

For discussion
on 29 November 2010

**Legislative Council
Panel on Financial Affairs**

**Extension of a Supernumerary Directorate Post
in the Financial Services and the Treasury Bureau
(Financial Services Branch)
to Coordinate Anti-Money Laundering Matters**

Purpose

This paper briefs Members on the proposal to extend the existing supernumerary post of Administrative Officer Staff Grade C (“AOSGC”) (D2) in the Financial Services Branch (“FSB”) under the Financial Services and the Treasury Bureau for a period of 17 months from 13 February 2011 to 15 July 2012 to complete the relevant legislative and related work in relation to the enhancement of the anti-money laundering (“AML”)¹ regime in Hong Kong.

Background and Latest Developments

2. Following approval by the Legislative Council (“LegCo”) Finance Committee on 13 February 2009, FSB has formally created a supernumerary post of AOSGC (D2), which is designated as Principal Assistant Secretary (Financial Services)⁷ (“PAS(FS)⁷”), on the same day for a period of 24 months up to 12 February 2011 to undertake follow-up actions in response to the relevant recommendations made by the Financial Action Task Force (“FATF”)² in its mutual evaluation (“ME”) report on Hong Kong completed in mid-2008.

3. The ME report on Hong Kong by FATF recommended inter alia that the

¹ For the purpose of this paper, references to “AML” include the meaning of both anti-money laundering and counter-financing of terrorism.

² FATF is an inter-governmental body which sets the international AML standards.

AML regulatory regime for financial sectors in Hong Kong should be enhanced to align with the prevailing international standards. The key deficiencies to be addressed include the lack of statutory backing for the customer due diligence and record-keeping requirements, the lack of appropriate sanctions for these requirements, and the absence of an AML regulatory regime for remittance agents and money changers (“RAMCs”).

4. FSB has completed a comprehensive review in this regard in conjunction with the relevant financial regulators and conducted two rounds of public consultation in July and December 2009 respectively to gauge views on the legislative proposals. We also briefed the LegCo Financial Affairs Panel (“the Panel”) on the legislative framework and the detailed proposals on 11 June 2009 and 14 December 2009 respectively and attended a public hearing session organized by the Panel on 24 May 2010. After completing the necessary procedures, we introduced the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill (“the Bill”), which seeks to address the key deficiencies highlighted in paragraph 3 above, into LegCo on 10 November.

5. Since October 2008 onwards, FSB has led multi-agency efforts to actively participate in the deliberations on various AML-related issues by FATF and other international AML fora. In early 2010, FSB also coordinated with the relevant bureaux, departments and agencies in compiling Hong Kong’s submission to FATF on the actions taken / planned for following up the ME report. At its plenary in June 2010, FATF has noted the progress made by Hong Kong to deal with the deficiencies highlighted in the ME report and required that we should continue with the various improvement actions being taken / planned and report further.

Justifications for Extension of the Post of PAS(FS)7

6. In mid 2009, after we have started working on the new legislation on AML regulation for financial sectors, FATF has discussed ways to ensure that member jurisdictions under FATF’s follow-up process take early and effective actions to address major deficiencies identified during their ME exercises, and promulgated a new requirement in early 2010 that member jurisdictions which

are subject to its follow-up process should address the major deficiencies in their AML system and seek removal from the follow-up process within four years after the adoption of the relevant ME reports. Under this new requirement, Hong Kong is expected to have addressed the major deficiencies and to seek removal from FATF's follow-up process by June 2012. If Hong Kong fails to obtain FATF's agreement to be removed from the follow-up process within the specific period, FATF may consider applying enhanced scrutiny and monitoring on Hong Kong. This could affect Hong Kong's status as an international financial centre.

7. With the experience gained in the consultation exercises on the proposed AML legislation, we acknowledge that it is important to continue to engage and consult the financial sectors after the passage of the Bill in working out the detailed guidelines to facilitate AML compliance by financial institutions. We would also make full preparation to facilitate smooth transition to the new AML legislation, which is proposed to take effect on 1 April 2012.

8. In light of the latest developments mentioned above, we propose that the post of PAS(FS)7 should be extended for 17 months up to 15 July 2012 to oversee the passage of the Bill through the legislature, to complete the preparation for implementation of the new AML regulatory regime, and to seek FATF's agreement to remove Hong Kong from its regular follow-up process. The detailed justifications for the proposed extension of the post of PAS(FS)7 are -

- (a) to oversee the completion of the legislative process for the Bill;
- (b) to coordinate the work of the relevant regulatory authorities in preparing for the implementation of the new AML regulatory regime, including -
 - (i) the preparation of detailed guidelines to provide guidance to facilitate financial institutions' compliance with the new AML legislation and the conduct of stakeholders' consultation before promulgation of the detailed guidelines; and

- (ii) the preparation of requisite subsidiary legislation for the implementation of the licensing regime for RAMCs provided for under the new AML legislation;
- (c) to coordinate the preparation of Hong Kong's submissions to FATF in 2011 and 2012, and the inputs from financial regulators and other relevant Government bureaux and departments in connection with Hong Kong's participation in FATF and other AML-related fora;
- (d) to represent Hong Kong in FATF's meetings as necessary, in particular the meetings scheduled for June 2012 when we would seek FATF's agreement to remove Hong Kong from its regular follow-up process; and
- (e) to coordinate Hong Kong's inputs to, and monitor closely, FATF's on-going review of the prevailing international AML standards for conducting the next round of FATF's ME on member jurisdictions which is expected to commence in around 2013; and after completion of FATF's review, to coordinate with the financial regulators and other relevant bureaux and departments to assess the impact of the changes made on Hong Kong.

—— The job description of the post of PAS(FS)7 is at **Annex A**. An organization chart of FSB showing the proposed extension of the post of PAS(FS)7 is at

—— **Annex B**. Upon the implementation of the new AML regulatory regime and completion of the other related policy work, we expect the complexity and volume of work related to AML duties will be reduced to an extent which could be absorbed by the relevant bureaux/departments/agencies through internal redeployment, as appropriate.

Alternative Considered

9. At present, there are six other Principal Assistant Secretaries (PAS(FS)s) in FSB overseeing different policy portfolios, including securities and futures, banking, insurance, mandatory provident fund, accountancy, insolvency and

other companies-related matters. Their existing job descriptions are set out in **Annex C**.

10. We have critically examined whether any of the existing PAS(FS)s in FSB can absorb the work of PAS(FS)7 upon the expiry of the current supernumerary post. However, since these other PAS(FS)s are already 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 enhancement of the regulatory regime for Mandatory Provident Fund (MPF) intermediaries and the planned implementation of the portability proposal to increase employees' control of their MPF investment; the proposed establishment of an independent Insurance Authority and a policyholders' protection fund; and the Companies Ordinance rewrite, it is operationally not feasible for any of them to take up the AML-related tasks upon the expiry of the current supernumerary post of PAS(FS)7 without seriously affecting the discharge of their current duties.

Non-directorate Support

11. The post of PAS(FS)7 is supported by a team of five non-directorate officers, comprising one Senior Administrative Officer (SAO), one Superintendent (SP), one Executive Officer (EO) I, one Personal Secretary I and one Personal Secretary II. The SAO and two Personal Secretary posts are time-limited posts created for two years from 2009-10 to 2101-11 mainly to assist in coordinating the follow-up work with regard to the FATF's ME report on Hong Kong and taking forward the above-mentioned legislative exercise. The SP and EO I are permanent posts responsible for handling AML-related matters on an on-going basis. In view of operational need, we have extended the term of the three time-limited posts which originally are scheduled to expire

in March 2011 to tie in with the proposed extended term of the post of PAS(FS)7, i.e. 15 July 2012.

Financial Implications

12. The proposed extension of the post of PAS(FS)7 will bring about an additional notional annual salary cost at mid-point 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 subsequent years to meet the cost of this proposal.

Advice Sought

13. We plan to submit the staffing proposal to the LegCo Establishment Subcommittee at its meeting on 5 January 2011 and then to the Finance Committee on 28 January 2011 for approval. Members are invited to note and comment on this proposal.

Financial Services and the Treasury Bureau
22 November 2010

Job Description of PAS(FS)7

Rank : Administrative Officer Staff Grade C

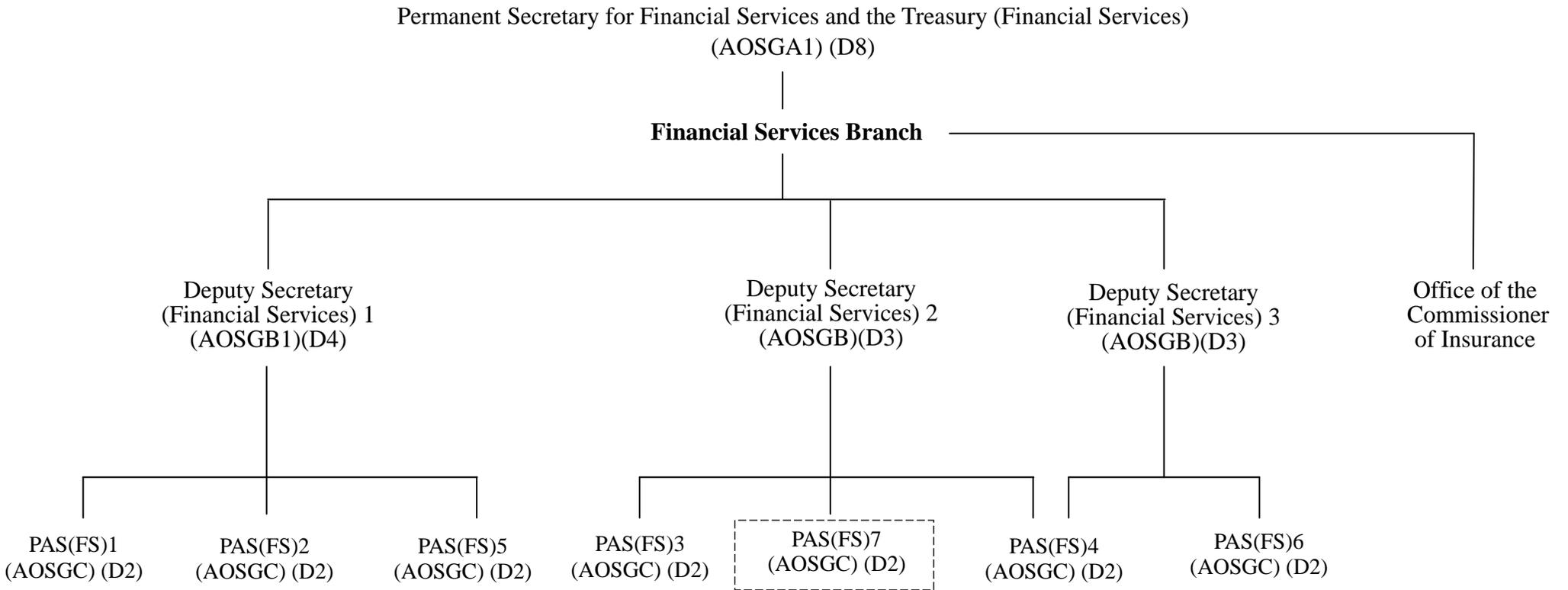
Post Title : Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)(7)

Major Duties and Responsibilities

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

1. To take forward the policy and legislative work in relation to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill, including the preparatory work in respect of subsidiary legislation and guidelines for the implementation of the new legislation;
2. To compile submissions to FATF on improvement actions to the AML regime of Hong Kong in coordination with the financial regulators and Government bureaux and departments;
3. To take lead in drawing up Hong Kong's inputs to the deliberations on AML issues by FATF and other AML-related fora and to be a member of the Hong Kong delegation to FATF and the other relevant international AML fora as appropriate;
4. To serve as secretary to the dedicated multi-agency coordinating committee on anti-money laundering and counter financing of terrorism; and
5. To coordinate and provide policy support to the above committee and senior officials in putting in place the appropriate legal and regulatory systems to fight money laundering and terrorist financing, having regard to the prevailing international standards.

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



Legend:

- Supernumerary directorate post to be retained
- 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 also working on the proposed establishment of an independent Insurance Authority and 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.