

**Responses to the submission from  
Mr David Webb**

***Leave requirement and scope limitation***

We will forward your comments to the Bills Committee for consideration. You may however wish to note that leave requirement is also found in the statutory derivative actions in other comparable jurisdictions such as Australia, New Zealand and Singapore.

***Members-only***

***Question 1***

Since the cause of action in a derivative action (whether it is taken under common law or the Bill) belongs to the company rather than the member and the benefits of the action should go to the company, we believe that the action will not fail even if the wrong is committed at a time before the member plaintiff is registered as a member.

***Questions 2 and 3***

The Standing Committee on Company Law Reform has considered the issue further subsequent to the Phase I consultation and agreed that directors and officers (whether present or past) and past members should not be allowed to commence a statutory derivative action, as in the case of the common law derivative action.

**Financial Services Branch  
Financial Services and the Treasury Bureau  
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