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Pacific Century  
Premium Developments  
盈科大衍地產發展

**PACIFIC CENTURY PREMIUM DEVELOPMENTS LIMITED**

**盈科大衍地產發展有限公司\***

*(Incorporated in Bermuda with limited liability)*

(Stock Code: 00432)

## **LITIGATION REGARDING THE CYBERPORT PROJECT**

This announcement is made by PCPD and its subsidiaries pursuant to Rule 13.09(1) of the Listing Rules.

In 2000, Cyber-Port Limited ("**CPL**"), PCPD's wholly-owned subsidiary, and PCCW Limited entered into a number of agreements with various Government owned companies, including Hong Kong Cyberport Management Company Limited ("**HKCMCL**"), in relation to development of the Government's Cyberport Project. The Cyberport Project Agreement which was signed at that time contains a requirement to establish a Development Maintenance Account ("**DMA/C**"). The agreement set the original level of the DMA/C at HK\$200 million and provided a mechanism for reviewing that level over the course of the project. The agreement also made provision for the funding of the DMA/C out of receipts of the Cyberport Project.

The Group has been in discussions with the Government and HKCMCL concerning the purported Final Assessment of the DM Amount made by HKCMCL under the terms of the Cyberport Project Agreement. By that assessment, the Government purported to increase the level of funding of the DMA/C to almost HK\$1.7 billion. This was done without due notice or consultation with the Group and in contradiction to public statements made by the Government over the past few years as to the financial status of the Cyberport Project. This also represents a more than eight-fold increase over the original agreed level of funding.

On 20 May 2010, the Government, through HKCMCL, commenced legal proceedings against CPL by way of originating summons in which it seeks declarations as to its purported Final Assessment.

The Group does not consider that the originating summons process is an appropriate avenue for resolving the dispute. On 22 May 2010, CPL and PCCW Limited responded to the filing of the Originating Summons by commencing legal proceedings by way of writ against HKCMCL and its affiliates (also Government-owned), Hong Kong Cyberport Development Holdings Limited and Hong Kong Cyberport (Ancillary Development) Limited, seeking (amongst other things) orders to quash the purported Final Assessment of the DM Amount and the purported auditors' certificate issued in relation to same and damages. The writ, endorsed with a Statement of Claim, is a document to which the public may have access at the Registry of the High Court (action number: HCA No. 746 of 2010). The Group presently intends to seek the consolidation of the Originating Summons proceedings into the writ action if it is not withdrawn or stayed.

The Group has engaged Senior Counsel Mr Benjamin Yu to lead its case together with junior counsel, Mr Jeremy Bartlett, instructed by Herbert Smith. The Board has taken legal advice and sought expert opinion on various matters relevant to the claims. Informed by that advice, the Board considers that, on the basis of the circumstances and facts as known, it has a solid case with very good prospects of success. CPL and the Group shall vigorously contest HKCMCL's claim and prosecute their own claim equally vigorously to defend the Group's legal rights and protect shareholders' interests.

No judgment in the legal proceedings has been made yet and the exact financial impact of the legal proceedings cannot be ascertained at the date of this announcement.

PCPD will issue further announcements to keep the shareholders informed in accordance with the Listing Rules.

**Shareholders and potential investors are advised to exercise caution when dealing in the shares of the Company.**

This announcement is made by PCPD and its subsidiaries pursuant to Rule 13.09(1) of the Listing Rules.

### **Background**

HKCMCL (on behalf of the Government) and CPL, a wholly owned subsidiary of PCPD, are parties to the Cyberport Project Agreement.

Under the terms of the Cyberport Project Agreement signed in 2000, the parties agreed to establish the DMA/C for the provision of funds for the upkeep and maintenance of certain facilities commonly available to both tenants and visitors at the Cyberport Portion of the Cyberport Project. The DMA/C is held in the name of HKCMCL. The Cyberport Portion, as more fully defined in the Cyberport Project Agreement and subsequent amendments, comprises essentially of the office accommodation, the Cybermall and the hotel. For clarification, the residential apartments and houses are not included within the Cyberport Portion but are included in the residential portion of the Cyberport Project.

Funds are paid into the DMA/C from the Project's operating account (the "**Operating Account**"), which is held in the name of CPL, using the surplus proceeds generated from the sale of units in the residential portion of the Cyberport Project and other specified project income.

The level of funds to be paid into the DMA/C (the "**DM Amount**") was originally set at HK\$200 million in the Cyberport Project Agreement.

The Cyberport Project Agreement provided a mechanism for the DM Amount to be re-assessed by HKCMCL after the aggregated amount of funds paid into the DMA/C reached HK\$200 million (the "**Provisional Assessment**") and, once more, within 6 months of the fifth anniversary of practical completion of the Cyberport Works (the "**Final Assessment**").

Practical completion occurred on 28 June 2004 at which time the Cyberport Portion was handed over to the Government. The fifth anniversary of the practical completion passed on 28 June 2009, meaning that the Final Assessment was due on 27 December 2009.

The relevant contractual provisions concerning the Provisional and Final Assessments require in each case that HKCMCL:

- a. assess the aggregate of (i) the full replacement cost of certain of the shared IT facilities at Cyberport with reference to the original acquisition cost of the relevant facilities and (ii) the "*accumulated deficit*", if any, of the Cyberport Portion during the first 5 years of operation from practical completion of the Cyberport Works. The "*accumulated deficit*" is the deficit, if any, after deducting all operating expenditure (excluding any payment from the DMA) in relation to the Cyberport Portion (including without limitation, all expenses relating to the leasing and management of the Cyberport Portion) from all operating income received by HKCMCL in relation to the Cyberport Portion; and
- b. have its assessment certified by its auditors, with the Final Assessment to be certified to inter alia, CPL.

If the aggregate figure arrived at through the assessment process exceeded HK\$200 million, the DM Amount would be revised to that figure and funds would be paid into or out of the DMA/C to bring it to the level of the revised DM Amount, subject to the DM Amount needing to be a minimum of HK\$200 million.

### **The Provisional Assessment and the purported Final Assessment**

In 2004, the DM Amount was revised to HK\$500 million following the Provisional Assessment by HKCMCL. CPL and the Group expressly reserved all of their rights in respect of the Final Assessment. The sum of HK\$500 million has already been paid into the DMA/C and any unneeded portion of these funds in excess of the HK\$200 million minimum would be returned to the project for distribution to both parties, in accordance with their allowed percentages, CPL's share being approximately 35.45%; the Government's share being approximately 64.55%.

On 24 December 2009, HKCMCL presented its purported Final Assessment of the DM Amount to CPL. It calculated that the aggregate figure should be HK\$1,693,068,297. This assessment included a calculation that the accumulated deficit of the Cyberport Portion in the five years since practical completion was HK\$1,129,889,206.

HKCMCL also purported to obtain a certificate of its purported Final Assessment from its auditors, PwC. The purported certificate expressly stated that PwC had only performed certain limited verification procedures agreed with HKCMCL in relation to HKCMCL's own calculations; and that PwC carried out the exercise solely to assist HKCMCL in providing a report of factual findings. It is the Group's contention that PwC has not certified the purported Final Assessment in accordance with the terms of the agreement.

The Group was not consulted in advance by HKCMCL or the Government regarding the purported Final Assessment despite several attempts by the Group to discuss the progress of the Final Assessment calculation. Upon receipt of the purported Final Assessment, the Group entered into discussions with the Government and HKCMCL, but those discussions produced no resolution.

The Government has asserted that it is entitled to require an additional sum of HK\$1,193,068,297 to be transferred into the DMA/C. The relevant Government Entity has not yet instructed that a transfer be made.

The position being taken by HKCMCL and by the Government surprised the Group as it runs contrary to statements and assurances made by the Government regarding the Cyberport Project since its inception in 2000.

As to the basis on which any deficit should be calculated for the purposes of determining the DM Amount, on 10 January 2005, the Government and HKCMCL made a joint presentation to LegCo's

Panel on Information Technology and Broadcasting in which it was stated that: "[t]he operating loss on a cash basis ... will be covered by the Development Maintenance Fund". The slide set and report that accompanied the Government's presentation to the LegCo committee also stated that "positive cash flow operation [was] envisaged by 2009/10".

Over the last few years, the Government has reported to LegCo that the Government Entities have generated improving operating revenues, and surpluses, from the Cyberport Project.

On 8 May 2006 the Government and HKCMCL reported to LegCo's Information Technology and Broadcasting Panel that the Cyberport Portion had recorded positive cash flow from October 2005 to March 2006 and said:

*"When a provisional assessment of the [Development Maintenance Fund] was made in late 2003 in light of operational experience, the amount was raised from \$200 million to \$500 million. [Mr Mak] added that it was unlikely that the level of DMF would be further increased."*

In its most recent report to LegCo's Information Technology and Broadcasting Panel on 8 February 2010, the Government reported that: "Cyberport has a healthy financial position". This suggested that the project was making surpluses and there would be no need to draw on the DMA/C over the original estimate.

The Government and HKCMCL have also allowed significant distributions to be made to CPL and the Government through its relevant corporate entity, HKCDHL, in accordance with their agreed percentages (CPL 35.45%: HKCDHL 64.55%) over the years and most recently on 9 July 2009 and 9 October 2009, in each case certifying that the aggregate amount paid into the DMA/C was not less than the DM Amount and without giving any indication that it would try to include depreciation in the forthcoming Final Assessment of the DM Amount.

However, contrary to the above statements, the Government Entities are now seeking to increase the DM Amount to nearly HK\$1.7 billion and are seeking to support that increase in part by claiming that HKCMCL has accumulated a deficit of HK\$1,129,889,206 in respect of the Cyberport Portion in the five year period since 28 June 2004 on the basis that depreciation should be included in that calculation. That method of calculation is both contrary to the Group's expectation and contrary to the practice used in establishing the Provisional Assessment in 2004. HKCMCL's own figures show no deficit has accumulated if depreciation is excluded from the calculation.

### **The Group's view of the Final Assessment**

The Group strenuously disputes both the manner and result of HKCMCL's purported Final Assessment. Management estimates that the Final Assessment, if properly conducted, would result in a figure of no more than approximately HK\$200 million.

Should it be determined that the appropriate level of the Final Assessment is less than HK\$500 million, then, subject to retaining a minimum of HK\$200 million in the DMA/C, HKCMCL would be obliged to return any excess over that Final Assessment to the Operating Account to be distributed in accordance with the terms of the Cyberport Project Agreement. Accordingly, if management's estimate of the Final Assessment is upheld, this would result in approximately HK\$300 million being returned to the Operating Account to be distributed in accordance with the terms of the Cyberport Project Agreement, with CPL's share of distributions being 35.45% and the Government's, through HKCDHL, being 64.55%.

If HKCMCL's view of the Final Assessment is upheld, then a further HK\$1,193,068,297 would have to be transferred to the DMA/C from the Operating Account. In the event of insufficient funds therein, HKCADL will be entitled to demand that HKCDHL and CPL contribute to the shortfall in the ratio of 64.55% to 35.45% respectively, with CPL's share being on that basis at most HK\$422.99 million.

As noted at paragraph 13.b(i) ("*Critical Accounting Estimates and Judgments*") of the Notes to its Year-End Announcement for 2009, the Group sought legal and other professional advice on the Final Assessment. Management's assessment was that the Provisional Assessment of HK\$500 million would be adequate for the purpose of the Final Assessment of the DM Amount, and the liability to contribute additional funds to the DMA/C by the Group is remote. Management remains of that view.

Accordingly, no additional provision for the DM Amount was made as at 31 December 2009. Should the Final Assessment of the DM Amount be resolved at a level lower than HK\$500 million, which management has estimated, an additional amount will be returned to the Group; if the Final Assessment exceeds HK\$500M an additional provision will have to be made accordingly in the Company's accounts.

### **The Litigation**

On 20 May 2010, HKCMCL issued legal proceedings in Hong Kong by way of originating summons against CPL seeking declarations as to its calculation of the purported Final Assessment. The action number of those proceedings is HCMP No. 986 of 2010.

The Group first became aware of those proceedings after close of trading on 20 May 2010 when solicitors acting for CPL and the Group received a copy of the originating summons issued by HKCMCL and the papers filed in support of that summons.

The Group does not consider that the originating summons process is an appropriate avenue for resolving the dispute. On 22 May 2010 in response to the filing of the Originating Summons, CPL and PCCW issued a writ against HKCMCL, HKCADL and HKCDHL seeking orders to quash the purported Final Assessment and PwC's purported certificate of same, and other relief, including declaratory relief as to the proper interpretation of the Cyberport Project Agreement and damages. The action number of those proceedings is HCA No. 746 of 2010.

The Group presently anticipates seeking orders that HKCMCL's originating summons (if not withdrawn or stayed) be consolidated into the writ action issued by CPL and PCCW. The Group and PCCW intend to vigorously prosecute their claims and defend their legal rights in all litigation.

No judgment in any legal proceedings has been made yet. The Company will issue further announcements to keep the shareholders informed in accordance with the Listing Rules.

**Shareholders and potential investors are advised to exercise caution when dealing in the shares of the Company.**

### **Definitions**

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

"Board" the board of Directors

"Company" or "PCPD" Pacific Century Premium Developments Limited (Stock Code: 00432),

	a company incorporated in Bermuda with limited liability, and the shares of which are listed on the Main Board of the Stock Exchange
"CPL"	Cyber-Port Limited, a company incorporated in Hong Kong with limited liability
"Cyberport Portion"	comprises essentially of the office accommodation, the Cybermall and the hotel, as more fully defined in the Cyberport Project Agreement and subsequent amendments. For clarification, the residential apartments and houses are not included within the Cyberport Portion but are included in the residential portion of the Cyberport Project.
"Cyberport Project Agreement"	the Project Agreement relating to the Cyberport Project dated 17 May 2000 and between (1) CPL, (2) PCCW, (3) HKCMCL, (4) HKCDHL and (5) HKCADL and as subsequently amended
"Cyberport Works"	the works, or any part thereof, in connection with the planning, design, building, construction, erection, procurement, completion and fitting out of the Cyberport Portion as more fully described in the Cyberport Project Agreement
"Directors"	the directors of the Company
"DMA/C"	as defined above
"DM Amount"	as defined above
"Final Assessment"	as defined above
"Government Entities"	HKCMCL, HKCDHL and HKCADL
"Government"	the Government of Hong Kong
"Group"	the Company and its subsidiaries, including CPL
"HK\$"	Hong Kong dollars, the lawful currency of Hong Kong
"HKCADL"	Hong Kong Cyberport (Ancillary Development) Limited, a company incorporated in Hong Kong with limited liability
"HKCDHL"	Hong Kong Cyberport Development Holdings Limited, a company incorporated in Hong Kong with limited liability
"HKCMCL"	Hong Kong Cyberport Management Company Limited, a company incorporated in Hong Kong with limited liability
"Hong Kong"	the Hong Kong Special Administrative Region of the People's Republic of China
"LegCo"	the Legislative Council of Hong Kong
"Listing Rules"	the Rules Governing the Listing of Securities on the Stock Exchange
"Operating Account"	as defined above

"PCCW"	PCCW Limited (Stock Code: 00008), a company incorporated in Hong Kong with limited liability, and the shares of which are listed on the Main Board of the Stock Exchange
"Provisional Assessment"	as defined above
"PwC"	PricewaterhouseCoopers
"Stock Exchange"	The Stock Exchange of Hong Kong Limited
"Year-End Announcement for 2009"	announcement of Annual Results for the year ended 31 December 2009 made by the Company to the Stock Exchange on 9 March 2010

By Order of the Board  
**Pacific Century Premium Developments Limited**  
**Cheng Wan Seung, Ella**  
*Company Secretary*

Hong Kong, 23 May 2010

The directors of the Company as at the date of this announcement are:

*Executive Directors:*

Li Tzar Kai, Richard (Chairman); Alexander Anthony Arena (Deputy Chairman);  
Lee Chi Hong, Robert (Chief Executive Officer); Lam Yu Yee; James Chan; and Gan Kim See, Wendy.

*Independent Non-Executive Directors:*

Cheung Kin Piu, Valiant; Prof Wong Yue Chim, Richard, SBS, JP; and Dr Allan Zeman, GBS, JP.

\* *For identification only*