



10

Railway Reform:

Toolkit for Improving Rail Sector
Performance

Chapter 10:

Corporate Governance for a
State-owned Railway Enterprise

10 Corporate Governance for a State-owned Railway Enterprise

Transparency – presenting accurate information on governance and performance to the public – is one of the most important sources of accountability for both SOEs and their state owners

10.1 Introduction

Corporate governance of a state-owned railway enterprise provides the framework for ensuring that the railway is well managed, implementing shareholder-set policy, conducting business lawfully, and performing in accordance with owner's expectations. It includes creating: (i) a transparent and healthy relationship between the government and the entity; (ii) a structure for strategic guidance and oversight of the railway; and (iii) a structure for appointing an appropriately qualified and motivated management team.

Most formerly state-owned railways are now organized either as state-owned enterprises (SOEs) or as private corporate enterprises with state ownership of part or all of the shares¹²². This chapter describes good practice for how corporate governance processes should work for state-owned railways.

Sources of good practice

This chapter draws on good practice guidance from the “Guidelines on the Governance of State-owned Enterprises” and the “Principles of Corporate Governance” prepared by the Organization for Economic Co-operation and Development (OECD)¹²³, as well as the experience of the World Bank in the rail sector. The Guidelines on the Governance of State-owned Enterprises (the OECD Guidelines) provide the only international body of guidance specific to the governance of SOEs. The two sets of OECD Guidelines are a unique and valuable resource for governments and ministries. They provide recommendations and extensive annotations. The OECD recommends that where possible SOEs should adhere to the broader ‘Principles’, which are intended to apply to both privately and publically owned enterprises. The World Bank’s SOE Toolkit, “Corporate Governance of State-Owned Enterprises: A Toolkit” provides useful guidance¹²⁴.

A selected set of sample documents for carrying out the corporate governance functions prepared by the World Bank are provided in Annexes.¹²⁵

¹²² An SOE is normally established under a special law applicable only to state entities, i.e. no provision for private shareholders. A private corporate enterprise with 100 per cent state ownership is legally a private corporation, but all of the shares are (at least initially) held by the state. The latter has all the legal status of any privately-held corporation, thus it is easier to add non-public shareholders later without making major changes to the corporate charter.

¹²³ OECD (2015), *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition, OECD Publishing, Paris; and OECD (2015), *G20/OECD Principles of Corporate Governance*, OECD Publishing, Paris.

¹²⁴ World Bank Group. 2014. *Corporate Governance of State-Owned Enterprises: A Toolkit*. Washington, DC. © World Bank. <https://openknowledge.worldbank.org/handle/10986/20390> License: CC BY 3.0 IGO.

¹²⁵ Includes: Board Charter (Annex 6); Ethics Code (Annex 7); Terms of Reference for an Executive Committee (i.e. Management Board or the Management) (Annex 8); Definition of Independence (Annex 9); Guidelines on Related Party Transactions (Annex 10); and Statement of Corporate Intent (Annex 11).

10.2 Structure of State-owned Enterprise Governance

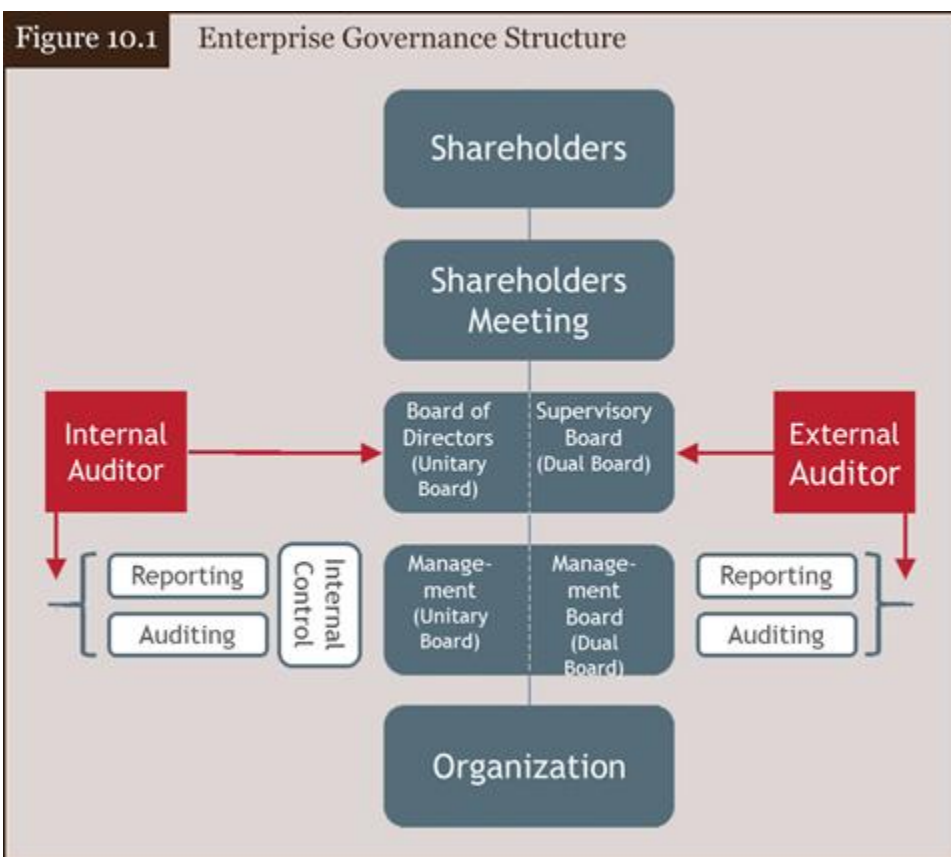
One of the two typical enterprise governance structures is usually employed for railway enterprises; namely, the one-tier board system (unitary board system) most common in North America and in Australia; and the two-tier board system (dual board system) used in some of the countries in Europe (including emerging economies such as Poland), as well as in China¹²⁶. Although the dual and the unitary board structures have shown some convergence in recent years, there remain notable differences. Under the unitary board system, the CEO is usually a member of the board of directors (or sometimes chair of the board, which is not a good practice from the corporate governance perspective), while under the dual board system, overlap in membership between the supervisory board and the management board is often not permitted.¹²⁷ By statute, the membership of the (European) supervisory board under the dual board system includes employee representation, which is seldom seen in North America. Under the dual board system, the supervisory board usually appoints the entire management team (management board), while under the unitary board system, the board of directors typically appoints the CEO, who then appoints the balance of the management team.

Legislation and regulations within each country will determine the details of the legal roles and responsibilities of the elements of the organization and their designation. For example, the articles of incorporation or corporate charter¹²⁸ for setting up the enterprise will determine many functional rights and responsibilities of shareholders and the board of directors. In addition, local company law and the enterprise charter often specify shareholder voting issues, how shareholders exercise voting rights, how they access enterprise information, and how minority shareholders are protected. Local law also determines the liabilities of the board of directors.

¹²⁶ In the European Union, unitary board system is recommended by the respective corporate governance code in eight countries, while a dual board system is recommended in ten countries. The remaining nine countries use a hybrid system or both (companies can choose unitary or dual board system). Source: European Commission, “National Fact-sheet: Gender Balance in Boards: Country Sweden.” January 2013. http://ec.europa.eu/justice/gender-equality/files/womenonboards/womenonboards-factsheet-se_en.pdf

¹²⁷ In countries such as Germany and France, the CEO is not a member of the Supervisory Board, but in countries such as the UK and Australia, the CEO is often a member of the Supervisory Board although s/he is not the chair.

¹²⁸ A corporate charter is a set of legal documents, often including Articles of Incorporation, filed with a government licensing agency that defines the purpose of the enterprise and how it will be structured (open or closed stock company, limited liability). The definition of the company in charter documents provides the legal basis for determining what laws and regulations apply to the enterprise and identify the legal address and structure of the enterprise. While it is important for a charter to be broadly consistent with international best practice, it is also essential that corporate documents for SOEs be fully consistent with national corporate law, including stock market regulations.



For the remainder of this chapter, “board” refers to the “corporate body charged with the functions of governing the enterprise and monitoring management”, as defined by the OECD “Guidelines on the Governance of State-owned Enterprises”, i.e. the board of directors of the one-tier board system or the supervisory board of the two-tier system.¹²⁹ “Management” refers to the group of senior employees responsible for day-to-day management of the enterprise, headed by the CEO, whether or not they are constituted as a board or other formally designated body.

It is important to understand that corporate governance policies have an important role to play in sustaining non-government investor confidence. Good corporate governance that is credible and supported by effective supervision and enforcement mechanisms reassures shareholders and other stakeholders that their rights are being protected on an ongoing basis. This not only facilitates corporate access to the capital market but reduces business risk, decreasing the cost of capital for the enterprise.

The most important characteristic of the corporate governance structure is that the board of directors is independent from enterprise management. Local legislation

¹²⁹ In some countries, SOEs are required by government regulations to have a supervisory board or a board of supervisors *in addition to* a board of directors. This supervisory board consolidates state shareholder views and nominates and removes board members.

and the articles of incorporation or corporate charter¹³⁰ for setting up the enterprise determine many functional rights and responsibilities. For example, local company law and the enterprise charter often specify shareholder voting issues, how shareholders exercise voting rights, how they access enterprise information, and how minority shareholders are protected. Local law also determines the board of directors' liabilities—generally, the board has fiduciary responsibility to shareholders and is legally liable for enterprise conduct.¹³¹ The enterprise compensates board members and expects them to spend significant time on company business.

Other important structures shown in the governance diagram and features specific to a railway enterprise are discussed in detail below.

10.3 Statement of Corporate Intent

In case of a public entity such as a railway SOE, there is often a formal commitment put in place between the railway SOE (via the company board) and the government entity that owns and oversees the enterprise, which may be called a Statement of Corporate Intent (SCI). The SCI (or similar) guides the activity of the railway corporation and allows the performance of the company to be evaluated. The SCI's exact content vary by the railway but typically includes the following¹³² (also see Annex 11 for a Model Statement of Corporate Intent Template):

- The corporate vision;
- The overview of the company and its business;
- The company's strategic objectives;
- High-level business strategy;
- Key initiatives;
- Review of the previous year's performance, including the financial results, and the performance targets for the coming years.

The relationship between the board and state owners can be complicated. Because the state is a shareholder (and often the only shareholder), state-appointed directors may feel conflicted about their responsibility to the state as against the railway SOE. For example, the board may include present or former government ministers or ministry officials, who report to government ministries. These directors may face a conflict between their responsibility to the state (or the state entity) and their

¹³⁰ A Corporate Charter is a set of legal documents, often including Articles of Incorporation, filed with a government licensing agency that defines the purpose of the enterprise and how it will be structured (open or closed stock company, limited liability). The definition of the company in Charter documents provides the legal basis to determine what laws and regulations apply to the enterprise and identify the legal address and structure of the enterprise.

¹³¹ A fiduciary responsibility is a responsibility based on trust. In this case, it refers to a group, business, or person (the board members in this case) who may act for another (the shareholders) with total trust, good faith, and honesty.

¹³² Some rail SOEs' SCIs can be found at: <http://www.artc.com.au/uploads/Final-ARTC-2016-17-Statement-of-Corporate-Intent.pdf> (ARTC); https://www.parliament.nz/re-source/en-NZ/51DBHOH_PAP66038_1/fd716313690a7bd5d1cdf5b4e1ee2ac3c5af5d6c (KiwiRail); and <https://www.tasrail.com.au/client-assets/downloads/sci/2015%20-%202016%20Statement%20of%20Corporate%20Intent.pdf> (TasRail).

responsibility to the enterprise as the board member. This situation has obvious conflicts; board members have fiduciary responsibilities to enterprise, thus board members are obligated to exercise their judgment to the benefit of the enterprise; but they also represent a state entity, whose interests may conflict with those of the enterprise. The SCI, clearly setting the enterprise objectives and performance targets as commitments to the government, enables the board and the government maintain a relationship that is transparent and arms-length. More information on the SCI and the process for creating it may be found in World Bank's SOE Toolkit, "Corporate Governance of State-Owned Enterprises: A Toolkit"¹³³.

10.4 General Shareholders Meeting

The transparency of the railway company's performance should follow normal rules of business as determined for a publicly listed company, including holding an annual general shareholders meeting (GSM) and having continuous and regular communication to the owner on matters that might affect the value of the railway company as a whole. If an SOE has an annual GSM, and if there are private shareholders, the private shareholders should also be able to vote at GSM.

One of the most important functions of the GSM is to select and approve board members. In addition, at GSMs, shareholders vote their shares to approve major annual items, including the company's financial statements and other major decisions/transactions, if any, as shown below.

Box 10.1 Typical Voting Items at SOE General Shareholders Meeting

Annual Decisions

Board	<ul style="list-style-type: none"> • Appoint board members at the recommendation of the board or shareholder • Approve board member mandate contracts • Approve the remuneration of the board • Monitor activity of board to ensure that principles of economy and efficiency are being observed
Accounts	<ul style="list-style-type: none"> • Approve annual financial statements • Appoint and dismiss the independent external auditor
Dividends	<ul style="list-style-type: none"> • Approve the dividend proposal by the board of directors
SCI	<ul style="list-style-type: none"> • Approve the Statement of Corporate Intent and any amendments to it

Extraordinary Decisions

Governing Documents	<ul style="list-style-type: none"> • Approve any amendment to the articles of incorporation or other governing documents of the SOE • Propose changes in board structure (unitary or two tiered)
Changes in Capital	<ul style="list-style-type: none"> • Authorize issuance of additional shares
Business Combinations	<ul style="list-style-type: none"> • Approve merger, split or divestiture of the SOE
Extraordinary Transactions	<ul style="list-style-type: none"> • Approve transactions involving 25% or more of the SOE's assets • Cancel related party transactions that prejudice the interests of the SOE

¹³³ World Bank Group. 2014. *Corporate Governance of State-Owned Enterprises: A Toolkit*. Washington, DC. © World Bank. <https://openknowledge.worldbank.org/handle/10986/20390> License: CC BY 3.0 IGO.

10.5 The Board

10.5.1 *Functions of the board*

Shareholders influence management through the board members they nominate. The board is legally and financially accountable for the company, responsible for the following functions, among others:

- Nominate and dismiss the CEO and in some cases key corporate officers, and set their compensation levels;
- Establish the enterprise organization;
- Establish company values and mission;
- Set the enterprise's strategic direction;
- Supervise management and monitor company performance against the performance objectives set in the SCI and the enterprise business plan;
- Monitor company financial performance and manage financial risks;
- Approve all important investments and strategic issues; and
- Develop company succession plans.

The duties and powers of the board, as well as board composition (discussed more in Section 10.5.3), terms, and chair selection, board committees, and relations with shareholders, are defined in the board charter (see Annex 6 for a Model Board Charter). The board draws on a range of resources to fulfill its duties to shareholders.

The board has a fiduciary responsibility to shareholders to act in the best interest of the enterprise. A fiduciary responsibility is a responsibility based on trust – those who act for shareholders have the duty to act with total trust, in good faith, and with honesty. For railway SOEs, the fiduciary responsibility of the board of directors means that they must act in the interest of the railway company. Conflicts between the interest of the company and the interest of government should be addressed through the SCI and other tools of government such as PSO/PSC contracts and regulation, so that the board can act fully in the interest of the SOE.

Boards typically organize internal committees to help manage responsibilities and may hire specialist consulting firms to help conduct governance, oversight, and strategic responsibilities.

Box 10.2 Key Principles for the Boards of SOEs

The boards of SOEs should have the necessary authority, competencies and objectivity to carry out the function of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions.

- Boards should have a clear mandate and ultimate responsibility for the company's performance, be fully accountable to the owners, act in the best interest of the company and treat all shareholders equitably.
- Boards should carry out their functions (monitoring management and strategic guidance) subject to the objectives set by the government and the ownership entity. The Board should have the sole power to appoint and remove the CEO.
- Boards should be composed so that they can exercise objective and independent judgment. Good practice calls for the Chair to be separate from the CEO.
- If employee representation on the board is mandated, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of the board's skills, information and independence.
- Boards should set up specialized committees that support the full board in performing its functions, particularly with respect to audit, risk management, and remuneration.
- Boards should carry out an annual evaluation to appraise their performance.

Note: The above is a summary of key responsibilities of the board from OECD Guidelines on Corporate Governance of State-Owned Enterprises (2015 edition). Accessed at: <http://www.oecd.org/corporate/guidelines-corporate-governance-SOEs.htm>

10.5.2 Other key responsibilities of the board

Setting performance targets for management

Performance targets for SOEs should be set as part of the development of the company business plan and SCI. The board should establish performance objectives for the team of top executives linked to performance indicators found in the SCI and the business plan. These objectives are then negotiated with and agreed by executives.

Setting dividends for shareholder(s)

When the enterprise is expected to be commercially viable, the government entity that oversees the railway corporation should prepare dividend guidelines for the company that specify how much dividends are expected to be paid out and the process by which the dividends are approved and paid.

The guidelines on dividend amount should follow the following principles:

- The proposed dividend payment should take into account both the current and future financing needs of the railways and shareholder expectations;
- Dividend payments should be in line with dividends paid by a peer group of listed companies;

- Dividends should be predictable and show a degree of consistency across years, although this does not preclude the possibility of a one-time dividend in unique circumstances (sale of major assets, for example).

Protecting minority shareholders

The government overseeing entity, the board and the SOE all should play a role in ensuring that minority shareholder rights are respected and that shareholders are treated fairly. Minority shareholdings may occur when SOEs have partial listing on a local or international stock exchange, or they may result from the presence of strategic owners in SOEs or joint ventures. Irrespective of their origin, SOEs supervised by the responsible government entity should comply with both legal requirements and good practices in equitable treatment of shareholders, assuring the following minority shareholder rights are protected:

- Obtain relevant and material information on a timely and regular basis;
- Participate and vote in general shareholders meetings;
- Elect and remove board members; and
- Share the profits of the organization.

Related party transactions

A conflict of interest is a set of circumstances in which an individual or organization has multiple interests, one of which could unduly influence the professional judgment or actions regarding the other. A related party transaction (RPT) is a transaction in which a party with influence over the transaction has a conflict of interest. Conflicts of interest can arise when board members, executives or their families have secondary interests that could influence the board member or executive's judgment. Each enterprise board must adopt appropriate guidelines and put in place the necessary monitoring and disclosure systems, to ensure that no RPT that is prejudicial to the interest of the enterprise is approved by the board. Also see Annex 10 for Guidelines on Related Party Transactions.

10.5.3 Board composition

The board composition and number of members must be matched to the duties and responsibilities it is expected to carry out effectively and efficiently. Board members have fiduciary responsibilities to enterprise, and are obligated to exercise their judgment to the benefit of the enterprise. On average, the board of a large corporation has 7 to 12 members¹³⁴. A substantially larger board should be avoided as unwieldy¹³⁵. It is usually recommended that there be an odd number of board members to avoid tied votes.

¹³⁴ According to de Andres, P., Azofra, V., and Lopez, F. "Corporate Boards in OECD Countries: Size, Composition, Functioning and Effectiveness", *Corporate Boards In OECD Countries*, Volume 13, Number 2, March 2005, the average board size of large non-financial companies sampled (450 samples from Belgium, Canada, Switzerland, Germany, Spain, France, UK, Italy, Netherlands, and USA) was 11.67, with the smallest average size of 6.84 in Netherlands and the largest average size of 15.06 in Germany. According to one of the OECD reports in 2011, the average board size of large companies in Japan was less than 10, Portugal, 9-10, Sweden 10-11, and UK 10-11.

¹³⁵ In India, for example, the national legislation defines the supervisory board as having 7-12 members, based on expert international advice. In Germany, as discussed in the

Board members commonly serve staggered multi-year terms. This provides stability and continuity, since members will not all be replaced simultaneously. Shareholders can remove and replace board members at any time, and boards have committees in place to nominate new board members.

Shareholders must carefully consider railway company business maturity and business direction when nominating board members for an enterprise that has substantial financial, operational, market, and technological complexity. Because of this complexity, it is useful to have board members with broad expertise in finance, operations and logistics, technology, human resources, and law and government, in addition to general attributes required for board members, such as analytical ability, integrity and accountability, interpersonal skills, common sense, financial literacy, and being “fit and proper” (see Box 10.3). Members who are specialists in law and government are essential, since railways are usually heavily regulated. Some boards also include employee representative(s) from one or more of the powerful unions representing railway workers. Both the corporate charter and local laws may restrict eligibility to serve on the board, especially for SOEs.

Box 10.3 Fit and Proper

A board member is not fit and proper if s/he has been:

- Subject to an adverse finding in civil proceedings related to commercial or professional matters;
- Found guilty of any criminal violation related to commercial or professional matters or that would raise doubts on their character as a potential board member;
- Subject to disciplinary actions by regulatory authorities, professional bodies, or agencies;
- Refused the right to carry on a trade, business or profession requiring a license
- A major shareholder or officer of a company gone into insolvency, liquidation or administration in the last five years;
- Disqualified from acting as a board member or from acting in a managerial capacity.

Source: Based upon the Fit and Proper Test for Approved Persons from the UK Financial Services Authority Handbook. <http://www.fsa.gov.uk/pubs/hb-releases/rel27/rel27fit.pdf>

Even for railway SOEs, the majority of board members should be independent of the main owner(s) (see Annex 9 for Definition of Independence). As discussed above, the SCI is one of the mechanisms to maintain transparent and arms-length relationship between the board and the government owner. Sufficient number of independent, non-executive board members capable of exercising independent judgements where there might be potential conflict of interest will help strengthen

box below describing the structure of Deutsche Bahn (DB, German Railways), the Supervisory Board includes union representatives and is somewhat larger.

the integrity and independence of the board. In most countries, boards must consider gender distribution, and sometimes they should also consider race, ethnicity, or regional identity.

Prospective board nominees must be capable, available for the time needed to fulfill their roles and responsibilities, and free of any bias that would encumber their decision making. The enterprise compensates board members and expects them to spend significant time on company business. Ensuring that all of these criteria are met is not only the responsibility of shareholders but also of prospective board members themselves. The issue of independence and resources should be assessed on an ongoing basis, at least annually, not only at the time of nomination.

The board chair must be selected based on both qualifications and ability to allocate time necessary for the role. The chair should not be the railway CEO or a past CEO¹³⁶. Large railways may require board chairs to be available for a substantial amount of time, since they may serve on committees, advise the CEO, and are often the political figurehead and spokesperson.

Board committees

A large railway SOE typically has several special board committees, such as:

- Compensation/remuneration committee, responsible for compensation policy for the board members and overseeing the remuneration of executives and staff, including salary, benefits and variable performance-based compensation;
- Audit committee, responsible for monitoring: the financial reporting and financial position of the SOE; the system of internal controls and risk management; the internal audit; the external audit; and informing shareholders on the status of the SOE; and
- Nominations committee, responsible for recommending board members in accordance with the proper nomination procedures.

Depending on the railway and the needs, more committees may be established, such as planning and strategy, finance, and executive search committees. Each committee should be headed by an independent board member with specialized professional experience in the specific issues that the committee is assigned to handle, and include other board members including independent members.

¹³⁶ For example, the President and CEO of Amtrak, publicly-owned and the most important passenger rail transport company in the USA, is by law precluded from being Chairman of the Board. The President of VIA Rail Canada, Canadian equivalent to Amtrak, is a member of the Board but is not necessarily the Chair, although it is not expressly forbidden.

Box 10.4 Corporate Governance Principles at Australian Rail Track Corporation (ARTC)

Statement of Corporate Intent (SCI)

ARTC, as a Government Business Enterprise (GBE), has specific reporting and disclosure requirements set out in Australian legislation. The company is required to prepare a corporate plan, and the Board is responsible for ensuring that such plan is prepared. The plan has to be submitted to the responsible Minister and the Finance Minister and has to be published on the ARTC website. The published corporate plans that have been redacted can take the form of a SCI or a Corporate Plan.

Board of Directors and Its Composition

The Board of Directors provide strategic guidance for the company and effective oversight of Management at ARTC. The Board comprises six members, of which five are independent non-executive directors. The only executive director on the Board is the CEO. The Chairman of the Supervisory Board is a different person than the CEO of ARTC.

Board Committees

ARTC currently has the following four committees:

- Audit and Compliance;
- People, Policy and Remuneration;
- Environment, Health and Safety; and
- Risk.

Each committee is chaired by a non-executive director and comprises in majority non-executive directors. Each committee is governed by its own charter, detailing the Committee's role, membership requirements and duties.

Management Structure

The Management Team manages the company. The ARTC Management Team currently consists of nine members: (i) CEO, who is also member of the Board; (ii) Chief Financial Officer (CFO); (iii) General Counsel and Company Secretary; and (iv) five Executive General Managers.

ARTC Corporate Governance Principles

ARTC's system of corporate governance reflects the eight principles:

1. Lay solid foundations for management and oversight
2. Structure the Board to add value
3. Promote ethical and responsible decision-making
4. Safeguard integrity in financial reporting
5. Make timely and balanced disclosure
6. Respect the rights of security holders
7. Recognize and manage risk

8. Remunerate fairly and responsibly

The ARTC Annual Reports provides report on the above every year as part of the company's Corporate Governance Statement. This includes a description of roles and composition of the Board, Code of Conduct, risk management, internal and external audits, and shareholder communications.

Source: ARTC Annual Reports

10.6 The Enterprise Management

10.6.1 *Functions of management*

The CEO and his/her management team make daily business decisions and play a central role in preparing and presenting materials on strategic issues and may recommend board actions on those issues (see Annex 8 for a Model Terms of Reference for an Executive Committee (i.e. Management Board or Management)).

10.6.2 *Management structure*

The management organization, headed by the CEO and approved by the board, manages the company. The management structure is an essential component of corporate governance, so the management organization and managers' duties and responsibilities must be completely transparent and publicly disclosed.

The primary duty of the management team is to assist the CEO in implementing operational decisions in the following categories. (This is a partial or representative list. Depending on circumstances, the list can vary, as can the management team structure.)

- Finance and Risk Management: accounting, finance, ICT, insurance, and other investment preparations, calculations, risks, and 'going-concern' evaluations
- Human Resources Management: policies, pensions, remuneration, and safety issues that affect workers
- Legal Affairs: competition policy, compliance, corporate governance systems, internal control, board and management team agenda, and patents
- Communications: external and internal communication strategies and plans, corporate social responsibility, internet presence, branding, and media relations
- Operations, Technical and Engineering: usually the largest functional group in a railway company; includes operations, transportation functions, rolling stock, and infrastructure design, engineering, construction supervision, and maintenance
- Commercial and Market Management: commercial issues, relationships with passenger representatives and shippers; includes market research, marketing, and pricing issues; includes development of retail channels and the development of contracts; uses cost accounting data to develop pricing tools

The CEO is responsible for delegating these duties to the members of the management team, supervising their implementation, and evaluating the results.

The CEO

The board selects the company CEO, provides general instructions and guidelines on managing railway operations, and reviews the results. The CEO and the management team prepare strategy and strategic decisions and present them to the board, which has overall responsibility for these areas. The CEO ensures railway compliance with rules and regulations and well-managed company assets, and can initiate unusual or long-term actions *only* with board authorization.

The board should clearly distinguish areas of responsibility and decision making between the CEO and the board chair to avoid confusion or conflicts between the two. Since the board supervises the chair, the CEO should not be the board chair. The CEO's terms of reference should be established in a written agreement, and approved by the full board.

The CEO is typically responsible for the following:

- Leading the executive directors and the senior executive team in the day to day running of the group's business, including chairing the Executive Committee and communicating its decisions/ recommendations to the board.
- Ensuring effective implementation of board decisions.
- Regularly reviewing the operational performance and strategic direction of the group's business.
- Regularly reviewing the group's organizational structure and recommending changes as appropriate.
- Formalizing the roles and responsibilities of the senior executive team, including clear delegation of authorities.
- Supervising the activities of subsidiary companies' most senior executives.
- Developing senior teams within subsidiaries and ensuring succession planning.
- Developing the policies for board approval and then implementing them. These include, but not limited to:
 - Codes of ethics (see Annex 7 for a Model Ethics Code) and business practice;
 - Share dealing code;
 - Health and safety policy, risks and procedures;
 - Communications policy (including procedures for the release of price sensitive information);
 - Investor relations policy;
 - Corporate social responsibility policy (including environmental, employee communications and employee disability).

- Ensuring that all group policies and procedures are followed and conform to the highest standards.
- Together with the chairman, providing coherent leadership of the company, including representing the company to customers, suppliers, government, shareholders, financial institutions, employees, the media, the community and the public.
- Keeping the board chairman informed on all important matters.

Senior management

The CEO of an SOE typically determines his/her own top management team¹³⁷, and while the board can facilitate nomination and recruitment and provide advice, the CEO is ultimately responsible for recruiting and retaining a competent, high quality, cohesive management team. The board defers to the CEO in team selection and development, although board approval may be required for key management team positions.

10.7 Incentive Structures

Most enterprises provide incentives for management and staff, to align compensation with company strategy. A properly functioning incentive system is crucial to motivating the CEO and railway staff to act for the benefit of the company and its shareholders. Railways following good governance practice thus develop enterprise-specific performance indicators, which drive incentive compensation schemes. The incentive system should take into account shareholder objectives and goals (that is, government objectives for state-owned railways). Therefore, the incentive system can be a key driver for changing company culture to promote innovation, commercial behavior, and staff loyalty.

Most incentive structures are based on performance indicators—typically each business unit department or function has a specialized set of indicators that measure the performance of the unit or function as it contributes to the railway enterprise strategy.

To motivate employees to achieve the objectives, incentive compensation system targets and goals must be achievable only with above-average efforts. Incentives should be developed and adapted annually, setting new targets aligned with company strategy. Each employee participating in the incentive scheme should be assigned multiple performance indicators, but not so many that the system becomes too complex to manage and adjust.

10.7.1 Setting incentive structure for management

In general, the principle in building incentive programs is to weight them in favor of longer-term goals, i.e. the incentive structure must ensure to balance short-term goals such as financial returns with longer-term goals such as maintaining assets in good condition.

¹³⁷ If the organization has a dual board, the supervisory board may appoint the entire management board.

Typically, top management has long- and short-term goals, key operational personnel have shorter-term goals, and for staff below that, the incentive structure is based on a number of performance criteria depending on the company, which can include overall corporate performance and divisional/departmental performance, considering the annual (short-term) KPIs.

Long-term incentives are paid to top management and to managers who can influence long-term railway development. Typically, incentives measures are key performance indicators for longer-term (more than one year) corporate performance and strategic development.

Box 10.5 Good Practice for Setting Executive Remunerations

The executive/senior management's remuneration schemes should:

- Support the long-term interests of the company;
- Are fair relative to a peer group of companies, considering both performance and compensation level;
- Align incentive compensation with individual performance objectives;
- Ensure that the cost of variable compensation plans is understood under different performance scenarios to ensure that unusual payouts do not occur under unexpected conditions;
- Avoid distortions in incentives that can result from the choice of weightings and/or performance measures and avoids incentivizing wrong behaviors;
- Reduce discretion in incentive plans and, to the extent possible, link to objectively measurable results, while ensuring that formula-based plans do not generate unexpected or unfair payouts; and
- Balance positive and negative impacts of incentive compensation plans on morale.

Short-term incentives reward operations results and are normally paid to key staff in a position to make a measurable impact on company performance. Indicators can differ among positions, but results must be measurable, and have an observable impact on daily operations. Typically, these short-term KPIs for a railway organization could measure profit, turnover, growth, punctuality, safety, market development or other outcomes. The individual incentives can vary from 10 to 40 percent of a staff member's annual compensation.