

12 March 2012

By Fax (2840 0797) and by Post

Ms. Connie SZETO
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

(Your Ref.: CB1/BC3/10)

Dear Miss Szeto,

Response to further consultation on the proposed retention of the headcount test for members' schemes under Clause 664 of the Companies Bill

I refer to your letter of 14th February, 2012 to The Hong Kong Institute of Chartered Secretaries (the "Institute"), requesting further consultation on Clause 664 of the Companies Bill, specifically, relating to whether the headcount test should be retained or not in relation to the passing of a members' scheme of compromise or arrangement. The Institute has discussed with certain senior members including me in determining its views on this matter.

I am aware that the Institute has made its submission on 9th March, 2012. I concur with the Institute's opinion that the abolition of the headcount test is consistent with and based on the "one share, one vote principle".

In the company secretarial practice, we submit that the guiding principle remains "one share, one vote". That is, where a resolution of members is required for passing a important matters, this should be done by way of poll. This approach promotes certainty and is consistent with good corporate governance. Such an approach will prevent unfair or unreasonable vote-splitting exercises or other misconduct, which takes advantage by just passing the resolution with the show of hands. It is required

by the Rules Governing the Listing of Securities (13.39) of The Stock Exchange of Hong Kong Limited that any vote of shareholders at a general meeting must be taken by poll except where the chairman, in good faith, decides to allow a resolution which relates purely to a procedural or administrative matter to be voted on by a show of hands. For important matters, such as a members' scheme were to be allowed to pass by a show of hands, it will apparently be an inconsistency or lagging behind in the standard of requirement among the regulatory bodies in the regime of corporate governance in Hong Kong.

I hereby support the idea that the headcount test be abolished on the principle of "one share, one vote", with the retention of the unfettered discretion of the Courts, which is also in line with fair and equitable principle of corporate governance.

We thank you for giving us the opportunity to provide our comments on the further consultation. Should you have any enquiries, please contact me or the Institute.

Yours faithfully,



Dr. Brian Lo, FCIS FCS