

**立法會**  
***Legislative Council***

LC Paper No. LS55/12-13

**Paper for the House Committee Meeting  
on 24 May 2013**

**Legal Service Division Report on  
Proposed Resolution under section 727 of the  
Companies Ordinance (28 of 2012)**

The Secretary for Financial Services and the Treasury (SFST) has given notice to move a motion at the Council meeting of 5 June 2013. The motion seeks the approval of the Legislative Council (LegCo) of the Companies (Unfair Prejudice Petitions) Proceedings Rules (the Rules) made by the Chief Justice (CJ) on 9 May 2013 under section 727 of the Companies Ordinance (28 of 2012) (the new CO).

2. The new CO was passed by LegCo on 12 July 2012. Subsidiary legislation is required to be enacted before the new CO can be brought into operation. The Administration has identified at least 13 pieces of subsidiary legislation that are required to implement the new CO. The Rules is one of such subsidiary legislation which is subject to the approval of the LegCo.

3. Under the existing Companies Ordinance (Cap. 32), the procedures on unfair prejudice petitions are regulated by the relevant provisions in the Companies (Winding-Up) Rules (Cap. 32 sub. leg. H) (the Winding-Up Rules). These provisions concern the form and the presentation of a petition, as well as the drawing up and the service of an order.

4. Under the new CO, the provisions relating to remedies for unfair prejudice to members' interests are provided in Division 2 of Part 14. Under section 727(1)(a) of the new CO, subject to the approval of the LegCo, CJ may make rules for regulating proceedings under that Division. The Rules are made by CJ for this purpose.

5. According to paragraph 4 of the draft speech of SFST, the Rules are generally modelled on existing provisions applicable to unfair prejudice petitions in the Winding-Up Rules, with the addition of a number of technical provisions.

6. In gist, under the Rules, the proceedings on unfair prejudice petitions are to be regulated in the following manner -

- (a) Presentation of petition: The petitioner must deliver the unfair prejudice petition to the Court of First Instance (the Court) for filing, and specify both the grounds for presentation and the terms of any order sought in the petition (Rule 4(1)). The petition must be in the form set out in the Schedule to the Rules, which is modelled on Form 3A in the Appendix to the Winding-Up Rules (Rule 3(1)(b));
- (b) Service of petition: The Court will return sealed copies of the petition endorsed with a return day on which the petitioner, the company and all respondents must attend before the Registrar 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 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 procedural and other matters in respect of the petition as set out in Rule 6 on or after the return day, 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: The petitioner, or the petitioner's solicitor, and all other persons who have appeared at the hearing must leave with the Registrar a draft of the order and the Registrar may make an appointment to settle the order (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 time of advertisement (Rule 9).

7. The rules and practice of the High Court for regulating the 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)). On the other hand, where the petitioner also seeks an order to wind up the company concerned in an unfair prejudice petition, the rules for regulating winding-up proceedings by the Court under the Winding-Up Rules will become relevant. To deal with such petitions, it is provided in Rule 3(2) that both the relevant rules on winding-up proceedings in the Winding-Up Rules and the Rules (so far as not inconsistent with the relevant provisions of the Winding-up Rules) will apply.

8. The Clerk to the Panel on Financial Affairs has advised that the Panel was consulted at the meeting on 7 January 2013. At the House Committee meeting held on 8 February 2013, members agreed to form a single subcommittee to study the subsidiary legislation to be made under the new CO. At the House Committee meeting held on 3 May 2013, members noted that the Administration would table the third batch of subsidiary legislation before LegCo before end of May 2013. The Subcommittee would meet to start the scrutiny of the subsidiary legislation as soon as possible.

9. Members may refer to the LegCo Brief (File Ref.: CBT/7/6C) issued by the Financial Services and the Treasury Bureau on 15 May 2013 for background information.

10. The Rules will come into operation on the day on which section 727 of the new CO comes into operation.

11. The Legal Service Division is still scrutinizing the legal and drafting aspects of the Rules.

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