

Legislative Council Panel on Transport

KCRC Corporate Governance

Purpose

This paper sets out how the Government representatives as members of the KCRC Managing Board and together with the entire Managing Board have resolved the recent incident on KCRC's corporate governance issues.

Background

2. Under the KCRC Ordinance (Cap.372) ("the Ordinance"), the Managing Board, comprising the Chairman, Chief Executive Officer ("CEO") and other Members, shall be the governing body of the Corporation. Section 3(2A) of the Ordinance provides that the functions of the Chairman and the CEO shall be the functions assigned to them by the Ordinance and any functions that the Corporation may assign to them.

3. The posts of the KCRC Chairman and the CEO were originally held by one person. In 2001, in light of the expansion of KCRC's network and patronage, and the increasing public expectation on the services of the Corporation, the Government strengthened the corporate governance of the Corporation by separating the functions and duties of the Chairman and the CEO to ensure that both strategic planning and day-to-day management receive the undivided attention they deserve. The Government considers that the separation of the post of the Chairman and CEO enables the Chairman and CEO to complement each other and at the same time provides a check-and-balance effect. This is also in line with the universal trend in good corporate governance.

4. Specifically, during the deliberation of the KCRC Ordinance (Amendment) Bill in 2001, the Government explained that the Chairman should concentrate on the following tasks –

- (i) reviewing and guiding corporate strategy and business development plans;

- (ii) overseeing financial planning, major capital expenditure, acquisition and divestiture;
- (iii) setting performance objectives and monitoring the achievement of such objectives by the executives;
- (iv) ensuring the adequacy and integrity of the accounting, financial reporting and risk management systems; and
- (v) identifying candidates for key executive positions, overseeing succession planning and determining executive remuneration.

On the other hand, the CEO should focus on –

- (i) implementing the business strategies determined by the Board;
- (ii) delivery of operational and financial performance objectives set by the Board;
- (iii) day-to-day management of the rail operation and rail construction; and
- (iv) internal administration of the Corporation.

5. On the basis of the above division of functions and duties, to facilitate the handling of the operation and business of the Corporation, the Corporation has set out in its Corporate Governance Manual the roles of the Chairman, CEO and Managing Board. The Manual has been uploaded on the homepage of KCRC and the relevant provisions are at *Annex*.

The recent incident relating to corporate governance of KCRC

6. The Government was made aware of the incident in the morning of 10 March 2006 when we received a letter from Mr Samuel Lai, Acting CEO, addressed to the Managing Board which set out his concerns on the division of functions and duties of the Chairman and the CEO. The Government was very concerned about the incident and immediately discussed the matter with the KCRC Chairman, Acting CEO, and other Managing Board Members with a view to mediating and reaching a satisfactory solution.

7. The KCRC Managing Board subsequently convened a meeting on 14 March 2006, the Board reached a consensus and reiterated their support for enhancing transparency and accountability in KCRC and for the corporate governance structure i.e. the parallel functions of the Chairman and CEO.

The Board also further decided on a set of measures to delineate more clearly the work of the Chairman and the CEO. These measures not only reinforce the guiding principles set out in paragraph 4 above, but also delineate more clearly the details of the division of work between the Chairman and CEO in handling the day-to-day business of KCRC, including-

- (a) the Chairman is responsible for the conduct of the business of the Managing Board;
- (b) the Chairman is responsible for ensuring that the contents and order of the Managing Board's agenda are correct and that Members receive the relevant Board papers in good time. The papers submitted by the Management may also set out the views and comments of the Chairman;
- (c) the CEO is responsible for the conduct of the Corporation's day-to-day business; and
- (d) the CEO is responsible for public relations and will be the spokesman for the Corporation. The Chairman may be the spokesman on important matters, as decided by the Managing Board.

8. As regards railway operation, during this incident relating to corporate governance, the railway operation staff of KCRC have been carrying out their duties diligently as usual and Government has also been upholding its regulatory role. Continued safe and reliable railway services are maintained throughout the period.

Other issue: Personnel and disciplinary problem on 14 March 2006

9. On 14 March 2006, while the KCRC Managing Board was having a meeting to resolve issues relating to corporate governance, a group of 20 senior KCRC senior executives made a declaration to the media at the room next to the Board room. The KCRC Managing Board considered that matter very serious and that such behaviour had caused serious damage to the reputation and image of KCRC as a responsible and orderly public organization.

10. After careful consideration of the matter at the Managing Board meeting held on 15 March 2006, the Managing Board unanimously resolved to terminate the contract of Mr. Michael Lai, General Manager, Marketing, and to issue written warning letters to the other 19 senior management staff. The Acting CEO, Mr Samuel Lai, also tendered resignation to the Board as he considered that, being the CEO of the Corporation, he should be held accountable for the acts of his staff. The Managing Board, after careful consideration, accepted Mr Lai's resignation and agreed to invite Mr James Blake to take over the post of CEO. Mr Lai has also agreed to stay in KCRC to ensure a smooth transition.

ETWB

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SECTION 2: CORPORATION AND MANAGING BOARD – ROLE OF THE CHAIRMAN, STANDING ORDERS, RULES FOR CONDUCT OF CORPORATION BUSINESS AND COMMITTEES OF THE MANAGING BOARD

CORPORATION AND MANAGING BOARD

201 The Kowloon-Canton Railway Ordinance (Chapter 372) sets out the powers of the Corporation.

202 The Corporation's governing body is its Managing Board. This Board comprises a Chairman and nine Members, one of whom is the Chief Executive Officer. All are appointed by the Chief Executive of the Hong Kong Special Administrative Region with the exception of the Chief Executive Officer, who is appointed by the Corporation with the prior approval of the Chief Executive of the Hong Kong Special Administrative Region. The Chairman and the Chief Executive Officer perform the functions assigned to them by the Ordinance, the Managing Board and its Committees.

ROLE OF THE CHAIRMAN

211 The Chairman is responsible for the conduct of the Business of the Managing Board.

212 The Chairman must ensure that the content and order of the Managing Board's agenda are correct and that Members have the relevant Board papers in good time. In consultation with Members, he is required to settle the frequency, location and duration of meetings.

213 The Chairman shall preside at all meetings of the Managing Board. If he is unable to attend a meeting, and in the absence of any Member nominated and appointed to act as Chairman in his place, the Standing Orders of the Managing Board shall apply.

214 In the event that the Chairman is absent from Hong Kong or unable to through illness to carry out his duties, he must nominate a Member of the Managing Board to the Secretary of the Environment, Transport and Works for appointment to act as Chairman until he is able to resume his responsibilities.

STANDING ORDERS OF THE MANAGING BOARD

221 The Managing Board's Standing Orders, which set out how the Board conducts its business, are reproduced as paragraphs 222 to 229 below.

222 The Board may appoint a Secretary and shall cause minutes to be kept of all resolutions and proceedings of the Board at each meeting. The minutes of each meeting shall include a record of the Members, Corporate staff and any other parties who are present.

223 Meetings of the Board will normally be held on the last Monday of each month. Formal notice will be given and confirmation of the date, time and venue will be noted at the end of the minutes of the previous meeting.

224 Any paper for consideration of the Board should be forwarded to reach Members at least 7 days prior to the relevant Board meeting. With the Chairman's approval, urgent or sensitive papers may be distributed at any time prior to the meeting, or tabled at the meeting.

225 In addition, the Chairman is empowered to call extraordinary meetings of the Board at any time, and any 2 Members of the Board may together call a meeting by requisition to the Secretary in writing specifying the business of the meeting.

226 At least 48 hours' notice of any extraordinary meeting shall be given in writing to each Member. The notice shall specify the place, date and time of the meeting and the business to be conducted.

227 The Chairman may also, without calling a meeting, circulate in writing any resolution to all Members of the Board, and such resolution shall be duly passed if signed by not less than 5 Members.

228 In the absence of the Chairman of the Board and of any Member nominated and appointed to act as Chairman in his place, the Board may appoint a Member to chair the meeting or to respond to problems on behalf of the Board.

229 In the event of any inconclusive ballot of Members on any issue, a casting vote shall be exercised by the Chairman.

RULES FOR CONDUCT OF CORPORATION BUSINESS

241 The following matters will in all cases be referred to the Managing Board for its consideration and approval, together with any further items which the Board may from time to time decide –

- (a) Board General Standing Orders.
- (b) Rules for Conduct of Corporation Business.
- (c) By-laws
- (d) 3 Year Business Plans, including revenue, expenses and capital budgets for the ensuing year, annual manpower plan and pay review.
- (e) Annual Budget.
- (f) Annual Report and Audited Accounts.
- (g) Recommendations with respect to Dividend Payments.
- (h) Major Business Strategies.
- (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 non-lowest conforming expenditure and all non-highest conforming revenue contracts, and variations to such contracts, in excess of HK\$20 million.
- (m) All consultancy contracts, and variations to consultancy contracts, in excess of HK\$10 million.
- (n) Substantive appointments of the Chief Executive Officer, Senior Directors, Directors, Deputy Directors, and General Managers who directly report to the CEO, including prior clearance with the Board of any terms and conditions for negotiating agreements providing for pension, gratuities, settlement and other financial benefits.
- (o) Borrowings other than those involving uncommitted facilities with maturities of one year or shorter.
- (p) Purchase and sale of all real property.

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

242 In addition, Management must report to the Board each month on significant developments, together with the operating and financial results, information on use of the Corporate Seal, letting of major contracts, accidents, service disruptions, public complaints and any other matters which may be required by the Board from time to time.

243 All other authorities to carry out Corporation activities are delegated to the Chief Executive Officer.

SUBMISSIONS TO THE MANAGING BOARD AND ITS COMMITTEES

261 As the Managing Board has consciously decided to limit its consideration to those key matters specified in the Rules for Conduct of Corporation Business, before making a submission to the Managing Board or one of its Committees the responsible Division or Department head must first ascertain whether the matter needs reference to the Managing Board or the Committee, or can instead be decided by the Chief Executive Officer exercising his delegated authority. Advice may be sought from the Company Secretary and General Counsel, and the Deputy Company Secretary.

262 The Chief Executive Officer has a duty to ensure that all submissions to the Managing Board and its Committees (except the Audit Committee) state the relevant issues and proposals succinctly and definitively. In the case of the Audit Committee, the Chief Executive Officer will only be concerned with those parts of papers which reflect Management's responses to audit findings and recommendations, and not with the findings and recommendations of either the General Manager, Internal Audit or the External Auditor, which will not be subject to amendment or softening.

263 The Chairman shall determine what papers are to be submitted to the Managing Board and, in doing so, that the content and order of the Managing Board's agenda are correct. He has the responsibility to ensure that the content of papers submitted to the Managing Board accord with the policy previously laid down by the Managing Board and, where they do not, to bring this to the attention of the Chief Executive Officer. In consultation with the Chairman, the Chief Executive Officer will then be responsible for deciding whether any paper should be withdrawn from the agenda, whether the content of any paper should be amended to accord with the approved policy or whether the Managing Board's approval should be sought to amend the prevailing policy.

264 All papers relating to matters falling within the terms of reference of a Board Committee must be considered by that Committee before being submitted to the Board unless the Board or the Chairman declares otherwise.

265 The Chairman, and Members having cleared any board paper initiated by them with the Chairman, may submit papers to the Managing Board in accordance with paragraph 224.

266 Only the Company Secretary and General Counsel, and the Deputy Company Secretary have the authority to despatch papers to the Board and its Committees. The purpose of this control is simply to ensure the quality, timeliness and orderliness with which papers are prepared and issued. For the avoidance of doubt, this requirement should not in any way inhibit or discourage any Directors or General Managers from raising issues on which they consider the Managing Board should be consulted or informed. Indeed it is their responsibility, as Directors and General Managers, both to raise issues and to speak up because Members of the Managing Board require their advice, and because Members and Management are part of the same corporate team.

SECTION 3: ROLE OF THE CHIEF EXECUTIVE OFFICER AND THE MANAGEMENT COMMITTEE

ROLE OF THE CHIEF EXECUTIVE OFFICER

301 The Chief Executive Officer of the Corporation is responsible to the Board for the conduct of the day-to-day business of the Corporation and for implementing the policies and strategies decided by the Board. He is responsible to the Board for all aspects of the Corporation's performance.

302 Save for those matters reserved to the Managing Board under the Rules for Conduct of Corporation Business for its consideration and decision, the Managing Board has delegated its authority to the Chief Executive to make decisions in respect of all other matters arising from the business of the Corporation.
