

立法會交通事務委員會

九廣鐵路公司的公司管治事宜

目的

近日九廣鐵路公司(九鐵公司)發生涉及公司管治的問題。本文闡述政府人員作為公司管理局成員及與整個管理局對事件的解決方法。

背景

2. 《九廣鐵路公司條例》(第 372 章)訂明，管理局是九鐵公司的管治團體，由主席、行政總裁及其他成員組成。根據該條例第 3(2A)條訂明，主席及行政總裁的職能，是該條例授予他們以及由公司指派給他們的職能。

3. 九鐵公司的主席及行政總裁以往由同一人擔任。於二零零一年，鑑於九鐵網絡日益擴大，乘客量日增，公眾對九鐵公司服務的期望亦越來越高，政府強化了九鐵公司的公司管治，把公司主席及行政總裁的職能及職責分開，使兩者能各司其職，務求令策略性規劃及日常的鐵路營運均得到充分的關注。政府認為分設主席及行政總裁，互相輔助及制衡，是公司管治的上佳模式，亦是符合公司管治的國際主流趨勢。

4. 具體而言，在審議《2001年九廣鐵路公司(修訂)條例草案》時，政府已解釋九鐵公司的主席須集中處理下列事宜；

- (i) 檢討並指導公司訂立的策略和業務發展計劃；
- (ii) 監督財政計劃、重要的資本開支、收購和出售公司資產事宜；
- (iii) 定下服務表現指標，並監督行政人員負責完成這些指標；

- (iv) 確保會計、財政報告和風險管理系統穩健完善；以及
- (v) 物色可擔任行政要職的人選，監督制定接班計劃，以及釐定行政人員的薪酬。

至於行政總裁則須專注於下列事項：

- (i) 執行由管理局決定的業務策略；
- (ii) 落實由管理局定下的營運和財政表現指標；
- (iii) 管理日常的鐵路營運和鐵路工程；以及
- (iv) 處理公司的內部行政事宜。

5. 九鐵公司按照以上分工，在處理公司事務的具體運作上，於《公司管治手冊》中列明了主席、行政總裁及管理局的不同角色。有關手冊載於九鐵公司網頁，相關的條文現載於附件(只備英文本)。

九鐵公司近日發生涉及公司管治的問題

6. 二零零六年三月十日上午，政府接獲署理行政總裁黎文熹先生發給管理局的函件，得悉黎先生表示關注公司主席及行政總裁的權責分工問題。政府對此事極度關注，並即時與公司主席、署理行政總裁及管理局成員討論事件，進行調查，務求尋求一個圓滿的改善方法。

7. 隨後九鐵公司管理局於三月十四日舉行會議，各成員達成共識，重申支持九鐵公司實行高透明度及問責精神，確定目前公司管治模式，即是主席及行政總裁並行，管理局亦同時進一步制定一套方案，讓主席及行政總裁的分工在運作上劃分得更為明確。該方案除了肯定上文第 4 段所述的指導原則外，亦訂明了主席及行政總裁處理日常事務上的具體分工細節，包括：

- (a) 主席負責處理管理局的事務；
- (b) 主席負責確保管理局開會議程的內容和次序正確無誤，並確保及早向成員送達管理局的有關文件。管理層提交的文件亦可闡述主席的觀點和意見；
- (c) 行政總裁負責處理九鐵公司日常的運作；及
- (d) 行政總裁負責處理與公共關係有關的事務，並擔任公司的發言人。管理局可決定由主席代表公司就重要的事項發言。

8. 在鐵路運作方面，在今次事件期間，九鐵的鐵路運作人員如常努力工作，從沒有鬆懈。政府的監察仍然繼續，期間鐵路的安全及可靠性並無受任何影響。

其他事項：三月十四日的人事及紀律問題

9. 二零零六年三月十四日，正值九鐵公司管理局開會解決涉及公司管治的問題之時，九鐵公司 20 名高級管理層人員在隔鄰房間會見傳媒發表聲明。管理局認為事件嚴重，涉及人事紀律問題，有關員工的整體行為嚴重損害九鐵公司作為一間負責任和有秩序的公營機構的聲譽及形象。

10. 管理局在三月十五日的會議中，經慎重考慮有關的事件後，一致決定終止市務總經理黎啟憲先生的合約，並向其餘 19 名高級管理層人員發出警告信。九鐵公司署理行政總裁黎文熹先生認為其作為公司的行政總裁，應為下屬的行為負責，所以向管理局請辭。管理局在詳細考慮後，接納黎先生的辭職，並同意邀請詹伯樂先生接任公司行政總裁。黎文熹先生亦同意留任直至交接工作順利完成。

環境運輸及工務局
二零零六年三月

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.
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- (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.
