

**For discussion
on 15 November 2000**

EC(2000-01)12

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

**HEAD 148 - GOVERNMENT SECRETARIAT :
FINANCIAL SERVICES BUREAU
Subhead 001 Salaries**

Members are invited to recommend to Finance Committee the creation of the following permanent post in the Financial Services Bureau with effect from 5 February 2001 -

1 Administrative Officer Staff Grade B
(D3) (\$127,900 - \$135,550)

PROBLEM

The supernumerary post of Deputy Secretary (Financial Services) will lapse on 5 February 2001. It is necessary to create a permanent post of Administrative Officer Staff Grade B in the Financial Services Bureau (FSB) to ensure adequate support at the directorate level to handle the increasing workload in respect of matters pertaining to companies, insolvency administration, insurance, Mandatory Provident Fund (MPF) schemes and occupational retirement schemes (ORS).

PROPOSAL

2. The Secretary for Financial Services (SFS) proposes to create one permanent post of Administrative Officer Staff Grade B (AOSGB) (D3) to oversee the Companies Section and the Retirement Schemes and Insurance (RSI) Section of FSB.

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JUSTIFICATION

3. Before February 1999, SFS was only supported by one Deputy Secretary (DS) ranked at the Administrative Officer Staff Grade B1 (AOSGB1) level who in turn was in charge of the Financial Services Division which consisted of five sections, namely, Banking and Monetary Affairs, Securities, Financial Infrastructure¹, Companies, and RSI. On 5 February 1999, in view of the heavy workload of FSB, Finance Committee approved the creation of a supernumerary AOSGB post for a period of two years to oversee the Companies and RSI Sections. The post was designated as Deputy Secretary (Financial Services) 2 (DS(FS)2). Experience in the past 18 months has confirmed that it is necessary to retain the supernumerary DS(FS)2 post on a permanent basis to enable FSB to better meet its policy objectives in respect of companies, insolvency administration, insurance, MPF and ORS matters.

Companies Section

4. The Companies Section is responsible for formulating policies in respect of companies, from their incorporation to its dissolution. It also carries policy responsibility for bankruptcy matters and oversees the self-regulatory regime of accountants. The Section oversees the work of the Companies Registry (CR) and the Official Receiver's Office (ORO). Matters pertaining to the operation of companies require constant review so that our company law regime is kept abreast of the times. Annual amendments to our Companies Ordinance (the Ordinance) have been made and we envisage that the reviews in the coming years to be more complicated as our corporate sector matures and corporate governance standards rises internationally. The same applies to our insolvency administration regime.

Review of the Companies Ordinance

5. The Government is committed to ensuring that the legal framework in respect of companies is conducive to the operation of businesses in order to foster Hong Kong's status as an international financial and business centre. Towards this end, the Standing Committee on Company Law Reform (SCCLR), our adviser on company law development, published in February this year, its 'Report on the Recommendations of a Consultancy Report of the Review of the Hong Kong Company Ordinance.' The SCCLR put forward 62 recommendations for changes in the Ordinance and subjects for further study.

6. The proposed legislative changes range from rectifying anomalies to fundamental structural changes to the Ordinance. The Government has accepted all

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¹ The Financial Infrastructure Section was dissolved on 1 April 2000 upon completion of the dedicated tasks and the lapse of the relevant posts.

the proposals, which will be implemented in four phases, with legislative changes and further studies proceeding in parallel. The Bill for implementation of Phase I items is to be introduced into the Legislative Council in mid 2001. The formulation of legislative proposals for the items in Phases II and III which would include complicated subjects like further studies on no par value shares and financial assistance by a company for acquisition of its own shares will take at least another two to three years. DS(FS)2 will, apart from ensuring the early passage of the Bill for Phase I implementation, be responsible for overseeing and co-ordinating the formulation of the legislative proposals for the remaining three phases. In particular, the officer is responsible for steering and taking forward the further studies required for the formulation of subsequent legislative amendments. The items in these phases are highly complex and require policy input at the DS level. Work on the Phase IV items, which involves substantial restructuring and rewriting of the Ordinance, will take place in the longer term. The overhaul of the Ordinance will have profound implications for Hong Kong's corporate regime, and it is essential for it to be steered by an officer at the rank of AOSGB. Moreover, any revamp of the Ordinance would only be successful with the concerted efforts of the Administration, the financial regulators and our self-regulatory bodies, thereby making it all the more important for co-ordination to be done by an officer of sufficient seniority.

7. Other on-going amendments to the Ordinance include the implementation of the recommendation of the Law Reform Commission (LRC) to introduce a statutory corporate rescue procedure in Hong Kong; amendments to facilitate the implementation of the Strategic Change Plan of the CR (i.e. the full re-engineering of the CR's operation to facilitate the implementation of a fully computerised registry by 2004); amendments to implement measures for the protection of personal data kept in the public registers maintained by the CR in compliance with the guidelines issued by the Home Affairs Bureau; and, other technical amendments that may be required from time to time.

8. It should be noted that company law is evolving and other common law jurisdictions and financial centres are taking positive reform measures to ensure that their company law regimes meet their modern business needs. The reform of company law is therefore an on-going task and to maintain our competitive edge, Hong Kong cannot afford to lag behind. The dedicated input in efforts at the DS level is crucial in ensuring that the on-going reform proceed in the right direction and that the momentum for modernisation is maintained.

Corporate Governance Review

9. The Financial Secretary announced in his Budget Speech this year that the SFS, with the help of the SCCLR, would undertake a comprehensive

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review of the standards of corporate governance in Hong Kong with a view to establishing the benchmark for the region. This review is very important as the standards of governance of our companies has a bearing on Hong Kong's position as an international financial centre. We expect the review to be completed in two years' time. It involves highly technical and complex issues such as the duties and responsibilities of company directors, the rights of shareholders and corporate reporting. Moreover, it straddles the work of financial regulators, professionals, self-regulatory bodies, and affects investors in general. At present, work is progressing steadily on this front. Three subcommittees have been established to study the above three areas and DS(FS)2 represents the SFS on these subcommittees to provide policy input for their deliberations. Although it is too early to predict the recommendations at this stage, it can be expected that proposals on legislative changes and the development of guidelines will be put forward and again, implementation of such proposals will require the steer and dedicated efforts of a directorate officer at the DS level. Raising governance standards is a continuous task. As business thrives and more companies establish their presence in Hong Kong, raising our governance standards will remain a continuing challenge and would require on-going oversight at the DS level.

Insolvency Administration

10. Another major facet of the work of the DS(FS)2 post is attending to the latest development in policy and legislation in respect of insolvency administration. A comprehensive review of the role of the Official Receiver will commence shortly. Consultants will be engaged to conduct a two stage 14-month study on the role and functions of the ORO, taking into account the development of insolvency administration overseas and the recommendations made by the LRC's report on the comprehensive review of the winding up provisions in the Companies Ordinance. Apart from the need to oversee the Consultancy Study, it will be necessary to co-ordinate the implementation of the recommendations. Since the provisions in relation to insolvency administration in the Companies Ordinance and the Bankruptcy Ordinance are rather antiquated, we expect that significant changes to revamp the existing insolvency administration regime would be proposed. Such changes would have wide implications for companies operating in Hong Kong, the success or otherwise of the implementation of these recommendations demands the direct input of an officer at a senior level. Although we cannot pre-empt the findings of the consultants at this stage, the recommendations will have to be assessed and analysed, taking into account the overall policy objectives of the FSB. Implementation of the reforms to the insolvency regime would also entail substantive legislative changes and need to be taken forward by an officer at the rank of AOSGB who has the necessary breadth and depth of knowledge. We cannot predict at this stage how long the implementation process will take, but can expect that a very fundamental revamp will be necessary.

World Trade Organisation

11. The latest round of World Trade Organisation (WTO) negotiations on trade in services started in early 2000. Such negotiations aim to help bring about further trade expansion, and foster global prosperity and stability. It is important that Hong Kong plays an active part in such negotiations. In this regard, the Trade and Industry Department plays an overall co-ordinating role with FSB responsible for advising the Trade and Industry Department on all trade matters in respect of financial services. These financial services are wide-ranging and include banking, insurance, securities and accountancy. We consider it necessary for an officer at a DS level to be responsible for formulating such policy input in consultation with the relevant service industries. We also envisage the need for the officer to represent Hong Kong at negotiations in the international forums with important trading partners in the financial services sector.

Retirement Schemes and Insurance Section

12. The RSI Section is responsible for policy matters in respect of the MPF Schemes, regulation of the insurance industry and matters pertaining to the operation of retirement schemes. As the MPF System develops, close attention and continuous reviews will be required to ensure the efficient and effective operation of the System. In respect of the insurance industry which has experienced rapid development in recent years, we expect that the regulatory standards will have to be further enhanced in line with international trend and the experience in other insurance centres.

Mandatory Provident Fund Schemes

13. The MPF System will be implemented in December 2000. Close monitoring of this massive social programme which affects over three million employees and self-employed persons is essential. The MPF System and the MPF Schemes Ordinance are completely new to Hong Kong. The policy will naturally need to be fine-tuned and the legislation refined in the light of operational experience. As a first step, a Bill to amend the MPF Schemes Ordinance and the subsidiary legislation will be put before the Legislative Council in 2001. The purpose of the Bill is to remove anomalies in the legislation that have been identified in the course of implementing the MPF System. In the longer term, there is a need of an officer at DS level to continue to provide the necessary policy overview in respect of MPF issues including refinements and improvements to the present system in the light of operational experience; and oversee the housekeeping matters in respect of the MPF Schemes Authority (MPFA).

Insurance

14. The insurance industry has experienced rapid development and expansion and is becoming increasingly complex as many new products have been developed in recent years. The number of insurance intermediaries is now over 34 000.

15. The insurance industry has to gear itself up to meet the new challenges posed by market competition, globalisation of insurance business, convergence of financial services and rapid development of information technology. It is important to continue to improve the professionalism of the insurance market and enhance the status of Hong Kong as a major international insurance centre. In this regard, a comprehensive review of the regulatory system for insurance intermediaries is being undertaken by the Office of the Commissioner of Insurance (OCI) and is expected to be completed in 2001. Implementation of the recommendations in the review requires the policy input from an officer at DS level.

16. We are also examining the different possible modes of the OCI. In the 1996 Policy Commitments, the Government undertook to consider the establishment of the Insurance Authority as an independent regulatory body. An in-house study by the OCI to examine the possible organisation modes and the relative merits of the different modes is in progress. Other follow up actions will have to be taken in consultation with FSB. It will be incumbent upon DS(FS)2 to assess the suitability and practicability of the possible modes, taking into account the overriding policy objective of protecting the interest of the insuring public and the efficient management and deployment of resources, and where necessary to co-ordinate and oversee the implementation of the necessary changes. Regardless of the future mode of operation of the OCI, there will still be continuing policy matters pertaining to the development of the insurance industry and the self-regulatory framework of insurance intermediaries that will require the attention and steer of the Bureau at an appropriate level of seniority.

Occupational Retirement Schemes

17. Retirement schemes voluntarily established by employers for the benefit of their staff are required to be registered through the Registrar of Occupational Retirement Schemes and governed by the Occupational Retirement Schemes Ordinance (ORSO). Since 10 January 2000, the MPFA has assumed the role of the Registrar.

18. With the implementation of the MPF System, about 7 000 of the ORSO schemes covering over 640 000 employees have sought and been granted exemption from MPF. There is a need for FSB to monitor the legislative framework and the registration and regulatory system for these MPF-exempted ORSO schemes to ensure their smooth operation and protection of scheme member interests. A review is being undertaken on the regulatory system in respect of ORSO schemes, in particular the provisions in the Ordinance with a view to updating the relevant legislative provisions. This would require careful consideration by an officer at the senior level.

Human Resources Development in the Financial Services Sector

19. DS(FS)2 represents FSB in the newly established Advisory Committee on Human Resources Development in the Financial Services Sector (FinMan Committee). The FinMan Committee is the first formal and on-going establishment for human resources development in the financial services sector. It aims to pool and co-ordinate training resources and expertise in the sector and serves as a major force for taking forward, on an on-going basis, human resources development initiatives intended to maintain the overall competitiveness of Hong Kong as an international financial centre. The Committee comprises very senior representatives from various financial services sectors, regulators, professional organisations and academic institutions. The Committee has now established six subgroups to deal with matters relevant to sub-sectors of the financial services industry. DS(FS)2, apart from being a member of the Committee, is also required to ensure proper coordination of cross sectoral interests. DS(FS)2 will also provide high level input from a policy perspective in respect of the implementation of the various measures recommended by the Committee. We envisage that DS(FS)2 will have to liaise closely with both the Chairman of the Committee and Convenors of the subgroups as well as other key players in the industry and relevant organisations during the course of deliberations.

Alternative

20. There is currently only one permanent DS post (DS(FS)1) underpinning SFS. Apart from deputising for and representing SFS at the highest levels within the Government, in public and when negotiating with leading personalities within the financial services sector, DS(FS)1 is responsible for assisting SFS in the formulation and development of policies and legislation on the banking, monetary, securities and futures sectors, and the development of financial infrastructure and implementing the recommendations of the Steering Committee on the enhancement of the Financial Infrastructure. Among the major initiatives, there are a number of new areas which will require substantial policy input. These include deposit insurance, credit card business, e-payment systems, scripless securities markets and straight through processing. These are major policy areas

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that involve changes to not only the regulatory and legislative framework but also to business operations, institutional arrangements and systems development, and hence require strong steering at a senior level on an on-going basis. DS(FS)1 is also responsible for co-ordinating housekeeping matters of the FSB, Hong Kong Monetary Authority, and the Securities and Futures Commission, and regulatory issues which straddle across more than one financial services sector, and input into the Hong Kong Special Administrative Region's participation in Asia-Pacific Economic Co-operation (APEC) Finance Ministers Meetings, Organisation for Economic Co-operation and Development (OECD) Financial Markets Committee, Financial Action Task Force (FATF) (anti-money laundering), and other forums for the discussions of international financial architecture; and input into assessment by International Monetary Fund and other international bodies as well as credit rating agencies. DS(FS)1's other duties are co-ordinating liaison and co-operation with overseas regulatory authorities, promoting Hong Kong as an international financial centre, and co-ordinating preparation by the financial services sector in anticipation of China's accession to the WTO.

21. To assist SFS to deal with the composite Securities and Futures Bill, a six-month supernumerary AOSGB post designated as Deputy Secretary (Financial Services) Special Duties (DS(FS)SD) has been created under delegated authority. The post-holder is already fully occupied with this dedicated task and, given the temporary nature of her post, it would be impossible for her to absorb the duties of DS(FS)2. Neither is it possible for DS(FS)1 to do so for reasons set out above. It is therefore essential to create the post on a permanent basis to ensure FSB is in a position to fully meet its policy objectives and deliver its commitments. A copy of the proposed job description for the post of DS(FS)2 and the proposed organisation chart are at Enclosures 1 and 2 respectively.

Encls.1&2

FINANCIAL IMPLICATIONS

22. The additional notional annual salary cost of this proposal at MID-POINT is -

| | \$ | No. of Post |
|--------------------------------------|-----------|-------------|
| Administrative Officer Staff Grade B | 1,580,400 | 1 |

The full annual average staff cost of the proposal, including salaries and staff on-cost, is \$2,657,000. We have included sufficient provision in the 2000-01 Estimates to meet the cost of this proposal.

/BACKGROUND

BACKGROUND INFORMATION

23. The Finance Committee approved in February 1999 the creation of the supernumerary AOSGB post for two years to provide SFS with the necessary support in the various policy areas. The post will lapse on 5 February 2001.

CIVIL SERVICE BUREAU COMMENTS

24. FSB has considered carefully the alternative means to provide the required directorate support bearing in mind the need for efficiency and productivity but considers this proposal the most appropriate way to proceed. Having regard to the policy commitment to take the various financial service initiatives forward and the reasons put forth in the paper, Civil Service Bureau considers the proposal justified and the grading and ranking appropriate.

ADVICE ON THE STANDING COMMITTEE ON DIRECTORATE SALARIES AND CONDITIONS OF SERVICE

25. The Standing Committee on Directorate Salaries and Conditions of Service has advised that the grading proposal for the post would be appropriate if the post was to be created.

Financial Services Bureau
November 2000

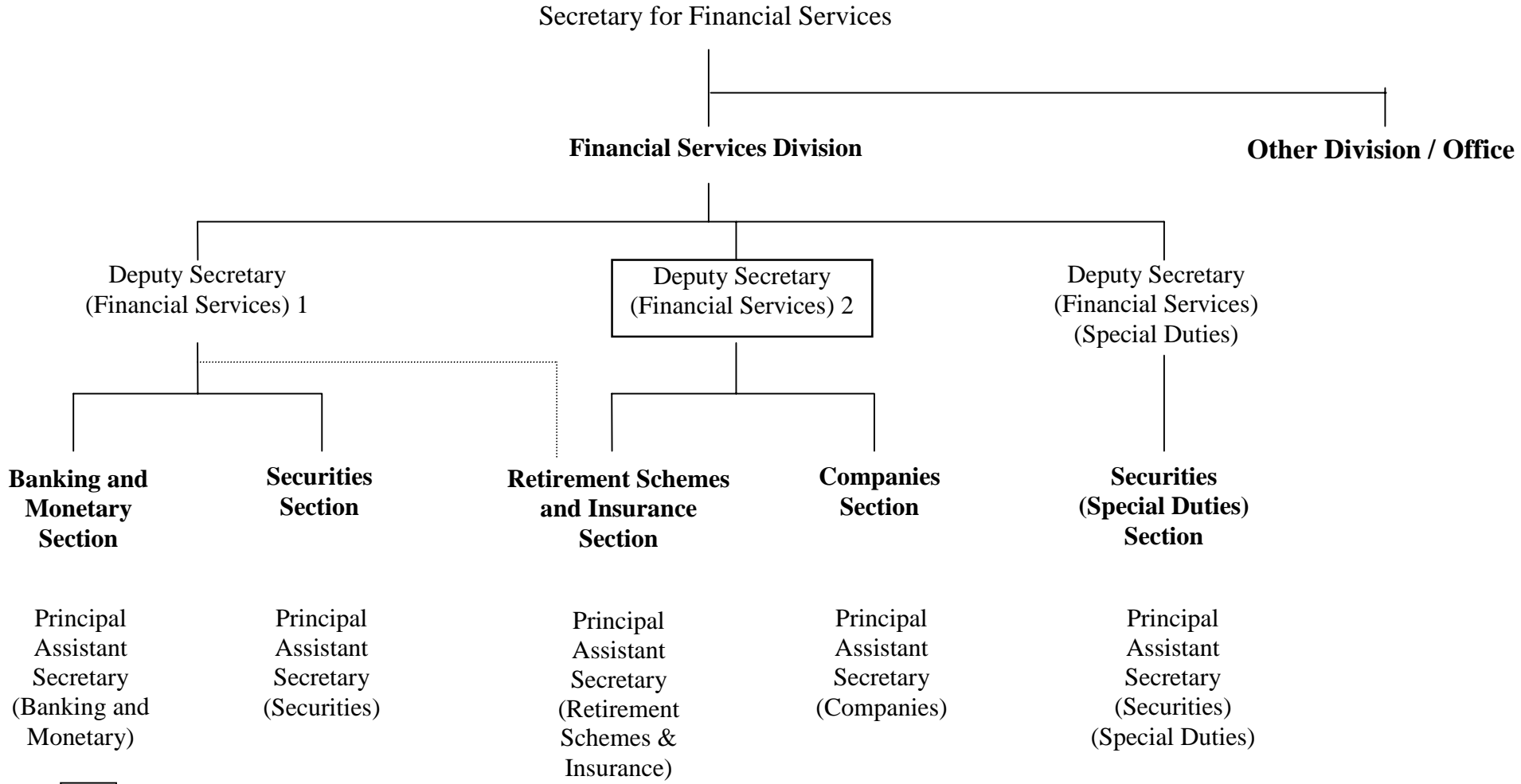
**Job Description of the Proposed
Deputy Secretary (Financial Services) 2 Post**

Main Duties and Responsibilities

Answerable to the Secretary for Financial Services (SFS) for the following duties and responsibilities -

- (a) To assist SFS in the formulation and development of policies and legislation on companies, insolvency administration, insurance, occupational retirement schemes and Mandatory Provident Fund schemes matters.
- (b) To co-ordinate housekeeping matters of the Office of the Commissioner of Insurance (OCI), the Mandatory Provident Fund Schemes Authority, the Companies Registry and Official Receiver's Office (ORO).
- (c) To examine the future position and role of the ORO in the provision of insolvency service particularly in the light of the findings of the consultancy study, to oversee and co-ordinate the necessary structural and legislative changes.
- (d) To examine the future position and development of the OCI.
- (e) To represent the HKSARG in the World Trade Organisation General Agreement on Trade in Services negotiations in trade in financial services and to co-ordinate input from financial services sector in HKSAR's participation in the work of Pacific Economic Cooperation Council.
- (f) To co-ordinate the provision of human resources and training opportunities for the financial services sector through the work of the FinMan Committee.
- (g) To undertake other duties as assigned by SFS, including preparation of speeches, drafting replies to Legislative Council (LegCo) questions, liaison with LegCo members and attending Executive Council and LegCo meetings.

Organisation Chart of Financial Services Bureau



- The permanent post under consideration