

立法會
Legislative Council

LC Paper No. CB(1)8/12-13
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the thirty-third meeting held on
Friday, 23 March 2012, at 9:30 am
in Conference Room 1 of the Legislative Council Complex**

- Members present** : Hon Paul CHAN Mo-po, MH, JP (Chairman)
Hon Starry LEE Wai-king, JP (Deputy Chairman)
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Ronny TONG Ka-wah, SC
- Public officers attending** : **Agenda item I**
Mr Darryl CHAN
Deputy Secretary for Financial Services and the
Treasury (Financial Services)

Mr Nick AU YEUNG
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)

Ms Ada CHUNG, JP
Registrar of Companies
Companies Registry

Mrs Karen HO
Deputy Principal Solicitor (Company Law Reform)
Companies Registry

Ms Kitty TSUI
Senior Solicitor (Company Law Reform)
Companies Registry

Agenda item II

Mr Darryl CHAN
Deputy Secretary for Financial Services and the
Treasury (Financial Services)

Mr Nick AU YEUNG
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)

Ms Ada CHUNG, JP
Registrar of Companies
Companies Registry

Mrs Karen HO
Deputy Principal Solicitor (Company Law Reform)
Companies Registry

Ms Kitty TSUI
Senior Solicitor
(Company Law Reform)
Companies Registry

Mr CHUNG Wai-tim
Solicitor (Company Law Reform)
Companies Registry

Miss Selina LAU
Senior Government Counsel
Department of Justice

**Attendance by
invitation**

: Agenda item I

The Law Society of Hong Kong

Mr Lewis LUK Tei
Member, Company Law Committee

Hong Kong Small and Medium Enterprises
Development Association

Ms Shirley LI
President

Economic Synergy

Mr Henry LUK
Member

Individual

Dr Davy WU
Senior Lecturer, Department of Accountancy &
Law, Hong Kong Baptist University

Allen & Overy

Ms Bernardine LAM
Partner

Hong Kong Small and Medium Enterprises
Association

Mr Danny LAU Tat-pong
Chairman

Hong Kong General Chamber of Commerce

Mr William BROWN
Chairman, Legal Committee

Baker & McKenzie

Mr CHEUNG Yuk-tong
Partner

The Hong Kong Institute of Chartered Secretaries

Mr Mohan DATWANI
Director, Technical and Research

The Chamber of Hong Kong Listed Companies

Mr Mike WONG Ming-wai
Chief Executive Officer

Mayer Brown JSM

Mr Patrick WONG
Partner

Computershare Hong Kong Investor Services Ltd.

Mr Edrick YU
Vice-President, Client Services

Individual

Mr David WEBB

The Institute of Certified Management
Accountants (Hong Kong Branch)

Mr Allen WONG
Chief Executive

PCCW Minority Share Holder Alliance

Mr LEUNG Kwok-keung
Convenor

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)4

Staff in attendance : Mr KAU Kin-wah
Senior Assistant Legal Adviser 3

Mr Timothy TSO
Assistant Legal Adviser 2

Ms Sharon CHUNG
Senior Council Secretary (1)4

Miss Lilian MOK
Council Secretary (1)4

Ms Christina SHIU
Legislative Assistant (1)4

Action

I Meeting with deputations and the Administration

Clause 664 relating to retention of the headcount test for members' schemes

(LC Paper No. CB(1)2389/10-11(01) -- Administration's paper on Part 13 and Part 14 of the Companies Bill

LC Paper No. CB(1)744/11-12(04) -- Comparison Table for Part 13 -- Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back)

Action

Submissions from deputations attending the meeting

- (LC Paper No. CB(1)1332/11-12(01) -- Submission received from the Law Society of Hong Kong
- LC Paper No. CB(1)1332/11-12(02) -- Submission received from Economic Synergy
- LC Paper No. CB(1)1350/11-12(01) -- Submission received from Dr Davy WU, Senior Lecturer, Department of Accountancy & Law, Hong Kong Baptist University
- LC Paper No. CB(1)1332/11-12(03) -- Submission received from Hong Kong General Chamber of Commerce (dated 13 March 2012)
- LC Paper No. CB(1)1530/11-12(01) -- Submission received from Hong Kong General Chamber of Commerce (*issued on 11 April 2012*) (dated 11 April 2012)
- LC Paper No. CB(1)1332/11-12(04) -- Submission received from Baker & McKenzie
- LC Paper No. CB(1)1332/11-12(05) -- Submission received from the Hong Kong Institute of Chartered Secretaries
- LC Paper No. CB(1)1332/11-12(06) -- Submission received from the Chamber of Hong Kong Listed Companies
- LC Paper No. CB(1)1332/11-12(07) -- Submission received from Mayer Brown JSM
- LC Paper No. CB(1)1332/11-12(08) -- Submission received from Computershare Hong Kong Investor Services Limited
- LC Paper No. CB(1)1332/11-12(09) -- Submission received from Mr David WEBB
- LC Paper No. CB(1)1332/11-12(10) -- Submission received from the Institute of Certified Management Accountants (Hong Kong Branch)
- LC Paper No. CB(1)1492/11-12(01) -- Submission received from Allen & Overy (*issued on 2 April 2012*) (dated 29 March 2012)
- LC Paper No. CB(1)1601/11-12(01) -- Submission received from

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(issued on 17 April 2012)

Hong Kong Small and
medium Enterprises
Development Association
(dated 12 April 2012))

Submissions from organizations/individuals not attending the meeting

(LC Paper No. CB(1)1332/11-12(11) -- Submission received from Hong Kong Small & Medium Enterprises General Association on 1 March 2012

LC Paper No. CB(1)1332/11-12(12) -- Submission received from Dr LU Hai-tian, Assistant Professor, School of Accounting and Finance, Hong Kong Polytechnic University on 12 March 2012

LC Paper No. CB(1)1332/11-12(13) -- Submission from Mr YEUNG Wai-sing, Eastern District Council member dated 7 March 2012

LC Paper No. CB(1)1332/11-12(14) -- Submission from the British Chamber of Commerce in Hong Kong dated 12 March 2012

LC Paper No. CB(1)1332/11-12(15) -- Submission from Dr Brian LO dated 12 March 2012

LC Paper No. CB(1)1332/11-12(16) -- Submission from Securities and Futures Commission dated 13 March 2012

LC Paper No. CB(1)1332/11-12(17) -- Submission from Hong Kong Securities Association dated 13 March 2012

LC Paper No. CB(1)1332/11-12(18) -- Submission from the Hongkong and Shanghai Banking Corporation Limited dated 14 March 2012

LC Paper No. CB(1)1332/11-12(19) -- Submission from the Hong Kong Institute of Directors

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- dated 14 March 2012
- LC Paper No. CB(1)1332/11-12(20) -- Submission from Woo Kwan Lee & Lo dated 14 March 2012
- LC Paper No. CB(1)1332/11-12(21) -- Submission from The Chinese Manufacturers' Association of Hong Kong dated 16 March 2012
- LC Paper No. CB(1)1332/11-12(22) -- Joint submission from Professor Mark WILLIAMS, Associate Head and Professor of School of Accounting and Finance, Hong Kong Polytechnic University and Mr Daniel LAM, Lecturer of School of Accounting and Finance, Hong Kong Polytechnic University dated 16 March 2012
- LC Paper No. CB(1)1332/11-12(23) -- Submission from the Society of Chinese Accountants and Auditors dated 16 March 2012
- LC Paper No. CB(1)1332/11-12(24) -- Submission from the Hong Kong Association of Banks dated 16 March 2012
- LC Paper No. CB(1)1350/11-12(02) -- Submission from Federation of Hong Kong Industries dated 28 February 2012
- LC Paper No. CB(1)1350/11-12(03) -- Submission from Association of Chartered Certified Accountants Hong Kong dated 12 March 2012
- LC Paper No. CB(1)1350/11-12(04) -- Submission from Hong Kong Institute of Certified Public Accountants dated 20 March 2012
- LC Paper No. CB(1)1457/11-12(01) -- Submission from Hong Kong Bar Association dated 28 March 2012
(*issued on 29 March 2012*)

Action

LC Paper No. CB(1)1492/11-12(02) -- Joint submission from British Chamber of Commerce in Hong Kong, the Chinese Manufacturers' Association of Hong Kong, the Federation of Hong Kong Industries, Hong Kong General Chamber of Commerce, and the Hong Kong Institute of Chartered Secretaries dated 30 March 2012
(*issued on 2 April 2012*)

LC Paper No. CB(1)1937/11-12(01) -- Submission from the Canadian Chamber of Chamber in Hong Kong dated 16 May 2012
(*issued on 21 May 2012*)

The Bills Committee received views from the deputations and exchanged views with them and the Administration on clause 664 of the Companies Bill (Index of proceedings attached at the **Appendix**).

- Admin 2. The Administration was requested to take the following actions --
- (a) to provide written responses to deputations' submissions and the views expressed by members and deputations at the meeting, and to review clause 664, taking into account these views; and
 - (b) to provide an update of the practices in relevant overseas jurisdictions in respect of requirement of headcount test for company's scheme of compromise or arrangement.

II Meeting with the Administration

Matters arising from previous meetings

(LC Paper No. CB(1)1350/11-12(05) -- Administration's response to issues raised at the meeting on 18 October 2011 in relation to stamp duty on transfer of Hong Kong stock

Action

LC Paper No. CB(3)412/10-11 -- The Bill)

Other relevant papers

(File Ref: CBT/17/2C

LC Paper No. LS26/10-11

-- Legislative Council Brief

-- Legal Service Division
Report

LC Paper No. CB(1)1406/10-11(01) -- Paper on Companies Bill
prepared by the Legislative
Council Secretariat
(Background brief))

3. The Bills Committee noted the Administration's response to issues raised at the meeting on 18 October 2011 in relation to stamp duty on transfer of Hong Kong stock.

III Any other business

4. The Chairman advised that members would be informed of the date and time for the next meeting as soon as possible.

(Post-meeting note: The next meeting of the Bills Committee was held on Tuesday, 10 April 2012 at 9:00 am to meet with the Administration.)

5. There being no other business, the meeting ended at 11:59 am.

Council Business Division 1
Legislative Council Secretariat
11 October 2012

Bills Committee on Companies Bill

**Proceedings of the thirty-third meeting
on Friday, 23 March 2012, at 9:30 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000303-000447	Chairman	Opening remarks and arrangements for the meeting	
<u>Presentation of views by deputations</u>			
000448-001011	The Law Society of Hong Kong ("LSHK")	<p>LSHK's views -- (Submission -- LC Paper No. CB(1)1332/11-12(01))</p> <p>(a) The headcount test for members' schemes of arrangement should be abolished.</p> <p>(b) The test was contrary to the "one share, one vote" principle and had been rendered irrelevant given the prevalence of nominee shareholders who held shares for a large number of individual beneficial owners.</p> <p>(c) There were other means to protect interests of the minority shareholders, including --</p> <p>(i) the Court's discretion not to approve a scheme if the scheme was considered unfair to minority shareholders; and</p> <p>(ii) the 10% objection rule under Rule 2.10(b) of the Code on Takeovers and Mergers ("the Takeovers Code") issued by the Securities and Futures Commission.</p> <p>The Administration's proposal to give the Court discretion to dispense with the test would create uncertainty.</p>	

Time marker	Speaker	Subject(s)	Action required
001012-001037	Hong Kong Small and Medium Enterprises Development Association ("HKSMEDA")	<p>HKSMEDA's remarks that it would provide a written submission to the Bills Committee and it had no further comments</p> <p><i>(Note: HKSMEDA's submission (LC Paper No. CB(1)1601/11-12(01)) was received on 16 April 2012 and circulated to members on 17 April 2012.)</i></p>	
001038-001559	Economic Synergy ("ES")	<p>ES' views -- (Submission -- LC Paper No. CB(1)1332/11-12(02))</p> <p>(a) The headcount test for members' schemes of arrangement should be abolished.</p> <p>(b) The test was against the "one share, one vote" principle and gave disproportionate control to a very small number of shareholders who might have invested very little in a company.</p> <p>(d) The test could not effectively reflect the views of the shareholders whose shares were held by custodians/nominees.</p>	
001600-002025	Dr Davy WU	<p>Dr Davy WU 's views -- (Submission -- LC Paper No. CB(1)1350/11-12(01))</p> <p>(a) The headcount test might not fairly reflect the wishes of true minority shareholders.</p> <p>(b) The test was vulnerable to abuse by those trying to create a majority in number of shareholders to approve a scheme at the Court-ordered meeting.</p> <p>(c) The test should be retained for non-listed companies, as the Takeovers Code was not applicable to them and vote manipulation was much more difficult to happen in these companies.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(d) To encourage minority shareholders to be proactive in protecting their own interests by raising well-founded objections to a scheme which they considered unfair, the Administration should consider a proposal in line with section 168BI of the Companies Ordinance ("CO") that the Court might require a company proposing a scheme to indemnify out of its assets against the costs incurred/to be incurred by the shareholder in raising an objection to the scheme, if the Court was satisfied that the objecting shareholder was acting in good faith and had reasonable grounds for doing so.</p>	
002026-002626	Allen & Overy	<p>Allen & Overy's views --</p> <p>(a) They strongly supported abolishing the headcount test in its entirety.</p> <p>(b) The headcount test was archaic, inherited from a completely different context. With the evolution of the regime for nominee/custodian holding, registration process and pricing structure for transfer, etc., the headcount test had developed into a perfect ground for voting manipulation and abuse.</p> <p>(c) They did not support the introduction of any Court discretion to disregard the headcount test in circumstances where there was evidence that the result of the vote had been unfairly influenced by activities such as share splitting.</p> <p>(d) They did not support introducing statutory backing to the 10% objection rule.</p>	

Time marker	Speaker	Subject(s)	Action required
002627-002910	Hong Kong Small and Medium Enterprises Association ("HKSMEA")	<p>HKSMEA's views --</p> <ul style="list-style-type: none"> (a) The headcount test for members' schemes of arrangement should be retained as it would protect minority shareholders' interests. (b) Providing a new discretion for the Court to dispense with the test could prevent share splitting. (c) Retaining the headcount test would place Hong Kong in line with other common law jurisdictions such as the United Kingdom ("UK") and Singapore, and enhance Hong Kong's status as a major international financial centre. 	
002911-003443	Hong Kong General Chamber of Commerce ("HKGCC")	<p>HKGCC's views -- (Submission -- LC Paper No. CB(1)1332/11-12(03))</p> <ul style="list-style-type: none"> (a) The headcount test, which was against the "one share one vote" principle, should be abolished. (b) The Government's proposal to give the Court discretion to override a headcount test would add uncertainty in the process of taking forward a members' scheme of arrangement. (c) Given that other jurisdictions either had no headcount tests (like Canada and the United States) or were in the course of removing it (like India and Ireland), Hong Kong might have fallen behind other jurisdictions in retaining the test, which was contrary to the Government's policy to promote Hong Kong as a major international financial centre. (d) As regards the suggestion from the Securities and Futures Commission ("SFC") (LC Paper No. 	

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		<p>CB(1)1332/11-12(16)) to explore aligning the headcount test in CO with the 10% objection rule, HKGCC considered the matter complex, there was no immediate need to take forward the proposal and careful consideration should be given on the matter.</p>	
003444-003958	Baker & McKenzie	<p>Baker & McKenzie's views -- (Submission -- LC Paper No. CB(1)1332/11-12(04))</p> <ul style="list-style-type: none"> (a) The company supported abolishing the headcount test for members' schemes of public and listed companies. (b) Under the headcount test, small shareholders were given significant veto power, which was wholly disproportionate to their economic interests in the company. (c) The headcount test failed to reflect the decisions of the beneficial owner of the overwhelming majority of listed shares held in the Central Clearing and Settlement System ("CCASS"). (d) Because of the headcount test, the parties involved in a members' scheme of arrangement had to consider whether they should split their shareholdings, either as a proactive measure to increase their positive vote by headcount, or as a defensive measure against the opposite camp doing so. (e) The uncertainty as to when the Court might exercise its discretion to dispense with the headcount test and the difficulty in predicting the outcome of the vote might deter companies from proposing a scheme. 	

Time marker	Speaker	Subject(s)	Action required
		(f) As for SFC's suggestion to explore aligning the headcount test in CO with the 10% objection rule, the suggestion might be worth considering for applying to public companies.	
003959-004438	The Hong Kong Institute of Chartered Secretaries ("HKICS")	<p>HKICS' views -- (Submission -- LC Paper No. CB(1)1332/11-12(04))</p> <p>(a) According to the guiding principle for company secretarial practice, when a resolution of members was required for passing a members' scheme, the "one share, one vote" principle should apply and the voting should be conducted by way of a poll. This approach promoted certainty and was consistent with good corporate governance.</p> <p>(b) The headcount test should be abolished and the Court would continue to retain an unfettered discretion as to whether or not to sanction a members' scheme.</p> <p>(c) HKICS did not support incorporating the 10% objection rule into statute.</p>	
004439-004458	Chairman	<p>The Chairman's request for HKGCC to provide a submission on its position on the proposal to incorporate the 10% objection rule into statute</p> <p>HKGCC agreed to provide a further submission.</p>	
004459-005014	The Chamber of Hong Kong Listed Companies ("CHKLC")	<p>CHKLC's views -- (Submission -- LC Paper No. CB(1)1332/11-12(06))</p> <p>(a) The headcount test should be abolished because it contradicted the principle of "one share, one vote", which was recognized by the company law and also upheld by the Hong</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Kong Exchanges and Clearing Limited for all general meeting resolutions.</p> <p>(b) With the implementation of the headcount test for a members' scheme, certain minority shareholders with a small percentage of shares might engage in acts such as share splitting to wield disproportionate influence over the voting results, putting themselves above the wishes of the other minority shareholders, thus harming the interests of the larger group of minority shareholders.</p> <p>(c) Adequate shareholder protection, such as the 10% objection rule, was provided for under other legislation/regulations to protect minority shareholders' interests.</p> <p>(d) The proposal under clause 664 giving the Court discretion to dispense with the headcount test in case of abuse would bring uncertainty to a scheme and could deter companies from proposing the scheme.</p> <p>(e) The international trend was to abolish the headcount test for members' schemes of arrangement. Hong Kong should not fall behind in this respect.</p> <p>(f) CHKLC did not consider it necessary to incorporate the 10% objection rule into statute as the rule was working well.</p>	
005015-005540	Mayer Brown JSM ("MBSM")	<p>MBSM's views -- (Submission -- LC Paper No. CB(1)1332/11-12(07))</p> <p>(a) The headcount test was an anachronism and should be abolished.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) A company was essentially an entity formed by its shareholders for economic purposes. The cornerstone of shareholder democracy, as opposed to political democracy, was the principle of "one share, one vote".</p> <p>(c) The headcount test was not about real headcount as beneficial owners of shares were entitled to, and often did, register their shares in the names of nominees. Those who did so under the names of three different nominees would be regarded as three shareholders in a headcount test. In these circumstances, it was difficult to determine whether such action was taken for the purpose of share splitting or for other legitimate purposes.</p> <p>(d) MBJSM did not support incorporating the 10% objection rule into the Companies Bill ("CB"), as the Bill would apply to all companies incorporated in Hong Kong, not only public and listed companies which were required to observe the 10% objection rule.</p>	
005541-010055	Computershare Hong Kong Investor Services Limited ("CHKISL")	<p>CHKISL's views -- (Submission -- LC Paper No. CB(1)1332/11-12(08))</p> <p>(a) As shares held by non-registered shareholders were registered in the name of Hong Kong Securities Clearing Company ("HKSCC") Nominees Limited and HKSCC Nominees Limited was only one registered shareholder of the listed company, technically it would only be considered as having one vote in a headcount test. In practice, in past cases, HKSCC Nominees Limited was usually considered as having voted one vote in favour of the scheme and one vote against the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>scheme for the purpose of the headcount test. This would not reflect the interests of individual non-registered shareholders because there could be hundreds of non-registered shareholders behind the CCASS vote.</p> <p>(b) The headcount test should be abolished because it could not effectively reflect the views of the shareholders whose shares were maintained through CCASS, and there were already sufficient safeguards to protect the interests of minority shareholders in a members' scheme.</p>	
010056-010651	Mr David WEBB	<p>Mr David WEBB's views -- (Submission -- LC Paper No. CB(1)1332/11-12(09))</p> <p>(a) The headcount criterion was archaic and anarchic. The headcount test should be abolished for all schemes of arrangement, not just those involving members of listed companies. The vote-splitting risks were similar for listed companies and private companies.</p> <p>(b) The principle of protecting minorities against compulsory purchase of their shares was similar to the principle of protecting minority holders of an apartment building from compulsory purchase of their property. Section 3 of the Land (Compulsory Sale for Redevelopment) Ordinance allowed for a compulsory sale by auction of land upon application by persons who owned not less than 90% of the undivided shares in a lot. It did not contain a headcount requirement.</p> <p>(c) The 10% objection rule should be included in CB.</p>	

Time marker	Speaker	Subject(s)	Action required
010652-010838	The Institute of Certified Management Accountants (Hong Kong Branch) ("ICMA")	<p>ICMA's views -- (Submission -- LC Paper No. CB(1)1332/11-12(10))</p> <p>(a) The headcount test was inconsistent with the "one share, one vote" principle in other provisions dealing with shareholder meetings in CO.</p> <p>(b) The test might place significant veto power in the hands of small shareholders out of proportion to their financial involvement in the company.</p> <p>(c) The test attracted attempts to manipulate the outcome of the vote for or against a members' scheme by share splitting.</p>	
010839-011109	PCCW Minority Share Holder Alliance ("PCCWMSHA")	<p>PCCWMSHA's views --</p> <p>(a) The headcount test for members' schemes of arrangement should be retained.</p> <p>(b) PCCWMSHA supported the discretion given to the court to dispense with the headcount test.</p> <p>(c) PCCWMSHA was not aware of any reasonable privatization schemes in Hong Kong's securities market that had been blocked by the headcount test. PCCWMSHA had requested the Financial Services and the Treasury Bureau to provide statistics and information about privatization schemes of companies in Hong Kong over the past 10 years but received no reply.</p> <p>Small investors in Hong Kong looked for financial rewards and were rational. It was only when they felt unfairly treated under a proposal of the major shareholders that they took antagonistic action in a meeting.</p>	

Time marker	Speaker	Subject(s)	Action required
<u>Exchange of views with deputations and the Administration</u>			
011110-011214	Administration	The Administration's advice that it would take note of the views expressed by deputations and follow up the request for provision of statistics on privatization schemes proposed by listed companies in Hong Kong over the past years	
011215-011324	Baker & McKenzie Chairman	<p>Baker & McKenzie's enquiry on the Bills Committee's treatment of the large number of views opposing the retention of the headcount test which had been collected during the public consultation on the draft CB</p> <p>The Chairman's explanation --</p> <p>(a) The consultation was conducted by the Administration prior to the introduction of CB into LegCo and the formation of the Bills Committee.</p> <p>(b) The Bills Committee had not arrived at a conclusion on the headcount test and this meeting was held to hear views from deputations on the matter.</p>	
011325-011703	Mr James TO	Mr James TO's query that minority shareholders would simply oppose a members' scheme without considering its economic benefits	
011704-011937	Mr David WEBB	<p>Mr David WEBB's views --</p> <p>(a) There was evidence that some good members' schemes had been overruled by the headcount test.</p> <p>(b) Employees holding shares of the company could have good reasons to vote against a privatization scheme if they believed that the scheme would jeopardize their job opportunities.</p> <p>(c) The principle of "votes to follow capital" in business management</p>	

Time marker	Speaker	Subject(s)	Action required
		should be upheld.	
011938-012309	Baker & McKenzie	Baker & McKenzie's views that so long as the headcount test for members' schemes was required, it was natural for a party involved in such a scheme to consider whether to split the shareholdings either as a measure to increase the vote or as a defensive measure against the opposite camp doing so	
012310-012459	PCCWMSHA	<p>PCCWMSHA's views --</p> <p>(a) While big shareholders had professionals like lawyers to advise them on the actions to be taken in a headcount test, minority shareholders were not provided with any professional advice nor had information about what was going on at the management level of a company.</p> <p>(b) After the failure of PCCW's privatization scheme in 2009, the major shareholders of the company received huge benefits in the distribution of dividends but minority shareholders were not benefited from the distribution. This explained why minority shareholders were antagonistic to the management in a special shareholders' meeting. The actions of minority shareholders were taken simply to protect their interests.</p>	
012500-012513	Chairman	The Chairman reminded deputations that, when addressing the Bills Committee, they were not covered by the protection and immunity under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).	
012514-012800	Mr Jeffrey LAM	Mr Jeffrey LAM's enquiry for the Administration on its position regarding the headcount test, given that the loud and clear voices of deputations attending the meeting were supportive of abolition of the	

Time marker	Speaker	Subject(s)	Action required
		<p>test, and that 124 of the 144 submissions received by the Administration during the public consultation in 2009 also opposed to retaining the test</p> <p>Mr LAM's enquiry for HKGCC on whether its views on abolishing the headcount test were from local or foreign companies in Hong Kong</p>	
012801-013125	Administration	<p>The Administration's response --</p> <p>(a) Of the 124 submissions opposing the retention of the headcount test, 91 came from listed companies. Both supporting and opposing views were backed by strong justifications.</p> <p>(b) The Administration would take the views received today into consideration in reviewing clause 664.</p>	
013126-013311	HKGCC	<p>HKGCC's advice that there was evidence that the international trend was towards abolishing the headcount test – Canada and the United States had no headcount test; New Zealand and Sri Lanka had recently abolished the test; in the UK, a specialist government advisory group had proposed abolition of the test</p>	
013312-014106	Deputy Chairman Administration Mr David WEBB MBJSM	<p>The Deputy Chairman's enquiry on information/evidence showing that the headcount test had blocked privatization schemes of companies</p> <p>The Administration's response --</p> <p>(a) There had been a few cases in the past where the headcount test had been a hurdle to privatization schemes.</p> <p>(b) The Administration was collating information from SFC about privatization schemes proposed/approved in the past years and would provide the information to</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>the Bills Committee.</p> <p>Mr David WEBB's remarks that the PCCW case in 2009 was an example showing the headcount test was prone to vote manipulation</p> <p>MBJSM's remarks --</p> <p>(a) There had been privatization schemes some years before blocked by failure to pass the headcount test.</p> <p>(b) When 90% of the voting rights attached to all disinterested shares supported a scheme, it was unreasonable to give the holders of the rest the power to veto the proposal.</p>	
014107-014223	Chairman	<p>The Chairman's requests --</p> <p>(a) for the Administration to provide an update of information about the practices in relevant overseas jurisdictions regarding the headcount test for a company's scheme of compromise or arrangement; and</p> <p>(b) for HKGCC to provide a further submission on information in item (a) above and its position on the incorporation of the 10% objection rule into statute</p>	The Administration to take action as in paragraph 2(b) of the minutes
014224-014453	LSHK	<p>LSHK's comments --</p> <p>(a) There had been cases where the headcount test had been passed but the minority shareholders were strongly dissatisfied with the price offered under the privatization scheme. Unlike the PCCW case, these minority shareholders did not have the financial support for taking the case to the Court.</p>	

Time marker	Speaker	Subject(s)	Action required
		(b) Another hurdle to minority shareholders in taking the cases to the Court was the difficulty in proving vote rigging.	
014454-015036	Mr James TO	Mr James TO's view that it was important for companies to encourage minority shareholders to attend shareholders' meetings and take positive actions to pass a resolution, rather than to veto the resolution by way of a headcount test	
015037-015216	Baker & McKenzie	Baker & McKenzie's views that it was not unreasonable to require a high threshold for approving a members' scheme (such as approval by 75% of the votes cast by disinterested shareholders and not more than 10% of the votes of all disinterested shareholders being cast against the scheme), but the headcount test was fundamentally at fault, arbitrary and subject to manipulation.	
015217-015339	MBJSM	MBJSM's views that regulatory and judiciary resources should not be wasted on investigation of possible abuse of headcount test or vote splitting, and that the test should be abolished	
015340-015703	LSHK	<p>LSHK's views --</p> <p>(a) The headcount test was archaic and irrelevant to the Hong Kong investment market nowadays.</p> <p>(b) Share splitting for the purpose of vote rigging should not be encouraged. Only the "one share, one vote" principle could protect the interests of shareholders.</p>	
015704-020132	Mr David WEBB	Mr David WEBB's view that the Administration should enhance other measures for protecting minority shareholder rights, including legislating for class action rights, litigation finance reform, auditor's duty of care to	

Time marker	Speaker	Subject(s)	Action required
		shareholders, and requiring intermediaries to get voting instructions from retail investors	
020133-020343	PCCWMSHA	PCCWMSHA's view that it was pivotal for the Government/regulatory authority to enhance the standard of conduct of the management of companies so as to protect the interests of investors	
020344-020533	Administration	(a) The Administration's thanked members and deputations for their views on clause 664. It would consider the views carefully and revert to the Bills Committee. (b) On measures to enhance protection of small investors' interests, the Administration had started working on a number of initiatives.	
020534-021600	Chairman	The Chairman thanked deputations for their views and advised that the Administration's written response would be provided to the deputations when it was received.	The Administration to take action as in paragraph 2(a) of the minutes
<i>Break (021601- 022643)</i>			
<u>Discussion on follow-up actions for the meeting held on 18 October 2011 in relation to Stamp Duty on transfer of Hong Kong Stock (LC Paper No. CB(1)1350/11-12(05))</u>			
022644-022914	Administration	The Administration's briefing on the paper	
022915-022926	Chairman	Date of next meeting	