

New Companies Ordinance

Briefing Notes on

Companies (Unfair Prejudice Petitions) Proceedings Rules

BACKGROUND

Under the Companies Ordinance (Cap. 32) (“Cap. 32”), matters concerning unfair prejudice petitions are prescribed in section 168A whereas the conduct of such proceedings is regulated by the Companies (Winding-up) Rules (“Cap. 32H”). As Cap. 32H is primarily concerned about the procedures on winding-up petitions, not all provisions in Cap. 32H apply to unfair prejudice petitions. Specifically, the applicable provisions in Cap. 32H include Rule 22 and Form 3A on the form of a petition, Rule 23 on the presentation of a petition, Rule 35(1) on the drawing up of an order and Rule 36(3) on the service of an order.

2. On the commencement of the new Companies Ordinance (“new CO”), the applicable provisions in Cap. 32H are consequentially amended as appropriate by Part 7 of Schedule 9 to the new CO and they will no longer be applicable to unfair prejudice petitions; whereas the amended rules and the rest of the provisions in Cap. 32H concerning winding-up petitions will remain in effect and continue to apply in relation to winding-up petitions.

3. Section 727(1)(a) of the new CO provides that, subject to the approval of the Legislative Council (“LegCo”), the Chief Justice (“CJ”) may make rules for regulating the proceedings in the Court of First Instance (“the Court”) on unfair prejudice petitions concerning the affairs of a company under Division 2 of Part 14. The CJ has made the Companies (Unfair Prejudice Petitions) Proceedings Rules pursuant to section 727 with the approval of LegCo.

THE SUBSIDIARY LEGISLATION

Companies (Unfair Prejudice Petitions) Proceedings Rules (“the Rules”)

Major Changes

4. Under Cap. 32, the procedures on unfair prejudice petitions are regulated by the relevant provisions in Cap. 32H. These provisions concern the form and presentation of a petition, as well as the drawing up and the service of an order. The Rules mainly re-enact the procedural requirements on these aspects with appropriate modifications and elaborations.

The Rules

5. The Rules comprise nine rules and one schedule –
- (a) *Rules 1 and 2* provide for the commencement and the interpretation of the terms used respectively.
 - (b) *Rule 3* sets out the application of the Rules to an unfair prejudice petition, in particular in the case where a petitioner also seeks an order to wind up the company in the same petition. It also specifies the form of a petition.
 - (c) *Rule 4* specifies the content of a petition. It also sets out the arrangements for presentation of the petition and fixing of the return day by the Court.
 - (d) *Rule 5* sets out the requirements on the service of a petition by the petitioner.
 - (e) *Rule 6* provides for the matters on which the Court may give directions on or after the return day.
 - (f) *Rule 7* provides for the drawing up of an order.
 - (g) *Rule 8* provides for the service of an order.

(h) *Rule 9* provides that if the order is to be advertised, the Court must give directions as to the manner and time of advertisement.

(i) *the Schedule* prescribes the form of a petition.

6. Under the Rules, the proceedings on unfair prejudice petitions are regulated in the following manner –

(a) *Presentation of petition* : To present an unfair prejudice petition, the petitioner must deliver the petition to the Court for filing, and specify both the grounds for presentation and the terms of the order sought in the petition (**Rule 4(1)**). The petition must be in the form prescribed in the Schedule to the Rules, which is modelled on Form 3A in the Appendix to Cap. 32H (**Rule 3(1)(b)**);

(b) *Service of petition* : The Court will return sealed copies of the petition each endorsed with a return day, on which the petitioner, the company and all respondents must attend before the Registrar of the High Court or a judge of the Court for directions in relation to the procedure on the petition (**Rule 4(2) and (3)**). The petitioner must serve the sealed copies of the petition on the company and all respondents at least 14 days before the return day (**Rule 5**);

(c) *The return day* : The Court may give directions on or after the return day on procedural and other matters in respect of the petition as set out in **Rule 6**, which may include advertising of the petition and any order for a stay with a view to mediation or other alternative dispute resolution; and

(d) *The order* : On the pronouncing of the order in the Court, a draft order is to be drawn up in accordance with **Rule 7**. Unless otherwise directed by the Court, the petitioner must serve an office copy of the order on the company and on the Registrar of Companies (**Rule 8**). In addition, if the Court requires the order to be advertised, it must also give directions as to the manner and the time of advertisement (**Rule 9**).

7. The rules and practice of the High Court for regulating ordinary civil procedure also apply to an unfair prejudice petition so long as such rules and practice are not inconsistent with the Rules, and that the petition does not include the seeking of an order to wind up the company (**Rule 3(5)**). Where the petitioner also seeks an order to wind up the company in an unfair prejudice petition, the rules for regulating winding-up proceedings by the Court under Cap. 32H will be applicable. To deal with such petitions, it is provided in **Rule 3(2)** that both the Rules and the relevant rules on winding-up proceedings in Cap. 32H will apply, but the latter will take precedence where inconsistency arises.

Companies Registry
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