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## **MTR CORPORATION LIMITED**

### **香港鐵路有限公司**

(the “**Company**”)

*(Incorporated in Hong Kong with limited liability)*

(Stock code: 66)

### **DISCLOSEABLE TRANSACTION CONTINUING CONNECTED TRANSACTION**

On 24 November 2008, the Company entered into a Preliminary Entrustment Agreement with the Secretary for Transport and Housing for and on behalf of Government, providing for the design of, and site investigation and procurement activities in relation to, the Shatin to Central Link (the “**SCL**”) (the “**Preliminary Entrustment Agreement**”).

The scheme in respect of the SCL was first gazetted under the Railways Ordinance (Cap. 519 of the Laws of Hong Kong) on 26 November 2010. The Chief Executive in Council has decided that the Company should be asked to proceed with work which is necessary for the advance works of the SCL (the “**Authorisation**”).

On 17 May 2011, pursuant to the Authorisation, the Secretary for Transport and Housing for and on behalf of Government and the Company entered into an agreement for the financing, construction, procurement of services and equipment and other matters associated with the Works (the “**Entrustment Agreement**”).

In consideration of the Company executing or procuring the execution of the Entrustment Activities and carrying out its other obligations under the Entrustment Agreement, Government shall pay to the Company the Project Management Cost on a monthly basis and in consideration of the Company executing or procuring the execution of the Miscellaneous Works (if any) and carrying out its other obligations under the Entrustment Agreement in relation to the Miscellaneous Works (if any), Government shall pay to the Company the Miscellaneous Works Fee. Government is also required to bear any Direct Costs. In summary, the scope of the Entrustment Activities includes certain enabling works on the expanded Admiralty Station and the to be constructed Ho Man Tin Station, the re-provisioning of the International Mail Centre from Hung Hom to Kowloon Bay and other works as described as such under the Entrustment Agreement.

Under the Entrustment Agreement, Government is required to bear all of the Works Cost. In this connection, Government will make payments to the Company in respect of the Works Cost on a provisional basis, subject to adjustments when the final outturn cost of the Works

Cost is determined.

Pursuant to the Entrustment Agreement, the Company shall carry out or procure the carrying out of the Entrustment Activities in accordance with all applicable laws, regulations, by-laws, the MTR Ordinance, the Operating Agreement and the Entrustment Agreement.

Government shall use reasonable endeavours to provide the Company with assistance of a non-financial nature, including taking all reasonable steps to procure that all necessary licences and consents, required in connection with the design, construction and operation of the SCL are given or granted.

As Government is a substantial shareholder of the Company and therefore a “connected person” of the Company (as defined in Chapter 14A of the Listing Rules), the Entrustment Agreement is a continuing connected transaction for the Company under Rule 14A.13 and Rule 14A.14 of the Listing Rules. As disclosed in previous announcements by the Company, the Stock Exchange has granted the Waiver to the Company which exempts it from strict compliance with the requirements under Chapter 14A of the Listing Rules which would otherwise apply to continuing connected transactions between the Company and Government, subject to conditions described below under the heading “**GENERAL**”. Had the Waiver not been granted, the Entrustment Agreement would have been subject to the announcement, reporting and independent shareholder approval requirements under Chapter 14A of the Listing Rules.

The Entrustment Agreement constitutes a transaction under Chapter 14 of the Listing Rules. As each of the revenue ratio, the assets ratio and the consideration ratio, as applied in respect of the Entrustment Agreement, is more than 5% but less than 25% and each of the other ratios is less than 5% (or does not apply), the Entrustment Agreement constitutes a discloseable transaction for the Company which is subject to the notification and announcement requirements under the Waiver and the Listing Rules.

This announcement is made in accordance with the conditions of the Waiver and Rules 14.35 and 14A.47 of the Listing Rules.

Details of the Entrustment Agreement will be disclosed in the next annual report of the Company in accordance with the terms of the Waiver and Rule 14A.46 of the Listing Rules.

## **ENTRUSTMENT AGREEMENT**

The Entrustment Agreement relates to the SCL which is one of the railway projects recommended for implementation in Government’s Railway Development Strategy 2000. The SCL comprises two parts; firstly it will extend the existing Ma On Shan Line from Tai Wai to the West Rail Line via East Kowloon and secondly it will extend the existing East Rail Line across the harbour to Wan Chai North and Central. The Entrustment Agreement contains (inter alia) the terms described below:

**Parties:**

- (1) the Company; and
- (2) Secretary for Transport and Housing for and on behalf of Government.

**The Company's obligations**

Pursuant to the Entrustment Agreement, the Company shall carry out or procure the carrying out of the Entrustment Activities in accordance with all applicable laws, regulations, by-laws, the MTR Ordinance, the Operating Agreement and the Entrustment Agreement. In summary, the scope of the Entrustment Activities includes certain enabling works on the expanded Admiralty Station and the to be constructed Ho Man Tin Station, the re-provisioning of the International Mail Centre from Hung Hom to Kowloon Bay and other works as described as such under the Entrustment Agreement.

The Company and Government may agree that the Company will carry out (or procure the carrying out of) certain additional works for Government (such agreed additional works being "**Miscellaneous Works**"). Miscellaneous Works (if any) are to be carried out by the Company in the same manner as if they had formed part of the Entrustment Activities.

The Company will provide to Government by the end of each calendar month, a progress report on the Entrustment Activities that were carried out in the immediately preceding calendar month and, within three months following the completion of the Works, a final report on the Entrustment Activities.

The Company will let all contracts with Third Parties under its conditions of contract and act in accordance with certain of its management systems and procedures specified in the Entrustment Agreement.

The Company will, to the satisfaction of Government, carry out or procure the carrying out of the Entrustment Activities related to the Miscellaneous Works (if any), in accordance with specifications and/or standards to be agreed or, in the absence of agreement, reasonably stipulated by Government or other relevant public bodies.

In reaching any commercial settlements with Third Parties which are not strictly in accordance with the terms of the relevant contract or which amend the terms of the relevant contract, the Company shall act in accordance with its relevant commercial settlement procedures and shall consult with the Project Supervision Committee in respect of any proposed commercial settlement before such settlement is considered by Company's internal project control group.

The Company shall be responsible for the care of all works constructed under the SCL Project from the commencement of construction until the date of handover of those works to Government (or to a third party directed by Government) and for procuring the completion of any outstanding works and/or defective works identified prior to the handover of the works.

During the period of twelve years following the issue of a certificate of completion by the

Company in respect of work carried out under any contract with any Third Party, the Company shall be responsible for the repair of any defects in such work that are identified following the expiry of any defects liability period under the relevant contract.

***Project Supervision Committee***

The Project Supervision Committee shall hold meetings to review progress under the Entrustment Agreement and to monitor procurement activities, post-tender award cost control and resolution of contractual claims, in each case, associated with SCL Project.

Unless otherwise agreed between Government and the Company, the Company shall send a representative or representatives to attend all meetings of the Project Supervision Committee and such representatives shall provide such information, co-operation and assistance as, in each case, Government may reasonably require, and be entitled to receive any papers which are prepared for consideration at the meetings of the Project Supervision Committee.

***Warranties***

Under the Entrustment Agreement the Company warrants that:

- (A) in the case of those Entrustment Activities that relate to the provision of project management services, such Entrustment Activities shall be carried out with the skill and care reasonably to be expected of a professional and competent project manager;
- (B) in the case of those Entrustment Activities that relate to the provision of design services, such Entrustment Activities shall be carried out with the skill and care reasonably to be expected of a professional and competent design engineer; and
- (C) in the case of those Entrustment Activities that relate to the carrying out of construction activities, such Entrustment Activities shall be carried out with the skill and care reasonably to be expected of, and by utilising such plant, goods and materials reasonably to be expected from, a competent and workmanlike construction contractor.

**FINANCIAL UNDERTAKINGS**

***Government's obligations***

In consideration of the Company executing or procuring the execution of the Entrustment Activities (other than the Miscellaneous Works (if any)) and carrying out its other obligations under the Entrustment Agreement, Government shall pay to the Company the Project Management Cost on a monthly basis and, in consideration of the Company executing or procuring the execution of the Miscellaneous Works (if any) and carrying out its other obligations under the Entrustment Agreement in relation to the Miscellaneous Works (if any), Government shall pay to the Company the Miscellaneous Works Fee. The Miscellaneous Works Fee will be paid by Government in cash within 21 days of receipt of a relevant

certificate issued from time to time by the Company in accordance with the terms of the Entrustment Agreement. Government is also required to bear any Direct Costs.

Under the Entrustment Agreement, Government is required to bear all of the Works Cost. In this connection, Government will make payments to the Company in respect of the Works Cost on a provisional basis, subject to adjustments when the final outturn cost of the Works Cost is determined. As the expanded Admiralty Station will serve both the SCL and the South Island Line (East) and the to be constructed Ho Man Tin Station will serve both the SCL and the Kwun Tong Line Extension, the Works Cost in respect of the Enabling Works and the RRIW relating to the expanded Admiralty Station will, in general, be approximately 70% of the relevant final outturn construction cost for such Works and the Works Cost in respect of the Enabling Works and the RRIW relating to the to be constructed Ho Man Tin Station will, in general, be approximately 73.5% of the relevant final outturn construction cost for such Works.

Government shall bear land acquisition, clearance and related costs and those costs which are incurred by the Lands Department in connection with the SCL Project.

The maximum aggregate amount payable by Government to the Company for the Entrustment Cost under the Entrustment Agreement is limited to approximately HK\$3,000,000,000.00 per annum and a total in aggregate of approximately HK\$15,000,000,000.00.

Government shall use reasonable endeavours to provide the Company with assistance of a non-financial nature, including taking all reasonable steps to procure that all necessary licences and consents required in connection with the design, construction and operation of the SCL are given or granted as expeditiously as possible.

### ***Term***

The Entrustment Agreement commences on 17 May 2011 and remains in full force and effect until the completion of the Entrustment Activities. Notwithstanding this, certain provisions will remain in force following completion of the Entrustment Activities, for example, provisions regarding confidentiality and dispute resolution.

### ***Modifications to SCL Project***

Under the terms of the Entrustment Agreement, either of Government or the Company may propose amendments in writing to the SCL Project programme, the scope of the Entrustment Activities and/or the scope of the SCL Project. If the relevant party wishes to proceed with the material modification proposed by it, the parties will endeavour to agree on the terms of such modification. Any increase in cost shall be borne by Government.

### ***Mutual Co-operation***

Each of Government and the Company shall use reasonable endeavours to co-operate with the other in relation to the preparation of any submission or other document to various

authorities including the Legislative Council and relevant District Councils.

## **REASONS FOR THE TRANSACTION**

The Company's principal activities include activities in relation to railway projects of the nature provided for in the Entrustment Agreement. Consequently, the Company believes that its entry into the Entrustment Agreement will reinforce the Company's position as a leading provider of such services in Hong Kong.

The Directors (including the independent non-executive Directors) believe that the terms of the Entrustment Agreement are on normal commercial terms, in the ordinary and usual course of business of the Company and fair and reasonable and in the interests of the shareholders of the Company as a whole.

## **GENERAL**

As Government is a substantial shareholder of the Company and therefore a "connected person" of the Company (as defined in Chapter 14A of the Listing Rules), the Entrustment Agreement is a continuing connected transaction for the Company under Rule 14A.13 and Rule 14A.14 of the Listing Rules. As disclosed in previous announcements by the Company, the Stock Exchange has granted the Waiver to the Company which, subject to certain conditions, exempts it from strict compliance with the requirements under Chapter 14A of the Listing Rules which would otherwise apply to connected transactions and continuing connected transactions between the Company and Government. Under the Waiver, the Company is required to make an announcement in respect of the Entrustment Agreement in accordance with Rule 14A.47 of the Listing Rules and to disclose details of the Entrustment Agreement in its next annual report in accordance with Rule 14A.46 of the Listing Rules. The Waiver also requires the Company to make the Entrustment Agreement subject to the approval of the Board, with the Directors appointed by the Government under Section 8 of the MTR Ordinance and any Director who holds a position in the Government being required to abstain from voting. Accordingly, each of Professor Chan Ka-keung, Ceajer, the Secretary for Transport and Housing and the Commissioner for Transport had left the relevant Board meeting prior to discussion of the Entrustment Agreement and voting by the Board on the relevant Board resolutions.

The Entrustment Agreement constitutes a transaction under Chapter 14 of the Listing Rules. As each of the revenue ratio, the assets ratio and the consideration ratio, as applied in respect of the Entrustment Agreement, is more than 5% but less than 25% and each of the other ratios is less than 5% (or does not apply), the Entrustment Agreement constitutes a discloseable transaction for the Company which is subject to the notification and announcement requirements under the Waiver and the Listing Rules.

This announcement is made in accordance with the conditions of the Waiver and Rules 14.34 and 14A.47 of the Listing Rules. Details of the Entrustment Agreement will be disclosed in the next annual report of the Company in accordance with Rule 14A.46 of the Listing Rules and the terms of the Waiver. Had the Waiver not been granted, the Entrustment Agreement would have been subject to the reporting, annual review, announcement and independent shareholder approval requirements under Chapter 14A of

the Listing Rules.

As the Entrustment Agreement is a continuing connected transaction, the terms of the Waiver also require, amongst other things, the following:

- (a) the independent non-executive Directors shall review the transactions under the Entrustment Agreement every year and confirm in the Company's annual report that such transactions have been entered into:
  - (1) in the ordinary and usual course of the business of the Company;
  - (2) either on normal commercial terms or, if there are no sufficient comparable transactions to judge whether they are on normal commercial terms, on terms no less favourable to the Company than terms available to or from independent third parties; and
  - (3) in accordance with the Entrustment Agreement on terms that are fair and reasonable and in the interests of the shareholders of the Company as a whole;
- (b) the auditors of the Company shall provide a confirmation letter to the Board each year (with a copy to the Stock Exchange at least 10 business days prior to the bulk printing of the Company's annual report) in accordance with the terms of the Waiver;
- (c) the Company shall allow, and shall use its reasonable endeavours to procure that Government will allow, the auditors of the Company sufficient access to their records for the purposes of giving the confirmation in paragraph (b) above;
- (d) the Company shall state in its annual report whether its auditors have given the confirmation in paragraph (b) above; and
- (e) the Company shall notify the Stock Exchange promptly and publish an announcement if it knows or has reason to believe the independent non-executive Directors and/or the auditors of the Company will not be able to give the confirmations in paragraphs (a) and (b) above.

#### **PRINCIPAL ACTIVITIES OF THE COMPANY**

The principal activities of the Company and its subsidiaries are:

- (a) the operation of a modern railway system with lines from Central to Tsuen Wan (**Tsuen Wan Line**), from Yau Ma Tei to Tiu Keng Leng (**Kwun Tong Line**), from Po Lam and LOHAS Park to North Point (**Tseung Kwan O Line**), from Chai Wan to Sheung Wan (**Island Line**), from Hong Kong to Tung Chung (**Tung Chung Line**), from Hong Kong to the Hong Kong International Airport and then AsiaWorld-Expo both at Chek Lap Kok (**Airport Express Line**), from Sunny Bay to Disneyland Resort (**Disneyland Resort Line**), from Hung Hom to the boundary at Lo Wu and

Lok Ma Chau (**East Rail Line**), from Tai Wai to Wu Kai Sha (**Ma On Shan Line**), from Hung Hom to Tuen Mun (**West Rail Line**), the North-west Railway (commonly known as Light Rail) in the North-West New Territories of Tuen Mun, Tin Shui Wai and Yuen Long, and an intercity railway system between Hong Kong and some major cities in the Mainland of China, and feeder bus services in support of West Rail Line, East Rail Line and Light Rail;

- (b) property development, either as owner or as an agent for KCRC, at locations along the related railway lines including the Tseung Kwan O Line, the Ma On Shan Line, the East Rail Line, the Light Rail and the West Rail Line;
- (c) related commercial activities, including the letting of advertising and retail space, enabling telecommunication services on the railway system, property management and leasing management of investment properties (including shopping malls, offices and residential units);
- (d) the investment in a 50% equity share in the operation of the seven-year UK's London Overground Concession, consisting of five London railway lines;
- (e) the investment in the operation (including rolling stock maintenance which is undertaken by a 50:50 joint venture) of the eight-year Sweden's Stockholm Metro Concession, consisting of three lines, linking the Swedish capital's central areas with surrounding suburbs;
- (f) the investment in a 60% equity share in the operation and maintenance of Australia's Melbourne train system, consisting of 15 lines, linking Melbourne's central business district with surrounding suburbs, under a franchise agreement with an initial period of eight years;
- (g) the design and construction of the West Island Line as an extension of the Island Line;
- (h) the design, construction, procurement of services and equipment, and all other matters associated with bringing the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link into service;
- (i) the design of the Kwun Tong Line Extension and the South Island Line (East) as the railway system extensions for which scheme authorisation has been granted;
- (j) the planning and design of the Shatin to Central Link as a major project which Government has confirmed policy support;
- (k) the operation of the Tung Chung to Ngong Ping Cable Car System and the Theme Village in Ngong Ping, Lantau Island, Hong Kong;
- (l) worldwide consultancy services covering all areas of expertise required in the project management, planning, construction, operation, maintenance and up-grading of railways plus fare collection, property integration/development advice



including other property related services and advice on generation of non-fare revenues;

- (m) investment in Octopus Holdings Limited, a subsidiary of the Company, which has business activities both in Hong Kong and overseas including the operation of a smart card system by its subsidiary Octopus Cards Limited for the collection of payments for both transport and non-transport applications in Hong Kong;
- (n) equity investments and long term operations and maintenance contracts outside of Hong Kong;
- (o) property management, shopping centre investment and railway related property development business in the Mainland of China;
- (p) the investment in a 49% equity interest in a joint venture for the investment, construction and operation of Beijing Metro Line 4, under a 30 year concession agreement with the Beijing Municipal Government, and operations and maintenance of Beijing Metro Daxing Line, an extension of the Beijing Metro Line 4, under a 10 year operations and maintenance concession agreement with Beijing Metro Daxing Line Investment Company Limited, a wholly owned subsidiary of Beijing Municipal Government; and
- (q) the investment in the design, construction and future operations of Phase 2, together with operations of Phase 1 of Shenzhen Metro Line 4, a double-track urban railway running from Futian Checkpoint at the boundary between Hong Kong and Shenzhen, Mainland of China, to Longhua New Town in Shenzhen, under a 30 years Build-Operate-Transfer concession agreement with the Shenzhen Municipal Government.

## DEFINITIONS

In this announcement, unless the context otherwise requires, the following expressions have the following meanings:

“**Board**“ means the board of directors of the Company.

“**Concession Approach**“ has the meaning ascribed to that term in the Operating Agreement.

“**Direct Costs**“ means any and all charges, costs and amounts payable to any Government department, bureau, agency or body in relation to the Entrustment Activities, including without limitation, any internal charges, costs and amounts of Government, any Government department, bureau, agency or body.

“**Directors**“ means members of the Board.

**“EA3”** means an agreement which may be entered into by Government and the Company and which may contain their rights, obligations, duties and powers with respect to the financing, construction, completion, testing, commissioning and putting into service of the railway works which are necessary for the construction and/or operation of the SCL.

**“Enabling Works”** means any item of work which is described as such under the Entrustment Agreement.

**“Entrustment Activities”** means all activities, including the procurement thereof, as detailed in the Entrustment Agreement which are related to, as the case may be, the Enabling Works, the RRIW and all activities, including the procurement thereof, as agreed between Government and the Company which are related to the Miscellaneous Works (if any), and which, in each case, are required for the planning, design and construction of the Enabling Works.

**“Entrustment Costs”** means the total cost of the Entrustment Activities including, but not limited to:

- (a) the Direct Costs;
- (b) the Works Cost;
- (c) the Project Management Cost;
- (d) the Miscellaneous Works Payment (if any); and
- (e) the Miscellaneous Works Fee (if any).

**“Government”** means the government of Hong Kong.

**“HK\$”** means Hong Kong dollars, the currency of Hong Kong.

**“Hong Kong”** means the Hong Kong Special Administrative Region of the People’s Republic of China.

**“KCRC”** means the Kowloon-Canton Railway Corporation.

**“Listing Rules”** means the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited.

**“Miscellaneous Works Fee”** means, in relation to any Miscellaneous Works, the sum agreed between the Company and Government as being the project management fee payable to the Company in consideration of its designing and constructing such Miscellaneous Works.

**“Miscellaneous Works Payment”** means, in relation to any Miscellaneous Works, the sum agreed between the Company and Government as being the cost of designing and constructing such Miscellaneous Works.

**“MTR Ordinance”** means the Mass Transit Railway Ordinance (Cap. 556 of the Laws of Hong Kong).

**“Operating Agreement”** means the operating agreement dated 9 August 2007 made between Secretary for Transport and Housing for and on behalf of Government and the Company, as contemplated in Section 4(2) of the MTR Ordinance.

**“Project Management Cost”** means an amount equal to (i) the Relevant Fixed Percentage of the Works Costs or (ii) the Relevant Sum, to be paid to the Company by Government in consideration for the Company carrying out or procuring the carrying out of the Entrustment Activities (except for the Miscellaneous Works) and its other obligations under the Entrustment Agreement. Prior to the agreement on the Relevant Fixed Percentage or the Relevant Sum, the Project Management Cost shall be charged on a provisional basis calculated in accordance with the Entrustment Agreement.

**“Project Supervision Committee”** means the committee established by Government for purposes of carrying out the activities specified in the heading above entitled “Project Supervision Committee”.

**“Relevant Fixed Percentage”** means a percentage to be agreed between Government and the Company as soon as reasonably practicable after the date of the Entrustment Agreement and, in any event, prior to their entry into of EA3.

**“Relevant Sum”** means a sum to be agreed between Government and the Company as soon as reasonably practicable after the date of the Entrustment Agreement and, in any event, prior to their entry into of EA3.

**“Reprovisioning, Remedial and Improvement Works”** or **“RRIW”**, as the date of the Entrustment Agreement, comprise the removal and replacement, modification or improvement of existing privately owned facilities or facilities owned by Government or public bodies required as a consequence of the construction of the SCL, in each case, as more particularly specified in the Entrustment Agreement.

**“SCL Project”** means together the RRIW, the Enabling Works and the Miscellaneous Works (if any)

**“Stock Exchange”** means The Stock Exchange of Hong Kong Limited.

**“Third Party”** means any contractor, consultant, adviser or other third party employed or otherwise engaged by the Company in connection with the Entrustment Activities.

“**Waiver**” means the waiver granted by the Stock Exchange to the Company from the requirements under Chapter 14A of the Listing Rules (subject to certain conditions) whose terms were contained in announcements made by the Company on 13 January 2005 and 24 October 2005.

“**Works**” means the Enabling Works, the RRIW and the Miscellaneous Works (if any).

“**Works Cost**” means the costs relating to the Enabling Works and the RRIW, as described as such and calculated in accordance with the Entrustment Agreement.

By order of the Board  
**Leonard Bryan Turk**  
*Company Secretary*  
MTR Corporation Limited

Hong Kong, 18 May 2011

*Members of the Board:* Dr. Raymond Ch'ien Kuo-fung (*Chairman*)\*\*, Chow Chung-kong (*Chief Executive Officer*), Vincent Cheng Hoi-chuen\*, Christine Fang Meng-sang\*, Edward Ho Sing-tin\*, Alasdair George Morrison\*, Ng Leung-sing\*, Abraham Shek Lai-him\*, T. Brian Stevenson\*, Professor Chan Ka-keung, Ceajer (Secretary for Financial Services and the Treasury)\*\*, Secretary for Transport and Housing (Eva Cheng)\*\* and Commissioner for Transport (Joseph Lai Yee-tak)\*\*

*Members of the Executive Directorate:* Chow Chung-kong, William Chan Fu-keung, Chew Tai Chong, Thomas Ho Hang-kwong, Jacob Kam Chak-pui, Lincoln Leong Kwok-kuen and Leonard Bryan Turk

\* *independent non-executive Directors*

\*\* *non-executive Directors*

This announcement is made in English and Chinese. In the case of any inconsistency, the English version shall prevail.

