

**For discussion
on 22 March 2016**

**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 policy and legislative matters relating to auditor regulatory
reform, corporate rescue procedures, money lenders and related
intermediary activities,
Companies Ordinance, financial technologies and
the Asian Infrastructure Investment Bank**

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”); and
- (b) one supernumerary Administrative Officer Staff Grade C (“AOSGC”) (D2) post in FSB of FSTB

for two years from 1 January 2017 to 31 December 2018 for taking forward legislative initiatives on auditor regulatory reform, introduction of a new statutory corporate rescue procedure, review of the Companies Ordinance (Cap. 622) (“CO”), as well as other policy matters concerning financial intermediaries for money lending, etc.

BACKGROUND

Existing supernumerary posts

2. Currently, the above initiatives are spearheaded by one

supernumerary AOSGB post¹ in FSB (designated as Deputy Secretary (Financial Services) 3 (“DS(FS)3”)) who is also responsible for, inter alia, overseeing policy matters concerning the accountancy sector, corporate insolvency and individual bankruptcy, companies, trust and money lenders. He is supported by, among others, one supernumerary AOSGC² (designated as Principal Assistant Secretary (Financial Services) 6 (“PAS(FS)6”)), in relation to CO-related policy matters and matters concerning financial intermediaries for money lending. PAS(FS)6 is also responsible for policy initiatives concerning financial technologies (“Fintech”) and the Asian Infrastructure Investment Bank (“AIIB”).

JUSTIFICATIONS

3. The supernumerary posts of DS(FS)3 and PAS(FS)6 will lapse on 1 January 2017. The Government has reviewed the operational needs of the two supernumerary posts and considers it necessary to retain them to provide suitable high-level policy steer and inputs to the work as elaborated in paragraphs 4 to 21 below.

Reform of the Regulatory Regime for Listed Entity Auditors

4. In order to ensure that the regulatory regime for auditors is benchmarked against international standards and practices, which is important given the externally-oriented nature of our financial market and the need to maintain the confidence of both international and local investors in our overall financial regulatory regime with regard to the capital market, the Government has embarked on a reform exercise to improve the regulatory regime for auditors of public interest entities (“PIEs”)³ in Hong Kong. The reform seeks to transform the Financial Reporting Council (“FRC”) into an independent auditor oversight body vested with direct inspection, investigation and disciplinary powers with regard to PIE auditors. It would also be responsible for the oversight of the Hong Kong Institute of Certified Public Accountants (“HKICPA”) in performing the latter’s statutory functions

¹ The Finance Committee (“FC”) approved in January 2006 the creation of the post, and extension of the post in May 2010, April 2012 and June 2014 respectively.

² The FC approved in January 2006 the creation of the post, and extension of the post in May 2010, March 2013 and June 2014 respectively.

³ PIEs will be defined in the relevant amendment bill to mean entities listed in Hong Kong.

of registration, setting continuing professional development requirements and standards on professional ethics, auditing and assurance with respect to PIE auditors.

5. This will be the most important reform to the auditor regulatory regime since the establishment of FRC in 2006, involving the transfer of certain important regulatory functions and powers from HKICPA to FRC and a revamp of the disciplinary system for PIE auditors. The Government has completed a public consultation exercise on a package of proposals to improve the regulatory regime for PIE auditors. We have already secured general support from the Legislative Council (LegCo) Panel on Financial Affairs (“FA Panel”), the accounting sector and other relevant stakeholders on the direction and objective of the reform exercise. We will continue to engage with various stakeholder groups as we prepare the amendment bill. Our target is to introduce the amendment bill into LegCo in the 2016-17 legislative session.

6. We envisage that there will be intensive preparatory work in the months after enactment of the amendment bill to complete the transition from the existing regulatory regime to the new one. For example, we will convene tripartite meetings with FRC and HKICPA to ensure smooth transition and put in place necessary arrangements to facilitate FRC making detailed guidelines and performing its new statutory functions.

Introduction of a new statutory Corporate Rescue Procedure and Insolvent Trading provisions

7. The Government has committed to introducing a new statutory corporate rescue procedure (“CRP”) and insolvent trading provisions. CRP aims to facilitate companies in short term financial difficulty to turn around or restructure. Its 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 insolvent winding-up. Besides, in the absence of insolvent trading provisions which impose civil liabilities on company directors in specified circumstances, our corporate insolvency regime is short of a legislative tool to protect the interests of creditors dealing with a company which is in financial difficulty. It is therefore important that Hong

Kong has in place an effective CRP and insolvent trading provisions as soon as possible.

8. Under the broad proposal, CRP would provide for the appointment of an independent third party, namely the provisional supervisor, to take temporary control of the company, consider specified options for rescuing the company within a specified period and prepare proposals for a voluntary arrangement for creditors' approval in a speedy manner. It would also ensure that employees will be no worse off than in case of an immediate insolvent winding-up by mandating payment for outstanding employees' entitlements by specified milestones in the CRP process. 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 it is under provisional supervision. In parallel, in respect of the introduction of insolvent trading provisions, there would be appropriate safeguard provisions for directors of the company in genuine cases.

9. In the earlier consultation exercises, the proposals above were broadly supported by respondents and the FA Panel. There have been strong requests from stakeholders for early implementation ahead of possible financial crisis in future. FSTB took the matter forward in 2014 by announcing a package of detailed proposals on CRP and insolvent trading which had taken into account public and stakeholders' feedback. We are engaging relevant stakeholders on the further details for preparation of an amendment bill. Taking into account the scale and complexity of the exercise, our target is to introduce the relevant amendment bill into LegCo in 2017-18.

Review of regulatory and related arrangements to tackle malpractices by financial intermediaries for money lending

10. We have been monitoring the issue and working closely with the Police and the Registrar of Money Lenders ("the Registrar")⁴. The Police has also stepped up enforcement against the malpractice of intermediaries, and conducted a number of special operations between 2014 and 2015. To date, over 280 persons have been arrested, including those who were involved in the operation of money lending business or intermediary activities for

⁴ The Registrar of Companies is the current Registrar of Money Lenders.

money lending. The malpractices of intermediaries may be subject to sanction under the provisions of different ordinances, including the Money Lenders Ordinance (Cap. 163) (“MLO”) which, inter alia, provides that it is a criminal offence to fraudulently induce any person to borrow money from a money lender by any false, misleading or deceptive statement, or by any dishonest concealment of material facts. Offenders are liable to a fine and to imprisonment. The MLO also prohibits a money lender from colluding with any person to charge a fee from a borrower. Offenders will be liable to a fine and to imprisonment. If the act of a financial intermediary for money lending involves other criminal aspects, the Police will also follow up in accordance with existing legislation such as the Crimes Ordinance (Cap. 200).

11. To enhance protection for borrowers, we are liaising closely with the Police to review its recent enforcement experience. We are developing additional measures to further address the issue and will brief the FA Panel on our proposals in April 2016.

12. DS(FS)3 and PAS(FS)6 will be responsible for this initiative. It will involve coordination with the Police and the Companies Registry (“CR”), intensive engagement with different stakeholders in finalising the details of the proposals, and active oversight to ensure smooth implementation. Directorate officers with adequate policy-making experience, communication and oversight skills will be required to take forward this initiative.

Review of the Companies Ordinance

13. FSTB completed a major legislative exercise in 2013 to rewrite the CO to provide a modernised framework for the incorporation and operation of companies in Hong Kong. The new CO, which is the longest piece of legislation enacted in recent years and contains 921 clauses, 11 schedules and 12 pieces of subsidiary legislation, was brought into operation on 3 March 2014, with a six-month lead time for enforcing certain new requirements. Its commencement of operation has strengthened Hong Kong’s competitiveness and standards of corporate governance.

14. FSTB, in conjunction with CR, are making preparations for conducting a review of the new CO taking into account the implementation experience as well as feedback and suggestions received from stakeholders. We aim to complete the review within about one year and will then engage

relevant professional bodies and other stakeholder groups in developing details of improvement proposals.

Development of Hong Kong into a Fintech hub

15. Broadly speaking, Fintech refers to the application of information and telecommunications technology (“ICT”) in the field of financial services. Application of Fintech by existing financial institutions may enhance efficiency of their operations and service delivery, and Fintech startups may provide solutions that have the potential to transform traditional products and processes. The development of Fintech in Hong Kong can help strengthen the competitiveness of our financial services industry and bring about ample new opportunities for talents and enterprises in finance, and other related sectors.

16. The Government established the Steering Group on Financial Technologies (“Steering Group”) in April 2015, following the announcement of its establishment in the Financial Secretary’s 2015-16 Budget, to advise on how to develop Hong Kong into and promote Hong Kong as a Fintech hub. PAS(FS)6 has been the Secretary to the Steering Group since its establishment. The Steering Group submitted its report to the Government in early February 2016.

17. In his 2016-17 Budget, the Financial Secretary announced a range of measures for early implementation of the Steering Group's recommendations, including –

- (a) establishing a dedicated team under Invest Hong Kong to organise international events and assist start-ups, investors and R&D institutions to establish their presence in Hong Kong;
- (b) setting aside a dedicated space of 3 000 square metres in Cyberport’s Smart-Space for Fintech activities and rolling out a designated incubation programme for 150 Fintech start-ups over the next five years;
- (c) arranging for 300 university students, through Cyberport, to join Fintech training camps in overseas universities to gain more in-depth understanding of career prospects in the sector;

- (d) establishing dedicated platforms at the Hong Kong Monetary Authority (“HKMA”), the Securities and Futures Commission and the Office of the Commissioner of Insurance to enhance communication between regulators and the Fintech community;
- (e) setting up, by the HKMA in partnership with the other stakeholders, a three-pronged cyber security programme that comprises a cyber intelligence-sharing platform, the conduct of risk assessment and professional certification; and
- (f) encouraging the industry and relevant organisations to explore the application of “Blockchain” technology in the financial services industry, with a view to developing its potential to reduce suspicious transactions and bring down transaction costs.

18. PAS(FS)6 will liaise with other departments and monitor the implementation of the above initiatives to develop Hong Kong into a Fintech hub. In view of the evolving landscape, the Government will continue to engage the industry and other stakeholders to keep abreast of the dynamic developments, and monitor any emerging opportunities and challenges on the international and local horizons. In this context, FSTB will act as a key coordinator with parties responsible for implementing the measures announced in the 2016-17 Budget mentioned at paragraph 17 above, including Cyberport, Invest Hong Kong, financial regulators, R&D institutions, and other relevant Government departments and industry stakeholders.

Hong Kong’s participation in the Asian Infrastructure Investment Bank

19. The AIIB is a multilateral development bank, which supports infrastructure development in Asia with a view to expanding regional connectivity and improving regional integration. The AIIB officially commenced operation in January 2016.

20. We have been in discussion with the Central People’s Government (CPG) and the AIIB the appropriate arrangements for Hong Kong to join the AIIB as a non-sovereign territory. We have also liaised with AIIB on rendering practical support to its operation by leveraging on Hong Kong’s

status as an international financial centre. Hong Kong's participation in the AIIB will bring about enormous business opportunities for our financial industries and other related service sectors. Specifically, our capital markets and asset management professionals and various financial products can support the operation of the AIIB in areas such as project financing, bond issuance, investment, financial management and foreign exchange management. Our professional service and financial service industries will stand to benefit which will also help reinforce our position as an international financial centre.

21. In view of the above developments, we need focused support of a directorate officer at AOSGC rank to take forward matters relating to Hong Kong's participation in the AIIB in order to put our relationship with AIIB on a firmer footing within the next few years.

Retention of the DS(FS)3 and PAS(FS)6 posts in FSB

22. In spearheading the relevant legislative exercises and policy initiatives mentioned above, we need to have directorate support to provide high-level policy steer to address the many complex and technical issues involved, and lead relevant stakeholder engagement exercises in order to ensure timely delivery of these projects. As the major exercises highlighted in paragraphs 4 to 21 above will be in full swing and reach different critical milestones in the coming two years, it is important to ensure momentum and provide the necessary policy steer. With reference to our aim to take forward the relevant legislative exercises, ensure smooth implementation of the new legislation upon enactment, as well as implement important policy initiatives, we propose to retain the two posts upon their lapse on 1 January 2017 up to 31 December 2018. The proposed job descriptions of DS(FS)3 and PAS(FS)6 are at Annex A and Annex B respectively.

ALTERNATIVES CONSIDERED

23. We have considered whether the duties of DS(FS)3 and PAS(FS)6 can be absorbed by other officers in FSB upon the lapse of the two posts on 1 January 2017.

24. 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, anti-money laundering and financial cooperation with the Mainland. As explained at the Establishment Sub-Committee (“ESC”) meeting held on 3 February 2016 and with further details provided vide LC Paper No. ESC58/15-16(01), FSB has completed a review of the directorate establishment, taking into account the work at hand and the priority tasks to be completed in the next few years. We consider that the other DSes and PASes are fully committed to their designated policy initiatives and legislative exercises, and that it would not be operationally feasible to redeploy them to take up the duties of DS(FS)3 and PAS(FS)6 without prejudicing the delivery of work under their respective heavy portfolios⁵. 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.

FINANCIAL IMPLICATIONS

25. The proposed retention of the two supernumerary directorate posts will bring about an additional notional annual salary cost at mid-point of \$4,264,200. The additional full annual average staff cost, including salaries and staff on-cost, is \$6,059,352. The proposal will not give rise to any net increase in supporting staff for the two posts⁶.

⁵ As reported to ESC, of the two supernumerary posts other than DS(FS)3 and PAS(FS)6, one is proposed to be converted into a permanent post (ESC supported the proposed conversion on 3 February 2016) while one will lapse by end 2017. Separately, following FC’s approval, one supernumerary Principal Executive Officer post was created on 9 September 2015 for 18 months to provide administrative support to the Provisional Insurance Authority in its initial operation, including recruiting key personnel, office rental and the setting up of information technology system, etc..

⁶ The two supernumerary directorate posts proposed to be extended will continue to be supported by four non-directorate officers, namely, one Senior Administrative Officer (“SAO”), two Personal Secretary Is (“PS I”) and one Assistant Clerical Officer (“ACO”). Except for one permanent PS I post, the duration of the other three posts of SAO, PS I and ACO will coterminous with these two supernumerary directorate posts.

26. We have included the necessary provision in the draft Estimates of 2016-17 and will include sufficient provision in the draft estimates of 2017-18 and 2018-19 to meet the cost of the proposal.

ADVICE SOUGHT

27. Members are invited to comment on the proposal. Subject to Members' views, we will submit the proposal to the ESC for endorsement and Finance Committee for approval in the 2015-16 LegCo session.

Financial Services Branch
Financial Services and the Treasury Bureau
March 2016

**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 be responsible for the policy and legislation relating to the accounting sector, including the reform of the auditor regulatory regime.
2. To be responsible for the policy and legislation on corporate insolvency and individual bankruptcy, including the introduction of a new statutory corporate rescue procedure and insolvent trading provisions.
3. To be responsible for the policy and legislation relating to companies, including a review of the Companies Ordinance.
4. To be responsible for the policy and legislation relating to money lenders, and development of proposals to tackle malpractices of intermediaries for money lending.
5. To be responsible for the policy and legislation relating to trusts.
6. To undertake any other tasks as assigned by PSFS.

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

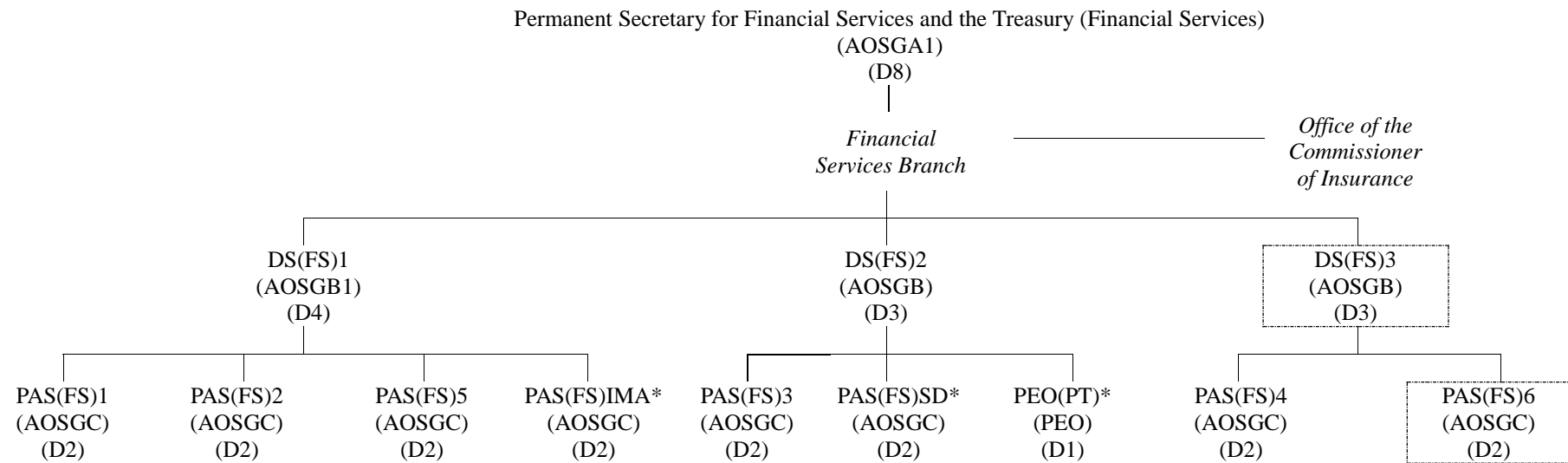
Rank : Administrative Officer Staff Grade C (D2)

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

Main Duties and Responsibilities –

1. To provide input on policy and legislative matters concerning the Companies Ordinance, and housekeeping matters in respect of the Companies Registry.
2. To provide input on policy and legislative matters concerning the Money Lenders Ordinance, including development of proposals to tackle malpractices of financial intermediaries for money lending.
3. To provide input on policy and legislation relating to trusts.
4. To provide input on policy and legislation on individual bankruptcy, and housekeeping matters in respect of the Official Receiver’s Office.
5. To take forward policy initiatives in relation to promoting Hong Kong as a hub for Financial Technologies (“Fintech”) and implementing the recommendations of the Steering Committee on Fintech.
6. To provide support to the Under Secretary for Financial Services and the Treasury on policy matters relating to the Asian Infrastructure Investment Bank.
7. 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 extended
- 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)
- PEO – Principal Executive Officer
- * – Supernumerary directorate posts

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. Over-the-counter 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. There are a number of key initiatives currently underway, notably the establishment of the independent Insurance Authority (IIA) which includes the preparation of subsidiary legislation for the IIA to take over the regulatory responsibilities of the Office of the Commissioner of Insurance and transition from the existing self-regulatory regime for insurance intermediaries to a licensing regime; legislative work for establishing the Policyholders’ Protection Fund; legislative work for improving the MPF system, including the introduction of the fee-controlled Default Investment Strategy; and the on-going review of the operation of the MPF system. DS(FS)2 is also responsible for the new initiative for enhancing talent training and development for the insurance industry as well as the housekeeping of the Census and Statistics Department.

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

PAS(FS)1

Responsible for policy and legislation relating to the regulation of the securities and futures markets, asset management, investor protection and education, oversight of the Securities and Futures Commission (SFC), coordination of matters relating to the Market Misconduct Tribunal and the Securities and Futures Appeals Tribunal, and support for the SFC Process Review Panel.

PAS(FS)2

Responsible for policy and legislation relating to the stock and futures exchanges and their clearing houses, related market development initiatives including mutual market access and fund distribution platform, and the implementation of the over-the-counter derivative market regulation.

PAS(FS)3

Responsible for policy and legislation relating to Mandatory Provident Fund Schemes and other retirement schemes. Also handles housekeeping matters of the Census and Statistics Department.

PAS(FS)4

Responsible for policy and legislation relating to the accountancy sector and the corporate insolvency regime, and liaison with the Financial Reporting Council and the Hong Kong Institute of Certified Public Accountants.

PAS(FS)5

Responsible for policy and legislation relating to banking, bond market development, Islamic finance, anti-money laundering, and corporate treasury centres. Also oversees policy matters relating to the Deposit Protection Scheme, stored value facilities and payment systems.

PAS(SD)

Responsible for policy and legislation relating to the insurance sector, including oversight of the legislative exercises and administrative procedures for the establishment of an independent Insurance Authority, a Policyholders' Protection Fund, the introduction of a risk-based capital framework for the prudential regulation of insurers, and the new initiative for enhancing talent training and development for the insurance industry.

PAS(FS)IMA

Responsible for formulating policy initiatives and co-ordinating matters on reinforcing and enhancing Hong Kong's roles as an offshore Renminbi business hub, and advancing Hong Kong's financial co-operation with the Mainland. Also oversees policy matters and legislation concerning the implementation of Hong Kong's commitment to meet international standards including the establishment of an effective resolution regime for financial institutions, and handles other relevant international affairs relating to financial services.