

EMBARGO: 2.30 pm, 22nd July,2009

**AD HOC COMMITTEE
ON
ADMINISTRATION
AND
CORPORATE GOVERNANCE**

.....

REPORT for PART ONE

.....

DATED : 22ND JULY, 2009

**PORT KLANG AUTHORITY
P.O BOX 202 JALAN PELABUHAN UTARA,
42005, PELABUHAN KLANG,
SELANGOR DARUL EHSAN
MALAYSIA**

22nd July 2009

**The Chairman & Members of the Board
Port Klang Authority**

Dear Sirs,

**Report of the Ad-Hoc Committee on Administration and
Corporate Governance – Part One**

In pursuant to the Terms of Reference of the Committee, the Committee had decided to carry out its task in two parts. The first part involves a broad examination of the governance of Port Klang Authority and out of which a set of key recommendations will be made based on good governance principles and the second part will involve the actual implementation of the recommendations at PKA and PKFZ.

For the first part of our work, we are pleased to submit this report of the Ad-Hoc Committee for your perusal.

Yours faithfully,

On behalf of the Ad-Hoc Committee on Administration and Corporate
Governance

Datuk Paul Low Seng Kuan
Chairman

1. Introduction

The events leading to PKFZ fiasco has received wide publicity in both the local and foreign media. Basing on the details of the report¹ of PricewaterhouseCoopers Advisory Services Sdn. Bhd. (PwCAS) dated 3rd February, 2009, it is undoubtedly a basket case of poor management and governance. The Board of PKA being concerned about the lack of good governance in the entity had decided with the concurrence of the Minister of Transport to establish a special committee called the Ad-Hoc Committee on Administration and Corporate Governance to make recommendations to improve the governance of PKA and its subsidiary, PKFZ.

To provide an independent assessment and evaluation in governance, PKA had decided to invite the participation of representatives in the committee from the private sector. Invitations were made to the President of Transparency International Malaysia (TI-M), the President of the Malaysian Institute of Accountants (MIA), the Secretary General of the Malaysian Institute of Corporate Governance (MICG) and the Auditor-General (to be represented by a senior officer).

The core responsibility of this Ad-Hoc Committee is not to provide an in depth investigation on abuses as such an investigation is now being undertaken by other agencies that are established to handle such matters. As stated clearly by the terms of reference given, the Committee is to make recommendations for the

¹ Report entitled " Position Review of Port Klang Free Zone Project and Port Klang Free Zone Sdn Bhd dated 3rd February, 2009

significant improvement in governance at PKA, thus, making it an exemplary government agency that would excel in governance and integrity in carrying out its mission entrusted to it.

2. Terms of Reference of the Ad-Hoc Committee

The Committee was established under the Board of Port Klang Authority (PKA) with the following responsibility as specified under section 7 of the Terms of Reference (Annexure 2) as follows:

“7. FUNCTIONS AND DUTIES

7.1 To have a main role in structuring the corporate governance of the Port Klang Authority.

7.2 To assist the Board to identify the weakness and flaws in the procedures and executions.

7.3 To resolve and improve the identified weaknesses and flaws.

7.4 To increase the efficiency and improve the effectiveness of the system in providing the public services in particular on decision making at the Authority Board level.

7.5 To increase corporate governance and the delivery system of public service with added frameworks on the legal and regulatory aspects.

7.6 *To improve the use and efficient cost management of public fund with adopting economical financial controls and increased monitoring on its implementations.”*

3. Members of the Ad-Hoc Committee

The Ad-Hoc Committee met trice on 1st July, 2009, 9th July, 2009 and 21st July, 2009.

The members of the committee are as follows:

Y.Bhg. Datuk Paul Low Seng Kuan (Chairman)

President, Transparency International Malaysia

Mr. Nik Mohd. Hasyudeen Yusoff

President, Malaysian Institute of Accountants

Mr. Paul W. Chan

Secretary General, Malaysian Institute of Corporate Governance

Mrs. Hjh. Saadatul Nafisah Bt. Bashir Ahmad

Deputy Director, National Audit Department, Malaysia, representing the Auditor-General

Observers (by invitation)

from Transparency International Malaysia:

Dr. Loi Kheng Min – *Secretary General*

Mr. Murad Ali Abdullah – *Member of Executive Committee*

Ms Ng Swee Ling - *Executive Officer, Secretariat,*

Staff from Port Klang Authority (PKA)

Capt. David Padman

Mr. Adnan Abidin

Mrs. Shazrina bt. Mustafa
Mrs. Shaifurina Hilni bt. Halim
Mr. V.S .Vijay (Secretary to the Committee)

4. The Two Parts of Work of the Ad-Hoc Committee

The work of the Ad Hoc Committee will be carried out in two parts.

The first part will involve a broad examination of the governance of PKA and will propose a set of key recommendations based on good governance principles. These recommendations are submitted to the PKA Board for adoption as a preliminary acceptance that these will be the initiatives to be undertaken and after which a more detailed pathway will be proposed to guide their implementation for good governance.

Based on the acceptance of the recommendations in the first part, the second part which will be completed over a six month period which will involve the actual implementation of the proposals to be carried out in collaboration with the senior management of PKA and PKFZ.

5. Lapses in Governance as Highlighted by the PwCAS's Report

As a basis in the committee deliberation, we have invited the representatives from PwCAS to give an overall briefing with emphasis from the perspective of governance. Generally, most of

the lapses in governance can be identified from the extract of their report in Section 2 which is extracted below for reference.

**Section 2: Extract on Weak Governance and Weak Project Management
[From PricewaterhouseCoopers's Position Review of Port Klang Free Zone
Project and Port Klang Free Zone Sdn Bhd]**

Weak Governance

2.12 *The proposal to purchase the Land was approved by the Cabinet. However, subsequent development proposals were not tabled to the Cabinet for approval prior to the execution of the DA, ADW and NADW even though the total development costs under the DA, ADW and NADW of RM1.846 billion (excluding interest) exceeded the cost of the Land of RM1.088 billion (excluding interest). We have been informed by PKA that the Government ratified development costs of RM1.8 billion on 27 June 2007. This sum combined with the cost of the Land (RM1,088m), additional amount agreed in the final account of the DA (RM216m), VO for ADW and NADW (RM169m) and professional fees paid to KDSB and other consultants (RM203m) adds up to total project outlay of RM3,522m (excluding interest).*

2.13 *PKA/MOT also **failed to alert** the Cabinet in a timely manner about PKA's inability to pay for the Project out of its own funds. In May 2004, PKA was aware that it was not able to meet the Cabinet's condition on self-financing. PKA should have alerted the Cabinet of this important fact. To compound the issue, **PKA entered***

into other very significant development agreements thereafter.

2.14 There was a **general lack of Board oversight** and governance over the Project. Several matters indicated that **the Board had limited involvement** in implementing the Project:

- **Key agreements were not submitted to the Board for approval. The agreements were signed under Common Seal without prior authorization;**
- Variation Orders (VOs) totaling RM62.5 million have been accepted to-date by PKA management, **without reference** to the Board;
- Appointment of key project consultants were made by PKA management **without the prior approval** of the Board; and
- The Board **was not consulted** on acceptance of the Land without KDSB completing the Infrastructure Works and how price adjustment was to be effected.

2.15 Several Government **checks and balances were bypassed.** For example:

- The **agreements were not vetted** by the Attorney General despite the significant amounts involved

and **PKA's lack of experience** in projects of this nature;

- Treasury guidelines on vetting of agreements by the Attorney General and approval of VOs by MOF were **not adhered** to;
- Letters of support, which could be construed as guarantees, were issued by the Minister of Transport **without MOF approval**; and
- PKA **did not adhere** to MOF's stipulation to issue government guaranteed bonds for the development of the Project.

2.16 As an important statutory body, the Board of PKA is expected to demonstrate good corporate governance. In the words of the Auditor General, a statutory body is set up to implement governance policies through programmes and activities in a professional and effective manner.

Any failure to be seen to operate with exemplary corporate governance, for example, in the way the Board exercises its oversight of the Project including **managing any potential conflicts of interest**, can damage the reputation of not only PKA but also the Government.

2.17 We should also mention PKA's apparent reliance on approvals by senior government office such as the

Cabinet, Ministry of Transport and Prime Minister. Whilst such approvals are important, the Board still retains the overall responsibility to run PKA in a professional and sustainable manner. This would include the responsibility to not enter into agreements which may threaten PKA's long term financial viability.

Weak Project Management

2.18 The Project **was poorly executed with lapses in project management**. Key amongst them were :-

- *Contracts were entered into on the basis of estimated amounts and without detailed building plans. The development agreement DA3 was entered into based on an estimated amount of RM1 billion and without detailed plans. Therefore, PKA did not have the benefit of a fixed sum contract or detailed specifications of the turnkey development would entail.*
- *The development contracts totaling RM1.846 billion were all awarded to KDSB without competitive bids.*
- *The entire Project was completed in two years, contrary to the JAFZI/TSG Masterplan which recommended a mixed development strategy-a single phase for infrastructure works and multiple phase over eight years for the Light Industrial Units*

(LIU) (which represented 42% of total construction cost of RM1 billion under the JAFZI/TSG Masterplan). As at 31 December 2008, only 77 units out of a total of 512 units of the LIU are rented.

- *The QS4 quantity surveyor consortium was only appointed nine months after construction works commenced. Thus, PKA did not have the benefit of the advice of its own quantity surveyor from the beginning of construction works.*

The Way Forward

2.19 *Moving forward, there are three areas² which merit the Board's immediate attention:-*

(i) Governance and project management

PKA should strengthen its Board oversight and governance over significant projects of this nature.”

The numerous violations of governance that are highlighted above (as indicated by the underlined words) are symptoms of the ineffectiveness of the boards in the past and the lack of submission to the boards' authority by the chief executive/general manager of PKA. Foremost, it reflects a gross negligence of past board members in not discharging their fiduciary duty diligently.

² The other two areas do not relate to the issue of governance and therefore they are not quoted.

Furthermore, if there were adequate systems of check and balances, “red flags” indicating such abuses would have been reported to the board by the internal auditor. There were many weaknesses and lapses in governance that had been ignored. The past boards of PKA cannot deny responsibility for their inaction because of ignorance and the General Manager being the chief executive officer, must take responsibility for taking unilateral unauthorized decisions beyond her limits. Therefore, the recommendations that are made in this report are aimed to correct these weaknesses by placing PKA and PKFZ in a firmer foundation for good governance.

6. Recommendations for Part One

The effectiveness of corporate governance depends on the leadership of the organization at the top. Failure in governance can often be traced to an ignorance of the top management on the subject matter of governance or a lack of commitment to make sure appropriate measures are put in place to build an acceptable standard of compliance to sound systems requirements and processes. Therefore, an ineffective Board also means poor governance. PKA should therefore, enhance and improve the Board governance based on the following principles:

- (i) Board responsibility for governance – the board must be designed to fulfill its duties effectively and efficiently. Each member must be unrestricted to discharge his fiduciary duty.

- (ii) Corporate governance transparency – Board members must be provided with the correct and available information to make proper decisions.
- (iii) Direction competency and commitment – Selection of members of the board must be made to ensure the level of competency and commitment of directors. Directors with the relevant skills set must be emphasized.
- (iv) Board accountability & objectivity – the board must be designed to ensure accountability to the stakeholders and the objectivity of board decisions.
- (v) Independent board leadership – the board must be equipped to provide leadership as distinct from the executive management. The board must have powers of oversight over the CEO.
- (vi) Integrity, ethics & responsibility – the board must be responsible to put in place an appropriate corporate culture of integrity, ethics and corporate responsibility.
- (vii) Attention to information, agenda and strategy – designed to support the board in determining its own priorities, resultant agenda, and information needs and to assist the board in focusing on strategy (and associated risks)

- (viii) Protection against board entrenchment and complacency – designed to encourage the board to refresh itself.
- (ix) Shareholder input in director selection – designed to encourage stakeholder involvement in the selection of directors.
- (x) Shareholder communication – designed to encourage communication with all stakeholders.

One of key root causes of the PKFZ fiasco is the deficiency of management competence in managing a mega project like PKFZ and errors in business judgment. This is understandably so because the people who managed the project were basically regulators and not businessmen. The main function of the PKA Board is that to carry out its function of a regulator over the ports as specified under the Act. However when PKA decided to establish PKFZ it embarked into a business venture which requires a different skills set and business acumen. Therefore, as the nature of operation for PKA and PKFZ are different, there is a need to separate the management of these two entities. PKFZ needs to be operated like a commercial enterprise without undue interference which could inhibit the latter to operate efficiently in accordance with its commercial purposes. Composition of the boards must be changed to take into account the differences and the nature of their responsibilities. There is also a need to increase the number of independent non-executive directors on both boards

(PKA and PKFZ) to provide the necessary expertise and different perspectives to ensure that the boards are not entrenched and to be more equipped to deal with the dynamic changes in port management in a globalised environment.

6.1 RESTRUCTURING OF THE BOARD COMPOSITION AT PKA.

6.1.1 To keep the Board members of PKA and PKFZ Sdn Bhd independent of each other. There may be some common directors but the of PKFZ board should consist of more directors having business acumen and with commercial experience similar in nature to that of PKFZ ;

6.1.2 At least 1/3 members of the both Boards should be made of Independent Non-executive Directors and such directors should be selected on the basis of their competence to add value to the Board. The definition of an independent non-executive director is as follows:

- Not an appointed representative of another governmental agency whether at the state or federal.
- Not a political appointee.
- Not a nominee of the Minister.

- Do not hold executive position.
- Not connected to a licensee and/or subsidiary of PKA.
- Hence, such a member would be someone who is recommended by the PKA Board (even though his appointment has to be sanctioned by the Minister) in consideration of :-
 - a) His skills, experience and knowledge to contribute to the function of PKA;
 - b) His integrity and track record of independence and objectivity;
 - c) His good standing in the society (can be a representative of an NGO or professional/ business organization);

6.1.3 The Chairman's tenure should be for three (3) years to provide continuity and leadership on a longer term than the current year by year appointment;

6.1.4 The Directors tenure should be for a minimum of two (2) years.

6.2 MAKING THE CEO OR GENERAL MANAGER (GM) MORE ACCOUNTABLE TO THE BOARD.

The many instances of the General Manager (GM) frequently bypassing the authority of the PKA Board are evident from the PwCAS's report. This lack of submission to the authority of the Board not only violates basic practice of accountability in corporate governance but undermined the fiduciary responsibility of the Board. A CEO seemingly taking unilateral discretions that exceed the authority limits violate the norm of prudence that is expected to be exercised in sound management and thus, incurring consequential questionable liabilities. The General Manager in PKA who by virtue of the powers in the Act is appointed by the Minister and therefore, may erroneously assume that he is only accountable to the Minister and not the Board. To ensure the clarity of direct accountability to the PKA board by the GM it is indeed very critical to make this line of accountability be specified clearly through the appropriate amendment to the Act or by administrative procedure. In the norm of corporate governance practice, the Board who is appointed by the stakeholder is ultimately responsible for the management of the entity. Therefore, we recommend as follows:

- a. CEO or GM of PKA shall not be the CEO or GM of PKFZ Sdn Bhd;
- b. CEO or GM of PKA and PKFZ to be accountable to their respective Board;

c. CEO or GM of PKA ought to be nominated or appointed by the Board and the Minister to approve such an appointment only on the recommendation of the Board;

d. CEO or GM of PKA shall be engaged on contract basis with security of tenure for a period of three (3) years subject to renewal on satisfactory performance as evaluated by the Board.

6.3 ESTABLISHMENT OF THE SUPERVISORY COMMITTEE ON ETHICS AND INTEGRITY.

One of the weaknesses of the current function of the PKA Board is a lack of oversight on issues directly relating to good governance. Matters relating to governance are often left to the discretion of the individual directors each of whom is expected to exercise his fiduciary duty diligently. However, in practice this is often not the case as matters of governance require monitoring of the way processes are implemented, adequacy of internal controls and the exercise of disclosure of conflict of interests. Therefore, to correct this weakness, it is recommended that the PKA Board establishes a Supervisory Committee on Ethics and Integrity to be headed by an independent non-executive director. Membership of this committee may include other members of the PKA Board who has the competency in the area and also

non-board members appointed from outside but who have the expertise to contribute meaningfully to the proper functioning of the committee. The main responsibilities of the committee are as follows:

6.3.1 Directly responsible to PKA Board:-

- a) Overseeing the implementation of good governance practice.
- b) Overseeing the implementation of Anti-Bribery Policy.
- c) Instilling a culture of integrity and zero-tolerance of corruption in PKA.
- d) Monitoring conflict of interest situations.
- e) Administrating the whistle blowing policy.
- f) Overseeing the integrity and governance compliance of subsidiaries and privatized ports through integrity agreements.
- g) Ensuring the cascading of good governance to management and operational levels.

- h) Evaluating independency of the Board in decision making.
- i) Ensuring Board members are able and not inhibited from exercising their fiduciary duties required of them and especially it needs to safeguard the objectivity of decisions.

6.3.2 The Chairman of the Supervisory Committee is elected by the Board from one of its independent Directors and other members shall include:

- The General Manager/CEO
- Non-board members from outside entity
- The Chief Internal Auditor
- The Chief Governance Officer
- The Company Secretary

6.3.3 A new executive position of Chief Governance Officer should be established to oversee the implementation of all governance initiatives and to ensure compliance to all policies and programme. This officer will be directly responsible to the Supervisory Committee on Ethics and Integrity.

6.4 STRENGTHENING THE ROLE OF INTERNAL AUDIT DEPARTMENT.

The problems coming from abuses in authority and violations and lack of compliance with established corporate standard operating procedures and sound management practices as highlighted by the PwCAS's report can be dealt with by the PKA Board if there exist a strong and independent audit committee and independent auditors. It is apparent that the former General Manager being the CEO also chairs the audit committee and the staff of the internal audit department is accountable to her directly. Internal audit is an essential and critical function in corporate governance especially in financial accountability and for it to carry out its duties professionally, internal audit must be independent of the chief executive. The determination of remuneration and the evaluation of the performance of all internal auditors must be set apart from the executive branch and comes under the direct responsibility of the Chairman of the Audit Committee. Therefore, it is proposed that steps be taken to strengthen the internal audit function as follows:

6.4.1 An Audit Committee be set up which has direct accountability to the Board and not the GM of CEO;

6.4.2 An Independent Director from the PKA Board to be the Chairman of the Audit Committee;

6.4.3 Strengthen of the internal audit function with the recruitment of chief internal auditor that has the competency to manage the wider scope of work and responsibility;

6.4.4 All members of the committee must not hold executive function. Executives may participate by invitation only. Members must have the competency to deal with financial matters and matters of governance.

6.5 ESTABLISHMENT OF RISK MANAGEMENT COMMITTEE

There is a need for PKA to continuously monitor all areas of its operations in terms of the risks that will affect PKA either in short or long term. This is necessary to provide an assessment of the occurrence of such risks and their consequences so that appropriate steps can be taken to prevent or mitigate against such risks. It is recommended that to oversee this function, a risk management committee shall be established and the necessary competent staff be recruited to support this function.

6.6 STRENGTHENING THE ROLE OF TENDER COMMITTEE.

In order to ensure that the best deal is obtained it is necessary to have in place a sound and professional

practices at all phases of the tender process. An open-tender process in line with government policy should be put in place and there should not be any privately negotiated procurement without first going through the required tender process. Strict observance to authorized standard procedures must be followed. The composition of the tender committee is as follows:

- a. Chairman to be an Independent Director. The CEO or GM of PKA ought not to chair this Committee.
- b. Executives who are involved in the evaluation and do not have a conflict of interest.
- c. An independent third party as required under the provisions of integrity pact.

6.7 ESTABLISHMENT OF BUSINESS PRINCIPLES OF INTEGRITY AND GOVERNANCE TO BE ADHERED TO BY THE MANAGEMENT.

PKA shall prohibit bribery in any form whether directly or indirectly and shall commit to implementing a programme to counter bribery basing on commitment to fundamental values of integrity, transparency and accountability. The aim should be to create and maintain a trust-based and inclusive internal culture in which bribery is not tolerated. The main features of the anti-bribery programme are provided in Annexure 1:

6.8 ADOPTION OF MEASURES TO ENSURE COMPLIANCE TO GOOD GOVERNANCE PRACTICES AND ANTI-BRIBERY PROGRAMME:

i. Integrity Agreement

To be signed between PKA and its licensee (port operators) and its JV and subsidiaries. Integrity Pack Agreement is a covenant where by both parties agreed to abide by the provisions of the agreement relating to the implementation of acceptable governance practices for their operation. It also gives rights to PKA to audit the adequacy of governance framework in the other party and to make proposal for policy changes and operational improvement in regards to governance and integrity. Failure of the other party to carry out these changes or improvement may allow PKA to impose penalties and even terminate the operational contract.

In time, a Port Klang Integrity Compliance Community (PKICC) will be formed to forge more improvement in compliance by creating a culture amongst all people and enterprises doing business in the Port cluster to forge peer-to-peer accountability.

ii. Whistle Blowing Policy

A policy to encourage disclosure to the Board on abuses, fraud and corrupt practices in the entity by employees, vendors and other parties that has relationship with PKA.

iii. Integrity Pacts (IP) in Procurement Transactions

These are agreements signed between vendors and buyers and require commitment and strict adherence to refrain from practicing or encouraging directly or indirectly bribes to influence procurement decisions. Key officers from both parties are required to signed statutory declarations stating compliance. A violation carries financial penalties and other sanctions such as debarring from doing business with PKA and PKFZ.

iv. Integrity Compliance Interview

Such interviews are usually conducted annually with key officers whose positions subject them to be predisposed to corrupt practices. The nature of such interviews is to reaffirm that the interviewee has not engaged in any corrupt practices. It provides a means of educating and reminding such employees that seriousness of the entity in countering such practices.

7. CONCLUSION

Although this report had made a number of significant recommendations most of which consist of good practices and measures to be undertaken by PKA, it is also important to emphasis that in practice, a high level of good governance can only be achieved where people in responsible positions have a high level of integrity. Therefore, the selection of people of good character in key management positions and at the Board is of

utmost importance. Furthermore, there must be instilled in the corporate culture a zero tolerance for dishonesty and corruption so that through peer pressure good governance is exercised at all levels of the entity.

Moreover, it is to be noted that PKA is a statutory body entrusted to handle a vital function of the national logistic infrastructure and as such, being in a governmental organization it will always face the risk of political decisions being imposed upon it that may be contrary to sound objective reasons. It is the duty of the Board to zealously protect the management from such intrusions which can have costly consequences where the whole Board ultimately cannot deny its responsibility for their incurrence.

The Minister, being vested wide powers by the Act to appoint members of the Board and the top management personnel and hence has an inherent strong influence on the management of PKA must also exercise such powers for sound and proper reasons that are beneficial to PKA.

Reported by:

Datuk Paul Low Seng Kuan
Chairman

PKA Ad-Hoc Committee on Administration and Corporate
Governance

Dated : 22nd July 2009

ANNEXURE 1

A. SCOPE OF THE PROGRAMME

The enterprise should analyze which specific areas pose the greatest risks from bribery and design and implement its programme accordingly.

The programme should address the most prevalent forms of bribery relevant to the enterprise but a minimum should cover the following areas:-

I. Bribes

- (i) The enterprise should prohibit all forms of bribery whether they take place directly or through third parties.
- (ii) The enterprise should also prohibit its employees from soliciting, arranging or accepting bribes intended for the employee's benefit or that of the employee's family, friends, associates or acquaintances.

II. Political contributions

- (i) The enterprise, its employees or agents should not make direct or indirect contributions to political parties, organizations or individuals engaged in politics, as a way of obtaining advantage in business transactions.

- (ii) The enterprise should publicly disclose all its political contributions.

III. Charitable contributions and sponsorships

- (i) The enterprise should ensure that charitable contributions and sponsorships are not used as a subterfuge for bribery.
- (ii) The enterprise should publicly disclose all its charitable contributions and sponsorships.

IV. Facilitation payments

- (i) Recognising that facilitation payments' are bribes the enterprise should work to identify and eliminate them.

V. Gifts, hospitality and expenses

- (i) The enterprise should prohibit the offer or receipt of gifts, hospitality or expenses whenever they could affect or be perceived to affect the outcome of business transactions and are not reasonable and bona fide.

B. PROGRAMME IMPLEMENTATION REQUIREMENTS

I. Organization and responsibilities

- (i) The Board of Directors or equivalent body should commit to an anti-bribery policy and Programme based on the Business

Principles and provides leadership, resources and active support for management's implementation of the Programme.

- (ii) The Chief Executive Officer is responsible for ensuring that the Programme is carried out consistently with clear lines of authority.
- (iii) The Board of Directors or equivalent body, Chief Executive Officer and senior management should demonstrate visible and active commitment to the implementation of the enterprise's Programme.
- (iv) The enterprise should make compliance with the Programme mandatory for directors and apply appropriate sanctions for violations of its Programme.

II. Business relations

- (i) Subsidiaries and other entities

The enterprise should implement its Programme in all business entities over which it has effective control and use its influence to encourage an equivalent Programme in other business entities in which it has a significant investment or with which it has significant business relationships.

III. Joint ventures and consortia

- (i) The enterprise should conduct due diligence before entering into a joint venture or consortium.
- (ii) The enterprise should ensure that joint ventures and consortia over which it maintains effective control have Programmes consistent with its own.
- (iii) Where an enterprise does not have effective control of a joint venture or consortium it should make known its Programme to the other entities in the venture and encourage them to adopt a Programme for the venture that is consistent with its own.
- (iv) The enterprise should monitor the Programmes and performance of joint ventures and consortia; in the case of policies and practices that are inconsistent with its own Programme, the enterprise should take appropriate action. This include: requiring correction of deficiencies in the implementation of the Programme; application of sanctions; or termination of its participation in the joint venture or consortium.
- (v) Where the enterprise is unable to ensure that a joint venture of consortium has a Programme consistent with its own, it should have a plan to exit from the arrangement if bribery occurs or is reasonably thought to have occurred.

IV. Agents and other intermediaries

- (i) The enterprise should not channel improper payments through agents or other intermediaries.
- (ii) The enterprise should undertake properly documented due diligence before appointing agents and other intermediaries.
- (iii) All agreements with agents and other intermediaries should require prior approval of management.
- (iv) Compensation paid to agents and other intermediaries should be appropriate and justifiable remuneration for legitimate services rendered.
- (v) Agents and other intermediaries should contractually agree to comply with the enterprise's Programme and be provided with appropriate advice and documentation explaining the obligation.
- (vi) The enterprise should contractually require its agents and other intermediaries to keep proper books and records available for inspection by the enterprise, auditors or investigating authorities.
- (vii) The relationship should be documented.
- (viii) The enterprise should monitor the conduct of its agents and other intermediaries and should have a right of termination in

the event that they pay bribes or act in a manner inconsistent with the enterprise's Programme.

V. Contractors and suppliers

- (i) The enterprise should conduct its procurement practices in a fair and transparent manner.
- (ii) The enterprise should avoid dealing with contractors and suppliers known or reasonably suspected to be paying bribes. It should undertake due diligence, as appropriate, in evaluating prospective contractors and suppliers to ensure that they have effective anti-bribery Programmes.
- (iii) The enterprise should make known its anti-bribery policies to contractors and suppliers.
- (iv) The enterprise should monitor significant contractors and suppliers as part of its regular review of relationships with them and have a right of termination in the event that they pay bribes or act in a manner inconsistent with the enterprise's Programme.

VI. Human resources

- (i) Human resources practices including recruitment, promotion, training, performance evaluation, remuneration and recognition should reflect the enterprise's commitment to the Programme.

- (ii) The human resources policies and practices relevant to the Programme should be developed and undertaken in consultation with employees, trade unions or other employee representative bodies as appropriate.
- (iii) The enterprise should make it clear that no employee will suffer demotion, penalty, or other adverse consequences for refusing to pay bribes even if such refusal may result in the enterprise losing business.
- (iv) The enterprise should make compliance with the Programme mandatory for employees and apply appropriate sanctions for violations of its Programme.

VII. Training

- (i) Directors, managers, employees and agents should receive appropriate training of the Programme.
- (ii) Where appropriate, contractors and suppliers should receive training on the Programme.

VIII. Raising concerns and seeking guidance

- (i) To be effective, the Programme should rely on employees and others to raise concerns and violations as early as possible. To this end, the enterprise should provide secure and accessible channels through which employees and

others should feel able to raise concerns and report violations (“whistle-blowing”) in confidence and without risk of reprisal.

- (ii) These or other channels should be available for employees to seek advice on the application of the Programme.

IX. Communication

- (i) The enterprise should establish effective internal and external communication of the Programme.
- (ii) The enterprise should publicly disclose information about its Programme, including management systems employed, to ensure its implementation.
- (iii) The enterprise should be open to receiving communications from relevant interested parties with respect to the Programme.

X. Internal controls and record keeping

- (i) The enterprise should establish and maintain an effective system of internal controls to counter bribery, comprising financial and organizational checks and balances over the enterprise’s accounting and record keeping practices and other business processes related to the Programme.

- (ii) The enterprise should maintain available for inspection accurate books and records that properly and fairly document all financial transactions. The enterprise should not maintain off-the-books accounts.

- (iii) The enterprise should subject the internal control systems, in particular the accounting and record keeping practices, to regular review and audit to provide assurance on their design, implementation and effectiveness.

ANNEXURE 2

Section 1 Terms of Reference and Members

1. OBJECTIVE

1.1. The Committee is formed to ascertain the weakness and shortfalls from the outcome of the PKFZ Audit Report to the public. There are four important principles in the performance of corporate governance in the public sector.

- a) Integrity
- b) Accountability
- c) Trust and monitoring
- d) Transparency

2. MEMBERSHIP

The Committee comprises of:

- (i) Y. Bhg. Datuk Paul Low Seng Kuan, President, Transparency International Malaysia.
- Chairman
- (ii) En. Nik Mohd. Hasyudeen Yusoff, President, Malaysian Institute of Accountants and Chief Operating Officer of Inovastra Sdn Bhd
- (iii) Pn. Saadatul Nafisah Bt. Bashir Ahmad, Director, National Audit Department

- (iv) Mr. Paul W. Chan, Secretary General, Malaysian Institute of Corporate Governance

3. CHAIRMAN

Y. Bhg. Datuk Paul Low Seng Kuan shall act as the Chairman of this Committee. In his absence, the Committee can elect amongst the committee members to chair the meeting.

4. SECRETARY AND MINUTES

4.1 The General Manager of Port Klang Authority shall act as the Secretary of the Committee.

4.2 The Secretary shall record the minutes and proceedings as well as resolutions at every committee meeting. The records shall incorporate the attendance records.

4.3 The minutes of meeting shall be distributed to members of the Committee soonest possible.

4.4 The minutes of meeting shall be tabled and for discussion to the Klang Port Authority Board for their perusal.

5. QUORUM

Minimum quorum for the meeting is 2 persons.

6. FREQUENCY OF MEETING

The said Committee shall meet twice a month or more as and when required.

7. FUNCTIONS AND DUTIES

- 7.1 To have a main role in structuring the corporate governance of the Port Klang Authority.
- 7.2 To assist the Board to identify the weakness and flaws in the procedures and executions.
- 7.3 To resolve and improve the identified weaknesses and flaws.
- 7.4 To increase the efficiency and improve the effectiveness of the system in providing the public services in particular on decision making at the Authority Board level.
- 7.5 To increase corporate governance and the delivery system of public service with added frameworks on the legal and regulatory aspects.
- 7.6 To improve the use and efficient cost management of public fund with adopting economical financial controls and increased monitoring on its implementations.

8. REPORTING RESPONSIBILITIES

The committee is required to report officially to the Port Klang Authorities.

9. ALLOWANCE FOR ATTENDING MEETING

The Committee shall be paid RM300.00 as allowance for each meeting.