



New updates to practice direction 3.4

On 30 June 2023, the Chief Justice issued new sets of practice directions applicable to bankruptcy and winding-up proceedings in Hong Kong which came into effect on 17 July 2023. One of the key changes to is the revamp of the Practice Direction 3.4 (the “**New PD 3.4**”). Our Mr Conti Wong and Mr Victor Lam provide a summary of the major changes that are of particular importance to insolvency practitioners and creditors who wish to take enforcement action against debtors.

Practice Direction 3.4 Case Management for winding-up petitions under section 177(1)(f) or 327(3)(c) of the Companies (Winding up and Miscellaneous Provisions) Ordinance, Petitions under section 724 of the Companies Ordinance, and Petitions under section 212(1)(b) or 214(1) of the Securities and Futures Ordinance

The previous Practice 3.4 covers case management for bankruptcy petitions, winding-up petitions and petitions under section 724 of the Companies Ordinance. The New PD 3.4 now only covers the following:-

1. Winding up petitions that are presented on the “*just and equitable grounds*” under section 177(1)(f) or 327(3)(c) of the Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap 32) (the “**CWUMPO**”) (the “**Just & Equitable Petitions**”);
2. Winding-up petitions presented pursuant to section 724 of the Companies Ordinance (Cap 622) (the “**CO**”) (the “**Unfair Prejudice Petitions**”); and
3. Petitions by the Securities and Futures Commission based on public interests or unfair prejudice etc. to interests of members of a listed corporation under section 212(1)(b) or 214(1) of the Securities and Futures Ordinance respectively (Cap 571) (the “**SFO**”) (the “**SFC Petitions**”).

The New PD 3.4 no longer covers case management for bankruptcy petitions and winding-up petitions that are not one of the above.

The role of the respondent companies

Paragraph 2 of the New PD 3.4 makes it clear, as in the nature of the Just & Equitable Petitions, the Unfair Prejudice Petitions and the SFC Petitions, that the respondent companies are only nominal respondents and should not be expected to take any steps in the proceedings except in one of the following situations below:-

1. Applying for a validation order;
2. Making discovery; and
3. Attending the hearing at which the Court is to consider what substantive relief should be granted when such relief may have an impact on the Company.

This represents a much-welcomed clarity in stating the legal position in the Just & Equitable Petitions, the Unfair Prejudice Petitions, and the SFC Petitions (where applicable). From our experience, some participants in such legal proceedings might not be acutely aware and take the view that the company should play an active role in Just & Equitable Petitions, Unfair Prejudice Petitions or SFC Petitions.



Directions hearing for Just & Equitable Petitions, Unfair Prejudice Petitions and SFC Petitions

Paragraph 3 of the New PD 3.4 has set out clearly the directions to be complied with before the first directions hearing before a Judge:-

1. The Petitioner shall lodge the skeleton submissions and electronic bundles at least 48 hours prior to the hearing for Just & Equitable Petitions or at least 72 hours prior to the hearing for Unfair Prejudice Petitions and SFC Petitions;
2. The Respondent shall lodge with the Court the skeleton submissions at least 24 hours prior to the hearing for Just & Equitable Petitions or at least 48 hours prior to the hearing for Unfair Prejudice Petitions and SFC Petitions.

Just & Equitable Petitions

For Just & Equitable Petitions, the Respondents should, prior to the call-over hearing before a Master, inform the Petitioner whether they intend to oppose the petition on liability.

If so, the Petitioner should consider giving his consent to a joint application for leave to dispense with the requirement of Rule 32(1)-(2) of the Companies (Winding-up) Rules (Cap 32H) (the "**Winding-up Rules**") in relation to an affidavit in opposition to a winding up petition or an affidavit filed in opposition to a winding up petition. The Master or the Judge also may make an order to dispense with the requirements of Rule 32(1)-(2) of the Winding-up Rules.

In addition, the New PD 3.4 provides a set of standard directions in Appendix A for pleadings to be filed. The New PD 3.4 also serves to save time and costs by allowing the parties to serve documents to the Official Receiver by way of email or a USB thumb drive.

Unfair Prejudice Petitions

For Unfair Prejudice Petitions, the Respondents should, prior to the first hearing before the Judge, inform the Petitioner whether they intend to oppose the petition on liability.

For SFC Petitions, the Respondents should inform the SFC in the event that they do not dispute liability, whether they agree to have the petition be disposed of by way of the summary procedure described in *Re Carecraft Construction Co. Ltd* [1994] 1 WLR 172.

Expert evidence

The Court may at any stage give directions on valuation of the Company with a view to encouraging the parties to resolve their disputes amicably. A set of standard directions in Appendix B of the New PD 3.4 should be considered and adopted by the parties. In line with judicial discouragement on excessive expert evidence filed without leave, the New PD 3.4 provides that no expert evidence should be filed without leave of the Court. Any expert evidence filed without leave may be expunged by the Court with adverse cost consequences against the party in default.

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Newsletter

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