



Directly Operated Railways Limited (“DOR”)  
Corporate Governance Summary



October 2013

## 1. Introduction

- 1.1. This Corporate Governance Summary, sets out an overview of the governance arrangements applicable to DOR and its stewardship of its subsidiaries from time to time, including East Coast Mainline Company Limited (“East Coast”) It describes:
  - 1.1.1. the relationship of the companies with the Department for Transport (“the Department”);
  - 1.1.2. the Board members and their responsibilities;
  - 1.1.3. the financing arrangements, including any auditing and accounting procedures which must be followed;
  - 1.1.4. the reporting arrangements; and
  - 1.1.5. any legal and financial, and other support that is available to the companies.
- 1.2. The Secretary of State has a duty under Section 30 of the Railways Act 1993 as amended by the Transport Act 2000 and the Railways Act 2005 to maintain the continuity of passenger rail services in the event a passenger rail franchise terminates and is not immediately replaced.
- 1.3. Section 30 of the Railways Act 1993 as amended by the Transport Act 2000 and the Railways Act 2005 states that the Secretary of State “shall provide, or secure the provision of, services for the carriage of passengers by railway where... a franchise agreement in respect of the services is terminated or otherwise comes to an end but no further franchise agreement has been entered into in respect of the services.”
- 1.4. DOR has been established to deliver the Secretary of State’s statutory obligations. It is a company wholly owned by the Secretary of State, which has been set up as the holding company of any Secretary of State operating company. As holding company, subject to any Section 30 undertakings, DOR will provide detailed stewardship of the activities of the Secretary of State operating company. Its stewardship function will start as soon as the franchise has been transferred from the failing franchisee to the Secretary of State operating company, and that operating company becomes operational.
- 1.5. East Coast is a company wholly owned by DOR, and therefore a subsidiary of DOR, and will operate the East Coast train franchise.
- 1.6. The Department may propose variations to the DOR’s Corporate Governance at any time, which shall be notified to and discussed with DOR prior to adoption. The Treasury shall also be consulted on any significant variations prior to adoption.

## 2. Holding Company Activities

### **Company Structure**

- 2.1. The ownership structure of DOR and East Coast is described above in paragraph 1. This structure was set up for the following reasons:
  - 2.1.1. It enables the train operating functions to be carried out within a discrete entity; this is beneficial from a safety and operational perspective;
  - 2.1.2. By using DOR, to provide detailed stewardship of East Coast, it facilitates a clear demarcation of functions and responsibilities between the essentially overarching objective setting, franchising, strategic review and control functions of the Department and the operator of last resort function of the Department (to be carried out through East Coast), and it promotes the satisfactory discharge of both, particularly where there is tension between them;
  - 2.1.3. It provides effective governance of the activities of East Coast;
  - 2.1.4. It enables the safety requirements relating to the provision of services under section 30 of the Railways Act 1993 to be discharged in an effective manner;
  - 2.1.5. It enables the Department to mitigate liability on its part for the section 30 operations by satisfying itself that the necessary resources and governance are in place to ensure compliance with all relevant health and safety obligations.

### **DOR**

- 2.2. On the date of the transfer the Department's relationship with DOR will change. DOR will take on a stewardship role in respect of East Coast, providing effective governance of its operations. The purpose of DOR at this stage is to ensure that East Coast is operating in accordance with the Services Agreement, its health and safety obligations and the terms of its licences.

### **Board Structure**

- 2.3. DOR will have a Chairman who chairs the BOARD.
- 2.4. The Board of DOR will be or include:
  - 2.4.1 a Chief Executive whose role is to lead DOR
  - 2.4.2 a Director for Finance; and
  - 2.4.3 a Director for Engineering; and
  - 2.4.4 a Director for Customer Service; and
  - 2.4.5 a Company Secretary.
- 2.5. During the period for which DOR is acting as the Holding Company, the Chairman reserves the right to allocate responsibility, other than specified in paragraph 2.4 of this agreement.

### **Finance**

- 2.6. The funding for its activity role is expected to be provided by way of a combination of a management fee which will be recovered from East Coast in respect of services legitimately provided to that company and either loans or
- 2.7. grants from the Sponsor (National Networks' Finance and Planning Directorate) to recover costs that are not directly attributable to managing East Coast.
- 2.8. DOR will liaise with the Department in relation to its budgetary requirements from time to time
- 2.9. DOR and its Chief Executive shall be accountable for the use of funds described above during both Mobilisation and Stewardship, as described in the Financial Framework.

### **Legal**

- 2.10. During its stewardship period, DOR's interests may conflict with those of the Department and DOR may therefore need to get its own independent legal advice, in accordance with DOR's procurement procedure rules.

### **Responsibilities and Accountabilities**

- 2.11. DOR will report to the Department on a regular basis. This report will allow the Department to satisfy itself that DOR is adequately resourced to discharge its safety responsibilities and that those resources are adequately and appropriately deployed.
- 2.12. In the event that the Department identified a serious deficiency in East Coast's operation of its business, or in DOR's stewardship of East Coast, the Department will, should it deem it to be necessary, intervene and devise appropriate remedial solutions. To the extent that the Secretary of State's rights under the Services Agreement prove not to be sufficient for this purpose, the Department will rely on the Secretary of State's powers as sole shareholder of DOR to take the necessary action.

### **East Coast**

- 2.13. East Coast will be responsible for the day to day running of the trains and will operate the franchise in accordance with its obligations under the Services Agreement.

### **Licences**

- 2.14. East Coast currently has a European passenger train licence and a GB passenger statement of national regulatory provisions (SNRP). It therefore needs to abide by the conditions of those licences.
- 2.15. Railway Act licences are needed to operate other assets (see section 6 of the Railways Act 1993). It is an offence to operate railway assets without a licence or licence exemption. However section 150 lists the sections that do not bind the Crown. The ORR has confirmed that a section 30 operator controlled by the Secretary of State would be covered by section 150 and therefore does not require these licences.

### **Board Structure**

- 2.16. On the date of the transfer, the Chief Executive of DOR will also become Non-Executive Chairman of East Coast.
- 2.17. The names and responsibilities of the Directors on East Coast's Board will be confirmed subject to any Section 30 undertaking, but it is recognised as detailed above, that the Chief Executive of DOR will sit on the Board of East Coast, as the non-executive Chairman.

### **Responsibilities and Accountabilities**

- 2.18. East Coast will report to Rail Commercial Contracts within the Department in accordance with the Services Agreement, in the same way as a private sector train operating company would report pursuant to its franchise agreement.
- 2.19. The Department will be entitled to request information.

### **Role of the Department**

- 2.20. The primary role of the Department is to ensure that its section 30 duty is adequately and appropriately discharged until such time as it can award a replacement franchise. In order to do this, it will need to ensure that DOR is adequately resourced to perform its functions. This will mean the Department satisfying itself that DOR has sufficient skills and expertise to provide detailed stewardship of East Coast and is adequately funded for that purpose. In particular, the Department must satisfy itself that DOR has access to adequate operational, safety and engineering expertise.
- 2.21. The Department will be accountable to Parliament for DOR's use of public funds and for ensuring that the value and profitability of the businesses for which it has responsibility is maximised. As with its franchise agreements with private sector train operating companies, the Department will therefore be required to ensure that the Services Agreement is effectively managed and that DOR and East Coast are appropriately held to their obligations under the Deed. The Department will also be required to ensure that the budget(s) which it agrees with DOR and East Coast effectively secure the optimum financial performance of the companies consistent with DOR and East Coast performing their obligations under the Services Agreement, their licences and applicable law.
- 2.22. East Coast's franchise will be managed by the Department in the same way as if it were a private sector franchise. However, there may be exceptional circumstances in which the Department considers it necessary to intervene in its role as owner of DOR and East Coast in a way in which it would not intervene in a private sector franchise. This would most likely be in the event that the Department became aware of a serious failing in the management or operation and delivery of East Coast's safety obligations of either company and did not consider that failing to be capable of correction by means of mechanisms provided for in the Services Agreement.

### **General Arrangements**

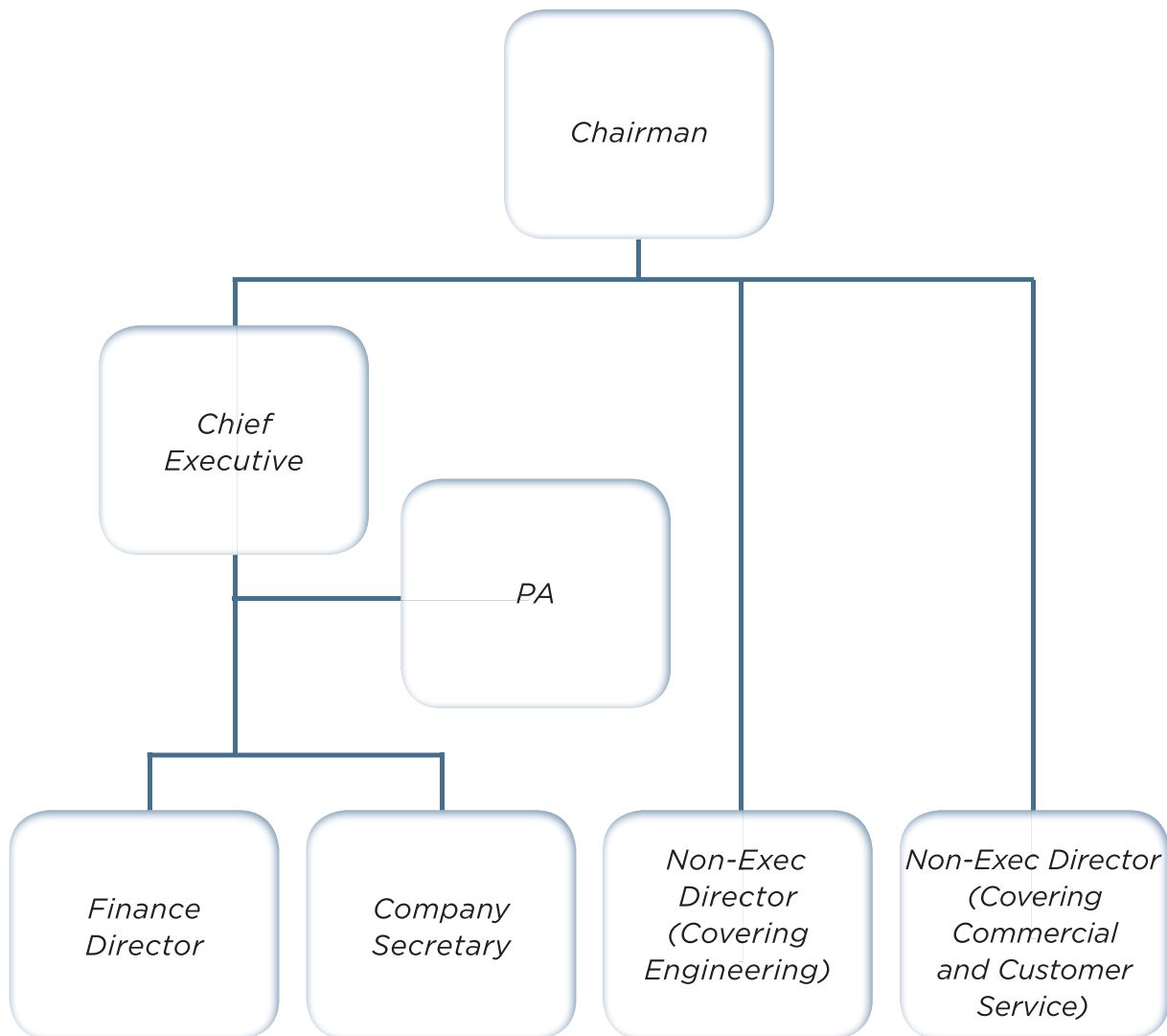
#### Appointments to DOR and East Coast


- 2.23. The Department will be required to ratify proposed appointments to the board of DOR. This will apply to all persons acting as directors whether they are statutory directors or not.
- 2.24. All further appointments to DOR shall be subject to agreement between the Department and DOR, whereby DOR is required to act reasonably in determining the appropriateness of the appointment.

**Scaling down or winding-up of DOR**

2.24. 2.25. The Secretary of State, through the Department, reserves the right, once the businesses of East Coast and any other Secretary of State train operating companies have been transferred back to the private sector, to decide whether (a) to wind up DOR or (b) to scale down DOR's activities but keep it in existence in case of future franchise failures, should the need arise.

### 3. Organisation Structure





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