

**W. H. LAM & COMPANY****CERTIFIED PUBLIC ACCOUNTANTS****林懷熙會計師行**ROOMS 904-6, 9<sup>TH</sup> FLOOR, ARION COMMERCIAL CENTRE, 2-12 QUEEN'S ROAD WEST, HONG KONG.

香港皇后大道西2-12號聯豐商業中心9樓904-6室

TEL (電話): 2524 6766, 2524 6767, 2524 7247, 2526 4040, 2526 4049

FAX (圖文傳真): 2868 5111, 2810 6508

E-MAIL (電子郵件): whlam\_co\_cpa@yahoo.com.hk

**LAM WAI HAY 林懷熙會計師**

C.P.A., F.H.K.S.A., C.P.A., (Aust.), A.C.I.S., F.T.I.H.K.

TEL: 2522 3925 (Direct Line)

Your Ref.: C2/1/57/3(04) Pt.7

**- 5 MAY 2004**

The Secretary for  
Financial Services and The Treasury Bureau,  
(Financial Services Branch)  
Government of The Hong Kong Special  
Administrative Region,  
18/F., Admiralty Centre Tower 1,  
18 Harcourt Road,  
Hong Kong.

**BY FAX AND BY MAIL**

Dear Madam,

**Statutory Derivative Action  
in the Companies (Amendment) Bill 2003**

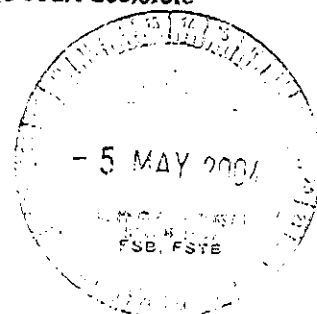
By reviewing the Statutory Derivative Action ("SDA") in the Companies (Amendment) Bill 2003, the proposed Committee Stage Amendments (CSAs) to the Bill as well as the issues raised by the Bills Committee and your consultation paper on the SDA, we would like to give our suggestions on the SDA for consideration by the appropriate Bills Committee.

We support the CSAs recommended by the Bills Committee except the following points which we highlight herewith for re-consideration:-

**Co-existence of the common law derivative action ("CDA") and SDA**

Concerning the issue of co-existence or duplicity of a CDA and a SDA taken by the same shareholder, we recommend that an amendment be introduced to the proposed section 168BB(4) to abolish a shareholder's common law right to commence a CDA if leave has been granted to the same shareholder to commence a SDA in respect of the same subject matter, vice versa. We opine that the suggestion for empowering the court to dismiss a shareholder's application for leave to commence a SDA if a CDA has been commenced by the same shareholder in respect of the same subject matter is rather time consuming and disputes may be arisen in finalizing the court decision.

..... to be cont'd .....



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Section 168BC Service of written notice

According to marked-up version of the Committee Stage Amendments to the proposed sections 168BA to 168L, the original wording of section 168BC(2)(a) is as follows:-

"in the case of a company, its registered office;"

We recommend that the wording of this section be amended as follows:-

"in the case of a Hong Kong incorporated company, its registered office;"

We opine that the words "Hong Kong incorporated" should be placed before the word "company" in order to avoid any confusion arisen in interpreting the meaning of "a company" in this section.

Yours faithfully,  
W. H. LAM & COMPANY



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