



**CHARTERED  
SECRETARIES**  
特許秘書

More than meets the eye.  
潛能. 超越所見.

*Edith Shih*  
*President*

9 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

Attn: Ms Sharon Chung

(Your Ref.: CB1/BC3/10)

Dear Madam,

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

We refer to your letter of 14 February 2012, requesting to further consult on Clause 664 of the Companies Bill, specifically, relating to whether the headcount test should be retained in relation to the passing of a members' scheme of compromise or arrangement.

This submission is in line with our submissions of 18 March 2010 and 30 March 2011 that the headcount test which is not consistent with the "one share, one vote principle" should be abolished.

In terms of company secretarial practice, we submit that the guiding principle remains "one share, one vote". Accordingly, where a resolution of members is required for passing a members' scheme, the voting should be conducted by way of a poll. This approach promotes certainty and is consistent with good corporate governance. Such approach would also prevent future vote-splitting exercises or other undesirable practices from being deployed.



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This Institute's position is based on the assumption that following the abolition of the headcount test, the Courts would continue to retain an unfettered discretion as to whether or not to sanction a members' scheme. With such discretion, the Courts would be in a position to consider all relevant issues, including those relating to minority protection, as articulated by the Administration, and on other just and equitable grounds, as appropriate, prior to determining whether or not to sanction a members' scheme.

For the reasons set out herein, we believe that the abolition of headcount test, based on the principle of "one share, one vote" should be adopted.

We thank you for giving us the opportunity to provide our submission on the further consultation. Should you have any enquiries, please contact myself or Mohan Datwani, Director, Technical and Research at 2881 6177 or [mohan@hkics.org.hk](mailto:mohan@hkics.org.hk).

Yours sincerely,

Edith Shih FCIS FCS(PE)  
*President*