

**For discussion
on 20 February 2013**

EC(2012-13)22

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

**HEAD 148 – GOVERNMENT SECRETARIAT :
FINANCIAL SERVICES AND THE TREASURY BUREAU
(FINANCIAL SERVICES BRANCH)**

Subhead 003 Recoverable salaries and allowances (General)

HEAD 46 – GENERAL EXPENSES OF THE CIVIL SERVICE

**Subhead 006 Recoverable salaries and allowances
(Companies Registry Trading Fund)**

Members are invited to recommend to Finance Committee the retention of the following two supernumerary posts –

Financial Services and the Treasury Bureau (Financial Services Branch)

1 Administrative Officer Staff Grade C
(D2) (\$133,150 - \$145,650)

for a period of 12 months, from 1 July 2013 to 30 June 2014

Companies Registry

1 Deputy Principal Solicitor
(DL2) (\$133,150 - \$145,650)

for a period of nine months, from 1 July 2013 to 31 March 2014

/PROBLEM

PROBLEM

The existing supernumerary posts of an Administrative Officer Staff Grade C (AOSGC) (D2) in the Financial Services Branch of the Financial Services and the Treasury Bureau (FSB) and a Deputy Principal Solicitor (DPS) (DL2) in the Companies Registry (CR) will lapse on 1 July 2013. Retention of the posts is required to provide adequate directorate support for FSB and CR to prepare for implementation of the new Companies Ordinance (CO); and for the AOSGC post in FSB, to also carry out the review of the abscondee regime under the Bankruptcy Ordinance (Cap. 6) (BO) and to facilitate scrutiny of the Trust Law (Amendment) Bill 2013 by the Legislative Council (LegCo).

PROPOSAL

2. We propose to retain the following two supernumerary posts to cope with the additional workload relating to the subject matters mentioned in paragraph 1 above –

- (a) one post of AOSGC (D2) in FSB for a period of 12 months from 1 July 2013 to 30 June 2014; and
- (b) one post of DPS (DL2) in CR for a period of nine months from 1 July 2013 to 31 March 2014.

JUSTIFICATION

Implementation of the new CO

3. In mid-2006, the Administration embarked on a comprehensive rewrite of the CO with a view to enhancing Hong Kong's status as an international commercial and financial centre and its competitiveness. The objectives of the rewrite were to enhance corporate governance, ensure better regulation, facilitate business and modernise the law. Having regard to the scale and complexity of the exercise, the Finance Committee (FC) approved in January 2006 the creation of one supernumerary AOSGC post in FSB (designated as Principal Assistant Secretary (Financial Services)⁶ (PAS(FS)⁶)) and one supernumerary DPS post in CR (designated as Deputy Principal Solicitor (Company Law Reform)² (DPS(CLR)²)) for 48 months¹ to cope with the workload. In May 2010, the FC approved the retention of the two posts until 30 June 2013.

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¹ Approval was also given for the creation of one supernumerary Administrative Officer Staff Grade B (D3) post in FSB for 60 months who oversees the CO rewrite exercise, the corporate insolvency reform and accountancy matters. FC's approval was subsequently obtained for retention of the post twice in May 2010 and April 2012 respectively. The post will lapse on 1 August 2014 and its operational needs will be subject to review.

4. The Companies Bill was passed in July 2012 to become the new CO. Our target is to bring the new CO into operation by the first quarter of 2014. In this connection, FSB and CR are undertaking preparatory work on the following three fronts to ensure smooth transition to the new CO regime –

- (a) enactment of subsidiary legislation;
- (b) implementation of changes in relevant forms and procedures; and
- (c) publicity and engagement with stakeholders.

5. First of all, we plan to make 13 pieces of subsidiary legislation to provide for various administrative, procedural and technical matters necessary for implementation of the new CO regime. Following discussion with the LegCo Panel on Financial Affairs and the LegCo Secretariat, we will introduce the subsidiary legislation by batches. The first batch of five pieces of subsidiary legislation concerning the preparation of reporting documents and company names were tabled at LegCo at the sitting on 6 February 2013. It does not include any provisions related to the new arrangement concerning the inspection of the Companies Register under the new CO. The subsidiary legislation related to the new arrangement is expected to be tabled before the LegCo in May 2013.

6. Upon commencement of the new CO, most of the provisions in the existing CO concerning the formation and operation of live companies in Hong Kong will be repealed. For other pieces of legislation which refer to or rely on those provisions to be repealed in their own contexts, consequential amendments to these other pieces of legislation will be necessary in time for commencement of the new CO. Schedules 9 and 10 to the new CO have provided for such consequential amendments but they cover only the legislation enacted up to March 2012. We therefore need to examine the legislation enacted thereafter and, where necessary, incorporate new consequential amendments into these two Schedules before the new CO commences operation. We will also amend the list of compoundable offences in Schedule 7 of the new CO in relation to the subsidiary legislation to be enacted. The amendments to these schedules to the new CO will be effected by way of publication of notices in the gazette later this year.

7. Enactment of the subsidiary legislation aside, CR will need to design at least 30 new specified forms² and revise 55 existing specified forms for use by all companies to tie in with the changes to be brought by the new CO. The workflows and procedures have to be reviewed to meet the changing operational needs. In particular, CR's computer system has to undergo major enhancement to tie in with the new forms, workflows and procedures.

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² A specified form refers to a form which is specified by the Registrar of Companies pursuant to provisions of the new CO. The preparation of specified forms would demand extensive legal inputs as the contents of the forms would need to comply with the relevant statutory provisions.

8. As for publicity and engagement with stakeholders, we will conduct briefings for, and liaise with, relevant professional bodies, the business community and stakeholders on the requirements under the new CO and the transitional and implementation issues. CR will publish new sample articles of association, new guidelines and external circulars and will send letters and pamphlets to over one million live companies to draw their attention to the key changes. In anticipation of increasing number of public enquiries towards the commencement of the new CO, CR will devise a mechanism for responding to enquiries and strengthen staff education so as to meet the needs of the public.

Review of the abscondee regime under the BO

9. Section 30A(3) of the BO provides that a bankrupt would be automatically discharged from bankruptcy after the running of a relevant period from the date of the bankruptcy order. Under section 30A(10)(b), if a bankrupt has left Hong Kong after the date of the bankruptcy order without notifying the trustee of his itinerary and his contact information (section 30A(10)(b)(i)); or fails to return to Hong Kong at such time as specified by the trustee (section 30A(10)(b)(ii)), the relevant period will automatically be suspended from running until the bankrupt returns to Hong Kong and notifies the trustee of his return. Bankrupts who left Hong Kong and could not be contacted are known as “abscondee”.

10. In an earlier court case, section 30A(10)(b)(i) was ruled by the Court of Final Appeal as unconstitutional on grounds that the provision is unreasonably restrictive of the right to travel guaranteed under the Basic Law. In view of the ruling, the Administration intends to take forward a review of the abscondee regime.

Trust law reform

11. In 2008, we launched a review of the trust law regime with the objective of enhancing Hong Kong’s status as an international asset management centre. The reform seeks to facilitate effective administration of trusts through enhancing trustees’ powers whilst providing for appropriate checks and balances, as well as modernises the trust law.

12. We conducted a public consultation on the detailed legislative proposals for amending the Trustee Ordinance (Cap. 29) and the Perpetuities and Accumulation Ordinance (Cap. 257) last year and published the consultation conclusions in November 2012. At the meeting of the Executive Council on 29 January 2013, the Council advised and the Chief Executive-in-Council ordered that the Trust Law (Amendment) Bill 2013 be introduced into LegCo. The Bill will receive its first reading at the LegCo sitting on 20 February 2013.

/Retention

Retention of the two supernumerary posts

13. From now until the new CO commences operation, we envisage that the preparatory work for implementation of the new CO will continue to entail substantial workload in dealing with policy and legal issues. We have to ensure smooth commencement of the new CO to maintain Hong Kong's status as an international financial centre and a leading corporate domicile. Having regard to the extent of changes that the new CO will bring to the business community as well as the scale of the work involved, there is a genuine need to retain the posts of PAS(FS)6 and DPS(CLR)2 to continue to provide high-level policy and legal input to the preparatory work, and to oversee the implementation progress throughout this critical period.

14. On the other hand, the review of the abscondee regime will require careful consideration of various complex issues, including the need to balance the bankrupt's right to travel and the creditor's right to properties. We have been studying the experience of other common law jurisdictions with a view to developing policy options. We will assess the options critically from the constitutional, legal and operational perspectives and will engage relevant stakeholders as we formulate detailed legislative proposals. Our current target is to complete the review by around mid-2014. PAS(FS)6 will be responsible for taking forward the review.

15. Apart from the implementation of the new CO and review of the abscondee regime, PAS(FS)6 is also responsible for the trust law reform exercise. In particular, PAS(FS)6 will assist in the scrutiny of the Trust Law (Amendment) Bill 2013 by LegCo and make preparation for the implementation of the reform proposals.

16. In light of the complexity of the exercises mentioned above, we consider it essential to retain the two supernumerary posts to provide dedicated directorate support in the preparatory work for commencement of the new CO, the review of the abscondee regime and for completion of the legislative exercise for trust law reform. Given the timeframe of these exercises, we propose to retain the post of PAS(FS)6 for a period of 12 months, i.e. from 1 July 2013 to 30 June 2014. On the other hand, DPS(CLR)2 will be heavily involved in rendering legal support on new CO matters and we propose to retain the post for a period of nine months, i.e. from 1 July 2013 to 31 March 2014. The proposed job descriptions of PAS(FS)6 and DPS(CLR)2 are at Enclosures 1 and 2 respectively.

Encls.
1 & 2

17. As mentioned above, our target is to commence the new CO in the first quarter of 2014 and complete the review of the abscondee regime by around mid-2014. We will review the manpower resources requirements taking into account the progress of these tasks and other relevant factors. If necessary, we will seek additional resources through the established mechanism in due course.

Non-directorate support

18. Throughout the additional period, PAS(FS)6 will be supported by a team of four time-limited non-directorate posts, comprising one Senior Administrative Officer, one Administrative Officer, one Personal Secretary I (PS I) and one Assistant Clerical Officer. DPS(CLR)2 will be supported by one Solicitor and one PS I through redeployment within CR.

ALTERNATIVES CONSIDERED

19. We have considered whether the duties of PAS(FS)6 and DPS(CLR)2 can be absorbed by other colleagues in FSB and CR respectively upon lapsing of the posts on 1 July 2013.

20. Regarding PAS(FS)6, there are at present seven other Principal Assistant Secretaries (PASes) in FSB overseeing different policy areas including securities and futures, banking, insurance, insolvency and accountancy, mandatory provident funds and Mainland-related measures on financial services. All of them are fully committed to other policy initiatives and legislative exercises which are significant to the development of financial services sector in Hong Kong. Regarding legislative work, FSB is preparing to introduce legislation for the development of Islamic finance, the regulation of over-the-counter derivatives financial products, the implementation of the scripless securities markets, the reform of corporate insolvency regime and the establishment of an Independent Insurance Authority. The Branch is also seeking to implement measures that aim to enhance the Mandatory Provident Fund Schemes and consolidate Hong Kong's position as a platform for offshore Renminbi businesses. It will not be viable to redeploy other PASes to take up the proposed duties of PAS(FS)6 without prejudicing the delivery of policy initiatives and legislative exercises under their respective portfolios. An organisation chart of the FSB is at Enclosure 3 and the existing job descriptions of all other PASes are at Enclosure 4.

Encl. 3
Encl. 4

21. As regards the post of DPS(CLR)2, there are at present two other DPSs in CR, namely Registry Solicitor (RS) and Deputy Principal Solicitor (Company Law Reform)1 (DPS(CLR)1). RS has been fully engaged with

/providing

providing legal support on the daily operation and enforcement actions of the Registry, and is also responsible for providing legal advice on policy matters, issues relating to licences granted to companies limited by guarantee, company name complaints, the restoration, deregistration and striking off of companies and the administration of other ordinances falling within the purview of CR. On the other hand, as company law encompasses a wide spectrum of complex subjects and in light of the volume of legal work involved, the work in respect of CO rewrite has all along been shared by two DPSs, i.e. DPS(CLR)1 and DPS(CLR)2, with each of them specialising in different substantive parts of the new CO. DPS(CLR)1 will be fully committed to the preparatory work and legislative work relating to the new CO in areas including company administration, accounts and auditing requirements and the provisions relating to company directors, company secretaries and takeovers and acquisitions. DPS(CLR)1 will also serve as the Secretary to the Standing Committee on Company Law Reform. In view of the above, it will be impossible for the other two legally qualified directorate officers in CR to absorb the work of DPS(CLR)2 without adversely affecting the discharge of their duties.

Encl. 5 The organisation chart of CR is at Enclosure 5.

FINANCIAL IMPLICATIONS

22. The proposed retention of the two supernumerary directorate posts will bring about an additional notional annual salary cost at mid-point of \$3,392,400 as follows –

Supernumerary posts	Notional annual salary cost at mid-point \$	Duration (months)	No. of posts
AOSGC (D2)	1,696,200	12	1
DPS (DL2)	1,696,200	9	1
Total	3,392,400		2

The additional full annual average staff cost, including salaries and staff on-cost, is \$4,920,000.

23. The notional annual salary cost at mid-point for the four time-limited non-directorate posts supporting PAS(FS)6 referred to in paragraph 18 above is \$2,436,060. The full annual average staff cost, including salaries and staff on-cost, is \$3,274,000.

/24.

24. The cost pertaining to DPS(CLR)2 will be met by the Companies Registry Trading Fund (CRTF). As to the PAS(FS)6 post, the current arrangement is for CRTF to bear 75% of the salary while the remaining 25% is met by provisions of FSB. The arrangement will be preserved until 31 March 2014 while FSB will start to assume the full cost thereafter. We shall include sufficient provision in the draft Estimates of 2013-14 and 2014-15 to meet the cost of the proposals.

PUBLIC CONSULTATION

25. The LegCo Panel on Financial Affairs was consulted on the staffing proposals at its meeting on 7 January 2013. Members supported the proposed retention of the two supernumerary posts.

ESTABLISHMENT CHANGES

26. The establishment changes in FSB and CR for the past two years are as follows –

Establishment (Note)	Number of posts			
	Existing (as at 1 February 2013)	As at 1 April 2012	As at 1 April 2011	As at 1 April 2010
<i>FSB</i>				
A	12 + (5)*	12 + (4)	12 + (3)	12 + (3)
B	64	65	63	57
C	87	87	89	91
Total	163 + (5)	164 + (4)	164 + (3)	160 + (3)
<i>CR</i>				
A	6 + (1)#	6 + (1)	6 + (1)	6
B	34	34	31	30
C	251	250	253	253
Total	291 + (1)	290 + (1)	290 + (1)	289

Note :

A – ranks in the directorate pay scale or equivalent

B – non-directorate ranks, the maximum pay point of which is above MPS Point 33 or equivalent

C – non-directorate ranks, the maximum pay point of which is at or below MPS Point 33 or equivalent

() number of supernumerary directorate posts

* as at 1 February 2013, there was one unfilled directorate post in FSB. The post was filled on 4 February 2013.

as at 1 February 2013, there was no unfilled directorate post in CR.

/CIVIL

CIVIL SERVICE BUREAU COMMENTS

27. The Civil Service Bureau supports the proposed retention of the two supernumerary directorate posts. The grading and ranking of the posts are considered appropriate having regard to the level and scope of responsibilities.

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

28. As the posts are proposed on a supernumerary basis, their retention, if approved, will be reported to the Standing Committee on Directorate Salaries and Conditions of Service in accordance with the agreed procedure.

Financial Services and the Treasury Bureau
February 2013

Proposed Job Description
Principal Assistant Secretary for Financial Services and the Treasury
(Financial Services)6

Rank : Administrative Officer Staff Grade C (D2)

Responsible to : Deputy Secretary for Financial Services and the Treasury
(Financial Services) 3 (DS(FS)3)

Main Duties and Responsibilities –

1. To provide policy input on matters relating to the implementation of the new Companies Ordinance (CO) and its subsidiary legislation.
2. To provide policy support on the preparation of the subsidiary legislation to be made under the new CO and throughout the vetting of the same by the Legislative Council (LegCo), and to make preparation for implementation.
3. To provide policy input on the reform of our trust law and policy support throughout the vetting of the Trust Law (Amendment) Bill 2013 by LegCo, and make preparation for implementation of the reform proposals.
4. To take forward a policy review on the abscondee regime under the Bankruptcy Ordinance (Cap. 6) and formulate detailed proposals on the way forward.
5. To be responsible for housekeeping matters of the Companies Registry.
6. To undertake any other duties as assigned by DS(FS)3.

**Proposed Job Description
Deputy Principal Solicitor (Company Law Reform)2**

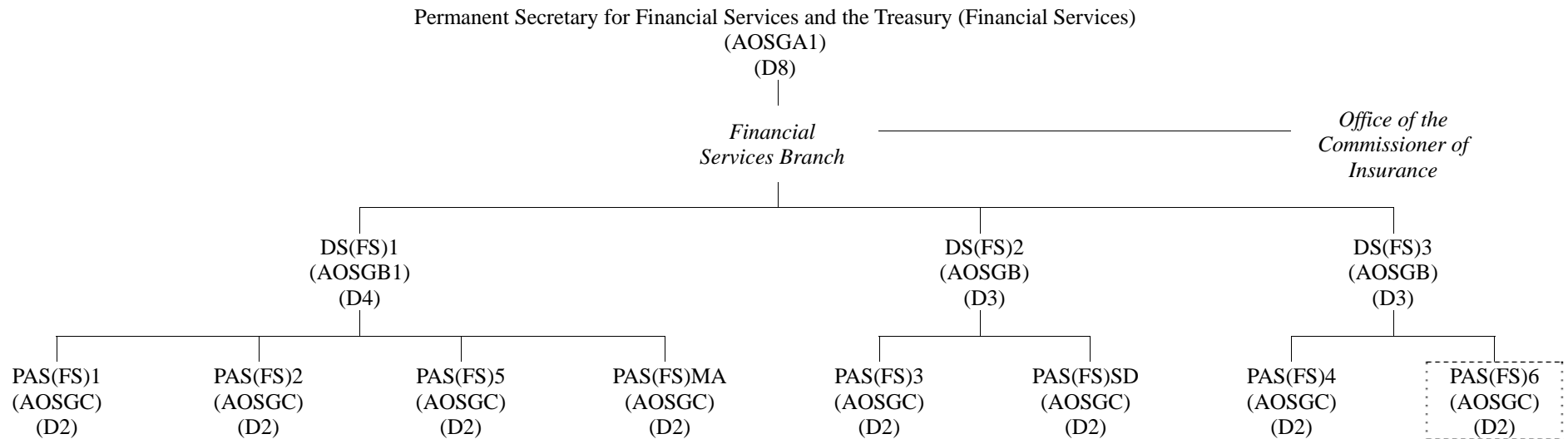
Rank : Deputy Principal Solicitor (DL2)

Responsible to : Registrar of Companies (R of C)

Main Duties and Responsibilities –

1. To provide and co-ordinate legal input and support to the R of C and the Financial Services and the Treasury Bureau on the following –
 - (a) to act as a key personnel for providing legal support in preparing the subsidiary legislation to be made under the new Companies Ordinance (CO) and throughout the vetting of the same by the Legislative Council;
 - (b) to prepare for the commencement of the new CO, including advising on the specification of new forms, the formulation of new procedures, and the revision of existing specified forms and work procedures;
 - (c) to prepare guidelines, for use internally and externally, on the operational requirements and transitional arrangements to facilitate compliance with and enforcement of the new CO. This will cover areas including the abolition of par values of shares, the abolition of memoranda of association of companies, a new compound offer regime for specified offences and a new system for registration of charges;
 - (d) to conduct seminars and briefing sessions for professional bodies, the business community and relevant stakeholders on changes to be brought by the new CO and issues relating to the implementation of the new CO, including transitional arrangements; and
 - (e) to conduct legal researches into matters arising from implementation of the provisions of the new CO and public enquiries, and to co-ordinate and devise a public enquiry mechanism to respond to enquiries relating to legal aspects of the new requirements under the new CO, including transitional arrangements.
2. To undertake any other tasks as may be assigned by the R of C.

**Organisation Chart of the Financial Services Branch of
the Financial Services and the Treasury Bureau**



Legend

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

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

PAS(FS)1 is responsible for policy and matters relating to investor protection in the securities and futures markets and the development of the asset management industry. 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 co-ordinates the operation of the Securities and Futures Appeals Tribunal and the Market Misconduct Tribunal, provides secretariat support for the Process Review Panel for SFC, and co-ordinates among the financial regulators on risk management matters.

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 legislation on the regulation of over-the-counter derivatives market to implement the G20's commitment and a scripless securities market in Hong Kong. He/She also handles matters relating to the development of the commodities market in Hong Kong.

3. PAS(FS)3 oversees policy and legislative matters over the Mandatory Provident Fund (MPF) Schemes and the Occupational Retirement Schemes. His/Her portfolio covers all MPF-related matters, including the housekeeping matters of the Mandatory Provident Fund Schemes Authority. He/She also handles housekeeping matters of the Census and Statistics Department.

4. PAS(FS)4 oversees a new exercise to modernise Hong Kong's corporate insolvency law and is responsible for formulating the proposal on the introduction of a new corporate rescue procedure. He/She also oversees public and legislative matters concerning the accountancy profession, and assists in handling insolvency policy and administration and corporate governance of non-listed companies. He/She also deals with housekeeping matters of the Official Receiver's Office and the Financial Reporting Council (FRC), and provides secretariat support for the Process Review Panel for FRC.

5. PAS(FS)5 is responsible for the review and maintenance of the Banking Ordinance including implementation of Basel III, 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,

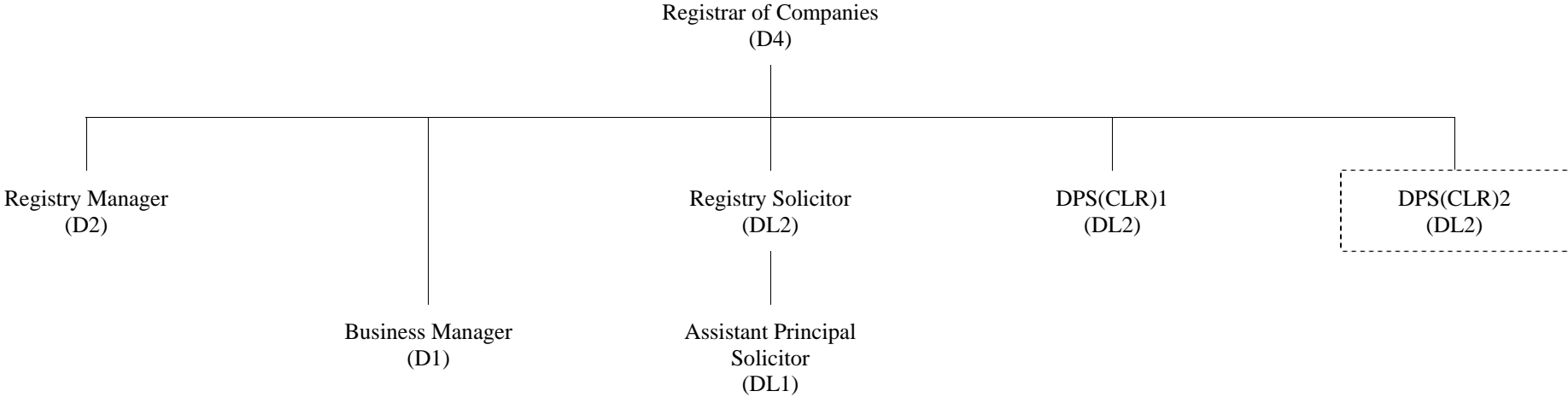
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anti-money laundering for financial institutions as well as those relating to bond market development and Islamic finance. In addition, he/she co-ordinates input from financial services perspective in connection with Hong Kong's participation in relevant 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)MA co-ordinates the implementation of new measures by the Central People's Government (CPG) announced in August 2011 to support the economic and social development in Hong Kong. He/She also oversees the financial co-operation with the Mainland at the CPG and regional levels as a strategic goal under the National 12th Five-Year Plan as well as the development of offshore Renminbi business in Hong Kong.

7. PAS(FS)SD oversees policy and legislative matters over the insurance sector. His/her portfolio covers all insurance-related policies, including the housekeeping matters of the Office of the Commissioner of Insurance. He/She oversees the proposed establishment of an independent Insurance Authority (IA) and a Policyholders' Protection Fund (PPF), engages the industry and stakeholders in developing detailed proposals, and formulates detailed legislative proposals for the establishment of the IA and PPF.

Organisation Chart of the Companies Registry



Legend

-  – Supernumerary directorate post to be retained
- DPS(CLR) – Deputy Principal Solicitor (Company Law Reform)