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Views on the Companies Bill

Submitted to the Bills Committee on Companies Bill, Legislative Council by the Chamber of Hong Kong Listed Companies

The Chamber of Hong Kong Listed Companies is a member organization representing over 200 listed companies on the Stock Exchange of Hong Kong. We represent roughly over 35% of the market in terms of market capitalization.

Our mission is to provide an effective channel of communication between listed companies and market regulators, especially on issues related to the regulatory environment of Hong Kong. We would like to help ensure Hong Kong will enjoy a sound regulation regime balancing the interests of all market participants.

The Chamber is pleased to have the opportunity to present before the Bills Committee on our views towards the Companies Bill. During the public consultation stage, we have made extensive comments on the Bill. We would now focus on one particular issue -- the retention of the Headcount Test for members' schemes for listed companies.

Our views are as follows:

> We disagree to the Government's decision to retain the headcount test. This decision was in contrary to the majority view of respondents to the Government's consultation. A total of 124 submissions opted for abolishing the test, including business and professional bodies such as Hong Kong General Chamber of Commerce, Law Society of Hong Kong, Hong Kong Bar Association, Hong Kong Institute of Chartered Public Accountants, Hong Kong Institute of Chartered Secretaries, Hong Kong Institute of Directors and ourselves. This compares to some 20 submissions opting for retaining the test. The market views in support of abolishing the headcount test far overweighed the views for retaining it.

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We oppose to retaining the headcount test because it contradicts the important principal of "one share, one vote". It also creates a loophole for vote manipulation, such as share splitting to unfairly influence the voting results by *any* shareholder groups, large and small shareholders alike.

In recent years, members' schemes where the headcount test applies are mostly privatizations of a listed company or selling the listing status. In these cases there are additional avenues to protect minority shareholders interests. Under the Takeovers Code, it is stipulated that the number of votes cast against the resolution in the scheme shall not be more that 10% of the voting rights attached to shares not held by controlling shareholders or their connected parties. Since only disinterested shares count, this is a very effective way to empowering minority shareholders to determine the results of the scheme, thus affording them strong protection.

Currently, most investors hold their shares within CCASS through their brokers or custodians and they remain as beneficial owners, not registered shareholders. It is thus not convenient for them to exercise their voting rights, regardless the headcount test or not. The proposed scripless securities market, although would allow investors to hold shares under their own names within CCASS, would not materialize for years and there would be no effects on shareholders participation in the interim. Further, even when the scripless market is introduced, it is still not sure how many investors would switch to direct holding given the costs involved in opening an individual account under CCASS and the short term investment horizon of many small investor.

Although the Court would have the discretion to dispense with the headcount test if there are abuses of the arrangement (provided it can be found out), this can only be done after the fact. Moreover, the judiciary process could be lengthy and costly, and the final ruling of the Court not certain. These uncertainties and the overall management and monetary costs could be too much for companies to bear.

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