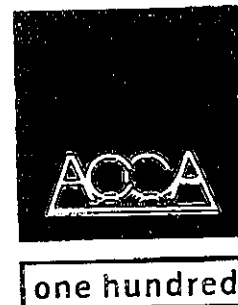


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CB(1)1746/03-04 (01)



Financial Services Branch
Financial Services and the Treasury Bureau
18th Floor
Tower I, Admiralty Centre
18 Harcourt Road
Hong Kong

Attention: Ms Shirley Lam

4 May 2004

Dear Madam

Consultation Paper on Statutory Derivative Action in the Companies (Amendment) Bill 2003

We refer to your letter dated 22 April 2004 inviting us for comments on the captioned matter. On behalf of ACCA (Association of Chartered Certified Accountants) Hong Kong, we are writing to submit our comments for your consideration.

We agree to the proposed committee stage amendments as well as the responses to the various issues arising from the discussion by the Bills Committee as set out in the consultation paper.

However, we would like to submit our comments regarding the proposed legislation for statutory derivative action ("SDA") which is not addressed in the consultation. We consider that the proposed legislation should provide more certainty to shareholders and make the law more accessible. As such, we concur with the approach that conditions need to be fulfilled in the application for leave of the court. Nevertheless, where the court has to be satisfied that the application is "in the best interests" of the company concerned as stipulated in the proposed section 168BB(3)(a), it should be recognized that the question of what are the best interests of the company is traditionally a matter of the company's directors to determine, albeit in the light of the concerns of shareholders and other stakeholders. We therefore consider that it may not be appropriate for the court to interfere in companies' internal affairs to make such a determination on what are the best interests of the company. Accordingly, we would recommend including specific conditions that the court should consider before granting the SDA applied by the minority shareholders.

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Apart from our comments on the proposed legislation, we would like to point out that a period of less than two weeks for this consultation process is not adequate given the importance of the proposed statutory derivative action which enhances the rights of minority shareholders.

Should you like to clarify any of the above issues, please do not hesitate to contact myself or Ms Sonia Khao at 2524 4988.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Leo Lee', is written over a horizontal line.

Leo Lee
President