

Hon Paul Chan Mo-po, MH, JP  
Chairman  
Bills Committee on Companies Bill  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

30 March 2011

Dear Paul

### **Bills Committee on Companies Bill**

Thank you for your letter dated 8 March 2011 inviting our comments on the Companies Bill.

On behalf of ACCA Hong Kong, we would like to set out our comments in particular to Clauses 281 and 282 of the Companies Bill regarding Authorization for Giving Financial Assistance (Subdivision 4, Division 5 of Part 5 of the Companies Bill refers).

We note from the consultation conclusion of the Second Phase Consultation on the Draft Companies Bill that the Administration although supported the abolition restrictions in the long run, considered that certain safeguards should be in place pending the actual enactment of the directors' duty to prevent insolvent trading, and hence the abolition of financial restrictions on private companies would not be featured in the Companies Bill. In this regard, ACCA Hong Kong indeed agreed to the abolition of the restrictions on financial assistance for private companies. However, whilst we opted for retaining the rules for listed companies in view of the public interests involved, it was the Administration's conclusion to relax the rules of prohibition for listed companies by applying the same rules as to the private companies regarding the financial restrictions.

We note that the requirement of simply an approval by the board of directors with a notice to be given to shareholders regarding the financial assistance has now been amended to require an ordinary resolution. We also note that the requirement that any member of the company or the company may apply to the Court of First Instance for an order restraining the giving of financial assistance as set out in the Clause 5.82 of the Draft Companies Bill has now been reverted to section 47G of the existing Companies Ordinance, which is currently for private companies only, to require having not less than 10% of the members

(if the company is not limited by shares) or members having not less than 10% voting rights in total for the court petition, Clause 282 of the Companies Bills refers. We consider the 10% threshold too high to protect the minority shareholders' interests.

Under the current Companies Ordinance, listed companies are basically prevented from giving financial assistance. By relaxing the restriction and providing a channel to minority shareholders to petition to the court only if a stringent requirement could be achieved, it contravenes the fundamental principle of minority shareholders protection of having the restrictions of financial assistance.

Should you wish to clarify any of the above issues, please do not hesitate to contact us at 2524 4988.

Yours faithfully



Rosanna Choi  
*Chairman*