloon-Canton Railway Corporation (KCRC) top management's variable pay" (VP) had originally been scheduled for discussion at the Panel's regular meeting to be held on 24 March 2006. In consideration of the need to schedule this special meeting to review issues arising from the recent incident on KCRC's corporate governance issues (the Incident), it was subsequently decided that the item be dealt with at this meeting instead. The agenda for the 24 March meeting had been revised accordingly.

2. Mr Abraham SHEK declared interests as a member of KCRC's Managing Board (the Managing Board).

3. Mr Andrew CHENG considered it necessary to invite the Chairman of KCRC, Mr Michael TIEN Puk-sun (Chairman TIEN) and other senior management to attend meeting(s) of the Panel to discuss the related governance issues. The Chairman remarked that as Chairman TIEN was out of town due to other prior engagement, he was not able to attend the special meeting of the Panel which was scheduled at short notice.

4. Members noted the following papers tabled at the meeting –

- (a) Information note prepared by the Secretariat's Research and Library Services Division on the chronology of major events that happened after the separation of the post of KCRC's Chairman and CEO in 2001;

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- (b) Ming Pao's copy of the letter (the Letter) dated 9 March 2006 from Mr Samuel LAI, Acting CEO of KCRC (Acting CEO/KCRC) to the Managing Board raising certain corporate governance issues (the Issues), in particular those on the division of the functions and duties of KCRC's Chairman and CEO, which to him was unclear; and
- (c) Letter dated 17 March 2006 from Ms Emily LAU to the Secretary for the Environment, Transport and Works (SETW) raising certain questions on the Incident.

(Post-meeting note: The information note in (a) above was issued to members vide LC Paper No. CB(1)1145/05-06 dated 22 March 2006.)

5. At the Chairman's invitation, SETW briefed members on the Administration's paper. In response to the Chairman, Acting CEO/KCRC confirmed that the letter published in Ming Pao was more or less the same as the letter he wrote to the Managing Board.

Circumstances surrounding the Incident

The causes and nature of the Incident

6. In recognition that the Incident all began with the Letter, Mr Andrew CHENG asked Acting CEO/KCRC whether he had to resort to writing the Letter rather than raising the Issues with members of the Managing Board, in particular SETW and the Secretary for Financial Services and the Treasury through other normal channels. In reply, Acting CEO/KCRC said that while as a member of the Managing Board he could always discuss with other Board members matters related to various aspects of KCRC, it was only by issuing the Letter that he for the first time formally raised the Issues with the Managing Board. He had not consulted any Board member before he issued the Letter.

7. Mr Albert CHAN referred to a KCRC staff member's claim that the Incident was the result of the conflict between the "shoeshining" culture and the accountable culture in KCRC, and queried if the Incident purely involved a simple move to highlight the problems as Acting CEO/KCRC had claimed. In his view, it might well be a pre-meditated "coup d'etat" masterminded by KCRC's senior management, who had originally planned to mobilize the support of other KCRC staff and manipulate the mass media to their advantage. In this connection, he asked Acting CEO/KCRC whether he had discussed with any KCRC senior executives before he issued the Letter, and how he managed to collect some 4 000 signatures in support of the Letter within a short time.

8. In response, Acting CEO/KCRC emphasized that he wrote the Letter on his own because he then felt it was the appropriate time to raise the Issues with the Managing Board and seek its advice. He did casually discuss with different people at different times on the best way to raise the Issues but he had not shown anybody the Letter before

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issuing it. Although he briefed KCRC's directors on the contents of the Letter after its issuance, the purpose was to enable them to learn the news from him instead of through the media. The directors indicated support for him at the moment, and reaffirmed their support in a letter to the Managing Board the morning after. He then also learnt that signatures were being collected to show support for him. However, the above were all natural developments. With his experience and expertise consistently in the area of rail operation, he was not good at staging coups. If the whole thing had been carefully planned, it would not have come to such an end. In response to Mr Albert CHAN on whether he had given his staff any hint to collect the signatures, Acting CEO/KCRC confirmed that the move came from the staff's own initiative.

9. Mr Jeffrey LAM pointed out that in the past four years, the senior management of KCRC had all along appeared to be willing to co-operate with Chairman TIEN in promoting a culture of accountability and high transparency in KCRC. He therefore questioned why problems in this regard would arise, necessitating the issue of the Letter. In reply, Acting CEO/KCRC explained that the senior management supported the culture of accountability and high transparency too. However, in promoting the accountable culture, time was required to explain to staff the rationale behind the management's decisions so as not to give them the impression that the management was looking for scapegoats instead of identifying the root causes of problems to avoid recurrence. As to the high-transparency approach, the requirement to report to the Government and media if rail service was delayed by more than eight minutes instead of 20 (the eight-minute requirement) might have the effect of giving the public the wrong impression that KCRC's service breakdowns had increased. Some staff might also find the eight-minute requirement infeasible and too demanding. Efforts and time were required to convince frontline staff of the need for the requirement because, without their support there would be implementation difficulties. He further explained that he had already alerted Chairman TIEN to the above concerns and problems before. However, as the circumstances did not change much, he saw a need to write the Letter.

Role of the Government in the Incident

10. Mr WONG Kwok-hing sought to ascertain whether SETW was aware of the Issues before the Incident broke out. In his view, as Government's representative on the Managing Board, SETW should be aware of the Issues beforehand. If not, the Government could not assure the public it could effectively monitor KCRC's operation and hence its service quality. SETW acknowledged that she had the important duty to ensure KCRC's service was safe, reliable and smooth, and pointed out that KCRC's service standard had been maintained notwithstanding the Incident. While confirming that the Incident had come as a surprise to her because there were no prior signs of discord between Chairman TIEN and Acting CEO/KCRC, she assured members that the separation of the CEO-cum-Chairman post in 2001 (2001 division) could already enable KCRC's Chairman and CEO to complement each other and at the same time provide a check-and-balance effect. Moreover, disagreement between holders of the two posts was not uncommon in other public bodies. It was just unfortunate that instead of being handled in-house, such differences had been played out in the open, thereby

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complicating and dramatizing the Incident.

11. Mr Andrew CHENG questioned why SETW could be unaware of the brewing of the Incident. He was concerned that her seemingly passive involvement in KCRC's operation might affect her ability to prevent recurrence of similar incidents. Mr LEE Cheuk-yan also found it unacceptable that SETW should, in his view, distance herself from the Incident as if she was not accountable, especially as the root of the Incident was, as he perceived, the duty and responsibility division problem highlighted in the Letter. He asked SETW whether she was aware of the division problem before the Incident and, if so, why she had not tackled it early to obviate the Incident.

12. In response, SETW reiterated that she was well aware of her duty to monitor KCRC's operation. However, as Government's representative on the Managing Board, she also had other duties such as to ensure a balance between rail service and other modes of public transport, and maintain an equitable balance between the considerations of wider public interests vis-à-vis the commercial operations of KCRC. She said that the details of the division of the functions and duties of KCRC's Chairman and CEO had not been set out mainly because it was important for KCRC, which operated along prudent commercial principles, to retain the flexibility to determine and fine-tune the relationship between the Managing Board and the executives to suit its operational needs and the prevailing corporate governance practice which changed overtime. She further explained that although she was aware of the differences between Acting CEO/KCRC and Chairman TIEN over certain matters, she had not been given to understand that they were so serious as to result in issue of the Letter. Nor had she known Acting CEO/KCRC was so aggrieved by the division of functions and duties. Mr LEE Cheuk-yan considered it undesirable that SETW had not taken the initiative to sort out the above differences although she was aware of them.

13. Mr Ronny TONG cast doubt on why SETW was not aware of the rift between KCRC staff and Chairman TIEN before the Incident, highlighting the Apple Daily's report on 28 October 2005 regarding KCRC staff's complaint about the culture of blame prevailing under the chairmanship of Chairman TIEN, and Sing Tao Daily's report on 19 January 2006 covering Acting CEO/KCRC's comment on Chairman TIEN's management style. He enquired if SETW was aware of the above two media reports and if so, what follow-up actions she had taken.

14. In reply, SETW said that it was not uncommon for a company with 6 000 staff to have dissatisfaction about the management. It was also natural that some KCRC staff would be aggrieved by Chairman TIEN's efforts to reform KCRC's culture. In recognition of the need to give KCRC a free hand, the Administration had always let KCRC handle its own staff matters instead of stepping in. Notwithstanding, positive actions had already been taken to address staff's grievances. She had also discussed with Chairman TIEN KCRC staff's concerns about the reform. As to Acting CEO/KCRC's comment at a previous meeting of the Subcommittee on Matters Relating to Railways, SETW said that as she understood, the comment was directed at his acting arrangement and not Chairman TIEN. Acting CEO/KCRC confirmed that the comment

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had been made in response to Mr Albert CHAN's question at the meeting of the Subcommittee on 18 January 2006, and was related to the constraints imposed by his acting arrangement on him in performing his duties, in particular in taking forward the reform. Mr Albert CHAN added that to do justice to Chairman TIEN, it should be pointed out that he was also concerned about Acting CEO/KCRC's protracted acting arrangement.

15. Ms Miriam LAU found the latest developments of the Incident regretful, and expressed concern about Government's role in the developments and its ability to prevent recurrence of the Incident. According to her, the issue of the Letter did not bother her so much as the high-profile media briefings held respectively by Acting CEO/KCRC on the night of 12 March 2006, and by 20 KCRC senior executives on 14 March 2006 (the 14 March briefing) at a room next to the Managing Board room to openly declare their support for Acting CEO/KCRC while the Managing Board was having a meeting to resolve the Issues. In her view, the above briefings had led to an important turn in the subsequent developments and eventually the taking of disciplinary actions against staff and resignation of Acting CEO/KCRC. In reply to her on whether any Government official had met with him before the 12 March media briefing, Acting CEO/KCRC pointed out that he did not know SETW was out of town before he issued the Letter. He therefore only called thereafter to discuss the Letter with her, who urged him to ensure KCRC's staff morale and service would not be affected. After SETW's return to Hong Kong, however, he managed to meet her in the daytime of 12 March 2006.

16. Ms Miriam LAU asked Acting CEO/KCRC whether KCRC's directors were present when he met with SETW on 12 March 2006, and whether SETW was informed of his plan to hold a press briefing on 12 March. In reply, Acting CEO/KCRC confirmed that two directors were present at the meeting. He however clarified that he had no plan to hold the briefing at that time. In fact, he had all along intended to resolve the Issues with the Managing Board at its meeting instead of through the media. He however felt obliged to hold the 12 March briefing to clarify the purpose of the Letter after being incessantly chased by reporters to respond to the media briefing held by Chairman TIEN earlier on the same day. SETW added that the purpose of her 12 March meeting with Acting CEO/KCRC was to gain better understanding of the Issues to prepare for the Managing Board meeting scheduled for discussion of the related issues. No mention of the 12 March press briefing had been made when she met with the Acting CEO/KCRC. She was notified of the briefing only minutes before it. Acting CEO/KCRC told her that there was a need to hold the briefing because he had been hard pressed by the media to respond to Chairman TIEN's earlier briefing. She did remind Acting CEO/KCRC to carefully assess the consequences of so doing but recognized the decision should remain with him.

17. Ms Miriam LAU pointed out that a meeting between Acting CEO/KCRC and the senior level of Government had been scheduled for 13 March 2006, and questioned why Acting CEO/KCRC had not waited to see if the scheduled meeting was of any help in resolving the Issues before he held the 12 March briefing in a high-profile manner. In

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reply, Acting CEO/KCRC reiterated that the purpose of the briefing was purely to collectively respond to the media on Chairman TIEN's earlier briefing. It was not meant to be a high-profile act. Nor had he anticipated that it would in turn lead to the 14 March briefing.

Role of the Managing Board in the Incident

18. Regarding the Managing Board's role in the Incident, Mr Abraham SHEK pointed out that Board members had never been alerted to any significant differences between Chairman TIEN and Acting CEO/KCRC before the Incident. He then emphasized that the duty of the Managing Board was to ensure KCRC's service quality, which it had diligently performed by spending long hours at meetings, examining all related matters in great detail, etc. In fact, the maintenance of safe and reliable railway services notwithstanding the Incident was ample proof that the Managing Board had successfully performed its role. He also denied the presence of any problem with the 2001 division of tasks, and explained that the delineation measures only sought to develop more details on the basis of the 2001 division. In addition, all members of the Managing Board and KCRC staff supported the accountability culture.

19. In reply to Mr Andrew CHENG on plans of the Managing Board to tighten up supervision of KCRC in the wake of the Incident, SETW echoed Mr Abraham SHEK's points in paragraph 18 above, and added that apart from attending long meetings, Board members also contributed to the work of KCRC by joining various committees formed under the Managing Board to help oversee specific aspects of KCRC's operations. Notwithstanding, the Managing Board would review its functions and duties in the wake of the Incident to better perform its supervisory role.

Disciplinary actions taken against staff as a result of the Incident

20. Mr LEE Cheuk-yan considered it undesirable that disciplinary action in the form of contract termination had been taken against Mr Michael LAI, General Manager – Marketing, as a result of the 14 March briefing without proper explanation. The action appeared to have been taken at the request of the Chief Executive (CE), who had commented at a media session that during the course of resolving the dispute between Chairman TIEN and Acting CEO/KCRC, there were serious personnel and disciplinary issues within KCRC. Mr LEE considered it unfair that Mr LAI had been penalized for having expressed certain views, whereas SETW had not been held accountable for failing to stop problems in time to obviate the Incident. He also cast doubt on whether proper procedures had been followed in terminating Mr LAI's contract. In response, SETW said that the Managing Board considered the holding of the 14 March briefing by the 20 senior KCRC executives very serious, and that such behaviour had caused serious damage to the reputation and image of KCRC as a responsible and orderly public organization. After careful consideration of the matter at its meeting held on 15 March 2006, the Managing Board resolved to terminate the contract of Mr Lai, who headed the 14 March briefing. As to whether the dismissal had anything to do with the above remarks of CE, SETW confirmed that this was the collective decision of the Managing

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Board made on its own. She also said that termination of contract was a common practice in the business sector and was totally legitimate. CE's remarks only showed that he was concerned about the Incident.

21. Pointing out that 20 KCRC senior executives were present at the 14 March briefing, Ms LI Fung-ying and Miss TAM Heung-man asked why only Mr Michael LAI had been singled out for action. They also sought details on the procedures followed to arrive at the decision to terminate his contract. SETW pointed out that written warning letters were issued to the other 19 senior management staff. Highlighting her reply to Mr LEE Cheuk-yan's previous question, SETW clarified that personnel matters of KCRC were handled by the Managing Board instead of by the Government. She further explained that as a senior executive, Mr LAI was expected to work with KCRC on the basis of mutual trust. In discharging his duties, there was an implied provision in his employment contract that he should protect KCRC's interests and image at all times. However, he had failed to perform such duty by acting as spokesman at the 14 March briefing and taking a lead in damaging KCRC's reputation and image. KCRC therefore terminated his contract by virtue of the above implied provision.

22. Ms LI Fung-ying was not convinced, and said that the two policy secretaries sitting on the Managing Board should instead be held accountable for the Incident. Mr LEE Wing-tat echoed her view. Ms LI was also concerned that the action taken against Mr Michael LAI would frighten KCRC staff out of expressing their views in future. At her request for sight of the relevant voting results of the 15 March Board meeting, SETW confirmed that the decision to terminate Mr LAI's contract had been made unanimously by the Managing Board. It was also after careful discussion that the Managing Board confirmed Mr LAI's leading role in the 14 March briefing. Details of the relevant discussion however could not be disclosed because the Board meeting proceedings were confidential.

23. In response to Mr LEE Cheuk-yan, Acting CEO/KCRC advised that according to KCRC's staff manual, certain procedures, such as conduct of inquiry and forming of a panel to examine the inquiry results, were usually followed before taking disciplinary actions. However, since the Managing Board was the highest authority in KCRC, its collective decision should be final. Moreover, there was no need to follow the above procedures in Mr Michael LAI's case because, instead of sacking him, his contract was terminated according to its terms.

24. In this regard, Miss TAM Heung-man enquired whether KCRC's image would be damaged if Mr Michael LAI instituted a suit against KCRC for terminating his contract. SETW considered it inappropriate to make comments in this regard.

25. Mr CHIM Pui-chung enquired whether Acting CEO/KCRC was forced by the Government to tender resignation. In reply, Acting CEO/KCRC confirmed that he tendered resignation of his own accord because, being the CEO of KCRC, he should be held accountable for the acts of the 20 senior executives, which were considered unacceptable by the Managing Board. Mr CHIM was however unconvinced, and

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questioned the real cause of Acting CEO/KCRC's resignation.

Impacts of the Incident

Impacts on the performance and safety of KCRC's service

26. Mr WONG Kwok-hing highlighted the public concern about the safety of KCRC's service in the wake of the Incident. Ms Miriam LAU, on the other hand, saw a need to positively look ahead to ensure KCRC's service quality. In this regard, Mr CHIM Pui-chung questioned whether, given the gravity of the Issues, the present arrangement for resolving the Issues would suffice so as to ensure KCRC's service quality. In reply, Acting CEO/KCRC pointed out that with the introduction of the delineation measures, the Issues had already been addressed. He assured members that in the eyes of all KCRC staff, service quality came first under all circumstances. In fact, the chairmen of different staff unions of KCRC had already issued open letters to their members to urge them to continue to perform professionally. As such, although there were lessons to learn from the Incident as to how views could best be expressed, the Incident had in fact provided an opportunity to improve service by sorting out problems. Mr CHIM questioned whether service quality could, as claimed above, be maintained after the latest dramatic development of the Incident. In response, Acting CEO/KCRC stressed the need to look ahead, and to give KCRC staff room to make improvement to the image of KCRC, which inevitably had been tarnished by the Incident.

27. Mr Abraham SHEK echoed Acting CEO/KCRC's points above, and assured members that notwithstanding KCRC's tarnished image, KCRC staff would be able to cope with the additional pressure so arising and continue to perform professionally to provide smooth and safe rail service. In particular, although the latest developments of the Incident might be frustrating to many of them who signed a letter in support of Acting CEO/KCRC, nothing happened to affect KCRC's service. This alone said much on the professionalism of KCRC staff and KCRC's good management. KCRC staff should therefore be given credit for their performance and be encouraged to keep up their good efforts.

28. Mr WONG Kwok-hing recalled the involvement of Mr James BLAKE, former Secretary for Works and Senior Director, Capital Projects of KCRC, in the Siemens Case, where his alleged failure to inform the Managing Board about delays by the signalling contractor Siemens and to consult the Board on remedial measures had resulted in KCRC paying an additional \$100 million to ensure the scheduled completion of West Rail on time. He then referred to the appointment of Mr BLAKE to take over the post of CEO, and enquired how the Administration could address public concern about the appropriateness of the appointment which, in turn, might have an impact on the service quality of KCRC. Mr Andrew CHENG shared his concerns. In response, SETW assured members that with Mr BLAKE's abundant experience in and profound knowledge of KCRC's operation, he was unanimously considered by the Managing Board to be the best candidate for the CEO post. She also believed that with the lessons learnt from the Siemens Case, Mr BLAKE would be better equipped to take the helm of

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KCRC.

29. Mr Ronny TONG felt that the crux of the Incident was the division of the functions and duties of KCRC's Chairman and CEO. In this regard, he pointed out that according to the KCRC Ordinance (Amendment) Bill in 2001, one of the tasks of KCRC's Chairman was setting performance objectives and monitoring the achievement of such objectives by the executives. However, it appeared that under the delineation measures, KCRC's Chairman was no longer responsible for setting performance objectives and monitoring their achievement. Addressing Mr TONG's concerns about the above change and hence KCRC's performance, SETW clarified that the above 2001 division of tasks was still in force. The delineation measures only sought to reinforce the relevant guiding principles, and delineate more clearly the details of the division of work in handling the day-to-day business of KCRC, so that instead of directly monitoring staff performance, KCRC's Chairman would do so via the CEO. The change had been made to address Acting CEO/KCRC's concern about differences between him and Chairman TIEN in this regard.

Impacts on staff morale

30. Ir Dr Raymond HO agreed with SETW that KCRC's service had not been affected by the Incident. Nonetheless, KCRC staff were put under additional pressure because of the Incident and other issues. First, KCRC staff had to adapt to Chairman TIEN's management style and high-transparency approach. Second, they were faced with uncertainties arising from the possible merger of KCRC with the MTR Corporation Limited (MTRCL), which had been under discussion for a long time. Third, KCRC staff were working very hard to address the problems arising from the KCR East Rail train incident (the East Rail incident) on 21 December 2005, when cracks were found in the mountings of underframe equipment on East Rail trains. Fourth, there appeared to be lack of public support for KCRC staff in the Incident. Fifth, KCRC staff who held the 14 March briefing were faced with disciplinary actions. In consideration of the impacts of the above on KCRC staff's morale, he stressed the need (a) to ensure KCRC staff that no more disciplinary actions would be taken against them because of the Incident, (b) to explain to KCRC staff the merger arrangements as soon as practicable, (c) to expedite the investigation into the East Rail incident, (d) to identify the real problems that gave rise to the Incident, and (e) to improve communication between KCRC's staff and management.

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31. Referring to the recent turmoil and management reshuffle as a result of the Incident, Mrs Selina CHOW also enquired about measures taken to ensure KCRC staff's morale would not be affected by the reshuffle as well as the uncertainties arising from the possible merger and the pending investigation into the East Rail incident.

32. In response, SETW made the following points –

- (a) The introduction of greater transparency and accountability to KCRC, formerly a public body, would inevitably take time and be met with difficulties and discords. The Managing Board had therefore more clearly delineated the work of KCRC's Chairman and CEO to improve corporate governance and hence tackle the above difficulties.
- (b) Regarding uncertainties arising from the possible merger, KCRC's front-line staff had already been assured on a number of occasions that their job security would be ensured at the time of the merger. As to the remaining staff, suitable arrangements would be made in a fair and open manner upon merger. The two rail corporations had already submitted a joint report on the outcome of the merger discussions. It was stated in the report that staff would be consulted on matters affecting them. In fact, KCRC had opened up channels to listen to the views of its staff on the possible merger and from time to time had held meetings with staff representatives. In the wake of the Incident, communication had been further geared up. Efforts had also been made to expedite the possible merger to sort out uncertainties as soon as practicable. It was hoped that a final proposal in this regard would be ready in two months' time.
- (c) The Administration was mindful of the fact that due to the East Rail incident, KCRC staff were coping with longer working hours and greater psychological burden. The investigation and assessment by Government would be completed in July 2006.
- (d) Efforts were being made to enable the staff side and management side of KCRC to resolve their differences in a rational, proper and smooth manner by ensuring direct communication channels within KCRC's setup.
- (e) In recognition that any delay in resolving the Incident would adversely affect staff morale and public interests, the Managing Board had already done its best to identify the best solutions within the shortest possible time to keep the impacts to the minimum.

33. Referring to (b) above, Mr LEE Cheuk-yan sought to ascertain whether "front-line staff" included contract staff. In response, Acting CEO/KCRC said that the Corporation was still examining the definition of "front-line staff". Notwithstanding, staff would be consulted once the definition was ready. SETW assured members that staff represented by staff unions would most likely be covered. Moreover, a decision

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had yet to be made on the possible merger. In recognition of Mr LEE's concerns above, the Chairman asked the Administration to address them in the paper on the possible merger.

34. Following up item (c) above, Ir Dr Raymond HO referred to the switch of train operation to the manual mode since the East Rail incident to reduce train speed and hence the risk of causing or aggravating cracks in the mountings of train underframe equipment, and enquired why train operation could not be reverted to automatic train operation mode after so many months. He called for early reversion to the automatic train operation mode on grounds that the manual mode would exert additional pressure on KCRC staff, and that train speed could also be reduced even with the adoption of the automatic train operation mode. In response, SETW said that KCRC was still adjusting and testing the automatic train operation mode. Since the Hong Kong Railway Inspectorate team had yet to be satisfied that the automatic train operation mode had nothing to do with the cracks, for prudence's sake it was decided that the manual operation mode should continue.

35. Mr LEE Wing-tat stressed the need to look ahead instead of dwelling on details of the Incident. In recognition that staff morale would affect KCRC's daily operation, he urged the Administration and the management of KCRC to make efforts to understand and address staff's discontent and concerns, and to assure them they could voice their views without fear of being penalized for that, notwithstanding the disciplinary actions taken against some staff involved in the Incident.

36. In response, SETW emphasized that KCRC staff were in no way prohibited from voicing their views. Disciplinary actions were taken against the 20 senior executives mainly because they had caused serious damage to KCRC's image by holding a press briefing on 14 March 2006. She further pointed out that KCRC staff could always voice their views through various channels or through their respective staff unions or departments. In fact, KCRC management welcomed comments from staff. When the Administration and Legislative Council (LegCo) Members visited KCRC's depots to give spiritual support to KCRC staff in recognition of the additional workload and stress they suffered because of the East Rail incident, KCRC staff were also encouraged to express their views to LegCo Members. Acting CEO/KCRC echoed her points, and supplemented that apart from staff unions, there were departmental consultative committees whose members were elected by the staff concerned. There were also hotlines and email addresses for solicitation of staff's views. Such communication channels would continue in future. He further reported that the Managing Board well understood that the KCRC staff who signed their names in support of the Letter had only made use of internal channels to express their views. It therefore considered the act acceptable and had already assured the staff concerned that they would not be penalized for it. KCRC staff were thus assured that they could continue to express views freely and frankly in future.

37. Mr LEE Cheuk-yan pointed out that as revealed in the Incident, Chairman TIEN's micro-management style would affect staff morale. Citing the eight-minute

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requirement imposed by him as an example, KCRC staff had expressed concern about the practical difficulties for compliance with the requirement. He opined that the requirement might also have the unintended effect of pressurizing staff to resume rail service as soon as possible without first examining in detail the cause of the service delay. As a result, the safety of rail service might in the long run be jeopardized. In reply to him on how a balance between public expectation of openness and service quality could be struck, Acting CEO/KCRC assured members that KCRC staff would not compromise safety notwithstanding the requirement. In fact, if it was estimated that service could not resume within eight minutes, KCRC staff would report the incident even before the eight-minute deadline was due. Mr LEE considered the latter scenario not conducive to public confidence in KCRC's service and hence staff morale. He also opined that regardless of the above assurance, the scenario he feared was still likely. He therefore concluded that if the requirement was not practical, it should be reviewed and lifted where necessary. In reply to Mr LEE on whether he supported the requirement, Acting CEO/KCRC agreed that there was a need to satisfy public demand for timely report of service delay. He however also saw a need to strike a balance between public expectations and practicability, and to involve staff in working out the implementation details so as to understand the difficulties they faced and enlist their support for the requirement.

Impacts on the possible merger

38. Ir Dr Raymond HO enquired how KCRC's senior and middle management's concerns about the possible merger could be allayed, especially as some of them had openly criticized Chairman TIEN in the Incident, and were afraid that such acts would affect their job security in the possible merger. In response, SETW reiterated that suitable staffing arrangements would be included in the proposed merger package.

39. Mr Albert CHAN suspected that the Government was using the Incident as an excuse to expedite the possible merger to the disadvantage of KCRC. He expressed concern that the Managing Board's high-handed management style, as exhibited by the termination of Mr Michael LAI's contract, might mean that KCRC staff would have little bargaining power in the possible merger, thus entrenching MTRCL's leading role in the merged entity. In particular, there was no staff consultation in this regard. In reply to him on measures to protect the interests of KCRC and its staff in the possible merger, SETW stressed the need to exercise care in handling the possible merger in view of its complexity and wide implications. As the negotiation involved commercially sensitive information relating to the operation of the two rail corporations, and many matters had yet to be agreed upon, there was difficulty in disclosing more details at this stage to assure staff. The Administration was therefore aiming to expedite the discussions so that merger arrangements could be worked out early for thorough discussion by all parties involved.

40. Mr Albert CHAN pointed out that it was such secrecy that had given rise to staff concerns about the possible merger. Highlighting the wide and significant implications of the possible merger on staff, he urged the Administration to take immediate action to

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address the concerns of staff rather than awaiting the announcement of the merger package. Once a decision was made, it was unlikely that the views and concerns expressed by the staff side would be taken into due regard.

KCRC top management's variable pay

41. Mr Andrew CHENG highlighted a recently exposed case where KCRC had been found to leave a high-load crane costing more than \$20 million standing idle, and questioned the Managing Board's proposal to release VP to eight senior executives of KCRC despite such blunders and the East Rail incident. In consideration of the above proposal and the Incident, he expressed concern how KCRC could convince the public of its willingness to embrace an accountable culture.

42. In response, Acting CEO/KCRC explained that VP payment was based on the overall performance of KCRC under four strategic areas during the past year. Since the relevant performance targets were met, and the East Rail incident affected the performance of the senior executives concerned in relation to only one or two of the 15 relevant performance measures, the Managing Board decided that the payment of VP to the executives should not be so influenced. He further advised that idling of the crane had been caused by changes in market demand which resulted in a drop in freight volumes. At the time of purchase, there was a genuine need for the crane to meet operational needs.

43. In this regard, Mr Andrew CHENG enquired how KCRC management could inspire confidence in the public that KCRC's expenditures would be value for money, and that it would set high performance standards. In response, SETW called upon members to look ahead and to allow KCRC to learn from past mistakes. She also assured members that there were stringent provisions and procedures in KCRC governing its expenditures.

44. In reply to Mr WONG Kwok-hing on why there was no VP payment and reallocation in the past, Acting CEO/KCRC explained that this was because the VP scheme was introduced on a full-year basis with effect from 1 January 2005, with participation extended to include all the eight current members of the Management Committee (MCOM). Before that the scheme had been operated as a pilot scheme for six months in 2004 involving six senior executives only. As such, although the executives were assigned additional allocation in accordance with the results of the scorecard in 2004, the additional allocation was small and was used to subsidize staff activities only. The additional allocation in 2005, however, amounted to \$1 million. In recognition that the good performance of the past year owed much to the hard work and dedication of the staff as a whole, as a token of appreciation for the staff, the MCOM members, of their own initiative, unanimously decided to recommend to the Managing Board to reallocate the additional sum to the staff.

45. In response to Mr WONG Kwok-hing on whether reallocation of the top-up VP to all staff could be made as a standing arrangement for rewarding front-line staff,

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Acting CEO/KCRC explained that this should be a decision of the MCOM members because the top-up payment had been introduced to encourage them collectively to achieve performance exceeding targets. Mr WONG opined that if reallocation was not a standing arrangement, the present reallocation move might be an act to “buy” the support of staff for the management side in the Incident. Acting CEO/KCRC pointed out that the reallocation was still a recommendation and the detailed arrangements had yet to be decided by the Managing Board. As such, staff were yet to benefit. Moreover, as reported in paragraph 44 above, although the other staff might not be aware, the MCOM members had also reallocated their top-up VP to staff in 2004. Since the top-up amount in 2005 was great, they considered the present recommendation more appropriate, and saw a need to inform the Managing Board and other staff of the recommended arrangement. Mr WONG urged the Managing Board and SETW to consider making reallocation of VP a standing practice.

46. Mr LEE Wing-tat considered Mr WONG Kwok-hing’s above query of KCRC’s MCOM members inappropriate unless he had proof, and asked him to withdraw the remark. Mr WONG refused to do so on grounds that his query was a reasonable deduction. The Chairman reminded members to always weigh their words and refrain from making unsubstantiated comments.

The way forward

47. Mr LEE Cheuk-yan considered that the Administration’s paper for this meeting had failed to address the many concerns about the Incident, in particular its implications on the possible merger and Government’s role in the Incident. He therefore opined that the Administration should be required to provide additional details in due course. In this regard, the Chairman said that corporate governance issues could be further pursued in the context of the possible merger. Mr Andrew CHENG, however, saw a need for the Administration to respond at the next regular meeting of the Panel to the many concerns raised at this meeting to ensure KCRC staff’s morale would not be adversely affected by the Incident. He also opined that Chairman TIEN and Mr James BLAKE should be invited to attend the said meeting. Mr Albert CHAN shared his views, and said that KCRC’s directors and staff unions should also be invited to enable members to better understand the problems leading to the Incident. Mr Abraham SHEK, however, did not agree that the Panel should further pursue the Incident. In his view, LegCo should not seek to interfere in the operation of KCRC, whose governing body should be the Managing Board. Mrs Selina CHOW also saw a need to give room for KCRC to recover from the Incident, for Mr BLAKE and KCRC staff to adapt to each other, and for Chairman TIEN to get used to his recently re-delineated role. As such, more time should be allowed before the Panel revisited the Incident. Along this line, if the Administration was ready to report on the possible merger within a short time, discussion of the possible merger might be taken as an opportunity to examine the after effects of the Incident. If the possible merger would take longer time to work out, the Panel would discuss the Incident at its May meeting. After further discussion, members agreed that the Panel should further discuss issues related to KCRC’s corporate governance at its regular meeting in April 2006.

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(Post meeting note: The Government announced on 11 April 2006 that it had reached an understanding with the MTR Corporation Limited on the structure and the terms for the merger of the MTR and the KCR systems. The Panel on Transport and the Panel on Financial Affairs held a joint meeting on 12 April 2006 to receive a briefing by the Administration on the related issues. After deliberation, members agreed that the item on KCRC's corporate governance scheduled for discussion at the meeting on 28 April 2006 be replaced by the item "Merger of MTR and KCR Systems – Staff-related issues". The remaining issues arising from the proposed rail merger would separately be dealt with by the Panel on Transport and Panel on Financial Affairs)

II Any other business

48. There being no other business, the meeting ended at 4:35 pm.

Council Business Division 1
Legislative Council Secretariat
22 May 2006