

Hon Paul CHAN Mo-po
Chairman
Bills Committee on Companies Bill
The Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

12 March 2012

Dear Paul

Views on the Retention of the Headcount Test for Members' Scheme (clause 664 of the Companies Bill)

Thank you for your letter dated 14 February 2012 inviting our views on the above proposal in the Companies Bill.

ACCA Hong Kong remains its position as set out in our previous submission dated 15 March 2010, a copy of which is attached for your reference.

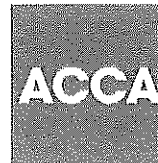
Whilst we consider it necessary to safeguard the minority shareholders, we share the concern of "share splitting" which counteracts the effectiveness of the "headcount" test. As such, we agree to retain the headcount test but to give the court discretion to dispense with the test in special circumstances.

Should you have further questions, kindly please feel free to contact us.

Yours sincerely



Bernard Wu
Chairman



Companies Bill Team
Financial Services and the Treasury Bureau
(Attn: Miss Sandy Chan)
15/F Queensway Government Offices
66 Queensway
Hong Kong

15 March 2010

Dear Sir

First Phase Consultation on Draft Companies Bill

Thank you for your letter dated 17 December 2009 in respect of the above consultation. On behalf of ACCA Hong Kong, we would like to set out our comments regarding the consultation questions under Chapters 6, 7 and 8 for your kind consideration.

Chapter 6 "Headcount" Test for Approving A Scheme of Compromise or Arrangement

Question 1 In respect of members' schemes of listed companies, which of the following options do you prefer? Please explain the reasons.

Option 1: retain the headcount test;

Option 2: retain the headcount test but give the court discretion to dispense with the test; or

Option 3: abolish the headcount test

ACCA Hong Kong agrees that there needs to be some safeguards for the minority shareholders. However, we also share the concern of "share splitting" which counteracts the effectiveness of the "headcount" test. As such, we consider option 2, i.e. to retain the headcount test but give the court discretion to dispense with the test a relatively appropriate option. As to the concern over the uncertainty as to when the court would exercise its discretion, we also believe that the court would only exercise the discretion to disregard the headcount test in circumstances where there is evidence that the result of the vote has been unfairly influenced by activities such as share splitting.

Question 3 If your answer to Question 1 is Option 2 or Option 3, do you think that the same approach should apply to creditors' scheme?

We consider the same approach should apply.

Chapter 7 Disclosure of Directors' Residential Addresses and Identification Numbers of Directors and Company Secretaries

Question 4

- (a) *Do you agree that directors' residential address should continue be made available for inspection on the public register?*
- (b) *If your answer to (a) is in the negative, do you think that either:*
- (i) the Australian approach (paragraphs 7.8 and 7.9); or*
 - (ii) the UKCA2006 approach (paragraphs 7.10(b)) should be adopted?*

Question 5

- (a) *Do you think that there is a need to mask certain digits from the identification numbers of new records of directors and company secretaries on the public register?*
- (b) *If your answer to (a) is yes, do you have any views on how to deal with personal identification numbers on existing records?*

Whilst we fully subscribe to the view that it is in the public interest that regulatory and enforcement agencies be able to contact directors through their residential address, we have no objection to the filing of such data with regulatory bodies. However, having considered the protection of personal data, ACCA Hong Kong does not agree that directors' residential address should continue be made available for inspection on the public register. Instead, in order to strike a balance between the protection of personal data and the public interest, we recommend a mechanism under which an aggrieved party, under exceptional circumstance, could apply for a court order to access the record of the directors' residential address.

For the same reason, when the personal records of the directors are being accessed, we consider that certain digits from the identification numbers of the directors should be masked. We consider that the situation for a person with same name and similar identity card numbers could be rare.

We agree that the administrative workload to deal with existing records could be too excessive to be justifiable. On the other hand, we understand that the change of the Company Law should not have a retrospective effect. As such, we consider that the old records should be phased out progressively.

Chapter 8 Regulating Directors' Fair Dealings of Private Companies Associated with a Listed or Public Company

Question 6

On the assumption that a new disinterested members' approval exception to prohibitions on loan and similar transactions in favour of directors and their

connected persons will be introduced in respect of public companies, which of the following options do you prefer?

Option 1: "relevant private companies" as defined in section 157H(10) of the CO should continue to be subject to more stringent regulations similar to public companies (including restrictions relating to quasi-loans and credit transactions, restrictions relating to connected persons and disinterested members' approval requirement);

Option 2: extending the concept of "relevant private company" to cover companies associated with non-listed public companies;

Option 3: modifying the concept of "relevant private company" by disapplying it to private companies having a common holding company with a listed / public company;

Option 4: modifying the concept of "relevant private company" to cover only private companies which are subsidiaries of a listed / public company; or


Option 5: abolishing the concept of "relevant private companies", i.e. all private companies should be subject to the same treatment.

Any other options (please elaborate)?

ACCA Hong Kong considers it more appropriate to have the current legislation remaining status quo. We see no justification to relax the regulation in this regard by modifying the concept of "relevant private company" either to disapplying to private companies having a common holding company with a listed / public company or to cover only private companies which are subsidiaries of a listed / public company. On the other hand, as stated in the consultation paper, to extend the concept of "relevant private company" to cover companies associated with non-listed public companies is likely to have only an insignificant impact as the number of non-listed public company is relatively small in Hong Kong. As such, we do not opt for option 2.

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

Yours faithfully

A handwritten signature in black ink, appearing to read "Judy Wong", written in a cursive style.

Judy Wong
President