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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 5 June 2013

Proposed resolution under the Companies Ordinance

The Secretary for Financial Services and the Treasury will move at the Council meeting of 5 June 2013 a proposed resolution under section 727 of the Companies Ordinance (28 of 2012). The proposed resolution is attached for Members' consideration. The President has directed that it be printed in the terms in which it was handed in on the Agenda of the Council.

2. The speech, in both Chinese and English, which the Secretary will deliver when moving the proposed resolution is also attached.

(Odelia LEUNG)
for Clerk to the Legislative Council

Encl.

Companies Ordinance

Resolution

(Under section 727 of the Companies Ordinance (28 of 2012))

Resolved that the Companies (Unfair Prejudice Petitions) Proceedings Rules, made by the Chief Justice on 9 May 2013, be approved.

Companies (Unfair Prejudice Petitions) Proceedings Rules

(Made by the Chief Justice under section 727 of the Companies Ordinance (28 of 2012) subject to the approval of the Legislative Council)

1. Commencement

These Rules come into operation on the day on which section 727 of the Companies Ordinance (28 of 2012) comes into operation.

2. Interpretation

In these Rules—

company (公司) includes a non-Hong Kong company;

Registrar (司法常務官) has the meaning given by Order 1, rule 4(1) of the Rules of the High Court (Cap. 4 sub. leg. A);

return day (回報日), in relation to an unfair prejudice petition, means a day fixed under rule 4(2);

unfair prejudice petition (不公平損害呈請) means a petition presented to the Court by a member, or a past member, of a company under section 724(1) or (3) of the Ordinance, or by the Financial Secretary under section 879(3) of the Ordinance;

Winding-up Provisions (清盤條文) means the provisions of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H) which apply to proceedings in a winding up by the Court.

3. Application

- (1) If an unfair prejudice petition does not include seeking an order to wind up the company under section 177(1) or 327(3) of the Companies (Winding Up and Miscellaneous

Provisions) Ordinance (Cap. 32) as an alternative remedy (*alternative application*)—

- (a) these Rules apply to the petition; and
- (b) the petition must be in the form set out in the Schedule (with any necessary modifications that the circumstances may require).
- (2) If the petition includes an alternative application—
- (a) the Winding-up Provisions (with any necessary modifications that the circumstances may require) apply to the petition;
- (b) these Rules, so far as not inconsistent with the Winding-up Provisions, also apply to the petition; and
- (c) the petition must be in the form set out in Form 2 in the Appendix to the Companies (Winding-up) Rules (Cap. 32 sub. leg. H).
- (3) If the alternative application is not proceeded with under an order of the Court—
- (a) the Winding-up Provisions cease to apply to the petition; and
- (b) these Rules continue to apply to the petition.
- (4) The cessation of the application of the Winding-up Provisions does not affect their previous application to the petition or anything duly done or suffered under the Winding-up Provisions in respect of the petition.
- (5) The rules and practice of the High Court for regulating the ordinary civil procedure of the court, so far as may be applicable and not inconsistent with these Rules, also apply to the petition where—
- (a) these Rules apply to the petition under subrule (1)(a); or

- (b) the Winding-up Provisions have ceased to apply to the petition under subrule (3)(a).

4. Presentation of petition

- (1) An unfair prejudice petition must specify the grounds on which it is presented and the terms of any order that is sought by the petitioner, and must be delivered to the Court for filing with sufficient copies for service under rule 5.
- (2) The Court is to fix a day on which, unless the Court otherwise directs, the petitioner and any respondent (including the company) must attend before the Registrar or a judge of the Court for directions to be given in relation to the procedure on the petition.
- (3) On fixing the return day, the Court is to return to the petitioner sealed copies of the petition for service, each endorsed with the return day and the time of hearing of the petition.

5. Service of petition

- (1) The petitioner must, at least 14 days before the return day, serve a sealed copy of the petition (*service copy*) on the company at the registered office of the company by leaving it with any member, officer or employee of the company found there.
- (2) If the company does not have a registered office, the service copy must be served at the principal or last known principal place of business of the company in Hong Kong (*alternative place for service*) by leaving it with any member, officer or employee of the company found there.
- (3) If no member, officer or employee of the company can be found at the registered office or alternative place for service, the service copy must be served—

- (a) by leaving it at the registered office or alternative place for service; or
 - (b) on a member, officer or employee of the company specified by the Court.
- (4) For a petition under section 724(1) or (3) of the Ordinance, the petitioner must also, at least 14 days before the return day, serve a sealed copy of the petition on every respondent named in the petition.

6. Return of petition

On the return day, or at any time after it, the Court may give any directions that it thinks appropriate with respect to the following matters—

- (a) service of the petition on any person, whether in connection with the time, date and place of a further hearing, or for any other purpose;
- (b) whether any statement of claim, defence and reply are to be delivered;
- (c) whether, and if so by what means, the petition is to be advertised;
- (d) the manner in which any evidence is to be adduced at any hearing before the judge, particularly—
 - (i) the taking of evidence wholly or in part by witness statement or orally;
 - (ii) the cross-examination of a person making a witness statement;
 - (iii) the matters to be dealt with in evidence;
- (e) any other matter affecting the procedure on the petition or in connection with the hearing and disposal of the petition; and

- (f) any orders, including an order for a stay for any period, that the Court thinks fit, with a view to mediation or other alternative dispute resolution.

7. Drawing up of order

- (1) The petitioner, or the petitioner's solicitor, and all other persons who have appeared at the hearing of the petition must, on the day on which an order under section 725 of the Ordinance is pronounced in the Court or the next day, leave with the Registrar a draft of the order and all other documents required for completing the order.
- (2) The Registrar may make an appointment to settle the order.

8. Service of order, etc.

- (1) Unless the Court otherwise directs, the petitioner must serve an office copy of the order on the company and on the Registrar of Companies.
- (2) Unless the Court otherwise directs, an office copy of the order must be served under subrule (1) by prepaid letter addressed to the company—
- (a) at the registered office of the company; or
- (b) (if the company does not have a registered office) at its principal or last known principal place of business in Hong Kong.
- (3) If the order involves a reduction of capital or an alteration of the company's articles, those provisions of the Ordinance and of the Rules of the High Court (Cap. 4 sub. leg. A) relative to these matters are to apply as the Court may direct.

9. Advertisement of order

If the Court requires the order to be advertised, it must give directions as to the manner and time of advertisement.

Schedule

[r. 3]

Petition on Ground that Members Unfairly Prejudiced

To the High Court of Hong Kong

- (a) Insert full name(s) and address(es) of petitioner(s)
.....
.....
- (b) Insert full name of company subject to petition
1. (b)
(the company) was incorporated on (c)
- (c) Insert date of incorporation
- (d) Insert address of registered office
2. The registered office of the company is at (d) ...
.....
.....
- (e) Insert amount of share capital and how it is divided
3. The share capital of the company is divided into (e) shares. The amount of the capital paid up or credited as paid up is (e) \$

4. The principal business which is carried on by the company is:
.....

- (f) Set out the grounds on which the petition is presented
5. (f)
.....
.....

In these circumstances the petitioner submits that[#]:

- the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of [the members generally]/[one or more members (including the petitioner)]*.
- the company's affairs were conducted in a manner unfairly prejudicial to the interests of [the members generally at the time when the petitioner was a member of the company]/[one or more members (including the petitioner) at the time when the petitioner was a member of the company]*.
- [the act or omission]/[the proposed act or omission] referred to in paragraph 5 above [is]/[would be] unfairly prejudicial to the interests of [the members generally]/[one or more members (including the petitioner)]*.

the act or omission referred to in paragraph 5 above was unfairly prejudicial to the interests of [the members generally at the time when the petitioner was a member of the company]/[one or more members (including the petitioner) at the time when the petitioner was a member of the company]*.

Please tick the box(es) as applicable.

* Delete as applicable.

(g) Set out the terms of the order(s) sought

The petitioner seeks the following order(s):

(g)
.....

or

any other order that the Court thinks fit.

(h) Insert the name(s) of the intended respondent(s)

It is intended to serve this petition on (h)
.....
.....
.....



Chief Justice

9 May 2013

Explanatory Note

These Rules provide for the form and procedure for a petition to the High Court under sections 724(1) and (3) and 879(3) of the Companies Ordinance (28 of 2012) as regards remedies for unfair prejudice to the interests of a company's members.

(Translation)

**Speech by the Secretary for Financial Services and the Treasury
at the meeting of the Legislative Council on 5 June 2013**

Companies (Unfair Prejudice Petitions) Proceedings Rules

President,

I move that the motion under my name, as printed on the Agenda, be passed to approve the Companies (Unfair Prejudice Petitions) Proceedings Rules (“C(UPP)PR”) made by the Chief Justice (“CJ”) on 9 May 2013.

2. To implement the new Companies Ordinance (“CO”) (28 of 2012), we need to make various pieces of subsidiary legislation to provide for administrative, procedural and technical matters. The C(UPP)PR is a piece of subsidiary legislation made by the CJ under section 727 of the new CO, and it is subject to positive vetting procedures of the Legislative Council. It seeks to prescribe the rules for the proceedings of the Court of First Instance (“the Court”) on unfair prejudice petitions.

3. If a current or past member of a company considers that the company’s affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members, or a proposed act or omission of the company would be so prejudicial, the member may present a petition to the Court for an order to remedy the situation. Such a petition is generally known as an unfair prejudice petition. While the requirements concerning unfair prejudice petitions are provided in detail in the principal legislation of the new CO, the C(UPP)PR sets out the rules for proceedings on such petitions, covering the following four areas –

- (a) on the presentation of petition, the set of rules provides that the petition must be in the form as prescribed in the Schedule. The grounds for presentation and the terms of the order sought must also be specified in the petition;
- (b) the set of rules also provides that the petitioner must serve copies of the petition on the company and other respondents within a specified period. The Court will fix a return day

on which all parties must attend before the Court for directions in relation to the procedure on the petition;

- (c) the Court may give directions on procedural and other matters on or after the return day. The set of rules sets out clearly those matters on which directions may be given; and
- (d) on the pronouncing of the order in the Court, the order must be drawn up and served in accordance with the C(UPP)PR.

4. The above rules are made by the CJ. They are generally modelled on existing provisions applicable to unfair prejudice petitions in the Companies (Winding-Up) Rules (Cap. 32H), with the addition of a number of technical provisions. For example, one provision is added to specify that if the Court requires the order to be advertised, it must give directions as to the manner and time of advertisement. Another provision is added to set out how the Companies (Winding-Up) Rules and the C(UPP)PR will apply if a petition includes the seeking of an order to wind up the company concerned. These technical provisions will improve the procedures and facilitate the handling of different cases.

5. President, the C(UPP)PR is a piece of technical subsidiary legislation made by the CJ under the new CO. I hope Members will support the passage of this motion to facilitate the implementation of the new CO. I move that the motion be passed to approve the C(UPP)PR made by the CJ. Thank you.

Financial Services and the Treasury Bureau
15 May 2013