



**Eirene Yeung**

Director, Corporate Strategy Unit &  
Company Secretary

1 April 2011

**BY FAX (2840 0797) & BY HAND**

Clerk to Bills Committee on Companies Bill  
Legislative Council Secretariat  
Room 815  
Murray Road Multi-storey Carpark Building  
2 Murray Road, Central  
Hong Kong  
Attn.: Mr. Simon Cheung

Dear Sirs,

**Re: First Phase Consultation Conclusions on Draft Companies Bill and Part IVAAA of Companies (Amendment) Ordinance 2010**

We are writing to express our views on the subject, in particular, (1) the Consultation Conclusions on the headcount test and (2) certain new requirements in Part IVAAA of Companies (Amendment) Ordinance 2010 which has been effective from 10 December 2010.

**1. Headcount test – No justification to retain**

The headcount test deviates from the “one share one vote” principle. It is a dated measure that does not recognize the reality that a significant portion of shares in listed companies are held by nominees and custodians, thus limiting a single nominee to only one vote.

There are adequate safeguards in the Code on Takeovers and Mergers to protect the interest of minority shareholders (Rule 2.10(b)). Further, the court still retains the discretion not to approve a scheme where the rights of minority shareholders are at stake, even in the absence of the headcount test.

As set out in the First Phase Consultation Conclusions on Draft Companies Bill, of a total of 144 submissions received, 124 submissions (including professional bodies and listed companies) opted for abolishing the headcount test for members’ schemes of listed companies. The Conclusions has failed to give due regards to the majority views expressed.

The reasons FSTB relied on to retain the headcount test were unconvincing. Instead, it was noted that both the Company Law Review Steering Group in the UK and the Australian Corporations and Markets Advisory Committee both recommended the abolition of the headcount test in their respective jurisdictions.

**2. Part IVAAA of the Companies (Amendment) Ordinance 2010 – Need further review**

The requirements in this new Part IVAAA were meant to be introduced to complement and align with the e-communications measures introduced by the Hong Kong Listing Rules, thus enabling Hong Kong-incorporated listed companies to enhance communication efficiency, save more trees through less printing, and save printing costs. However, certain of these requirements have created effects which should have been unintended.

One of the new requirements is that a document is deemed to have been received by the recipient 48 hours after it has been sent by a company by electronic means. A similar requirement for communicating by means of website is that a document is deemed to have been received by the intended recipient 48 hours after its first posting or 48 hours after receipt of the notice of posting (whichever is the later). In calculating the 48 hours, any part of a day that is not a business day is not counted.

The above-mentioned new requirements ("Requirements") are not found in the Hong Kong Listing Rules and they have the effect of delaying the time with which a document is regarded to have been received by the shareholders of a listed issuer in the case where it is sent in electronic form or by means of posting on the issuer's website. The Requirements are inconsistent with their underlying objectives as we have stated earlier. Further, it is to be noted that other jurisdictions such as Cayman Islands, Bermuda and British Virgin Islands do not have similar requirements and that a document can be regarded as being served, in the case by electronic means, at the time of transmission or in the case of posting on a company's website, when a notice of availability is deemed served on the recipient (usually being the day after posting of the notice).

Accordingly, we sincerely ask you to consider to review and amend the Requirements to allow deemed receipt upon transmission (for a document which is sent electronically) and in the case of posting a document on the company's website, upon its first posting or when a notice of availability is deemed served on the recipient (i.e. the day after posting if the notice is sent by post or upon transmission if the notice is sent by electronic means), whichever is the later.

For any queries or further information in relation to the above matter, please contact the undersigned at telephone no. 2122 2033, at fax no. 2128 8001 or at email address [eirene.yeung@ckh.com.hk](mailto:eirene.yeung@ckh.com.hk) or my colleague, Ms. Nicole Pao at telephone no. 2122 2771 or at email address [nicole.pao@ckh.com.hk](mailto:nicole.pao@ckh.com.hk).

Yours faithfully,

