

**For discussion
on 5 January 2015**

Legislative Council Panel on Financial Affairs

**Creation/extension of Supernumerary Directorate Posts
in the Financial Services and the Treasury Bureau
(Financial Services Branch)
for establishing an independent Insurance Authority**

PURPOSE

This paper seeks Members' views on creation/extension of the following supernumerary directorate posts in the Financial Services Branch ("FSB") under the Financial Services and the Treasury Bureau ("FSTB") to implement regulatory reforms for the insurance industry -

- (a) extension of one supernumerary Administrative Officer Staff Grade C ("AOSGC") (D2) post for 26 months from 1 November 2015 to 31 December 2017 to complete the legislative and related work for the Insurance Companies (Amendment) Bill 2014 ("the Bill") and take forward the legislative exercise to establish a Policyholders' Protection Fund ("PPF") ;
- (b) extension of one supernumerary directorate post of Assistant Commissioner of Insurance ("ACI") (D2) in the Office of the Commissioner of Insurance ("OCI") of FSB for 11 months from 1 November 2015 to 30 September 2016 to ensure a seamless transfer of regulatory powers from OCI to the independent Insurance Authority ("IIA"); and
- (c) creation of one supernumerary directorate post of Principal Executive Officer ("PEO") (D1) for 18 months in 2015-16 and 2016-17 to head a Preparatory Team to help set up the IIA, manage transitional issues and support IIA's initial operation.

BACKGROUND

Establishment of IIA

2. The establishment of the IIA is the most important regulatory reform in the insurance sector since the passage of the Insurance Companies Ordinance (“ICO”) in 1983. The policy objectives of setting up the IIA are to modernize the insurance industry regulatory infrastructure to facilitate the stable development of the industry, provide better protection for policyholders, and comply with the requirement of the International Association of Insurance Supervisors (“IAIS”) that insurance regulators should be financially and operationally independent of the government and industry. The Bill which provides a legal framework for the establishment of an IIA and a statutory licensing regime for insurance intermediaries to replace the existing self-regulatory system is under scrutiny by the Legislative Council (“LegCo”). Subject to deliberations by the Bills Committee, we target to have the Ordinance enacted by July 2015.

3. At present, the “Insurance Authority” is a public officer under ICO. She is supported by OCI which is a government department. Upon enactment of the Bill, we plan to commence the new Ordinance in three stages to allow for a smooth transition of regulatory powers from OCI and the self-regulatory organizations (“SROs”)¹ to the IIA. To avoid the costly mode of setting up a provisional authority as a company and then subsequently winding it up, the Bill is so drafted that in Stage One, the IIA will be renamed as “Provisional Insurance Authority” (“PIA”) immediately after its establishment. The PIA will be given certain administrative powers to undertake essential preparatory work, such as recruiting key personnel, leasing office premises and procuring office and IT equipment, etc., to prepare for the new insurance regulator to take over the work of OCI.

4. In Stage Two, the PIA will be renamed as “the Insurance Authority”, the official name of the IIA in the amended ICO. The IIA will take up the existing duties of OCI such as those on the prudential and conduct regulation of insurers and anti-money laundering regulatory regime. During Stage Two, the self-regulatory system for insurance intermediaries will continue, allowing time for

¹ They are the Insurance Agents Registration Board established under the Hong Kong Federation of Insurers, the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association.

the IIA to prepare the necessary tools for regulating insurance intermediaries in consultation with the industry and the general public. These will include subsidiary legislation and code of conduct for insurance intermediaries, guidelines for imposing financial penalty, etc..

5. Stage Three will commence after these regulatory tools are in place for the IIA to take over the regulation of insurance intermediaries from the three existing SROs.

6. The tentative timeline is as follows:

<u>Stage One:</u> Establishment of PIA	Within three months after enactment of the Bill
<u>Stage Two:</u> IIA to take over OCI	Six to 12 months after PIA's establishment
<u>Stage Three:</u> IIA to take over the supervision of insurance intermediaries from the SROs	12 to 20 months after PIA's establishment

Establishment of PPF

7. To better protect policyholders' interest, maintain market stability in the event of insurer insolvency and enhance public confidence in the insurance industry, we propose to establish a PPF as a safety net for policyholders. We last reported to the Panel on 6 February 2012. Our target is to introduce a Bill by end 2015 for establishing a PPF.

JUSTIFICATIONS

Extension of a supernumerary AOSGC post

8. Having regard to the scale and complexity of the exercise, the Finance Committee ("FC") approved on 15 April 2011 the creation of one supernumerary AOSGC post in FSB (designated as Principal Assistant Secretary

(Financial Services) Special Duties (“PAS(FS)SD”) for 30 months from 15 April 2011 to 14 October 2013 for, among other things, establishing an IIA and a PPF. The FC further approved on 21 June 2013 the extension of the said post for about 24 months from 15 October 2013 to 31 October 2015. After reviewing the progress of the legislative exercise for the establishment of the IIA and PPF, we propose to further extend the PAS(FS)SD post for 26 months from 1 November 2015 to 31 December 2017 to provide policy inputs to the work as elaborated in the ensuing paragraphs.

9. The proposed extension of the PAS(FS)SD post is justified on the following grounds -

- (a) The Bill only sets out the general principles of the conduct requirements for licensed insurance intermediaries. Following the enactment of the Bill, we need to work out with the new regulator a set of subsidiary legislation (e.g. levy collection, insurer register rule, intermediary register and licensing rules, etc.) and guidelines (e.g. concerning imposing pecuniary penalty, fitness and propriety of regulatees, regulated activities, the “best interest” conduct principle, etc.). Before making any rule, the IIA is required to publish a draft of the proposed rule for public consultation. Given the complexity and sensitivity of the tasks, they should be taken forward by an officer at AOSGC level. It is anticipated that the related work will continue several months after the commencement of Stage Three.
- (b) Close liaison and co-operation between the IIA and the Government are expected on policy and legislative matters relating to the insurance sector. PAS(FS)SD will play an important role in co-ordinating and overseeing the related matters throughout the process of the establishment of the IIA and also in the initial stage of operation of the IIA.
- (c) An officer at AOSGC level is needed to take forward the legislative exercise and co-ordinate with the IIA for the establishment of the PPF. As we envisage that the daily operation of the PPF would be undertaken by the IIA, we need to keep the IIA closely in the loop to facilitate its eventual taking-over of the administrative responsibilities of the PPF.

10. The proposed job description of PAS(FS)SD is at **Annex A**.

Non-directorate support

11. PAS(FS)SD is supported by a team of five non-directorate officers, comprising one Senior Administrative Officer, one Administrative Officer, one Senior Executive Officer, one Personal Secretary I and one Assistant Clerical Officer.

Extension of a supernumerary post of ACI

12. In view of the scale and complexity of the requisite work involved, the FC approved on 25 May 2012 the creation of one supernumerary directorate post of ACI in OCI (designated as ACI(Enforcement)) (“ACI(E)”) for 24 months to undertake the new regulatory functions stipulated in the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (“AMLO”) and the then Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011. ACI(E) is also responsible for overseeing the operation of the present self-regulatory system for insurance intermediaries. With approval given by the FC on 6 June 2014, the ACI(E) post was extended up to 31 October 2015.

13. A major regulatory function of the IIA is to regulate the conduct of insurers and insurance intermediaries to ensure that the sale and after-sale administration of insurance policies (e.g. policy renewal or insurance claims) are conducted honestly, fairly and professionally. The related functions are at present performed by the SROs in the insurance sector, overseen by ACI(E). In this connection, the post has been tasked to take forward the transition of the existing regulatory regime.

14. To ensure that appropriate arrangements are put in place to enable a seamless transition from the self-regulatory regime to the IIA regime, and the continued exercise of the anti-money laundering (“AML”) and Mandatory Provident Fund (“MPF”) intermediaries regulatory functions of the OCI in Stage Two, there is a need to further extend the ACI(E) post up to 30 September 2016 to tie in with the scheduled transfer of regulatory powers from OCI to the IIA.

15. Responsibilities of ACI(E) during the proposed extension period are -

- (a) to ensure that the current self-regulatory regime continues to operate effectively to protect the interests of policyholders until the tasks are handed over to IIA;
- (b) to continue to engage the three SROs to ensure a smooth and seamless transition to direct regulation of insurance intermediaries by the IIA. The scope of work will cover the preparation for the transfer of registration data/disciplinary cases of insurance intermediaries to the IIA, the establishment of a computerized system for register of insurance intermediaries, and the consolidation of the existing codes of conduct and penalty guidelines for insurance intermediaries for the IIA's reference; and
- (c) to exercise regulatory oversight of the AML Team, the MPF Intermediaries Team in OCI and IIA-related duties

OCI has rolled out on-site inspections and off-site reviews on insurance institutions for AML and counter-terrorist financing compliance as well as supervision and investigation work on MPF intermediaries from the insurance sector. There is a large number of entities involved, and continual and ongoing efforts are required from the relevant AML and MPF Intermediaries Teams of OCI under the supervision of ACI(E).

In addition, regulatory inputs and efforts are required from OCI for the Hong Kong money laundering and terrorist financing risk assessment exercise, proposed legislative amendments to AMLO to align with the revised Financial Action Task Force ("FATF") recommendations, and preparation for the FATF mutual evaluation exercise on technical compliance and effectiveness.

In view of the scale and complexity of the work involved, there is a continued need for ACI(E) to head the AML and MPF Intermediaries Teams of OCI so as to provide regulatory steer and direction, as well as to oversee the performance of all the

relevant supervisory and enforcement functions before they are transferred to the IIA.

16. The proposed job description of ACI(E) is at **Annex B**.

Non-directorate Support

17. ACI(E) is supported by an MPF Intermediary Team, an AML Team and an Insurance Intermediaries Team comprising Insurance Officers and supporting staff.

Creation of a supernumerary post of PEO

18. To expedite the establishment of the IIA, there is a need to provide support to the PIA especially before its own staff members are recruited. Having regard to the scale and complexity of the work involved, we propose to create a supernumerary post of PEO for about 18 months in 2015-16 and 2016-17 to head a Preparatory Team to assist PIA to start staff recruitment, formulate and implement internal administrative/financial systems and procedures, prepare office accommodation, procure stores and equipment and perform other secretariat and administrative functions. The Preparatory Team should be set up about six months before the establishment of the PIA to perform the following preparatory work -

- (a) to conduct strategic planning and execution of a plan for establishment of the PIA;
- (b) to take forward the appointment exercise of the Chairperson and other Directors of the PIA;
- (c) to set up a provisional office for the PIA;
- (d) to engage an executive search consultant for recruitment of the Chief Executive Officer and other key personnel;
- (e) to formulate proposals and recommendations on organizational

structure, recruitment strategies/schedules/procedures and remuneration packages for staff members of the PIA/IIA; and

- (f) to formulate the administrative, accounting, stores and procurement procedures for the PIA/IIA.

Assuming it would take 12 months for PIA to recruit sufficient staff and set up a permanent office and make other arrangements for the IIA to take over OCI's existing functions in the Stage Two, the total time required for the Preparatory Team to be in operation will be about 18 months. Actual creation of posts, however, would take place about six months before the establishment of the PIA.

19. The job description of the proposed PEO is at Annex C.

Non-directorate Support

20. The proposed PEO will be supported by three non-directorate officers in the Preparatory Team comprising one Senior Executive Officer, one Treasury Account and one Clerical Assistant.

ALTERNATIVES CONSIDERED

21. We have critically examined the option of internal redeployment of resources to cope with the workload concerned but consider it not feasible.

22. There are at present seven other PAS(FS)s in FSB overseeing different policy areas including securities and futures, banking, MPF, insolvency and accountancy, policies and legislation relating to companies and trusts and Mainland-related measures on financial services. All of them are fully committed to other policy initiatives and legislative exercises which are critical to the development of financial services sector in Hong Kong. Regarding legislative work, FSB has introduced a bill to LegCo for enabling the introduction of an uncertificated securities regime; it is preparing legislation for the regulation of stored value facilities and retail payment systems as well as modernizing our insolvency regime; it is consulting the market on the establishment of an effective resolution regime for financial institutions. FSB is also seeking to implement

measures that aim to promote the further development of our financial services industry including offshore Reminbi business, bond market, Islamic finance, asset management, corporate treasury activities and captive insurance, etc.. FSB also joins hands with the regulators to strengthen risk management in line with international standards, including implementation of the Basel III requirements for banks and a new regulatory regime for over-the-counter derivatives. In view of the heavy on-going legislative work programme and policy initiatives being pursued, it will not be viable to redeploy other PAS(FS)s to take up the proposed duties of PAS(FS)SD or the essential preparatory work in support of the establishment and initial operation of the IIA, without prejudicing the delivery of policy initiatives and legislative exercises under their respective portfolios. The existing portfolios of all other PAS(FS)s are at **Annex D**.

23. At present, there are three other ACIs in OCI, ACI (Policy and Development) (“ACI(P)”), ACI (General Business) (“ACI(G)”) and ACI (Long Term Business) (“ACI(L)”). ACI(P) is responsible for overseeing policy and legislative matters. He/She is heavily engaged in a number of important initiatives, including the development of a Risk-based Capital Framework for Insurance Business; providing input on the establishment of a PPF; participating in the IAIS in relation to cross-border supervision matters; and liaising with the China Insurance Regulatory Commission and the insurance industry regarding the Mainland and Hong Kong Closer Economic Partnership Arrangement measures and Mainland/Hong Kong co-operation. ACI(G) and ACI(L) are responsible for monitoring general business insurers and long-term insurers respectively. The capacity of the General Business Division and Long Term Business Division under these two respective ACIs have already been over-stretched because of the increasing workload in enhancing the monitoring of the financial position of insurers and conducting more frequent inspections on and stress testing of insurers. Since the other three ACIs are already overloaded, it will not be operationally feasible for any of them to take up the additional duties of the post of ACI(E) without seriously affecting the effective discharge of their current duties. The existing portfolios of all other ACIs are at **Annex E**.

24. An organization chart of FSB is at **Annex F**.

FINANCIAL IMPLICATION

25. The proposed creation/extension of the three supernumerary directorate posts will bring about an additional notional annual salary cost at mid-point of \$4,944,000. The additional full annual average staff cost, including salaries and staff on-cost is \$7,615,000.

26. As for the non-directorate civil service posts supporting PAS(FS)SD and in the Preparatory Team referred to in paragraphs 11 and 20 above, the notional annual salary cost at mid-point is \$5,179,500 and the full annual average staff cost, including salaries and staff on-cost, is \$7,319,000.

27. We have included sufficient provision in the 2015-16 draft Estimates and will include the necessary provision in the 2016-17 and 2017-18 draft Estimates to meet the cost of the proposal.

ADVICE SOUGHT

28. Members are invited to comment on the proposal. Subject to Member's views, we will seek the recommendation of the Establishment Subcommittee and approval from the FC.

Financial Services Branch
Financial Services and the Treasury Bureau
December 2014

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

Rank : Administrative Officer Staff Grade C (D2)
Responsible to : Deputy Secretary for Financial Services and the Treasury
(Financial Services) 2

Main Duties and Responsibilities-

- (i) To oversee the policy and legislation work relating to the insurance sector;
- (ii) To work out with the Provisional Insurance Authority / independent Insurance Authority (“PIA/IIA”) a set of subsidiary legislation and practice guidelines for the operation of the IIA;
- (iii) To coordinate with the Office of the Commissioner of Insurance (“OCI”) in liaising with the self-regulatory organisations and other industry stakeholders on the transitional arrangements for establishing the IIA;
- (iv) To provide policy support to OCI in handling staff issues arising from the abolition of office upon establishment of an IIA;
- (v) To take forward the legislative exercise and administrative procedures for the establishment of a Policyholders’ Protection Fund (“PPF”) and co-ordinate efforts to facilitate the initial operation of the Fund; and
- (vi) To engage the insurance industry on the introduction of a risk-based capital framework for the prudential regulation of insurers.

**Proposed Job Description
Assistant Commissioner of Insurance (Enforcement)**

Rank : Assistant Commissioner of Insurance (D2)

Responsible to : Commissioner of Insurance

Main Duties and Responsibilities –

- (i) To support the Financial Services and the Treasury Bureau in liaising with the self-regulatory organisations and other industry stakeholders on the transitional arrangements for establishing the IIA, including overseeing a smooth transfer of registration/disciplinary data of insurance intermediaries, the establishment of an insurance intermediaries computerized system and consolidation of existing codes of conduct requirements for insurance intermediaries for the IIA's reference;
- (ii) To oversee the existing self-regulatory regime of insurance intermediaries;
- (iii) To provide regulatory steer and direction on the operation of the anti-money laundering ('AML") regulatory regime for the insurance sector under the Anti-Money Laundering Ordinance (Cap. 615);
- (iv) To operate the system for supervision of Mandatory Provident Fund ("MPF") intermediaries from the insurance sector under the statutory regulatory regime, including compliance monitoring, inspection, complaints handling, and investigation; and
- (v) To represent the Insurance Authority in the liaison with other AML and MPF intermediaries regulators.

**Proposed Job Description
Principal Executive Officer**

Rank : Principal Executive Officer (D1)
Responsible to : Deputy Secretary for Financial Services and the Treasury
(Financial Services) 2

Main Duties and Responsibilities –

- (i) To lead the Preparatory Team in implementing the preparatory work for establishing the PIA/IIA;
- (ii) To take forward the appointment exercises of the Chairperson, Chief Executive Officer and other Directors of the PIA/IIA;
- (iii) To assist the PIA in appointing consultants for supporting its initial operation, e.g. legal, accounting, information technology, human resources and executive search consultants;
- (iv) To serve as member/secretary of selection boards for key personnel of the PIA; and
- (v) To co-ordinate with OCI and make practical arrangements to ensure a seamless transfer of regulatory responsibilities from OCI to the IIA.

**Portfolios of Other
Principal Assistant Secretaries (Financial Services) (“PAS(FS)s”)**

PAS(FS)1

He/She is responsible for policy and legislation relating to the regulation of the securities and futures markets and asset management, and oversight of the Securities and Futures Commission (“SFC”) and support for the SFC Process Review Panel.

PAS(FS)2

He/She is responsible for policy and legislation relating to the stock and futures exchanges and their clearing houses, including disclosure by listed companies and related parties, and the Shanghai-HK Stock Connect Scheme.

PAS(FS)3

He/She is responsible for policy and legislation relating to Mandatory Provident Fund Schemes and other retirement schemes. He/She also handles housekeeping matters of the Census and Statistics Department.

PAS(FS)4

He/She is responsible for policy and legislation relating to accountancy sector and corporate insolvency, oversight of the Financial Reporting Council (“FRC”) and support for the Process Review Panel for FRC.

PAS(FS)5

He/She is responsible for policy and legislation relating to banking, bond market, anti-money laundering and counter financing of terrorism, oversight of matters relating to the Deposit Protection Scheme and electronic retail payments.

PAS(FS)6

He/She deals with policy and legislation relating to companies, trust, money lenders and individual bankruptcy, and oversees the Companies Registry and the Official Receiver's Office.

PAS(FS)IMA

He/She deals with matters relating to financial co-operation with the Mainland and Greater China region, and international affairs on financial services including the establishment of an effective resolution regime for financial institutions in Hong Kong.

**Portfolios of Other
Assistant Commissioners of Insurance**

Assistant Commissioner of Insurance (General Business)

His/Her main duties and responsibilities are-

1. To authorize and prudentially supervise the general business insurers, including monitoring their financial soundness, their compliance with the statutory provisions and taking precautionary or remedial measures as and when appropriate.
2. To deal with matters affecting the general insurance industry, including –
 - (i) handling LegCo business relating to motor and Employees Compensation (“EC”) insurance;
 - (ii) administration of the Government Facility on Terrorism relating to EC insurance;
 - (iii) effective operation of EC Insurance Residual Scheme;
 - (iv) extension of the compensation coverage of the Motor Insurers’ Bureau;
 - (v) liaison with other local and overseas financial regulators on supervisory matters, and attending Supervisory Colleges organized by fellow regulators; and
 - (vi) liaison with the Hong Kong Federation of Insurers and other various related bodies on issues relating to the general insurance industry.
3. To compile general insurance statistics, and review and improve office procedures and operating guidelines.
4. To be responsible for the overall efficient operation of the General Business Division of the Office.

Assistant Commissioner of Insurance (Long Term Business)

His/Her main duties and responsibilities are-

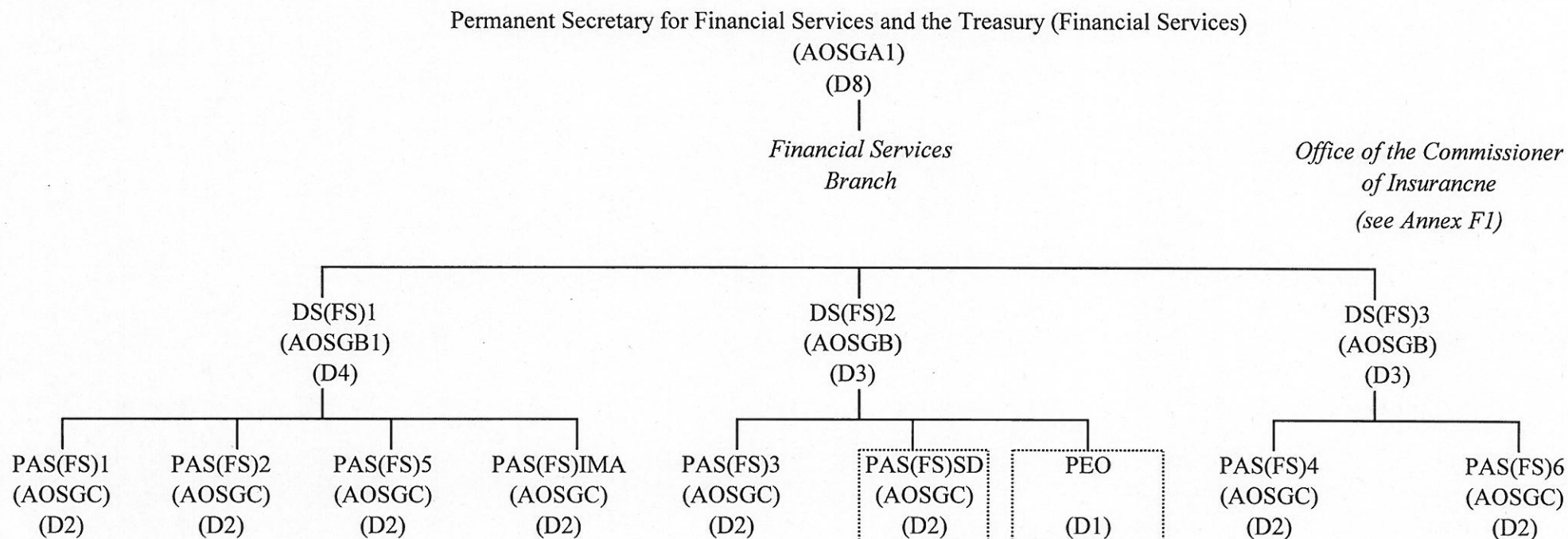
1. To supervise the day to day operation of Long Term Business ("LT") Division and be responsible for the overall efficient operation of the LT Division.
2. To authorize and prudentially supervise the long term business insurers, including monitoring their financial soundness, their compliance with the statutory provisions and take precautionary or remedial measures as and when appropriate.
3. To deal with matters affecting the long term insurance industry, including –
 - (i) processing of mergers and acquisitions, and life portfolio transfer;
 - (ii) dealing with public, media and LegCo members on complaints relating to long term insurers and agents;
 - (iii) leading the Actuarial Team of the LT Division to review various measures relating to actuarial reserving of long term insurers;
 - (iv) liaising with other local and overseas financial regulators on supervisory matters and attending Supervisory Colleges organised by fellow regulators;
 - (v) performing inspection visits and thematic review on long term insurers; and
 - (vi) liaising with Mainland regulatory authorities on RMB policies.
4. To compile long term insurance statistics; and review and improve office procedures and operating guidelines.

Assistant Commissioner of Insurance (Policy and Development)

His/Her main duties and responsibilities are-

1. To coordinate with Mainland bureaux/regulator on liberalisation measures under Mainland and Hong Kong Closer Economic Partnership Arrangement; enhance cooperation of the insurance sector between Hong Kong and the Mainland; pursue new initiatives of liberalisation; and exchange information on regulatory matters.
2. To develop new/update legislation and rules for the insurance industry; develop a risk-based capital framework for the insurance business in Hong Kong; prepare enabling legislation for the establishment of the independent Insurance Authority and the Policyholders' Protection Fund.
3. To participate in activities of the International Association of Insurance Supervisors and collaborate with international insurance regulators in developing and updating Insurance Core Principles and papers on various standards and regulatory measures; and participate in the development of legislation for a resolution regime for the financial services sector.
4. To coordinate information exchange between the Office, policy bureaux and local/overseas financial regulators; serve as the Head of Information Technology for all matters on OCI's information systems and website; and administer all matters relating to staffing and office administration.
5. To liaise with external parties such as credit rating agencies, professional bodies and consultants on regulatory matters and handle enquiries from the public and media.

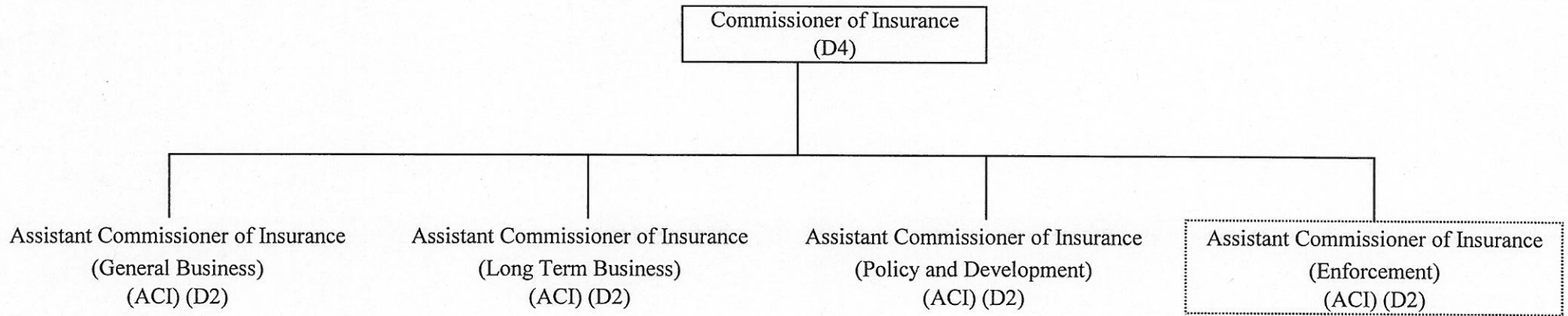
Proposed Organisation Chart of the Financial Services and the Treasury Bureau (Financial Services Branch)



Legend

- Supernumerary directorate posts to be created/extended
- AOSGA1 - Administrative Officer Staff Grade A1
- AOSGB1 - Administrative Officer Staff Grade B1
- AOSGB - Administrative Officer Staff Grade B
- AOSGC - Administrative Officer Staff 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)
- PEO - Principal Executive Officer

Proposed Organisation Chart of the Office of the Commissioner of Insurance



Legend

- Supernumerary directorate post to be extended
- ACI - Assistant Commissioner of Insurance