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5 May 2004

Ms Shirley Lam
Financial Services and the Treasury Bureau
HKSAR
18/F., Admiralty Centre, Tower 1
18 Harcourt Road
Hong Kong

Dear Ms Lam

**CONSULTATION PAPER ON STATUTORY DERIVATIVE ACTION IN THE
COMPANIES (AMENDMENT) BILL 2003**

Thank you for your letter dated 22 April 2004.

We have the following comments on the proposed statutory derivative action (SDA) provisions:

1. We support, in principle, the introduction of measures to improve the rights of shareholders to take action against a company where it is felt that shareholder interests are being compromised. However, in order to prevent frivolous or disruptive action being taken by shareholders simply wishing to cause difficulties for a company, there needs to be in place adequate procedures to prevent any abuse of this right.
2. The proposed SDA provisions appear to be very widely drafted and allow a member to bring any proceedings, other than criminal proceedings. For this reason, it seems sensible to require that leave of the Court be granted for such proceedings in order to prevent any abuse.
3. However, it has to be recognised that this may also act as a disincentive to legitimate proceedings being taken. One suggestion, therefore, would be to consider limiting in some way the scope of proceedings which may be brought under the SDA (to matters such as fraud, breach of directors' fiduciary duties), and limiting (or removing) the requirements to seek leave from the Court to proceed with the action.

Chairman Standard Chartered Bank
Vice Chairmen The Hongkong and Shanghai Banking Corporation Limited
Bank of China (Hong Kong) Ltd
Secretary Katie Yip

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4. As the SDA will have to be brought in the name of the company, and as the member must bear the risk of absorbing the costs of the action, we question to what extent such a provision will be used. The Bills Committee has already highlighted the difficulty, for example, of establishing that the company will not itself bring the proceedings or properly take responsibility for them when seeking the Court's leave to proceed, and we agree with these concerns.

We hope that the Bills Committee will find the above comments helpful in considering and revising the proposed provisions.

Yours sincerely

Katie Yip
Secretary

