



THE HONG KONG
POLYTECHNIC UNIVERSITY

香港理工大學

凝聚智慧 創建未來
INNOVATION AND APPLICATION
FOR THE FUTURE

To:

Ms. Sharon Chung
Clerk to Bills Committee on Companies Bill
Legislative Council Secretariat
Room 1010, Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms. Chung:

I refer to your letter of 14th February 2012, 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.

In general, I support the "one share, one vote" as guiding principle, That is, where a resolution of members is required for passing a members' scheme, this should be done by way of poll. This approach promotes certainty and is consistent with good corporate governance. For example, such an approach will prevent future vote-splitting exercises or other undesirable practices to comply with the headcount test for passing a members' scheme.

Unlike director's meeting where the company is relying on director's individual capacity and skills to make decision on behalf of the company, and therefore one person one vote. In member's meeting members are voting to exercise their rights over property, whoever has the largest proportion of that property naturally has control power, and therefore no need for head count.

The above 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, and on other just and equitable grounds, as appropriate, prior to determining whether or not to sanction a members' scheme.

For the above reason, I believe that the abolition of headcount test, based on the principle of "one share, one vote", with the retention of the unfettered discretion of the Courts, is the preferable approach to adopt.

Thank you for giving me the opportunity to provide comments on the further consultation. Should you have any enquiries, please contact me at 2766 7065 or afhtlu@inet.polyu.edu.hk

Regards

Dr. LU Haitian

Assistant Professor
School of Accounting and Finance
Hong Kong Polytechnic University
Tel: (852) 27667065
Email: afhtlu@inet.polyu.edu.hk