

For discussion
on 13 November 2008

**Legislative Council
Panel on Financial Affairs**

**Creation of a Supernumerary Administrative Officer Staff Grade C Post
with respect to Anti-Money Laundering and
Counter Financing of Terrorism Regime in Hong Kong**

Purpose

This paper briefs Members on the proposal to create a supernumerary post of Administrative Officer Staff Grade C (AOSGC) (D2) in the Financial Services Branch (FSB) under the Financial Services and Treasury Bureau to undertake the policy work in relation to the enhancement of the anti-money laundering (AML) and counter financing of terrorism (CFT) regime in Hong Kong from January 2009 for a period of 24 months.

Background

2. The Financial Action Task Force (FATF) is an inter-governmental body which sets international AML and CFT standards generally known as the FATF Recommendations. Members of FATF, including Hong Kong, are obliged to implement the FATF Recommendations and subject to the mutual evaluation (ME) conducted by FATF on their compliance with the FATF Recommendations.

3. As an international financial centre, Hong Kong should put in place an effective AML/CFT regime to deter criminals from making use of our systems to launder criminal proceeds, and to sustain the healthy growth of legitimate business and investments in Hong Kong. The Chief Executive has highlighted in his Policy Address on 15 October 2008 the need for improving our systems to combat money laundering and terrorist financing.

Justifications

Mutual Evaluation on Hong Kong

4. FATF has been conducting ME on its member jurisdictions against the FATF Recommendations with a view to ascertaining the effectiveness of the AML/CFT systems of these jurisdictions and putting forward proposals on improvement measures. The ME on Hong Kong was conducted in November 2007 and the ME Report was published in July 2008.

5. While the ME Report on Hong Kong highlighted that our existing AML/CFT regime is generally effective, it has identified certain deficiencies in our regime which include, among others, the lack of a proper regulatory regime for remittance agents and money changers and the designated non-financial businesses and professions such as accountants and lawyers, the lack of statutory backing for customer due diligence and record keeping requirements for financial institutions, and the gaps in our legal provisions to fully implement the United Nations Terrorist Financing Convention in Hong Kong, etc. The key findings of the ME Report on Hong Kong are summarized at **Annex A**. Hong Kong is required to submit the first progress report on following up the deficiencies identified in the ME in June 2010 and thereafter at regular intervals as determined by the FATF.

6. Under the FATF's procedure for Members' follow-up on the recommendations set out in ME reports, the concerned Members are expected to take vigorous actions to make substantial improvement regarding the gaps identified in the ME reports, particularly those related to the core FATF Recommendations. If the improvement measures taken by the concerned Member are considered inadequate by FATF, enhanced monitoring by FATF will be considered, including activating another on-site review on the concerned Member.

7. In view of the findings of the ME Report on Hong Kong, the Administration will undertake a comprehensive review of the current legal and regulatory regime in Hong Kong and introduce specific measures with a view to enhancing the capability to effectively prevent, detect, investigate, enforce and

prosecute money laundering and terrorist financing activities. The initial phase of the review will focus on the AML/CFT regulatory regime for the financial services sectors. Legislative work will be undertaken to implement measures to improve the regime.

Central Coordinating Committee on Anti-Money Laundering and Counter Financing of Terrorism

8. To better coordinate and give steer on the strategic directions for the enhancement of the AML/CFT regime in Hong Kong, the Central Coordinating Committee on Anti-Money Laundering and Counter Financing of Terrorism (CCC) was set up in April 2008. It is chaired by the Financial Secretary and comprises members including the Secretary for Justice, the Secretary for Financial Services and the Treasury, the Secretary for Security, the Commissioner of Police, the Commissioner for Customs and Excise as well as representatives of the financial regulators. The terms of reference of the CCC are at **Annex B**. The CCC discusses issues on AML/CFT policies and gives strategic steer on the formulation of AML/CFT policies and legal framework. Given the wide scope of coverage of AML/CFT policies and the number of parties involved in both the public and private sectors, the CCC requires the supporting policy bureau to render secretariat and policy support for its delivery of the stated objectives.

9. Before October 2008, the Narcotics Division (ND) of the Security Bureau (SB) was in charge of the overall coordination for AML/CFT policies within the Administration. The support was provided by non-directorate staff of the ND. A supernumerary AOSGC post was created under delegated authority in SB from May to September 2008 to assist the newly established CCC to formulate a priority strategy and work plan in these areas.

10. Noting that the trends and typologies of money laundering and terrorist financing activities have been fast changing, the modern financial systems are facing increasing threats of being abused by criminals for money laundering and other illicit purposes. Enhancing the preventive measures in financial institutions has become an essential component of an effective AML/CFT regime. To ensure that the AML/CFT measures to be implemented work in tandem with the policies to promote Hong Kong as an international financial

centre, it is decided that FSB should take over from the ND the overall coordinating role for AML/CFT policies within the Administration. ND will continue to deal with the AML/CFT matters relating to non-financial sectors under FSB's coordination. The transfer of the policy role was effected in October 2008.

Need for Additional Directorate Support

11. In the past when the coordination of the AML/CFT policies was undertaken by the ND, financial services-related input to the AML/CFT policies and the FATF process is collated and provided by the policy team overseeing banking policies in FSB. There were no designated resources at FSB to take care of AML/CFT policies. Upon taking up the overall coordination duties of AML/CFT policies, FSB will take the lead in the substantial policy formulation and legislative work to strengthen Hong Kong's AML/CFT regime for meeting the FATF's requirements. In view of the range, complexity and sensitivity of the duties as set out in paragraph 12 below, there is a need for a full-time dedicated AOSGC post to oversee the AML/CFT portfolio. As Hong Kong is expected to submit the first progress report to the FATF in June 2010, we propose that a supernumerary AOSGC post be created in FSB from January 2009 for a period of 24 months.

A New Policy Team on AML/CFT

12. The proposed supernumerary AOSGC post will head a new policy team in FSB to assume the task on the overall coordination of AML/CFT policies. The job description of the post is at **Annex C**. The new policy team will also comprise two Assistant Secretaries and one Executive Officer, and will be responsible for the following duties:

- (a) To serve as the secretariat of the CCC, including coordination of the agenda and discussion papers of its meetings. The policy team will liaise with the concerned bureaux/departments to follow up the CCC's decisions and keep track of the progress of the implementation of the AML/CFT policies;

- (b) To coordinate inputs and provide policy support to Hong Kong's contributions to the formulation of the AML/CFT policies and standards at the international level through active participation in the discussions of FATF (which meets at least three times a year) and other international forums on AML/CFT matters. The policy team will coordinate Hong Kong's attendance and comments on proposals and issues for discussion at FATF and other related forums, conduct relevant policy researches and related analyses on these matters with particular reference to the situation of Hong Kong. In addition, the policy team will coordinate consultations with the private sectors and related parties as and when required;
- (c) To coordinate with the concerned bureaux, departments and regulatory authorities in conducting AML/CFT threat assessments on different business sectors which provide a useful basis for the formulation of targeted and sector-specific AML/CFT guidance and regulation;
- (d) To draw up legislative proposals on enhancement of the AML/CFT regime in Hong Kong, in consultation with the concerned bureaux and departments and business sectors;
- (e) To collate relevant statistics and information pertaining to the investigation and enforcement of AML/CFT regulation as well as AML/CFT awareness amongst the regulated sectors and their feedback on the AML/CFT policies;
- (f) To advise and comment on the guidelines and codes of practice on AML/CFT regulation issued by the relevant regulatory authorities;
- (g) To coordinate and organize outreaching and training programmes for the financial services sector; and
- (h) To coordinate publicity concerning AML/CFT policies and practices to enhance the general awareness on prevention and detection of money laundering crime across the community.

13. The Administration is committed to enhancing the AML/CFT regime of Hong Kong to meet the international standards. To ensure that the relevant

policy formulation and legislative work can commence as soon as possible under the limited time frame and to start preparing for the outreaching programme for the business sectors to be held in early 2009, a supernumerary AOSGC post has been created in November 2008 under delegated authority. It will lapse upon creation of the supernumerary AOSGC post proposed in this paper.

14. As mentioned in paragraph 7 above, to follow up the recommendations raised in the ME Report, FSB will initially focus on coordination of a review on the AML/CFT regulatory regime regarding the financial services sectors, such as banking, securities, insurance, remittance agents and money changers, and draw up improvement proposals. The Legislative Council and the concerned business sectors will be consulted when concrete proposals are available later in 2009. Subject to the progress of implementation of the improvement measures addressing the deficiencies identified in the ME Report and the FATF's comments on the first progress report to be submitted in June 2010, the supernumerary AOSGC post will continue to coordinate the implementation of the FATF Recommendations and compile further progress reports to FATF.

15. At present, there are six Principal Assistant Secretaries in FSB, overseeing different policy portfolios, including securities and futures, banking, insurance, mandatory provident funds, and companies-related matters. Their existing job descriptions are set out in **Annex D**. The proposed supernumerary post will be designated as Principal Assistant Secretary (Financial Services)⁷. An organization chart of FSB showing the proposed change is at **Annex E**.

Alternative Considered

16 FSB has critically examined the feasibility of whether any of the existing Principal Assistant Secretaries in the Bureau can absorb the new AML/CFT portfolio. As all of them are fully engaged in their own work schedules and involved one way or the other in the reviews and follow-up actions arising from the global financial crisis, it is operationally not possible for the existing staff in FSB to take up the new task without adversely affecting the discharge of their current duties.

Financial Implications

17. The proposal will bring about an additional notional annual salary cost at mid-point of \$1,518,000. The full annual average staff cost of the proposal, including salaries and staff on-cost is \$2,038,000. We have included the necessary provision in the 2009-10 Estimates to meet the cost of this proposal.

Advice Sought

18. Members are invited to note and comment on the proposed creation of the supernumerary AOSGC post. Subject to Members' views, we will submit the proposal to the Establishment Committee of the Finance Committee for consideration at its meeting on 17 December 2008.

**Financial Services and the Treasury Bureau
November 2008**

**Summary of the Key Findings of
Hong Kong's Mutual Evaluation (ME) Report**

- In overall terms, the Report recognized the strengths of Hong Kong's AML/CFT regimes. The assessment team welcomed the setting up of the Central Co-ordinating Committee on Anti-Money Laundering and Counter Financing of Terrorism chaired by the Financial Secretary and said it was a development in the right direction.
- The report commended Hong Kong for its good legal structure with a satisfactory conviction rate for money laundering offences, clear and broad obligations for reporting suspicious transactions, and strong law enforcement efforts.
- The report found the supervisory regime over the banking, securities and insurance sectors effective with comprehensive obligations and a fairly broad range of sanctions.
- The report acknowledged the prompt provision of a wide range of international co-operation, and proactive and effective outreach to the private sector in raising its awareness. The report also commended Hong Kong's Joint Financial Intelligence Unit as proactive and effective.
- Under FATF's regular follow-up process, Hong Kong is required to submit the first progress report on rectification of the deficiencies identified in the ME Report to the FATF in June 2010, and thereafter at regular intervals as determined by the FATF.
- The major recommendations on addressing the deficiencies identified in the ME Report are:
 - (a) Incorporate the key elements of the customer due diligence process into law or regulations for the financial sector;

- (b) Extend all the requirements related to financial institutions to remittance agents and money changers;
- (c) Assess the risk which the non-core financial institutions (viz. money lenders, credit unions, Post Office and financial leasing companies) are exposed to and extend the AML/CFT requirements to these sectors if exemption is not justified;
- (d) Consider how to implement the FATF Recommendations among the designated non-financial businesses and professions, especially when only a few of their statutory or professional bodies embrace all practitioners in the respective sectors;
- (e) Expedite enactment of Court rules to enable implementation of key provisions in United Nations (Anti-Terrorism Measures) Ordinance, and broaden the provisions of anti-terrorism legislation to enable full implementation of the FATF Recommendations;
- (f) Prioritize work to conclude formal arrangements for rendition and mutual legal assistance with the Mainland and Macao;
- (g) Set up a disclosure or declaration system for cross-border physical transportation of cash or bearer negotiable instruments as soon as possible; and
- (h) Place more emphasis on the tracing, seizure and confiscation of the proceeds of crime to improve the regime's effectiveness.

**Central Co-ordinating Committee on
Anti-Money Laundering and Counter Financing of Terrorism**

Terms of Reference

1. To steer and coordinate the strategic development of Hong Kong's anti-money laundering and counter financing of terrorism (AML/CFT) regime in line with internationally recognized standards.
2. To ensure that appropriate legal, regulatory and supervisory systems are in place to fulfill Hong Kong's policies and commitment to fight money laundering and counter terrorist financing.
3. To monitor the progress of the implementation of AML/CFT policies, and where necessary to direct and guide further action by relevant agencies.
4. To keep under review the effectiveness of Hong Kong's AML/CFT regime and ensure an effective systemic response to changing threats.

Job Description of PAS(FS)7

Rank: Administrative Officer Staff Grade C

Post Title: Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)(7)

Major Duties and Responsibilities

Responsible to the Deputy Secretary for Financial Services and the Treasury (Financial Services)¹ for the following duties:

1. To serve as Secretary to the Central Coordinating Committee on Anti-Money Laundering and Counter Financing of Terrorism (CCC) chaired by the Financial Secretary;
2. To assist in overseeing the formulation and implementation of Anti-Money Laundering (AML)/ Counter Financing of Terrorism (CFT) policies in Hong Kong;
3. To coordinate and provide policy support to the CCC and senior officials in putting in place the appropriate legal, regulatory systems to fight money laundering and terrorist financing, having regard to the prevailing international standards;
4. To coordinate the draft legislation for addressing the deficiencies identified in the Financial Action Task Force (FATF) mutual evaluation conducted in 2007 and the formulation of the statutory regulatory framework for remittance agents and money changers;
5. To act as the coordinator and liaison contact for Hong Kong's participation in and input to the discussions of the FATF and other international forums on AML/CFT; and
6. To oversee the conduct of AML/CFT threat assessment and organization of the regular outreaching and educational programmes for financial services sectors in Hong Kong.

**Duties and Responsibilities of
the Existing Principal Assistant Secretaries
(Financial Services) (PAS(FS)s)**

PAS(FS)1 is responsible for the regulation of listing and market development issues in relation to debt market, financial products, fund management industry and offers of investment. He/She is responsible for policy matters relating to the housekeeping of the Insider Dealing Tribunal, Market Misconduct Tribunal and Securities and Futures Appeals Tribunal, and provides secretariat support to the Process Review Panel of the Securities and Futures Commission (SFC). He/She also deals with matters relating to the Hong Kong Exchanges and Clearing Limited and promotion of Hong Kong as an international financial centre overseas and in the Mainland.

2. PAS(FS)2 oversees matters relating to the development of market infrastructure, investor compensation, and supervision of intermediaries in the securities and futures markets. He/She co-ordinates the work of the regulators on risk management matters including market contingency planning and other cross-market issues. He/She is responsible for the maintenance and regular update of the Securities and Futures Ordinance in the light of market development. He/She is in charge of housekeeping matters relating to the SFC. He/She also co-ordinates the Mainland and Hong Kong Closer Economic Partnership Arrangement related matters in the financial services sector.

3. PAS(FS)3 is concerned with insurance policy matters. The major projects coming on stream include the review of the institutional set-up of the Insurance Authority; feasibility study of establishing policyholders' protection funds; and consultancy study on the supervisory framework of the assets of long-term insurers. Moreover, he/she deals with retirement scheme policy matters and the on-going review of the relevant legislation. Lastly, he/she is the subject officer responsible for matters relating to human resources development in the financial services sector.

4. PAS(FS)4 deals with policies in respect of companies, from their incorporation to dissolution. One of the major initiatives is the implementation of recommendations made by the Standing Committee on Company Law Reform to modernise the Companies Ordinance and improve corporate governance. He/She is also in charge of policy responsibility for bankruptcy matters and the self-regulatory regime of accountants. He/She oversees the work of the Official Receiver's Office, and co-ordinates trade matters in respect of financial services under the World Trade Organization. He/She is also responsible for taking forward

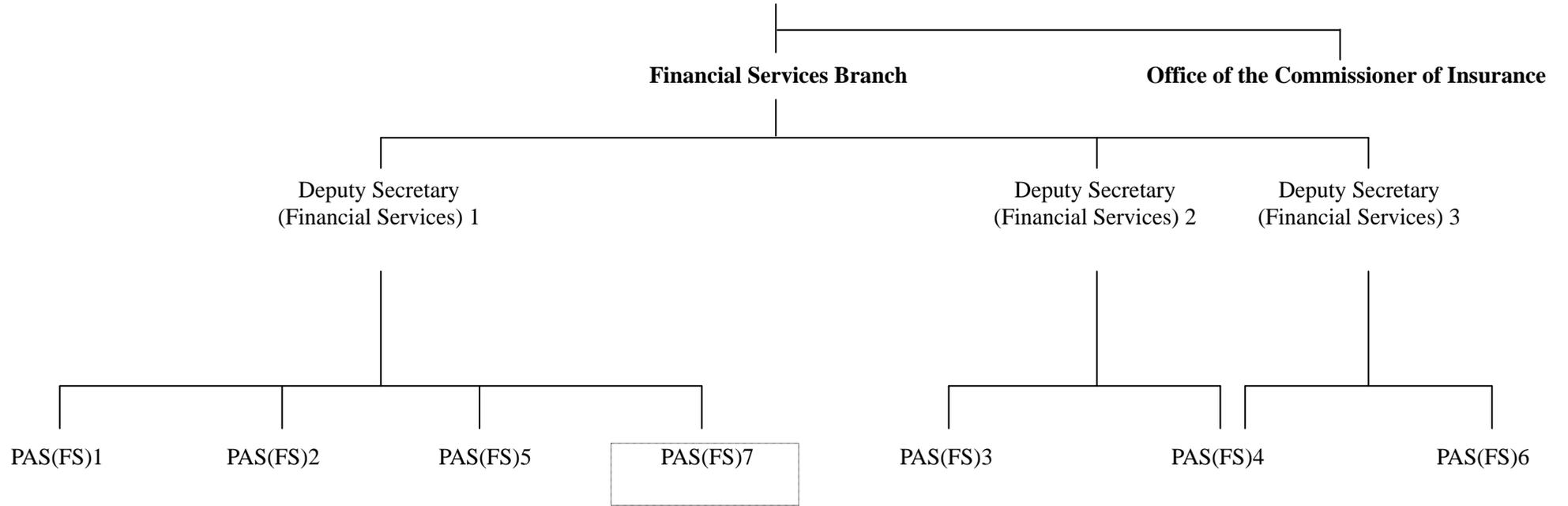
the proposals to enhance the oversight of the public interest activities of auditors and for liaising with the Financial Reporting Council.

5. PAS(FS)5 is responsible for the review and maintenance of Banking Ordinance, and liaison with the Hong Kong Monetary Authority on banking and monetary issues. He/She oversees the development and monitoring of the Deposit Protection Scheme. In addition, he/she co-ordinates input from financial services perspective into Hong Kong's participation in international forums such as the International Monetary Fund, Asia-Pacific Economic Cooperation, and the Organization for Economic Co-operation and Development.

6. PAS(FS)6 deals with policies and legislation relating to companies and trust companies. He/She co-ordinates the work relating to rewrite of the Companies Ordinance as well as review of the Trustee Ordinance. He/She is also in charge of housekeeping matters of the Companies Registry.

Organisation Chart of the Financial Services and the Treasury Bureau (Financial Services Branch)

Permanent Secretary for Financial Services and the Treasury (Financial Services)



Legend:

-  Supernumerary directorate posts to be created
- PAS(FS) Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)