

For discussion
on 3 January 2011

**Legislative Council
Panel on Financial Affairs**

**Creation of a Supernumerary Directorate Post
in the Financial Services and the Treasury Bureau
(Financial Services Branch)
to establish an independent Insurance Authority
and a Policyholders' Protection Fund**

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 the Treasury Bureau ("FSTB") for a period of 36 months with immediate effect upon approval by the Finance Committee ("FC") for the purpose of establishing an independent Insurance Authority ("IA") and a Policyholders' Protection Fund ("PPF").

Background

2. The proposals for an IIA and a PPF were highlighted as Government's policy initiatives in the Chief Executive's 2008-09 Policy Address and the Financial Secretary's 2010-11 Budget Speech. They are amongst FSTB's priority initiatives on the Policy Agenda after the relevant announcements.

Justifications for Creation of a Supernumerary Post of AOSGC

3. The proposed establishment of an IIA and a PPF are the most significant reform proposals for the insurance industry in the past 10 years.

Their successful implementation would require careful consideration and assessment of a wide range of policy issues pertaining to the organizational structure, governance framework, funding arrangements, and regulatory duties and powers in respect of the IIA; and the development of a cost-effective and publicly acceptable funding model and compensation mechanism with a clearly defined scope in respect of the PPF, supported by efficient administrative arrangements. In view of the significance of both proposals, we would need to conduct extensive consultation with the industry stakeholders and the general public to gauge their views in developing the legislative proposals. We attach great importance to these engagement exercises to ensure that the proposals will meet public aspiration and market development needs, and capable of effective implementation. Both the IIA and PPF proposals would require substantive legislation to set out the regulatory framework as well as the operational and transitional arrangements.

4. We have completed a three-month public consultation exercise on the establishment of an IIA in October 2010 and are now analysing the views collected from the insurance industry and the general public. Whilst there is general support for the establishment of an IIA, many respondents have pointed out that the Government should continue to engage the industry and other stakeholders before finalising the detailed legislative proposals. As regards the PPF proposal, we have earlier invited comments from the Legislative Council (“LegCo”) Panel on Financial Affairs on the proposed framework. We commissioned an actuarial consultancy study earlier this year to assess the optimal levy rate, target fund size and other detailed arrangements for the proposed PPF. We aim to draw up a detailed proposal for public consultation in the first quarter of 2011.

5. Having regard to the scale, complexity and sensitivity of the IIA and PPF proposals, there is a need for a full-time dedicated AOSGC officer to work on the implementation of both initiatives. We propose that a supernumerary AOSGC post, designated as Principal Assistant Secretary(Financial Services)(Special Duties) (“PAS(FS)SD”), be created in FSB for a period of 36 months with immediate effect upon approval by FC to undertake the various duties with respect to the establishment of an IIA and a PPF. Assuming smooth progress of the necessary steps to be taken, we expect

that the two proposals can be implemented in 2013-14 at the earliest. Detailed responsibilities of the proposed creation of the post are -

- (a) to formulate the detailed legislative proposals and engage the industry, other stakeholders and financial regulators in the process;
- (b) to prepare drafting instructions for the necessary legislative amendments;
- (c) to work with the Department of Justice on drafting of the bills and to steer the bills through LegCo; and
- (d) to help set up a provisional office for IIA as necessary after enactment and before commencement of the relevant bill, and complete the necessary preparatory and legislative work on the subsidiary legislation for implementation of the IIA and PPF.

The proposed job description of the post of PAS(FS)SD is at **Annex A**. An organization chart of FSB showing the proposed creation of the post of PAS(FS)SD is at **Annex B**.

Alternatives Considered

6. At present, there are seven PAS(FS)s in FSB overseeing different policy portfolios, including securities and futures, banking, insurance, Mandatory Provident Fund (“MPF”), anti-money laundering, accountancy, insolvency, and other companies-related matters. The existing job descriptions are set out in **Annex C**.

7. Currently, PAS(FS)3 is responsible for overseeing all policy matters pertaining to the insurance sector as well as policies relating to the MPF Schemes and Occupational Retirement Schemes and the review of related legislation. We have reviewed and considered that given the existing heavy work schedule, PAS(FS)3 cannot absorb the intensive policy and legislative work required for the implementation of an IIA and a PPF. A supernumerary AOSGC post will need to be created to give the necessary focus in view of the

substance and complexity of the policy matters involved. Subject to the proposed creation of the supernumerary post, PAS(FS)3 will focus on all MPF-related and the remaining insurance-related policies. On the MPF front, this would include the housekeeping of the Mandatory Provident Fund Schemes Authority (“MPFA”) and policies relating to the implementation and enhancement of the MPF Schemes and Occupational Retirement Schemes, such as working with MPFA on the review of the MPF system and following up on the outcome of the review; and the enhancement of the regulatory regime for MPF intermediaries, as well as the implementation of the Employee Choice Arrangement for increasing employees’ control of their MPF investments, etc. On the insurance side, PAS(FS)3 would be responsible for housekeeping OCI and dealing with all other relevant policy matters.

8. We have also critically examined whether the other PASs in the FSB can absorb the additional work of PAS(FS)SD. These other PAS(FS)s are fully occupied with the workload arising from various new initiatives, major legislative exercises and numerous on-going commitments including the proposed establishment of an Investor Education Council and a Financial Dispute Resolution Centre; the proposed transfer of the public offering regime for structured products from the Companies Ordinance to the Securities and Futures Ordinance; the development of offshore Renminbi business, asset management industry and bond market; the proposed statutory disclosure requirements for price sensitive information of listed companies; the legislative exercise to enhance Hong Kong’s anti-money laundering regime; the Companies Ordinance rewrite, etc. Therefore it is operationally not feasible for any of them to take up the IIA- and PPF-related tasks without seriously affecting the discharge of their current duties.

Non-directorate Support

9. The post of PAS(FS)SD will be supported by a team of four non-directorate officers, comprising one Senior Administrative Officer, one Statistician, one Personal Secretary I and one Assistant Clerical Officer. All these will be supernumerary posts for a period of 36 months which dovetails the proposed term for the PAS(FS)SD post.

Financial Implications

10. The proposed creation of the supernumerary post of PAS(FS)SD will bring about an additional notional annual mid-point salary of \$1,503,000. The full annual average staff cost of the proposal, including salaries and staff on-cost is \$2,096,892. We will absorb the additional expenditure from within the existing provisions in 2010-11 and include the necessary provision in the draft Estimates of 2011-12 and subsequent years to meet the cost of this proposal.

Advice Sought

11. We plan to submit the staffing proposal to the LegCo Establishment Subcommittee at its meeting on 12 January 2011 and then to the FC on 28 January 2011 for approval. Members are invited to note and comment on this proposal.

Financial Services and the Treasury Bureau
23 December 2010

Job Description of PAS(FS)SD

Rank : Administrative Officer Staff Grade C

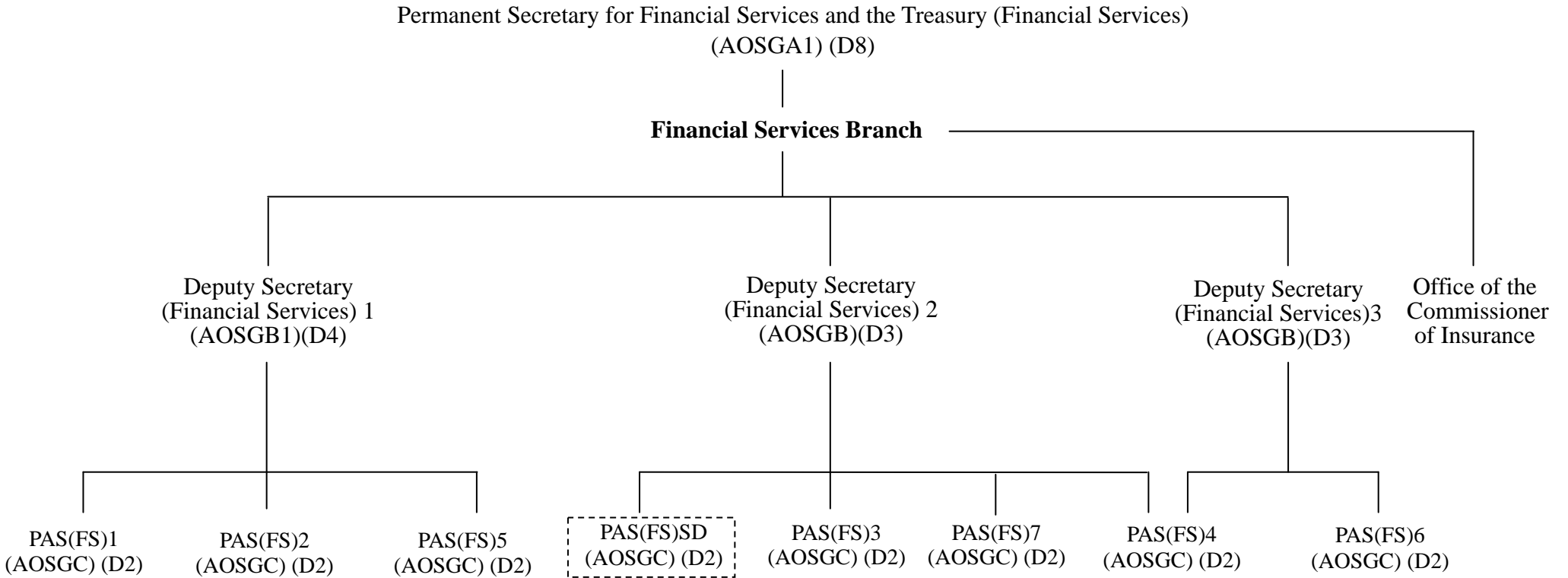
Post Title : Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) (Special Duties)

Main Duties and Responsibilities –

Responsible to the Deputy Secretary for Financial Services and the Treasury (Financial Services)² for the following duties:

1. To engage the industry and other stakeholders in the formulation of the detailed proposals on the establishment of an independent Insurance Authority (“IIA”) and a Policyholders’ Protection Fund (“PPF”) and work with the industry on the detailed transitional arrangements for the establishment of the IIA.
2. To prepare the detailed legislative proposals on the establishment of an IIA and a PPF, and oversee the drafting of the bills and the legislative process.
3. To handle corporate governance and high-level staffing matters in setting up an IIA, including formation of its governing board and advisory committee and recruitment of its chief executive officer and other senior executives.
4. To provide policy support to the Office of the Commissioner of Insurance (“OCI”) in handling staff issues arising from the abolition of OCI upon establishment of an IIA.
5. To complete the necessary preparatory work (including the set-up of a provisional office as necessary) for the IIA; and legislative work on the subsidiary legislation with a view to enabling commencement of operation of an IIA and a PPF in 2013-14.

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



Legend:

- Supernumerary directorate post to be created
- PAS(FS) Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)
- AOSGA1 Administrative Officer Staff Grade A1
- AOSGB1 Administrative Officer Staff Grade B1
- AOSGB Administrative Officer Staff Grade B
- AOSGC Administrative Officer Staff Grade C

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

PAS(FS)1 is responsible for policy and matters relating to investor protection of the securities and futures markets. In addition, he/she provides policy input on supervision of intermediaries and of market operation, and deals with the housekeeping matters of the Securities and Futures Commission (SFC). He/She also coordinates the operation of the Securities and Futures Appeals Tribunal and the Market Misconduct Tribunal. He/she provides secretariat support for the Process Review Panel for SFC, and coordinates among the financial regulators on risk management matters and is now working on the proposed establishment of an Investor Education Council and a Financial Dispute Resolution Centre.

2. PAS(FS)2 is responsible for listing related matters and liaison with the Hong Kong Exchanges and Clearing Limited. He/She is working on the proposed statutory disclosure requirements for price sensitive information of listed corporations, and the legislative exercise to transfer the public offering regime for structured products from the Companies Ordinance to the Securities and Futures Ordinance. He/She also oversees the development of commodities market in Hong Kong.

3. PAS(FS)3 oversees policy and legislative matters over the insurance sector, the Mandatory Provident Fund (MPF) Schemes and the Occupational Retirement Schemes. His/her portfolio covers all MPF-related and insurance-related matters, including the housekeeping matters of Mandatory Provident Fund Schemes Authority and Office of the Commissioner of Insurance. He/she is currently absorbing tasks relating to the proposed establishment of an independent Insurance Authority and a Policyholders' Protection Funds, and the enhancement of the regulatory regime for MPF intermediaries and the planned implementation of the portability proposal to increase employees' control of their MPF investment.

4. PAS(FS)4 is partially deployed to one of the divisions in the Companies Bill Team to assist in taking forward the rewrite of the Companies Ordinance and corporate rescue review. Apart from these duties, he/she also assists in handling insolvency policy and administration, accounting sector policy and legislation and corporate governance of unlisted companies. He/She deals with housekeeping matters of the Official Receiver's Office and

the Financial Reporting Council (FRC), and provides the secretariat support for the Process Review Panel for FRC.

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 other related issues. He/She oversees policy matters and legislation concerning the Deposit Protection Scheme as well as those relating to bond market development and Islamic finance. In addition, he/she co-ordinates input from financial services perspective in connection with Hong Kong's participation in relevant international and regional fora, including G20, Financial Stability Board, International Monetary Fund, Asia-Pacific Economic Cooperation, Asian Development Bank 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 also deals with the housekeeping matters of the Companies Registry.

7. PAS(FS)7 serves as the Secretary to the Central Coordinating Committee on Anti-Money Laundering and Counter Financing of Terrorism chaired by the Financial Secretary. He/She co-ordinates the proposed anti-money laundering (AML) legislation in respect of the financial sectors to address the deficiencies identified in the Financial Action Task Force (FATF) mutual evaluation conducted in 2007. He/She also acts as the co-ordinator and liaison contact for Hong Kong's participation in and inputs to the discussions of the FATF and other international forums on AML/Counter Financing of Terrorism (CFT). In addition, he/she assists in overseeing the implementation of AML/CFT policies in Hong Kong.