

**Legislative Council Panel on Transport
21 March 2006**

KCRC Corporate Governance

Purpose

This paper prepared by Kowloon-Canton Railway Corporation (KCRC) briefs Members about the Corporate Governance issue raised by the Acting Chief Executive Officer (ACEO) Mr Samuel Lai in his letter dated 9 March 2006 to the Managing Board.

Background

2. In September 2001, members were briefed that the Government had decided to split the former position of full time Chairman and Chief Executive of the KCRC into a part-time position of Chairman and a full-time position of CEO on the grounds that with the separation of the functions and duties of the Chairman and the CEO, the supervision of the wide range of tasks facing KCRC would be more effective by the Corporation. The Chairman, separate from the executives, would strengthen the independence of the Managing Board and hence its ability to discharge its supervisory functions. The CEO could devote full attention to the day-to-day management of the railway operation and the implementation of committed railway projects. This is in keeping with the universal trend in good corporate governance. It is also the model in most public corporations e.g. Airport Authority and Hospital Authority.¹

3. The KCRC Ordinance (Amendment) Bill 2001 had a general empowering provision to the effect that the functions of the Chairman and the CEO shall be the functions assigned to them by the principal Ordinance and any functions that KCRC may assign to them.

4. In the subsequent Legal Service Division's Report to the House Committee meeting on 2 November 2001,² it was explained that the Government's reasons for not setting out the duties and functions of the Chairman and the CEO, or at least their respective areas of responsibility, were

¹ See TBCR 3/1015/98 Pt. 3 – Legislative Council Brief prepared by the Transport Bureau dated 27 September 2001

² See LC Paper No. LS2/01-02

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 CEO) 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 CEO should be functions assigned to them by the Managing Board as in the case of any other normal commercial entity.

5. However, Legislative Council Brief dated 27 September 2001 further explained that the part-time Chairman should lead the KCRC Board and should concentrate on the following tasks -

- (a) reviewing and guiding corporate strategy and business development plans;
- (b) overseeing financial planning, major capital expenditure, acquisition and divestiture;
- (c) setting performance objectives and monitoring the achievement of such objectives by the executives;
- (d) ensuring the adequacy and integrity of the accounting, financial reporting and risk management systems; and
- (e) identifying candidates for key executive positions, overseeing succession planning and determining executive remuneration.

6. In the case of the CEO, who would also be a member of the Board, should focus on -

- (a) implementing the business strategies determined by the Board;
- (b) delivery of operational and financial performance objectives set by the Board;
- (c) day-to-day management of the rail operation and rail construction; and
- (d) internal administration of the Corporation.

7. This separation of roles and responsibilities reflects best corporate governance practices as recommended in the 1992 UK Cadbury Report and

later similar reports. In the case of the positions of Chairman and CEO, the Cadbury Report recommends that “there should be a clearly accepted division of responsibilities at the head of a company, which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision.”

8. In order to achieve a balance of power and authority, the very different but complementary roles of the Chairman and the CEO need to be defined. The KCRC Board has attempted to more fully describe this relationship in the KCRC’s corporate governance manual, a copy of which is available to the public on the KCRC’s website. In summary, the manual states that the Chairman is responsible for the conduct of the Business of the Managing Board. Those matters that the Board has reserved to itself to decide are set out in the Rules for Conduct of Corporation Business in the corporate governance manual. All other authorities to carry out Corporation activities are delegated to the CEO.

9. How the requirements of the corporate governance manual were to be interpreted in practice to serve the best interests of the community, the Corporation, passengers and staff was the heart of the CEO’s letter of 9 March 2006 seeking the advice of the Chairman and the members of the Managing Board.

Kowloon-Canton Railway Corporation
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