



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2869 4195)

31 May 2013

Mr Arsene YIU
PAS for Financial Services & the Treasury
(Financial Services)
Financial Services and the Treasury Bureau
15th Floor, Queensway Government Offices
66 Queensway
Hong Kong

Dear Mr YIU,

Companies (Unfair Prejudice Petitions) Proceedings Rules

We are scrutinizing the legal and drafting aspects of the subject Rules. We would be most grateful if you could clarify the following matters:-

Rule 3(2)(c)

Rule 3(2)(c) provides that if the petition includes an alternative application, 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). Please clarify whether by virtue of Rule 3(2)(b) the petition must also contain the other particulars contained in the form set out in the Schedule.

Rule 3(4)

It is noted that under section 23(b) of the Interpretation and General Clauses Ordinance (Cap. 1) and section 44(1)(b) of the Revenue Ordinance 1999 (44 of 1999), the phrase "anything duly done or suffered" is rendered as "適當作出或容許的事情"/"適當作出或容許的任何事情". Please clarify whether the Chinese rendition of "容受" in Rule 3(4) is a new rendition and whether it is appropriate.

Rule 3(5)

Rule 3(5)(b) provides that 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 the subject Rules, also apply to the petition where the Winding-up Provisions have ceased to apply to the petition under subrule (3)(a). Please clarify whether the rules and practice of the High Court for regulating the ordinary civil procedure would also apply to the petition which includes an alternative application (at the time when the Winding-up Provisions are still applicable to the petition).

Rule 4(2)

It is noted that under paragraph 5.6.3 of Practice Direction 3.1 relating to bankruptcy and winding-up proceedings, a hearing for directions would be held in chambers. Please clarify whether a hearing for directions under Rule 4(2) would be held in chambers or in open court. If it is intended that such hearings are to be held in chambers, please consider whether this should be explicitly stated in Rule 4(2).

Please also let members know if any practice directions will be issued for the purpose of proceedings relating to unfair prejudice petitions.

Rules 5(1) and (2) and 7(1)

It appears that the Chinese term "留交" is not a common one in everyday usage. Please consider whether the use of "留交" as the Chinese rendition of "leaving" or "leave" is appropriate.

Rule 8(1)

Please clarify whether there is a time limit for the petitioner to serve an office copy of the order on the company and on the Registrar of Companies. Please also let members know the reason(s) for requiring the order to be served on the Registrar.

Please also clarify the consequence(s), if any, for not complying with Rule 8(1). In particular, please clarify whether the order would still be effective against the company if it is not served on the company.

We should be most grateful if you would let us have the Administration's response as soon as possible.

Yours sincerely,



(Timothy TSO)
Assistant Legal Adviser

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