

(譯文)

來函檔號：
本函檔號：LS/B/40/02-03
電話：2869 9370
圖文傳真：2877 5029

香港
夏慤道18號
海富中心第1座18樓
財經事務及庫務局
財經事務及庫務局局長

傳真及郵遞函件
(傳真號碼：2528 3345)

(經辦人：財經事務及庫務局首席助理秘書長(財經事務)4林雪麗小姐)

林小姐：

**《2003年公司(修訂)條例草案》
 (“該條例草案”)——附表4**

關於本人於2004年5月20日收到閣下就上述條例草案提出的委員會審議階段修正案，謹附上本人的意見的手寫本。

助理法律顧問

(黎順和)
2004年5月25日

連附件

副本致：律政司(經辦人：高級政府律師勵啟鵬先生)

**A marked-up version of the
Committee Stage Amendments
to the proposed sections 168BA to 168BI**

PART IVAA

BRINGING OR INTERVENING IN PROCEEDINGS ON
BEHALF OF SPECIFIED CORPORATION

168BA. Definition

In this Part, unless the context otherwise requires,
"proceedings" (法律程序) means any proceedings (other than criminal
proceedings) within the jurisdiction of the court.

168BAA. Application

This Part applies to proceedings in relation to fraud,
negligence, default in compliance with any law or rule or breach
of duty committed against a specified corporation¹.

**168BB. Members may bring or intervene
in proceedings**

~~(1) A member of a specified corporation may~~

- ~~(a) without leave of the court, bring proceedings
before the court on behalf of the specified
corporation; or~~
- ~~(b) with the leave of the court granted under~~

¹ Having regard to the views of various organizations on this issue, we propose, as agreed by the Bills Committee, to restrict the scope of the statutory derivative actions to those proceedings in respect of any fraud, negligence, default in relation to any law or rules, breach of duty in relation to the specified corporation.

The court may dismiss an application for leave under section 168BB(3) if the applicant has, in respect of the same subject matter, brought proceedings on behalf of the specified corporation, or intervened in any proceedings to which the specified corporation is a party under common law⁶.

168BCB. Court's power to strike out proceedings brought or intervention in proceedings by members under common law

(1) Where leave has been granted to a member of a specified corporation under section 168BB(3), if the member brings proceedings on behalf of the specified corporation, or intervenes in any proceedings to which the specified corporation is a party under common law in respect of the same subject matter, the court may -

(a) order to be struck out or amended any pleading or the indorsement of any writ in the proceedings or intervention under common law, or anything in such pleading or indorsement; and

(b) order the proceedings or intervention under common law to be stayed or dismissed or judgment to be entered

Should the Court consider SDA & CDA so that the applicants common law claim and statutory claim be heard in the same proceedings?

⁶ Having regard to the views of various organizations on this issue, we propose to empower the court to deal with the co-existence or duplicity of a statutory derivative action and a common law derivative action: (a) Add a new section to empower the court to dismiss an application for leave to commence a statutory derivative action if a common law derivative action has been commenced by the same member in respect of the same subject matter; (b) Add a new section to empower the court to prevent a member from commencing a common law derivative action if leave has been granted to the same member to commence a statutory derivative action in respect of the same subject matter; and (c) Add a new section to empower the court to make any order and give any direction it considers appropriate in relation to items (a) and (b) above

(1) The court may, at any time,¹¹ make any order and give any direction it considers appropriate in respect of any proceedings brought or intervened in by a member of a specified corporation under section 168BB(1), or in respect of an application for leave made under section 168BB(3), including -

- (a) interim orders pending the determination of the proceedings or application;
- (b) directions concerning the conduct of the proceedings or application, ~~including requiring mediation~~¹²;
- (c) an order directing the specified corporation, or an officer of the specified corporation, to do, or not to do, any act (including the provision of such information or assistance as the court may think fit for the purpose of the proceedings or application)¹³; and
- (d) an order appointing an independent person to investigate and report to the court on -
 - (i) the financial position of the specified corporation;
 - (ii) the facts or circumstances that gave rise to the proceedings; or
 - (iii) the costs incurred by the parties to the

for whom?
the court?

¹¹ These amendments aim to improve the clarity of the proposed section 168BF(1).

¹² In response to the suggestion made by Mr Winston Poon, SC, these amendments aim to delete the phrase "including requiring mediation".

¹³ Having regard to the views of various organizations on this issue, we propose to amend the proposed section 168BF(1)(c) to make it clear that the court may make an order directing the specified corporation or its officers to provide information or assistance in relation to the statutory derivative action.