

贊助人 Patron
曾蔭權行政長官
The Hon Donald TSANG Yam-kuen GBM

榮譽會長 Hon President
榮譽主席 Chairman Emeritus
鄭慕智博士 Dr Moses Cheng GBS OBE JP

卸任主席 Immediate Past Chairman
黃紹開
Mr Peter S H Wong MBA

榮譽顧問 Hon Advisers
劉華森博士
Dr Lau Wah Sum GBS LLD DBA JP
鄭海泉
Vincent Cheng GBS OBE JP
吳天海
Stephen T H Ng
劉國元
Liu Guoyuan
方正
Eddy Fong GBS JP

主席 Chairman
黃天祐博士
Dr Kelvin Wong DBA
副主席 Deputy Chairmen
麥理思
George Magnus BBS OBE
梁廣灝
Edmund K H Leung SBS OBE JP
張永銳
Cheung Wing Yui, Edward
司庫 Treasurer
文善良
Man Mo Leung
行政總裁 Chief Executive Officer
徐蔚玲博士
Dr Carlye W L Tsui BBS MBE JP

理事會成員 Council Members
畢烈
Peter Barrett
陳心愉
Ms Bonnie S Y Chan
張惠彬博士
Dr Charles Cheung JP MBA DBA(Hon)
江偉
A F M Conway
范耀鈞教授
Prof Y K Fan BBS JP
何猷灝
Ronald Ho
孔敬權
Randy Hung
賴顯榮
Henry Lai
林潔蘭博士
Dr Cynthia Lam
劉冠倫教授
Prof Alex Lau
林宜亮
Alfred Lin
莫建鄴教授
Ir Prof John Mok
莫兆光
Stanley Mok
譚學林博士
Dr Tommy Tam JP
鄧宛舜
Ms Cynthia Y S Tang
陶榮
Christopher To
曾立基
Richard Tsang
詹華達
Jim Wardell
黃友嘉博士
Dr David Wong
黃至剛博士
Dr Lawrence T Wong
翁月華
Ms Linda Y W Yung
容永祺
Samuel W K Yung MH JP

4 February 2010

The Class Actions Sub-committee
The Law Reform Commission
20th Floor, Harcourt House
39 Gloucester Road
Wanchai, Hong Kong

Dear Sirs

Class Actions

The Hong Kong Institute of Directors (“HKIoD”) is pleased to forward our response to the captioned paper.

HKIoD is Hong Kong’s premier body representing professional directors working together to promote good corporate governance. We are committed to contributing towards the formulation of public policies that are conducive to the advancement of Hong Kong’s international status.

In relation to the captioned paper, we have gone through the processes of consulting our members and conducting focused review by our Corporate Governance Committee under the chairmanship of Mr Henry Lai. Hence, the response represents our consolidated collective views.

Should you require further information regarding our response, please do not hesitate to contact me on tel no. 2889 9986.

With best regards

Yours sincerely
THE HONG KONG INSTITUTE OF DIRECTORS



Dr Carlye Tsui
Chief Executive Officer

Enc

cc Dr Kelvin Wong, Chairman of Council, HKIoD
Mr Henry Lai, Council Member, HKIoD &
Chairman, Corporate Governance Committee

4 February 2010

HKLRC Consultation Paper - Class Actions (November 2009)

The Hong Kong Institute of Directors (“HKIoD”) is pleased to announce its position regarding the captioned Consultation Paper.

The HKIoD appreciates the Law Reform Commission Class Actions Sub-committee’s conscious regards of the “need for caution” when introducing a class action regime, and finds the Consultation Paper to have provided a useful framework for the Hong Kong public to consider the merits and appropriate safeguards.

The HKIoD believes that the ability to initiate and conduct class actions can be a useful addition to supplement the tools and options available to shareholders in protecting their rights. The prospect of facing class actions from shareholders can have the effect of prompting company directors to have a stronger sense of obligation, whether to the controlling shareholder or to the minority shareholders, in their disclosure, internal control and compliance practices.

The HKIoD is mindful that the adoption of a class action regime can produce its own social problems, most notably in the well-justified fear of promoting unnecessary, unmeritorious litigation. There should be appropriate mechanisms to certify the adequacy of the representative claimant, to ensure that the representative claimant (and its legal representatives) has the ability to fund the action and satisfy any adverse costs order that might be awarded against it. In addition, the court should be allowed to order or otherwise require “security for costs” in appropriate cases, so as to prevent abuse.

The high costs of litigation have always been a significant hurdle for many would-be litigants who might otherwise have meritorious claims. This is especially so when a single litigant or consumer is claiming against a large company with substantial resources at its disposal to mount a defence. A class action regime can improve the access to justice by aggregating claims involving similar issues. But even so, a class of such claimants may still not be able to meet the financial burden associated with a class action.

Although we do not at this stage express any views on the mode of funding to assist plaintiffs of limited means, we agree that attention should be given to devise an appropriate solution if a

class action regime in Hong Kong were to achieve its effect and purpose.

Given that class actions will be taken as a means for shareholders of Hong Kong-listed companies to seek remedy for or in respect of company law or securities law violations, we are mindful that many potential defendants are companies incorporated in jurisdictions outside of Hong Kong. Some of these companies may also have listed shares on exchanges in other places in addition to Hong Kong. It is conceivable that potential plaintiffs in these jurisdictions (the place of incorporation and the jurisdictions in which the shares are listed) may all seek to organise themselves to institute in their respective jurisdictions class actions for damages arising from same or similar allegations (e.g., financial irregularity, fraud, etc.). Either jurisdiction could have a legitimate stake of claim to be the appropriate place to adjudicate the dispute filed there, at least as to matters in which it has jurisdiction. We urge the Government and/or the LRC Class Actions Sub-committee to assess the likelihood of class actions in multiple jurisdictions involving the same defendant on similar issues, and when that happens, whether and how those cases can or should be consolidated or removed from one jurisdiction to the other.

In similar vein, we recognise that, due to Hong Kong's status as an international market, many potential plaintiffs would actually reside in jurisdictions outside Hong Kong. We agree with the Consultation Paper that a rigid exclusionary rule should not be favoured. We do not object to requiring class members residing in foreign jurisdictions to opt in. Class members of different jurisdictions are subject to different legal restrictions or controls (e.g., foreign exchange), thus potentially giving rise to separate legal or regulatory issues peculiar to them. It may be appropriate, perhaps even necessary, to require class members residing in foreign jurisdictions to organise into their own sub-class. We urge the Government and/or the LRC Class Actions Sub-committee to further assess these related issues.