

**Responses to the submission from
the Hong Kong Small and Medium Enterprises Association –
Schedule 4 relating to shareholders’ remedies**

The proposed section 152FA(2) provides that the court may only make an order under the proposed section 152FA(1) if it is satisfied that –

- (a) the application is made in good faith; and
- (b) the inspection applied for is for a proper purpose having regard to the interests of both the relevant specified corporation and the applicant.

Hence, the court, when considering whether an inspection order should be made under the proposed section 152FA(1), would need to have due regard to the interest of the relevant specified corporation.

2. We do not consider that the proposed section 152FA(2) would impose on the court an unenviable task of balancing the diverging interests of a specified corporation and an applicant in order to ascertain whether an application for an inspection order is for a proper purpose. First, the interests of a specified corporation and an applicant for an inspection order are not necessarily divergent. While a wrongdoer is in control of the specified corporation, it does not necessarily mean that the interests of the wrongdoer and those of the specified corporation are in alignment. In advancing his own interests, the applicant may well be advancing the interests of the specified corporation at the same time. Second, in the absence of any local jurisprudence, Hong Kong courts may be assisted by the (non-binding) Australian jurisprudence on what constitutes “proper purpose” under section 247A of the Australian Corporations Act (i.e. Australian equivalent of the proposed section 152FA).

Financial Services Branch
Financial Services and the Treasury Bureau
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