

**For information**

**Subcommittee on Subsidiary Legislation Made  
under the New Companies Ordinance**

**Supplementary Information arising from the Meeting on 3 June 2013**

**Purpose**

This paper provides supplementary information in response to the views expressed by members at the seventh meeting of the subcommittee on 3 June 2013.

**Companies (Unfair Prejudice Petitions) Proceedings Rules**

2. The application of this set of Rules on an unfair prejudice petition is determined according to rule 3. The general principle is that the Companies (Winding-Up) Rules (Cap.32H)<sup>1</sup> applies whenever the petition contains an alternative application, i.e. that the petition seeks an order to wind up the company concerned as an alternative remedy. If Cap.32H is applicable to the proceedings of a petition, it also takes precedence over this set of Rules in the event of any inconsistency between them. Further elaboration is given below –

- (a) If an unfair prejudice petition does not contain an alternative application, this set of Rules applies to the proceedings of the petition while Cap.32H does not apply (rule 3(1));
- (b) If an unfair prejudice petition contains an alternative application, the proceedings on the petition is subject to both this set of Rules and Cap.32H. However, the application of this set of Rules will be qualified to the extent that only those provisions which are not inconsistent with Cap.32H apply (rule 3(2)); or
- (c) If the alternative application in the petition in (b) above is

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<sup>1</sup> This refers to the provisions in Cap.32H which apply to proceedings in a winding up by the Court. The provisions may also be subject to any necessary modifications that the circumstances may require. See also the definition of “Winding-up Provisions” in Rule 2 and Rule 3(2)(a) for details.

not proceeded with, Cap.32H ceases to apply and the proceedings will be subject to this set of Rules only (rule 3(3)).

3. If a petition seeks only to wind up the company concerned, it is a winding-up petition presented pursuant to section 179 of the existing Companies Ordinance (Cap.32) (which will be retitled as the Companies (Winding Up and Miscellaneous Provisions) Ordinance after commencement of the new Companies Ordinance). This falls outside of the ambit of this set of Rules and the proceedings on the petition will be subject to Cap.32H.

4. If an unfair prejudice petition does not contain an alternative application at the time of presentation, a subsequent amendment to the petition to add a prayer to wind up the company requires the leave of the Court. However, the typical position of the Court is that a fresh winding-up petition should be presented instead of granting the leave<sup>2</sup>. The proceedings on the fresh petition would then be subject to Cap.32H only (see also paragraph 3 above).

### **Advice Sought**

5. Members are invited to note the contents of this information paper.

## **Financial Services and the Treasury Bureau 7 June 2013**

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<sup>2</sup> This is seen in *Cheung Hon Wah v Cheung Kam Wah and Others* [2005] 2 HKLRD 599, in which Hon Barma J (as he then was) said in paragraphs 24 and 25 of his judgment that “.... it would be a very rare case in which it would be appropriate for the court to exercise its jurisdiction [to grant leave to amend the petition to add a prayer to wind up the company concerned] in the way suggested by the Petitioner. It seems to me that as a matter of discretion, having regard to the procedural complications that would be caused by the proposed amendment that is sought, it would be a more appropriate exercise of my discretion to decline leave to amend [the petition] and to leave the Petitioner to take steps to seek the winding-up relief that he now wishes to obtain by means of a fresh petition presented for the purpose of obtaining a winding-up order”.