

**For discussion  
on 6 January 2014**

**The Legislative Council  
Panel on Financial Affairs**

**Retention of two supernumerary directorate posts in Financial Services  
Branch of the Financial Services and the Treasury Bureau  
to spearhead legislative initiatives relating to corporate insolvency,  
auditor regulatory reform, bankruptcy administration, the new  
Companies Ordinance (Cap. 622) and the reformed trust law**

**PURPOSE**

This paper seeks Members' views on the proposed retention of –

- (a) one supernumerary Administrative Officer Staff Grade B (“AOSGB”) (D3) post in the Financial Services Branch (“FSB”) of the Financial Services and the Treasury Bureau (“FSTB”) for two years and five months from 1 August 2014; and
- (b) one supernumerary Administrative Officer Staff Grade C (“AOSGC”) (D2) post in FSB of FSTB for two years and six months from 1 July 2014

up to 31 December 2016 for taking forward legislative exercises on corporate insolvency, auditor regulatory reform, “abscondee” regime under the Bankruptcy Ordinance (Cap. 6) (“BO”) and other matters.

**BACKGROUND**

*Existing supernumerary posts*

2. Currently, the above legislative initiatives are spearheaded by one supernumerary AOSGB post in FSB<sup>1</sup> (designated as Deputy Secretary

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<sup>1</sup> The Finance Committee (“FC”) approved in January 2006 the creation of the post, and extension of the post in May 2010 and April 2012 respectively.

(Financial Services) 3 (“DS(FS)3”)) who is also responsible for, inter alia, overseeing policy matters concerning the accounting sector, the trust industry, corporate insolvency and bankruptcy administration, and the implementation of the new Companies Ordinance (“CO”) (Cap. 622). Among others, one supernumerary AOSGC post<sup>2</sup> (designated as Principal Assistant Secretary (Financial Services) 6 (“PAS(FS)6”)) provides support to DS(FS)3, in particular for the review of the abscondee regime and matters relating to the new CO and the reformed trust law.

## **JUSTIFICATIONS**

3. The supernumerary posts of DS(FS)3 and PAS(FS)6 will lapse on 1 August 2014 and 1 July 2014 respectively. The Administration has reviewed the operational needs of the two supernumerary posts and considers it necessary to retain them to provide policy steer and inputs to the work as elaborated in paragraphs 4 to 16 below.

### *Improvement of Corporate Insolvency Law and new Statutory Corporate Rescue Procedures*

4. We have embarked on a legislative exercise to improve the insolvency and winding-up provisions in the existing CO (Cap. 32), which will be retitled as the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) after the commencement of the new CO on 3 March 2014. It is a major undertaking covering a whole range of different aspects of our insolvency regime, taking into account developments in insolvency laws in other major common law jurisdictions. This legislative exercise seeks to consolidate Hong Kong’s position as a major international business and financial centre, ensure that our corporate insolvency and winding-up regime can keep up with the latest development and meet social and economic needs, and enhance protection of creditors and facilitate more efficient administration of the winding-up process. In this regard, we have conducted a three-month public consultation on a package of 46 legislative proposals which ended in July 2013. Members of the Panel were briefed on the consultation in May 2013 vide LC Paper No. CB(1)876/12-13(01).

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<sup>2</sup> The FC approved in January 2006 the creation of the post, and extension of the post in May 2010 and March 2013 respectively.

5. There is majority support from respondents for the proposed legislative exercise. Having regard to the comments received on the consultation proposals, we are reviewing the details of the proposals and are preparing drafting instructions for the necessary legislation. We will continue to engage with stakeholders as we prepare the legislation. We aim to be in a position to brief the Panel on the consultation conclusions in the second quarter of 2014, and introduce the relevant Amendment Bill into Legislative Council (“LegCo”) in the 2014-15 legislative session.

6. In parallel, we are also actively developing further the proposal to introduce a new statutory corporate rescue procedure (“CRP”)<sup>3</sup> in Hong Kong. The proposal aims to provide an opportunity for companies in short-term financial difficulty to turn around or restructure. The key objective is to maximise the chance of existence of the company or as much as possible its business, thus preserving jobs and, if this is not attainable, to achieve a better return for the creditors of the company than in case of an immediate winding-up. We conducted a public consultation in late 2009 on the conceptual framework and some specific issues relating to CRP. Members of the Panel were briefed on the consultation in December 2009 vide CB(1)191/09-10(01). Under the broad proposal, CRP will provide for the appointment of an independent third party, namely the provisional supervisor, to take temporary control of the company, consider options for rescuing the company and prepare proposals for a voluntary arrangement within a specified period for creditors’ approval. At the same time, to provide more certainty so that the provisional supervisor can formulate a voluntary arrangement plan, there would be a moratorium on legal actions and proceedings against the company when the company is under provisional supervision.

7. There are certain key issues that need to be reviewed further. These issues include, for example, treatment of the outstanding entitlement of employees, the parties to be given the right to initiate the CRP, the qualifications for appointment as provisional supervisors and the question of whether to exempt any contracts or transactions from the moratorium, etc. We also need to consider in detail various other key issues which were not discussed in the previous consultation, such as the effect of provisional supervision on existing rights and contracts, the investigation powers of the provisional supervisor and checks-and-balances in relation to the conduct of

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<sup>3</sup> The proposal includes the introduction of insolvent trading provisions in Hong Kong.

the provisional supervisor, etc. We aim to develop a package of detailed legislative proposals for further engagement with stakeholders in 2014.

### *Auditor Regulatory Reform*

8. Auditors play the role as a key gatekeeper in the corporate governance of listed companies by providing assurance for the integrity and accuracy of the companies' financial reports. Therefore, it is important that there is a robust regime for regulating the professional conduct of and upholding the professional standards of auditors of listed companies in order to uphold the integrity of Hong Kong's capital market and safeguard the interests of the investing public.

9. In light of the relevant principles adopted internationally for the regulation of the securities market, which call for, inter alia, independent oversight of the regulation of the auditors of listed companies, many international financial centres have already introduced reforms to ensure that the oversight of the regulation of their statutory auditors is independent of the audit profession itself. Hong Kong is lagging behind in this respect. Besides, the absence of an independent auditor oversight body has rendered Hong Kong not qualified to be represented on the International Forum of Independent Audit Regulators, which is an influential international organisation both in the area of auditor regulation and in the setting of auditing standards, and Hong Kong is not able to gain recognition overseas on regulatory equivalence which could enhance our regulatory cooperation and liaison with the other major financial centres.

10. To address this problem, we have been working closely with the Financial Reporting Council ("FRC") and the Hong Kong Institute of Certified Public Accountants to develop proposals to further enhance the independence of our auditor regulatory regime with a view to ensuring that the regime is benchmarked against international standards and continues to be appropriate in the local context. A reform in this direction will bolster Hong Kong's competitiveness and reputation as an international financial centre and capital market. This will be the most important reform to the auditor regulatory regime since the establishment of FRC in 2006 for, inter alia, conducting independent investigations into possible auditing and reporting irregularities in relation to listed entities. We will need to take into account the views of the audit profession as well as other stakeholders including listed

companies, relevant financial regulators and general investors. We plan to put forward a package of reform proposals for public consultation in around the second quarter of 2014. Subject to the outcome of the consultation, we will prepare detailed legislative proposals with a view to introducing the necessary legislation into LegCo in the 2014-15 legislative session.

*Review of the abscondee regime under the BO*

11. The BO provides for a bankruptcy regime which facilitates the distribution of bankrupts' assets to creditors whilst giving bankrupts a financial "fresh start" after a specified bankruptcy period. In this regard, 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. In order to ensure the integrity and effective administration of the bankruptcy regime, the BO also contains provisions to deter bankrupts from evading their obligations by leaving Hong Kong ("abscondee regime"). Under the BO, if a bankrupt is absent from Hong Kong on the day of Bankruptcy Order (section 30A(10)(a)), leaves Hong Kong without notifying the trustee during bankruptcy (section 30A(10)(b)(i)) or fails to return to Hong Kong upon request by the trustee-in-bankruptcy (section 30A(10)(b)(ii)), the relevant period will automatically be suspended from running until the bankrupt has returned to Hong Kong and notified the trustee of his return.

12. In an earlier court case<sup>4</sup>, section 30A(10)(b)(i) was ruled by the Court of Final Appeal as unconstitutional on the ground that the provision was unreasonably restrictive of the right to travel guaranteed under the Basic Law. There is also another on-going appeal case<sup>5</sup> in which a bankrupt challenges the ruling of the Court of First Instance in May 2013 that confirms the constitutionality of section 30A(10)(a). In view of these court cases, we have commenced a review of the abscondee regime. We are developing broad legislative proposals and aim to brief the Panel on Financial Affairs in mid-2014.

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<sup>4</sup> *Official Receiver & Trustee in Bankruptcy of Chan Wing Hing v Chan Wing Hing* FACV Nos. 7 and 8 of 2006.

<sup>5</sup> *In the matter of CHANG HYUN CHI, the Bankrupt*, HCB 5227/2006.

### *The new CO*

13. The CO is the legal framework underpinning over one million companies in Hong Kong. We have conducted a complete rewrite of the CO to enhance corporate governance, ensure better regulation, facilitate business and modernise the law with a view to strengthening Hong Kong's status as an international business and financial centre. The new CO was enacted in July 2012 and will commence operation on 3 March 2014. Preparation work is in full swing for the smooth implementation of the new CO.

14. After commencement of the new CO, we will need to closely monitor its operation. On the other hand, arising from discussions during LegCo's scrutiny of the Companies Bill and the various pieces of subsidiary legislation made under the new CO, a number of issues have been identified for review. Subject to the outcome of the review, we will consider the next steps for introducing legislative amendments to the new CO and/or its subsidiary legislation in due course.

### *Policy matters pertaining to the reformed trust law*

15. We have reformed our trust law and the resulting Trust Law (Amendment) Ordinance 2013 has commenced operation on 1 December 2013. The Amendment Ordinance seeks to bolster the competitiveness of Hong Kong's trust services industry and attract settlors to set up trusts in Hong Kong, in turn enhancing Hong Kong's status as an international asset management centre. The Administration and the relevant industry organisations have been undertaking various promotional activities to enhance the awareness of this new initiative among trust practitioners and potential settlors both locally and overseas, and we will continue to do so.

16. As discussed at the relevant Bills Committee, we will monitor the implementation of the Amendment Ordinance and review the legislation after a certain period of time. In this connection, there are some suggestions from stakeholders for improving the trust law which have not been incorporated in the Amendment Ordinance as the merits and implications of these suggestions would need to be assessed in detail. We will conduct policy research and analysis and continue to engage the relevant stakeholders on these suggestions.

### *Extension of the DS(FS)3 and PAS(FS)6 posts in FSB*

17. In light of the complex and technical nature of the issues involved and the need for extensive stakeholder engagement, continued dedicated directorate support is essential in spearheading these legislative exercises and providing the necessary high-level policy steer. These exercises are currently overseen by DS(FS)3, with PAS(FS)6 providing support in respect of the review of the abscondee regime and matters relating to the new CO and the reformed trust law. As these exercises are progressing towards important milestones and critical stages, it is important to maintain the same set-up to ensure continuity and quality of steer. With reference to our aim to take forward the relevant legislative exercises within the current term of LegCo and to ensure that there will be adequate directorate support for smooth implementation of the new legislation upon enactment, we propose to retain the two posts up to 31 December 2016, i.e. extension of the post of DS(FS)3 for a period of two years and five months from 1 August 2014 and the post of PAS(FS)6 for a period of two years and six months from 1 July 2014. The proposed job descriptions of DS(FS)3 and PAS(FS)6 are at **Annex A** and **Annex B** respectively.

18. Taking into account the progress of these exercises and other relevant factors, we will review the manpower resources requirements and, if necessary, seek additional resources through the established mechanism in due course.

### **ALTERNATIVES CONSIDERED**

19. We have considered whether the duties of DS(FS)3 and PAS(FS)6 can be absorbed by other officers in FSB when these two posts lapse on 1 August 2014 and 1 July 2014 respectively.

20. There are at present two other Deputy Secretaries (“DSes”) and seven other Principal Assistant Secretaries (“PASes”) in FSB overseeing different policy areas including securities and futures, banking, insurance, mandatory provident funds and Mainland-related measures on financial services. We concluded that it would not be operationally feasible to redeploy other DSes and PASes to take up the duties of DS(FS)3 and PAS(FS)6 without prejudicing the delivery of policy initiatives and legislative

exercises under their respective heavy portfolios. An organisation chart of the FSB is at Annex C and the existing job descriptions of all other DSEs and PASEs are at Annex D and Annex E respectively.

21. In addition, there is a newly established Event Coordination Team (“ECT”) in FSB<sup>6</sup> that oversees all relevant planning and implementation work in respect of the organisation of the Finance Ministers’ Meeting (“FMM”) of the Asia-Pacific Economic Cooperation in September 2014. The ECT is headed by one AOSGB, who is underpinned by, among others, one Senior Principal Executive Officer (D2). Given that the ECT is dedicated to the work relating to the FMM, and is only created up to 30 September 2014, it will not be operationally feasible to redeploy officers in the ECT to take up the proposed duties of DS(FS)3 and PAS(FS)6.

## **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 \$3,758,400. The additional full annual average staff cost, including salaries and staff on-cost, is \$5,427,924. The proposal will not give rise to any increase in supporting staff for the two posts.

23. Subject to the FC’s approval of the above supernumerary directorate posts, we will include sufficient provision in the draft Estimates of 2014-15, 2015-16 and 2016-17 to meet the cost of the proposal.

## **ADVICE SOUGHT**

24. Members are invited to comment on the proposal. Subject to Members’ views, we will seek the recommendation of the Establishment Subcommittee in February 2014 and approval from the FC in May 2014.

**Financial Services Branch**  
**Financial Services and the Treasury Bureau**  
**December 2013**

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<sup>6</sup> The ECT has been established on 6 December 2013 with the funding approval by the FC (FC Paper FCR(2013-14)36).



**Proposed Job Description  
Deputy Secretary (Financial Services) 3**

**Rank :** Administrative Officer Staff Grade B (D3)

**Responsible to :** Permanent Secretary for Financial Services and the Treasury (Financial Services) (“PSFS”)

**Main Duties and Responsibilities –**

1. To oversee the corporate insolvency law improvement exercise and the introduction of statutory corporate rescue procedure.
2. To oversee regulation of the accountancy sector, including reviewing the existing regime on auditor oversight.
3. To oversee the review of the abscondee regime under the Bankruptcy Ordinance (Cap. 6).
4. To oversee follow-up matters concerning the new Companies Ordinance (Cap. 622) and the reformed trust law.
5. To oversee other policy issues concerning insolvency administration and housekeeping matters concerning the Official Receiver’s Office.
6. To oversee policy issues and housekeeping matters concerning the Companies Registry.
7. To undertake any other tasks as assigned by PSFS.

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

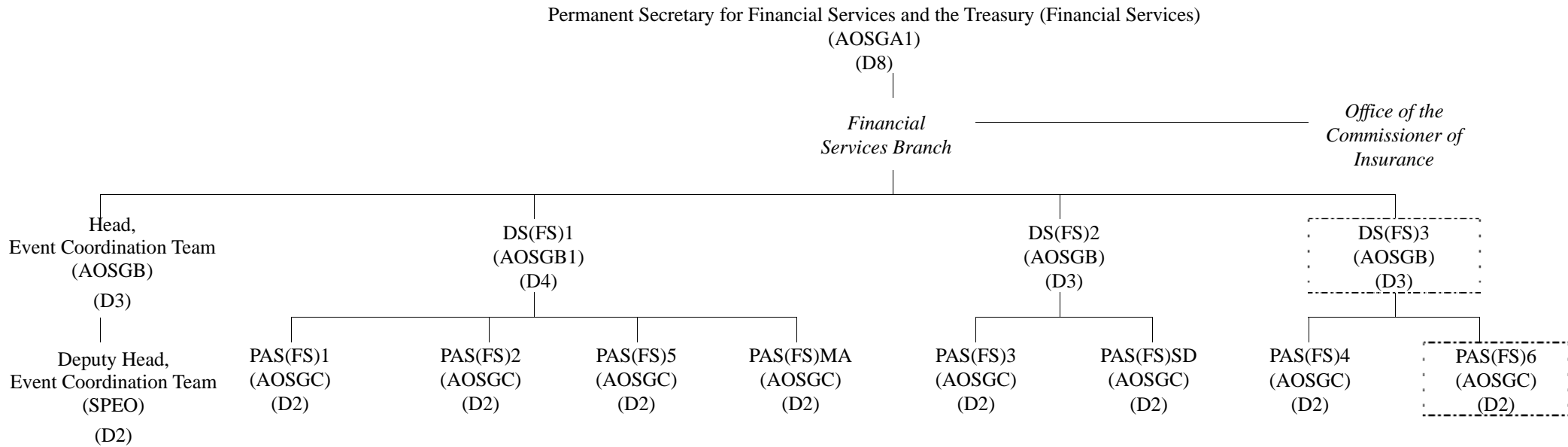
**Rank :** Administrative Officer Staff Grade C (D2)

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

**Main Duties and Responsibilities –**

1. To take forward a policy review on the abscondee regime under the Bankruptcy Ordinance (Cap. 6) and formulate detailed legislative proposals.
2. To monitor the implementation of the new Companies Ordinance (Cap. 622), and take forward necessary legislative amendments.
3. To provide policy input on follow-up matters pertaining to the reformed trust law.
4. To deal with housekeeping matters of the Companies Registry.
5. To undertake any other tasks as assigned by DS(FS)3.

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



**Legend**

- Supernumerary directorate posts to be created
- 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)
- SPEO - Senior Principal Executive Officer

**Major Duties and Responsibilities of the Existing Deputy Secretaries (Financial Services) (“DS(FS)s”)**

DS(FS)1 is mainly responsible for policy matters and legislation relating to the securities and futures markets, the banking and monetary matters, financial market development including cooperation with the Mainland, and anti-money laundering and counter terrorist financing in respect of the financial sectors. Within these policy areas, there are a number of key initiatives which are being pursued and will require active follow-up within the next few years. These include the further development of offshore Renminbi business and asset management industry in Hong Kong; promotion of the further and sustainable development of the local bond market including the Islamic bond market; implementation of relevant regulatory reforms to enhance investor protection and market quality, development of financial infrastructure including the introduction of an uncertificated securities regime in Hong Kong, and formulating legislative proposal for implementing other enhancement measures on financial stability promulgated by international forums including G20 (e.g. OTC derivative regulation and resolution regime) and the Basel Committee on Banking Supervision, and implementation of the anti-money laundering legislation for financial institutions and preparation for the next round of mutual evaluation on Hong Kong by the Financial Action Task Force.

2. DS(FS)2 is mainly responsible for policy matters and legislation relating to the insurance sector, Mandatory Provident Fund (MPF) schemes and other retirement schemes, and housekeeping matters of the Census and Statistics Department. There are a number of key initiatives currently underway, notably the proposed establishment of an independent Insurance Authority and a Policyholders’ Protection Fund, legislation for improving the MPF system and the on-going review of the operation of the MPF system.

**Major 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 in the securities and futures markets and the development of the asset management industry. In addition, she provides policy input on supervision of intermediaries and of market operation, and deals with housekeeping matters of the Securities and Futures Commission (SFC). She also coordinates 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 coordinates financial regulators on risk management matters.

2. PAS(FS)2 is responsible for policy matters relating to listing and the Hong Kong Exchanges and Clearing Limited. She works on the proposed legislation on the regulation of over-the-counter derivative market to implement the G20’s commitment and the introduction of an uncertificated securities regime in Hong Kong. She also handles matters relating to 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. Her portfolio covers all MPF-related matters, including the housekeeping matters of the Mandatory Provident Fund Schemes Authority. She also handles housekeeping matters of the Census and Statistics Department.

4. PAS(FS)4 oversees policy and legislative matters over bankruptcy, corporate insolvency and accountancy matters. He is responsible for an exercise to improve Hong Kong’s corporate insolvency law, including engaging stakeholders on a proposal to introduce new statutory corporate rescue procedure. He is also responsible for an exercise to further enhance the independence of the auditor oversight regime for listed companies from the audit profession. He 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 oversees policy matters and legislation concerning the Deposit Protection

Scheme, electronic retail payments, anti-money laundering for financial institutions, as well as those relating to bond market development and Islamic finance. In addition, he coordinates policy input from financial services perspective in connection with Hong Kong's participation in G20, Financial Stability Board, International Monetary Fund, Asia-Pacific Economic Cooperation, Asian Development Bank, the Financial Action Task Force on Money Laundering, and the Asia-Pacific Group on Money Laundering.

6. PAS(FS)MA formulates policy initiatives and co-ordinate matters on reinforcing and enhancing Hong Kong's roles as an offshore Renminbi business centre, and advancing Hong Kong's financial co-operation with the Mainland under the Closer Economic Partnership Arrangement and other co-operation platforms. She also oversees policy matters and legislation concerning the implementation of Hong Kong's commitment to meet international standards such as the development of an effective resolution regime for financial institutions in times of financial crises, and handles other relevant international affairs relating to financial services.

7. PAS(FS)SD oversees policy and legislative issues concerning the insurance sector. His portfolio covers all insurance-related policies, including the housekeeping matters of the Office of the Commissioner of Insurance. He oversees, among other things, the proposed establishment of an independent Insurance Authority and a Policyholders' Protection Fund, including the related legislative work and industry engagement.