

For discussion  
on 7 November 2005

**Legislative Council  
Panel on Financial Affairs**

**Rewrite of the Companies Ordinance**

**PURPOSE**

This paper aims to brief Members on the staffing requirements, in particular the need to create four supernumerary directorate posts (two in the Financial Services and the Treasury Bureau (Financial Services Branch) (“FSB”), and one each in the Companies Registry (“CR”) and the Department of Justice (“DoJ”)) to undertake the rewrite of the Companies Ordinance (“CO”).

**BACKGROUND**

2. At the Panel meeting held on 4 July 2005, Members were briefed on the Administration’s plan to take forward the proposed rewrite of the CO. Members indicated general support for the exercise, with some highlighting the need for -

- (a) enhancing the cost-effectiveness of the exercise by making reference to the developments in company law taking place in other jurisdictions;
- (b) involving the active participation of relevant stakeholders such as the Standing Committee on Company Law Reform (“SCCLR”) in the exercise;
- (c) expediting the rewrite exercise by identifying major areas for reform and developing proposals for public consultation in stages;
- (d) reviewing critically the need for the creation of new directorate posts; and

- (e) allowing sufficient time for the Legislative Council (“LegCo”) to scrutinize the new Companies Bill.

3. With the benefit of these views, the Administration has since then given further thought to matters such as the framework and staffing requirements for undertaking the rewrite. We consider the proposed rewrite to be a **well-justified** and **much needed** exercise. In this respect, we would like to elaborate on the staffing requirements for Members’ consideration, before we go to the Finance Committee (“FC”)/Establishment Subcommittee (“ESC”) to seek the necessary approval.

#### *The Companies Ordinance*

4. Company law provides the legal framework which enables businessmen to form and operate companies and sets out the parameters within which companies must operate, in order to safeguard the interests of those parties who have dealings with them such as shareholders and creditors. As at 1 October 2005, there were 543,519 companies on the register of companies, which were formed and registered locally in Hong Kong, comprising 535,742 private companies and 7,777 public companies.

5. Given the need and benefits as detailed at **Enclosure 1**, we consider it timely to start rewriting the CO now rather than amending it in a “piecemeal” fashion. This view was echoed by the SCCLR and the Bills Committees established to scrutinize the companies amendment bills in recent years. In addition, many Members expressed support for the proposed rewrite when we briefed the Panel earlier in July 2004 and July 2005.

#### *Workload arising from the Rewrite*

6. The CO is one of the longest and most complex pieces of primary legislation in Hong Kong, with currently over 600 sections and subsections and 20 schedules. Although many amendments have been made in recent years, many parts of the Ordinance are based on the major United Kingdom (“UK”) company law reforms contained in the Companies Act 1948 and some subsequent reforms such as those contained in the Companies Act 1976. Given this background, and in the light of the number and complexity of issues involved, the proposed

rewrite will be a very major exercise involving a significant amount of work, including two key components as outlined in paragraphs 7 to 9 below.

*(i) Research*

7. We need to conduct a significant amount of legal/policy research into the existing provisions of the CO, and the corresponding provisions as well as developments in company law taking place in other major common law jurisdictions, identify issues associated with the operation of the provisions, work out options on how to tackle them, analyze their advantages and disadvantages, formulate recommendations, prepare drafting instructions, draft the new Companies Bill and assist the LegCo to scrutinize the Bill. In this regard, given the extensive nature of the exercise, we consider it prudent for the winding-up provisions in the CO<sup>1</sup>, which primarily deal with the insolvency of companies and are administered by the Official Receiver's Office ("ORO"), to be dealt with separately in a second phase. Details of this second phase of the rewrite will be formulated in due course.

8. However, we wish to point out that while review and reform of company laws in other jurisdictions would serve as good reference for our proposed rewrite, given the economic and social differences between those jurisdictions and Hong Kong, extensive research and analysis of the policy and legal background to the company laws in those jurisdictions will be needed to see whether they should be adopted by the new Companies Bill. In other words, it would not make much sense in just copying, say, the UK White Bill into Hong Kong's law book.

*(ii) Consultation*

9. As highlighted by some Members at the Panel meeting in July 2005, the SCCLR would need to play a key role in the exercise, including keeping an overview of the rewrite and advising on all the major proposals/recommendations arising from the rewrite. Moreover, to ensure that the new CO would suit Hong Kong's circumstances, we would involve other stakeholders in the course of the rewrite. These stakeholders include the relevant professional bodies<sup>2</sup>, chambers of

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<sup>1</sup> Mainly Parts IVA, V, VI and X of the existing Companies Ordinance and the relevant subsidiary legislation.

<sup>2</sup> For example, the Law Society of Hong Kong, the Hong Kong Bar Association, the Hong Kong Institute of Certified Public Accountants, the Hong Kong Institute of Chartered Secretaries and the Hong Kong Institute of Directors.

commerce, market practitioners and company law academics. Apart from gauging their insight/views through means such as the issue of consultation documents on major policy issues, dedicated advisory groups comprising SCCLR members and the stakeholders' representatives will be formed to advise on the details of the legislative proposals. As regards the general public, we intend to adopt a two-pronged approach, namely first to conduct public consultations on key issues in stages that may have a major impact on the future CO<sup>3</sup> and subsequently issue a White Bill so that interested parties can comment on the proposals in a holistic manner.

10. On the basis of our current estimates, the future CO would comprise approximately 24 parts which are listed at **Enclosure 2**. Many of the issues to be considered in the context of drafting these parts are complex, whose development and operational history date back many decades. Some were basically untouched by the SCCLR's previous company law reviews such as reform of the capital maintenance and charges provisions.

11. Taking into account the complexity of the main issues and the experience of other major legislative exercises, DoJ has advised that the proposed rewrite will probably be **the largest ever conducted** in respect of one ordinance in Hong Kong. The proposed rewrite will be on a par with, but with a larger "footprint" than, the recent exercise leading to the enactment of the Securities and Futures Ordinance although there are differences between the two exercises, such as the considerable amount of ground work undertaken by the Securities and Futures Commission ("SFC") before the issue of the Consultation Document on the Securities and Futures Bill in 2000.

#### *Companies Bill Team and DoJ's Professional Support*

12. In view of the extent and complexity of the tasks involved, we consider it necessary to form a dedicated Companies Bill Team ("CBT") which would include both policy and legal staff to take forward the rewrite. Moreover, any overhaul of the existing law relating to the incorporation, management and dissolution of companies will have profound implications for a wide spectrum of stakeholders in the community including over half a million companies. Consequently, there has to be sufficiently high level policy input and solid legal work

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<sup>3</sup> For example, the idea of introducing a no-par value share regime and the corresponding capital maintenance rules.

from dedicated officers who have suitable expertise and extensive experience in legislative work. Organizationally, a Steering Committee, chaired by the Permanent Secretary for Financial Services and the Treasury (Financial Services) (“PSFS”) and comprising senior representatives of relevant departments such as CR and DoJ, will be established to steer the rewrite.

13. In terms of structure and manpower, we consider it a minimum for the CBT to have two integrated Policy and Legal Research Divisions. This structure is based on the estimated workload likely to be generated by the rewrite which involves a complete review and rewrite of the CO, with currently over 600 sections and subsections and 20 schedules. As a “ballpark” estimate, we believe that the workload involved could well be equivalent to the preparation of 20 ordinary amendment bills or more. The proposed structure will enable work to proceed in parallel on a number of different fronts at the same time and ensure that sufficient time and resources will be available to consider particularly complex issues such as the capital maintenance provisions. We wish to point out that it is simply not possible for one Division to be responsible for all the policy/research work to be undertaken by the CBT for a number of reasons. First, the span of responsibility assumed by the legal and policy directorate officers of the sole Division for all the policy/legal officers working in the CBT would become far too wide having regard to the spectrum of the CBT’s duties as outlined in **Enclosure 2**. This would certainly not be conducive to the effective and efficient supervision of the CBT's work which, in turn, would adversely affect the rewrite exercise. Secondly, a substantial part of the review is in connection with subjects which are highly complex and technical e.g. share capital, capital maintenance, charges and security interests etc., many of which basically have, to date, not been subject to any review. As such, they will require a significantly greater degree of policy/legal research and analysis than may be necessary in the case of the other areas of company law to be reviewed. Given this, we consider that a structure of having two Divisions is necessary and fully justified. The CBT will also need to be assisted by an external consultant<sup>4</sup> in these areas, in

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<sup>4</sup> The consultant may be a law firm, or a legal professional such as an academic, a practising lawyer or a retired judge supported by others having the required background, qualifications and experience. It/he would provide services for a fixed-term (say about 36 months) until the commencement of the public consultation on the White Bill, with an option of a further extension to cover the drafting of the new Companies Bill. We estimate that the total non-recurrent expenditure, subject to negotiations with the selected consultant, would be about \$19–22 million. The estimate has been drawn up after having regard to the prevailing market rates for an expert of the required level of experience and expertise.

which much of the necessary expertise currently rests with experts in the private sector.

14. While the CBT will have two Divisions, it will also need to heavily draw on the professional advice and input of DoJ, in particular the Law Drafting Division, and the Commercial Unit (“CU”) of the Civil Division (“CD”) of the Department. For details, please see paragraphs 30 and 31 below.

15. We have critically assessed the **minimum** staffing resources using the **leanest** possible organizational structure required for accomplishing the above-mentioned extensive and complex tasks in this very major exercise. To ensure that the new Companies Bill is a quality piece of work and available within a reasonable timeframe, we consider that a total of seven supernumerary directorate staff (three in FSB<sup>5</sup>, two each in CR and DoJ) plus 15 time-limited non-directorate staff (two in FSB, seven in CR and six in DoJ) are required for the rewrite.

16. In the light of Members’ views, we have also critically examined the workload of the existing staff in the coming years. As a result of the examination, relevant bureaux and departments **have managed to meet over one third of the staffing requirements through internal deployment, i.e. three directorate posts (with one each in FSB, CR and DoJ) and five non-directorate posts (with one in FSB and four in CR).** Consequently, there will only be a need to create four directorate posts (with two in FSB and one each in CR and DoJ) and ten non-directorate posts (with one in FSB, three in CR and six in DoJ), at a total cost of some \$79 million. All the proposed posts are limited to a period between 24 months and 60 months. A summary of the staffing requirements and relevant cost estimates are set out at **Enclosure 3**. Detailed justifications for the individual directorate posts are set out in paragraphs 17 to 38 below. Adding the estimated expenditure for the engagement of external consultant, the total estimated cost of the rewrite exercise will be about \$98-101 million, to be spent over a period of five years.

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<sup>5</sup> Including one AOSGC who will be re-deployed on a “50% basis”. Please see paragraph 23.

*Creation of one supernumerary post of Administrative Officer Staff Grade B (“AOSGB”) (D3) in FSB*

17. As mentioned before, the tasks involved in the rewrite are both complex and will involve a considerable amount of high level policy work. Furthermore, the proposals in the new Companies Bill will have profound implications for a wide spectrum of stakeholders in the community including over half a million companies, thereby requiring the coordination of concerted efforts among numerous Government bureaux/departments, regulators, professional bodies and other key stakeholders. Many of the issues involved are complex and a number could be controversial. Some examples of these are enforcement and oversight of accounting standards; problems relating to the present registration system of company charges such as the meaning and ambit of security interests and registrable security interests; matters relating to voting by institutional shareholders at company meetings and the idea of empowering beneficial shareholders to exercise their voting rights; the effect of abandoning the concepts of authorized share capital and par value and how creditors’ interests can be safeguarded and protected under a no par system, etc.

18. All these factors make it essential for the CBT to be headed by a senior directorate officer, say a Deputy Secretary at the rank of AOSGB (D3), who can provide sufficiently high level policy input, and possesses suitable expertise and extensive experience in legislative work. He/she should be underpinned by two integrated Policy and Legal Research Divisions each comprising a Principal Assistant Secretary at the rank of Administrative Officer Staff Grade C (“AOSGC”) (D2) plus a Deputy Principal Solicitor (“DPS”) (DL2). The AOSGB will be responsible to the PSFS and is the key officer directly overseeing the rewrite and ensuring that it follows the agreed timetable. This process will begin with legal research and policy formulation, leading to the legislative drafting process and consultation with the public and relevant stakeholders, and end with the enactment and operation of the new CO. Specifically, he/she will be responsible for ensuring the smooth running of the CBT; coordinating concerted efforts among various stakeholders (both inside and outside the Government) in preparing the new CO; overseeing the work of the external consultant; organising the public consultation (including the issue of a White Bill); leading the

Administration's team to assist LegCo in scrutinizing the legislative proposals; and so on.

19. At present, there are two permanent Deputy Secretaries (Financial Services), i.e. Deputy Secretary (Financial Services)1 ("DS(FS)1") and Deputy Secretary (Financial Services)2 ("DS(FS)2"), in the FSB. The DS(FS)1 is mainly responsible for policy matters and legislation relating to securities and futures sector, banking and financial market development. Within these policy areas, there are a number of key initiatives currently under way. These include giving statutory backing to major listing requirements; preparing for the implementation of the New Basel Capital Accord; rolling out the deposit protection scheme; promoting Hong Kong's financial services in the Mainland, the development of the asset management industry and bond market. The DS(FS)2 is currently responsible for policy matters and legislation relating to census and statistics, insolvency administration, accountancy, insurance, Mandatory Provident Fund ("MPF") schemes and other retirement schemes, companies and corporate governance. Over the next few years, he/she will need to spearhead several major policy initiatives including establishing the Financial Reporting Council; instituting an insurance regulatory authority independent of the Government; piloting the feasibility study of establishing policyholders' protection funds and the review of the supervision of assets of long term insurers, both of which will have a significant impact on the insurance landscape; and implementing fundamental improvements to the MPF system, including the introduction of important amendments to the MPF legislation, which will enhance the retirement protection infrastructure in Hong Kong. Moreover, he/she will continue to support the work of the Advisory Committee on Human Resources Development in the Financial Services Sector, which is a 26-man strong advisory committee on human resources strategies for the further development of Hong Kong's financial services sector. All these initiatives are important in maintaining Hong Kong's status as an international business and financial centre.

20. The workload arising from these initiatives, in addition to on-going commitments such as liaison with the Hong Kong Monetary Authority, the CR, the ORO and the SFC, facilitation of Hong Kong's financial service suppliers to explore opportunities made available under the Mainland and Hong Kong Closer Economic Partnership Arrangement, provision of input for Hong Kong's participation in the World Trade Organization negotiations in trade in financial services etc., will already fully occupy the two DS(FS)s over the next few years. In view of this, it

would be unrealistic for them to take on the proposed rewrite of the CO, which, as mentioned in paragraph 11 above, is probably the largest legislative exercise ever to be conducted in respect of one ordinance and is expected to last for five years (see timeframe in paragraph 41 below).

21. In view of these considerations, we propose to create a supernumerary AOSGB post (provisionally designated as Deputy Secretary (Financial Services)<sup>3</sup> (“DS(FS)3”)) in FSB for a period of 60 months to act as the head of the CBT.

*Creation of one supernumerary post of AOSGC in FSB*

22. As mentioned in paragraph 13 above, the CBT will have two integrated Policy and Legal Research Divisions. Each of the Divisions will include an AOSGC, who will report to and assist the DS(FS)3 in the discharge of the functions under CBT. More specifically, the two AOSGCs will be primarily responsible for providing policy input into the company law research; analysing and formulating policy options; drafting papers/documents for purposes such as internal deliberations or public consultations (including the White Bill consultation); assisting and participating in the relevant consultation exercise; preparing drafting instructions for the new CO and submissions to bodies like the Executive Council and LegCo; liaising with other Government bureaux/departments, advisory groups, professional bodies etc. on company law matters; providing secretariat support for the Steering Committee chaired by PSFS; and participating in the Administration’s team to assist LegCo in scrutinizing the new Companies Bill. As regards the distribution of duties between the two Divisions, we will take into account factors such as the complexity and correlation of the relevant subject matters, as well as the workload to be involved. For instance, it would be logical to assign one Division to deal with the subjects of company formation, share capital and the allotments of shares and debentures, so that these related subjects would be considered in a coherent manner. The same would apply to the consideration of the offences and inspection/investigation-related provisions. A possible way to distribute the subjects to be handled by the two Divisions respectively is set out at **Enclosure 2**<sup>6</sup>.

23. At present, there are five Principal Assistant Secretaries (Financial Services) (“PAS(FS)s”) in the FSB. Their existing job descriptions are at **Enclosure 4**, covering various areas in financial

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<sup>6</sup> Refinements may be necessary as the rewrite proceeds.

services, including securities and futures, banking, insurance, the MPF and other retirement schemes. One of the PAS(FS)s, namely Principal Assistant Secretary (Financial Services)<sup>4</sup> (“PAS(FS)4”), is currently responsible for policy matters regarding companies, insolvency, accountancy and corporate governance. We propose to redeploy this PAS(FS)4 post to one of the two Divisions under the CBT, and provide support for the DS(FS)<sup>3</sup> throughout the whole rewrite exercise. He will continue to look after those aspects of his duties (approximately 50%) concerning subjects such as insolvency, accountancy and corporate governance.

24. Since the other existing PASs are already stretched to their limit given the workload arising from various new initiatives and numerous on-going commitments, it is not viable to find another existing AOSGC post in FSB for the other Division of the CBT. We therefore need to create one supernumerary AOSGC post (provisionally designated as Principal Assistant Secretary (Financial Services)<sup>6</sup>) for this purpose. After critically reviewing the expected workload of the CBT and its distribution throughout the rewrite exercise, we propose that the duration of this supernumerary AOSGC post be limited to 48 months only.

25. An organization chart of FSB showing the proposed changes is at **Enclosure 5**.

*Creation of one supernumerary post of DPS in CR*

26. The legal research function in the CBT will be a significant and essential part of the rewrite exercise. In this respect, the legal officers in each of the two Divisions under the CBT will need to be supervised by a DPS. The two DPSs will be professionally responsible to the Registrar of Companies (“R of C”), but operationally report to the DS(FS)<sup>3</sup>, in the discharge of their functions under the CBT. More specifically, they will be primarily responsible for overseeing and supervising the conduct of the necessary in-depth legal research into the existing provisions of the CO including subsidiary legislation as well as comparable provisions and recent developments in other common law jurisdictions. This research will cover, among other things, the policy intent and operation in practice of the relevant provisions. In the course of the research, the DPSs will identify issues associated with company law and possible options on how to tackle them; draw up specific briefs to seek the expert advice of the external consultant; participate in discussion of any matters relating to the new CO; and assist in the

consultations with stakeholders and the public. They will also participate in the Administration's team to assist LegCo in scrutinizing the new Companies Bill.

27. At present, the CR has six directorate officers, namely R of C, the Registry Manager ("RM") (D2), the Business Manager ("BM") (D1), the Registry Solicitor ("RS") (DL2), the Assistant Principal Solicitor ("APS") (DL1), and the Secretary to the SCCLR ("S/SCCLR") (DL2). After reviewing their existing job duties, the R of C considers that one of them, namely the S/SCCLR (provisionally redesignated as Deputy Principal Solicitor (Company Law Reform)1 ("DPS(CLR)1") can take up duties ensuing from the rewrite of the CO throughout the whole exercise as the bulk of his current workload already concerns company law research and making recommendations for possible legislative reform. Neither RM nor BM are legal officers and thus cannot be deployed to the CBT. As regards the RS and APS, they are mainly responsible for giving legal advice to the R of C and the CR staff and supervise the CR's prosecution policy and investigations into complaints about breaches of the ordinances administered by the CR. Both officers are also involved in giving legal advice and advising on changes in policy in relation to licences granted to guarantee companies, company name complaints as well as in respect of the restoration, deregistration and striking off of companies. In recent years, the CR's prosecution policy has been expanded with the result that the numbers of prosecutions undertaken in the last complete financial year are now nearly seven times those issued in 2002-03. In 2004-05, a total of 1,760 summonses were issued against companies for failure to comply with their obligations under the CO, compared with 275 summonses issued in 2002-03. Given this workload and the five-year span of the rewrite exercise, the R of C considers that it is impossible to deploy them to take on the rewrite exercise without very adversely affecting the operation of the CR.

28. Consequently, with regard to the other Division in the CBT, we propose to create one supernumerary DPS post (provisionally designated as Deputy Principal Solicitor (Company Law Reform)2). Again, after critically reviewing the expected workload and its distribution throughout the rewrite exercise, we propose that the post be created for a period of 48 months. The organisation chart of the CR showing the proposed changes is at **Enclosure 6**.

29. In addition to the five directorate posts (two to be made available through re-deployment), the CBT will have nine non-directorate posts, namely two Senior Administrative Officers ("SAOs"), five Senior

Solicitors and two Solicitors. Among these posts, one SAO, three Senior Solicitors and one Solicitor will be re-deployed within FSB or the CR. The remaining posts (i.e. one SAO, two Senior Solicitors and one Solicitor) will need to be created for a period of 24 to 48 months. Moreover, the clerical support required by the CBT will be absorbed by FSB and the CR. The provisional organization chart of the CBT is at **Enclosure 7**.

*Creation of one supernumerary post of Deputy Principal Government Counsel (“DPGC”) (DL2) in DoJ*

30. As mentioned above, the rewrite will probably be the largest legislative exercise ever to be conducted in respect of one ordinance. The Law Drafting Division of the DoJ will be responsible for drafting a White Bill for public consultation and subsequently, a new Companies Bill for introduction into LegCo. Moreover, the draftsmen will be key officers of the Administration in assisting LegCo to scrutinize the new Companies Bill. It is estimated that the resulting workload will require the dedicated commitment of one drafting counsel at the rank of DPGC (DL2), underpinned by two Senior Government Counsels (“SGCs”). By stretching the limits of existing manpower within the Law Drafting Division, it is considered possible to absorb the workload without creating any new DPGC post. However, two time-limited SGC posts will need to be created for a limited period of 36 months to tackle the additional workload.

31. The rewrite will inevitably involve many complicated and wide-ranging legal issues affecting company law and the roles of the CR, auditors, investigators, minority shareholders, creditors and other stakeholders. In addition, the rewrite will require detailed advice on legal policy matters, human rights, the Basic Law, and changes to the criminal law (substantive, procedural, evidential and penalties) as well as regulatory, administrative/public law and private law aspects affecting companies and their stakeholders. To tackle these issues, the CBT will need the assistance of professional advice from DoJ. In this regard, the CU will act as the Department’s key interface with the CBT. It will help to ensure that the drafting instructions are not only clear and sufficiently detailed to permit drafting to proceed smoothly but also fully and correctly reflect the policy intent. Where the subject matter requires input from other Divisions of the DoJ, such as the review of the offences and penalty provisions and other provisions which will necessarily touch

on issues like human rights and prosecution, the CU will also coordinate the advice provided by different divisions of the DoJ.

32. Having regard to the nature, complexity and scale of the rewrite exercise, as well as the current manpower situation in the units/divisions within DoJ, it is considered that DoJ's existing manpower is already stretched to its limit by the internal redeployment of a DPGC in the Law Drafting Division. Having reviewed the overall staffing position and the experience and expertise required by the rewrite exercise, it is considered neither possible nor realistic to tackle the considerable additional workload through further internal re-deployment within the Department. In particular, the CU is overburdened with increasing workload and has to seek additional manpower for the rewrite exercise. Details of the existing directorate support in the CU and its workload are explained in paragraphs 33 to 37 below.

33. The CU advises Government bureaux and departments on all aspects of commercial law in connection with the Government's own commercial activities and the Government's regulation of certain commercial activities. The Unit advises on privatisations (IPOs), mergers, major bond issues, contract negotiation, drafting and interpretation of commercial contracts, major project works, procurement of goods and services, matters relating to all aspects of public sector reform including public private partnerships and outsourcing, trade-related matters, public transport franchises, substantial infrastructural franchises as well as media, broadcasting, telecommunications and commercial electronic transactions. The Unit also advises on legislative amendments to statutes governing commercial activities in the market, the exercise of statutory regulatory powers and the process and content of the enactments of new regulatory functions.

34. In recent years, there has been a significant increase in the range and complexity of legal work undertaken by the CU. This is partly a result of the advance of new technology and partly due to a number of new and major Government initiatives. A list of some of the major projects and other commercial matters undertaken currently and prospectively by the Unit and which greatly increase the demand for legal advice from the Unit is at **Enclosure 8**. These projects and matters are **supervised** and in many cases in view of their importance **handled** by the three Directorate officers referred to in paragraph 35.

35. The existing directorate structure of the CU comprises one Deputy Law Officer (Civil Law)(Commercial) (DL3) (“the Deputy Law Officer”) and two DPGCs (DL2). The Deputy Law Officer and the two Counsels occupying the DPGC posts are already heavily over-committed with their existing duties and have no spare capacity to absorb the work arising from the mammoth rewrite exercise. The duty lists of the relevant officers, with some examples of work handled by them, are at **Enclosures 9, 10 and 11**. Given the workload in the CU as well as the major projects and other commercial matters being undertaken by the Unit at the moment and committed to it, it is neither realistic nor possible to redeploy resources from within the Unit to meet the rewrite exercise. Further, as the rewrite requires substantial legal input, in particular expert knowledge and experience in the provisions of the CO, comparable provisions in other major common law jurisdictions and matters relating to their operation, it is also not possible to redeploy resources from other units or divisions of the Department to the rewrite exercise should there be spare capacity. It is therefore necessary to create one supernumerary DPGC post in the CU of the CD for a period of 54 months (designated as Senior Assistant Law Officer (Commercial) III) to provide/coordinate legal advice for the rewrite exercise, with one Personal Secretary II post for a similar period.

36. Moreover, a total of three time-limited SGC posts (one each in CD, the Legal Policy Division and the Prosecutions Division) will be created to provide the necessary support. The time-limited SGC post in CD will need to be created for 54 months, a period which will support and match the requirements of CD and the one supernumerary DPGC post referred to above, as well as to provide service and capability to the CBT. By stretching the limits of existing manpower, it is believed at this stage that the time-limited SGC posts in Legal Policy Division and Prosecutions Division will only need to be created for 36 months.

37. Upon the creation of the proposed DPGC post, it is not expected that there will be any change in the duties of the existing directorate posts in the CU. The Deputy Law Officer sits as the Secretary for Justice’s representative on the SCCLR. The DPGC whose existing portfolio includes, as one of many responsibilities, company matters will endeavour to continue to advise on them except that issues relating to the rewrite exercise will be undertaken by the proposed DPGC.

38. The organization chart of the CU showing the proposed changes is at **Enclosure 12**.

### *Reference to Other Exercises*

39. While it may not be entirely appropriate to make any direct comparison with the situation in the UK, Members may wish to note that the UK Department of Trade and Industry (“DTI”) has deployed a dedicated team of staff to undertake the review of the UK Companies Act. The DTI’s companies bill team was established in July 2001 to take forward the work of transforming the recommendations of an independent company law review into legislation. Although the size of the team has fluctuated according to which particular stage has been reached in the review, we understand that, during the heaviest middle phase of the project, the team (not counting clerical and other support staff) comprised a total of approximately 22 staff of whom 12 were policy staff and ten were lawyers. Of these, the ranks of two staff on the policy side and two staff on the legal side were pitched at a very senior directorate level while the ranks of most of the remaining staff were pitched at either deputy or assistant directorate level. In addition, the DTI team did not count the two parliamentary counsels, who were responsible for law drafting. Furthermore, the DTI team received considerable support from other staff in the DTI including very senior directorate staff as well as other bodies such as the Law Commission for England and Wales.

### *Financial implications*

40. Sufficient provision is available under the CR Trading Fund (“CRTF”) to meet the above cost, which is estimated to be under 9% of the total expenditure of the Trading Fund during the relevant period. The rewrite would have no significant impact on the fees charged by the CRTF.

### *Timeframe*

41. On the assumption that approval would be obtained from the FC of the LegCo in January 2006 for the creation of the proposed directorate posts, we envisage the following timeframe for the rewrite -

<u>Activity</u>	<u>Tentative Timing</u>
(a) FC's approval	January 2006
(b) Formation of CBT	Q1 2006 – mid 2006
(c) Research and preparation of the White Bill (including public consultations on major issues in stages)	Mid 2006 – mid 2009
(d) Consultation on the White Bill	Mid – end 2009
(e) Revision of the White Bill	Q1 2010 – mid 2010
(f) Introduction of the New Companies Bill into the LegCo	Q3 2010

42. We fully agree with Members' view that sufficient time should be allowed for LegCo to scrutinize the new Companies Bill. We consider the proposed timeframe, i.e. three years for preparing a White Bill and conducting public consultations on major issues in stages, six months for consulting the public on the White Bill and six months for making necessary revisions, to be a reasonable one. This approach would also facilitate the scrutiny of the new Companies Bill after its introduction into LegCo. Furthermore, there are at least 21 months between the introduction of the Bill that has already gone through rounds of public consultation and the expiry of the fourth term of office of LegCo in 2012.

## **WAY FORWARD**

43. We intend to submit the staffing proposal to the ESC in December 2005 for recommendation to the FC in January 2006. More detailed information, such as the job description of the relevant directorate posts, will be provided in our submission to the ESC/FC.

44. We also wish to assure Members that the additional cost of \$79 million mentioned in paragraph 16 above represents the **maximum** commitment we intend to incur for creating new posts to undertake the rewrite, which has been worked out as a result of our current critical examination. As the rewrite proceeds, we will re-examine the

manpower need. Each and every of the concerned posts will be created and filled on a strictly need basis, having regard to the prevailing circumstances, with a view to minimizing cost and keeping a lean structure.

**Financial Services and the Treasury Bureau**  
**Department of Justice**  
**Companies Registry**  
**November 2005**

*Needs and Benefits  
of the Rewrite Exercise*

*(A) Needs*

*(i) Implement the Recommendations of the Standing Committee on Company Law Reform (“SCCLR”)*

In 2000, the SCCLR published “The Report of the Standing Committee on Company Law Reform on the Recommendations of a Consultancy Report of the Review of the Hong Kong Companies Ordinance” (“SCCLR’s Report”). Subsequently, the SCCLR undertook a major corporate governance review and issued two consultation papers in 2001 and 2003 respectively. While many recommendations of the SCCLR’s Report and the review have been implemented in the context of a series of major companies amendment bills<sup>1</sup> over the past few years, we have now reached a stage where many of the remaining recommendations, such as restructuring of the Companies Ordinance (“CO”), reform of the capital maintenance provisions, modernization of statutory language etc., can be taken forward only in the context of a rewrite of the Ordinance.

*(ii) Resolve Issues Inherent in the Existing Ordinance*

2. In addition, there are issues inherent in the existing CO which can be handled only through a rewrite of the Ordinance. Firstly, the structure of the CO leaves much to be desired with, for example, most of the core provisions regarding a company’s registered office, register of members, company administration, general meetings, accounts and audit, company inspections, directors and other officers, loans to directors, arrangements and reconstruction and shareholder remedies are all found in Part IV (Management and Administration). There is a prima facie need to break up and rearrange this part in order to improve accessibility and clarity. Secondly, many of the existing provisions of the CO are arranged in a confusing manner, in particular Part II (Share Capital and Debentures), Part IIA (Distribution of Profits and Assets) and Part IV (Management and Administration). Thirdly, given the age of the CO, it

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<sup>1</sup> Notably the Companies (Amendment) Ordinance 2003 and Companies (Amendment) Ordinance 2004 which implement the SCCLR’s recommendations on matters such as the formation of one-member companies, reduction in the threshold for circulating shareholders’ proposals, removal of directors by ordinary resolution instead of special resolution, and enhancement of shareholders’ remedies including the introduction of a statutory derivative action.

is inevitable that it includes antiquated concepts and unclear provisions. Some notable examples of these are in Parts II and IIA mentioned above, Part III (Registration of Charges), the underlying assumption of paper-based communications between a company and its members as well as the lengthy and arguably “incomprehensible” provisions regarding directors’ loans and directors’ remuneration. Uncertain, unclear, unnecessary and out-of-date provisions will inevitably impose additional costs on business through, for example, the need to obtain professional advice more often than necessary.

*(iii) Keep Pace with International Developments*

3. Hong Kong’s company law cannot operate in isolation but must have regard to developments regarding company law currently taking place elsewhere in the world in order to enhance our competitiveness and attractiveness as a major international business and financial centre. Over the past decade, most of the major common law jurisdictions have either completed or embarked upon major programmes to reform their company law. For example, the United Kingdom (“UK”) Government commenced the Review of the Companies Act in 1998, and published the White Paper on Company Law Reform setting out its final proposals for comprehensive reform of the UK Companies Act on 17 March 2005. Reforms or major reviews have also been launched in other common law jurisdictions such as Australia, New Zealand, Singapore, the Isle of Man and Malaysia. Furthermore, many other jurisdictions such as certain European Union countries, South Africa, India and Japan are also reviewing their company law.

*(B) Benefits*

4. A new CO, with streamlined and modernised regulatory provisions, will meet more fully the needs of, and help save compliance costs incurred by, more than half a million companies, both local and overseas, registered in Hong Kong. Moreover, Hong Kong’s position, competitiveness and attractiveness as an international business and financial centre will be enhanced as a result of the implementation of the SCCLR’s recommendations which cover areas such as requirements regarding directors, shareholders’ rights and remedies, creditor protection, and accounting and auditing requirements. All these will boost market confidence, as well as facilitate business transactions and investments.

5. The rewrite will also provide an opportunity for Hong Kong to leverage from the developments regarding company law taking place

around the world. For instance, one of the objectives of the UK company law reform is to facilitate the wider use of electronic communications and simplification of procedures for the conduct of company businesses, such as the holding of annual general meetings. Similar changes in Hong Kong are expected to help save business costs and make our economy more competitive.

**Tentative Parts of New Companies Ordinance**

**Type I – Parts including policy issues which probably require wider consultation**

1. Allotment of Shares and Debentures\*
2. Share Capital\*
3. Registration of Charges\*
4. Accounts and Audit

**Type II – Parts including policy issues which probably require reference to the SCCLR**

5. Company Formation\*
6. Re-registration of Companies\*
7. Distribution of Profits and Assets
8. Fair Dealing by Directors
9. Arrangements, Reconstructions and Take-overs
10. Inspections and Investigations\*
11. Offences\*
12. Electronic Communications

**Type III – Parts including operational issues and restatement of existing provisions**

13. Preliminary
14. Directors and Other Officers
15. Company Administration and Procedure
16. Fraudulent Trading
17. Shareholder Remedies
18. Matters arising subsequent to Winding Up, Striking Out and Deregistration
19. Companies Incorporated outside Hong Kong
20. Registration Provisions
21. Companies formed or registered under a former Companies Ordinance or authorized to register under this Ordinance
22. Prevention of Evasion of the Societies Ordinance
23. Miscellaneous
24. Savings

**Note :**

1. Type I parts contain issues which probably require wider consultation before the issue of the White Bill because they are complex and controversial and were not covered by previous reviews.
2. Type II parts contain issues on which no wider consultation is required before the issue of the White Bill and consultation with the SCCLR would suffice.
3. Type III parts contain issues which have been either already subject to extensive consultation, or involve the reinstating of existing provisions, some of which have already been subject to extensive reform or are operational and technical in nature. These can be put forward for public consultation through the issue of the White Bill.
4. It is proposed that the Companies Bill Team should have two integrated Policy and Legal Research Divisions. Taking into account factors such as the complexity and correlation of the relevant subjects, our preliminary idea is to assign those items with an asterisk to one of the Divisions, and the remaining items to the other one.

**Staffing Requirements and the Relevant Cost Estimates  
for the Rewrite of the Companies Ordinance**

<b>Bureau/Department</b>	<b>Rank<sup>(Note 1)</sup></b>	<b>No. of Posts</b>	<b>By Re-deployment (up to 60 months)</b>	<b>By Creation</b>	<b>Full Annual Average Cost (\$)</b>	<b>Duration (Months)</b>	<b>Total Additional Cost (\$)</b>
1. <u>FSTB</u>							
<i>(a) Directorate</i>	AOSGB	1	0	1	2.25M	60	11.25 M
	AOSGC	2	1	1	2.03M	48	8.10 M
<i>(b) Non-directorate<sup>(Note 2)</sup></i>	SAO	2	1	1	1.45M	48	5.81 M
2. <u>CR</u>							
<i>(a) Directorate</i>	DPS	2	1	1	1.86M	48	7.43 M
<i>(b) Non-directorate<sup>(Note 2)</sup></i>	SS	5	3	2	2.88M	36	8.65M
	S	2	1	1	1.18M	24	2.35M

Bureau/Department	Rank <sup>(Note 1)</sup>	No. of Posts	By Re-deployment (up to 60 months)	By Creation	Full Annual Average Cost (\$)	Duration (Months)	Total Additional Cost (\$)
3. <u>DoJ</u>  <i>(a) Law Drafting Division</i>  <i>(i) Directorate</i>  <i>(ii) Non-directorate</i> <sup>(Note 2)</sup>  <i>(b) Legal Policy, Prosecutions and Civil Divisions</i>  <i>(i) Directorate</i>  <i>(ii) Non-directorate</i>	   DPGC   SGC     DPGC   SGC   PSII	   1   2     1   3   1	   1   0     0   0   0	   0   2     1   3   1	   -   2.97M     2.07M   4.46M   0.28M	   -   36     54   1 x 54 2 x 36  54	   -   8.92M     9.33M   15.61 M   1.26 M
<b>Sub-total :</b>							78.72 M  =====

<b>Bureau/Department</b>	<b>Rank<sup>(Note 1)</sup></b>	<b>No. of Posts</b>	<b>By Re-deployment (up to 60 months)</b>	<b>By Creation</b>	<b>Full Annual Average Cost (\$)</b>	<b>Duration (Months)</b>	<b>Total Additional Cost (\$)</b>
<i>(a) Directorate</i>		7	3	4			
<i>(b) Non-directorate</i>		15	5	10			
<b>Plus: Cost of consultant</b>	<b>Total no. of posts</b>	<b>22</b>	<b>8</b>	<b>14</b>			<b>19M to 22M</b>
<b>Grand total:</b>							<b>Say 98 M to 101 M</b>

**Note 1:**

AOSGB: Administrative Officer Staff Grade B  
AOSGC: Administrative Officer Staff Grade C  
DPGC: Deputy Principal Government Counsel  
DPS: Deputy Principal Solicitor  
PSII: Personal Secretary II  
SAO: Senior Administrative Officer  
SGC: Senior Government Counsel  
SS: Senior Solicitor  
S: Solicitor

**Note 2:**

Clerical support will be absorbed internally.

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

PAS(FS)1 is responsible for the regulation of listing and market development issues in relation to debt market, financial products, fund management industry and offers of investment. He/she provides policy input on a number of issues including disclosure of interests and market misconduct. He/she is responsible for policy matters relating to the housekeeping of Insider Dealing Tribunal, Market Misconduct Tribunal and the Securities and Futures Appeals Tribunal, and provide secretariat support to the Process Review Panel of the Securities and Futures Commission (“SFC”). He/She also deals with matters relating to Hong Kong Exchanges and Clearing Limited and promotion of Hong Kong as an international financial centre overseas and in the Mainland.

2. PAS(FS)2 oversees matters relating to the development of market infrastructure, investor compensation, and supervision of intermediaries in the securities and futures markets. He/she co-ordinates the work of the regulators on risk management matters including market contingency planning and other cross-market issues such as providing support for the Financial Stability Committee. He/she is responsible for the maintenance and regular update of the Securities and Futures Ordinance in the light of market development. He/she is in charge of housekeeping matters relating to the SFC, such as processing its budget, annual reports, appointments, and subsidiary legislation made by the SFC which requires prior consultation with the Financial Secretary. He/she also co-ordinates Closer Economic Partnership Arrangement related matters in the financial services sector.

3. PAS(FS)3 is concerned with insurance policy matters, for example, the review of the institutional set-up of the Insurance Authority; feasibility study of establishing policyholders’ protection funds; and consultancy study on the supervisory framework of the assets of long-term insurers. All these are major projects that involve considerable policy input and have attracted much interest of the relevant stakeholders. Moreover, he/she deals with retirement scheme policy matters and the on-going review of the relevant legislation. On this front, he/she is specifically responsible for the Administration’s interface with the Mandatory Provident Fund Schemes Authority (“MPFA”), such as handling MPFA’s submissions to the Government (e.g. the Authority’s

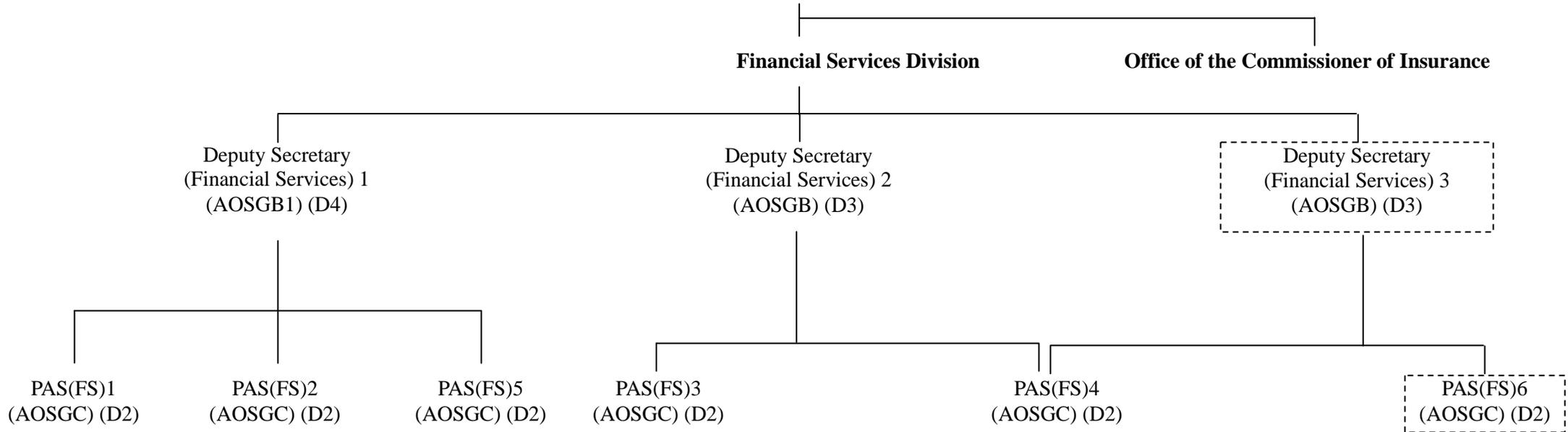
annual corporate plan and report). In addition, he/she is responsible for providing support to the Council of Financial Regulators chaired by the Financial Secretary and the internal administration of Financial Services Branch. Lastly, he/she is the subject officer responsible for matters relating to human resources development in the financial services sector.

4. PAS(FS)4 deals with policies in respect of companies, from their incorporation to dissolution. He/she is also in charge of policy responsibility for bankruptcy matters and the self-regulatory regime of accountants. He/she oversees the work of the Companies Registry, Official Receiver's Office, and co-ordinates trade matters in respect of financial services under the World Trade Organization. Among the major initiatives, there are a number of areas which require substantial policy input. These include the implementation of recommendations made by the Standing Committee on Company Law Reform to modernize the Companies Ordinance and improve corporate governance. He/She is also responsible for taking forward the proposals to enhance the oversight of the public interest activities of auditors and to establish a Financial Reporting Council.

5. PAS(FS)5 is responsible for the review and maintenance of Banking Ordinance, and liaison with the Hong Kong Monetary Authority on banking and monetary issues. He/she oversees the development and monitoring of the deposit protection scheme, as well as co-ordinating and facilitating the legislative work required for bank mergers. In addition, he/she co-ordinates input into Hong Kong's participation in international forums such as International Monetary Fund, Asia-Pacific Economic Cooperation, Organization for Economic Co-operation and Development, and the Financial Action Task Force against money laundering.

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

Permanent Secretary for Financial Services and the Treasury (Financial Services)  
(AOSGA1) (D8)



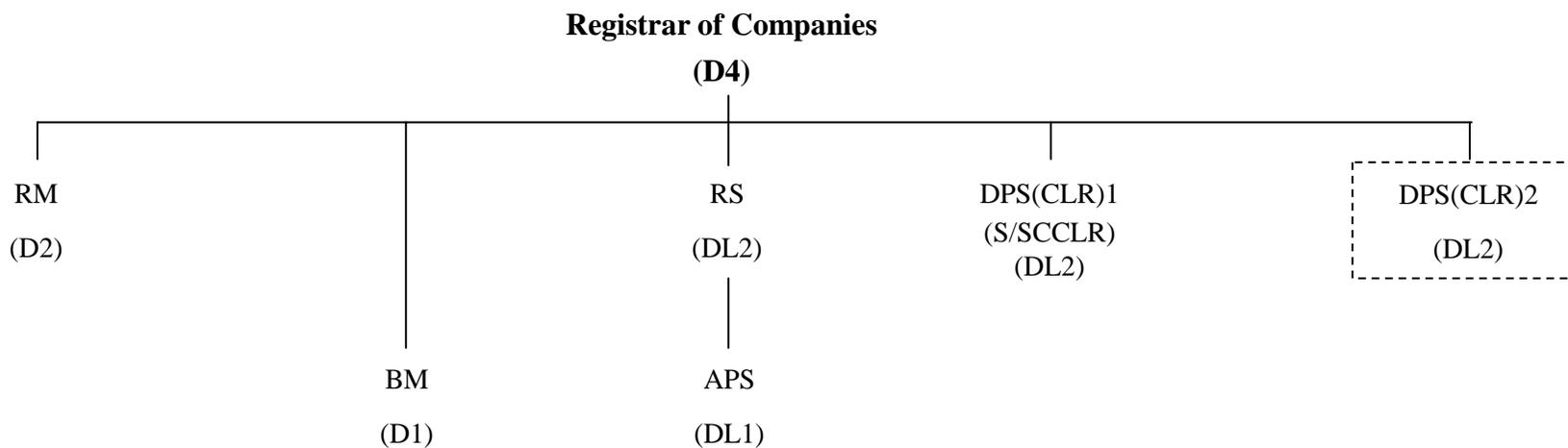
**Proposed Changes**

 Supernumerary directorate post to be created

**Legend:**

PAS(FS) Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)

### Organisation Chart of the Companies Registry



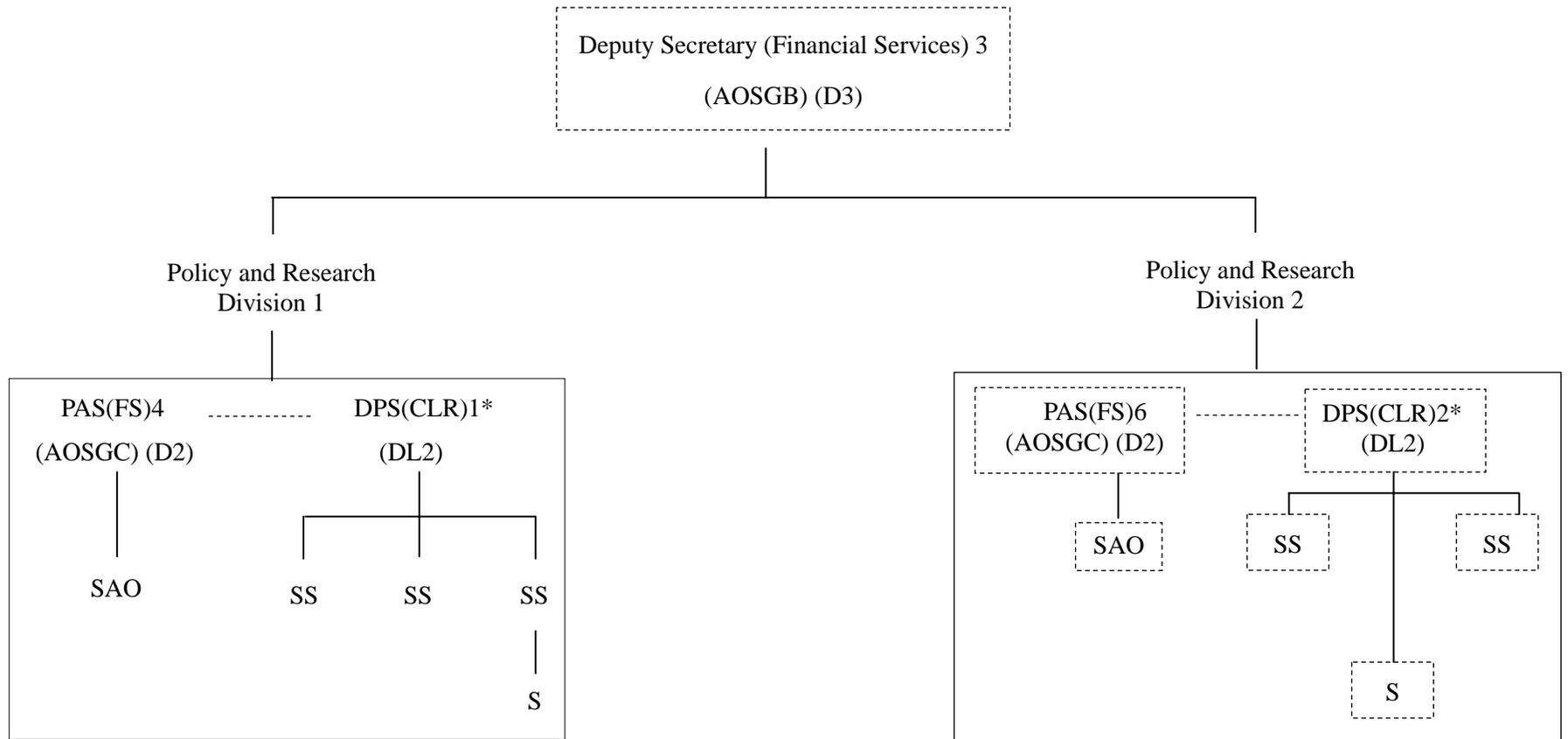
**Proposed Changes**

 Supernumerary directorate post to be created

**Legend:**

- RM Registry Manager
- BM Business Manager
- RS Registry Solicitor
- DPS(CLR) Deputy Principal Solicitor (Company Law Reform)
- S/SCCLR Secretary/Standing Committee on Company Law Reform
- APS Assistant Principal Solicitor

**Organisation Chart of Companies Bill Team**



**Proposed Changes**

   Supernumerary directorate/time limited non-directorate post to be created

**Legend:**

- PAS(FS)    Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)
- DPS(CLR)    Deputy Principal Solicitor (Company Law Reform)
- SAO        Senior Administrative Officer
- SS         Senior Solicitor
- S          Solicitor

\* The Two DPS will be responsible to the Registrar of Companies, but operationally report to the DS(FS)3 direct in the discharge of their functions under the CBT.

**Some of the major projects and other commercial matters undertaken  
currently and prospectively by the  
Commercial Unit of the Department of Justice**

Recently, currently and prospectively Counsel in the Commercial Unit of the Department of Justice including the 3 directorate appointments referred to have responsibility for :

- reform of banking and securities and futures legislation, including the regulatory tiers and their relationship inter se;
- regulation of utilities under (e.g.) the Schemes of Control;
- registration and regulation of the Mandatory Provident Fund Schemes;
- telecommunications, broadcasting and electronic transactions (including the legislative proposals on unsolicited electronic messages);
- partial privatization of the Government's interests in the Airport Authority and Tradelink;
- proposals to merge the KCRC and the MTRCL;
- drafting and advising upon agreements involving major project work such as the Disney-branded Theme Parks, the West Kowloon Cultural District, the International Exhibition Centre at Chek Lap Kok and the New Cruise Terminal Facilities;
- establishment of various trust funds and schemes;
- documentation, rules and related legal advice on the Capital Investment Entrant Scheme (Immigration);
- public private partnerships, private finance initiatives and public sector reforms;

- drafting and advising on Government's securitised debt and plain vanilla (sovereign) debt issues (these totalled HK\$26 billion in 2004);
- advising on bank mergers and deposit protection;
- Government's procurement of goods and services;
- advising on a number of major computer contracts including in some cases their termination;
- advising on competition issues in telecommunications, broadcasting, electronic trade manifests and the auto-fuel industry;
- advising on school service contracts for Government, aided and direct subsidy schools;
- advising on the legal implications of a number of proposals aimed at improving distribution of traffic through the harbour tunnels; and
- advising and negotiating on the preparation of about 15 significant contracts in relation to the 6<sup>th</sup> Ministerial Conference and the World International Telecommunication Union Conference etc.

**Main Duties and Responsibilities with Some Examples of  
Principal Government Counsel (DL3)  
Deputy Law Officer (Civil Law)(Commercial)**

**(October 2005)**

1. Responsible to the Law Officer (Civil Law) for :
  - (a) advising government departments and bureaux on commercial law issues generally (including proposals for new commercial legislation), particularly in relation to insurance, banking, securities and companies regulation, commercial contracts and franchise agreements, major projects, broadcasting, telecommunications, e-commerce and unsolicited electronic messages;
  - (b) advising on and vetting draft Executive Council Memoranda and drafting instructions for major commercial legislation;
  - (c) appearing before the Executive Council and Legislative Council committees or panels on matters within the remit of his Unit; attending at boards, committees and working groups;
  - (d) providing guidance and training to counsel of the Commercial Unit;
  - (e) Commercial Unit administration including work allocation, supervision and consultation; and
  - (f) taking part, as required by the Law Officer (Civil Law) in the overall management of the Civil Division of Department of Justice.
  
2. Examples of work currently handled or committed include :
  - (a) major projects including West Kowloon Cultural District (“WKCD”);
  - (b) mergers including proposals to merge MTRCL and

KCRC;

- (c) representing the Secretary for Justice on committees or panels such as Standing Committee on Company Reform and WKCD Steering Committee;
- (d) advising on public sector reform, public private partnerships and outsourcing including speaking at Government organised seminars;
- (e) advising on the regulatory interfaces including Hong Kong Exchanges and Clearing Limited, Securities and Futures Commission and Government;
- (f) advising on privatisation including proposals to partially privatise Airport Authority; and
- (g) advising on anti-competitive practices including competition initiatives in specific industries such as broadcasting and telecommunications.

**Main Duties and Responsibilities with Some Examples of the  
Deputy Principal Government Counsel (DL2)  
(Senior Assistant Law Officer (Civil Law) (Commercial) I)**

**(October 2005)**

Responsible to the Deputy Law Officer (Civil Law)(Commercial) for -

1. Handling personally and otherwise maintaining an overview of the work of Commercial Unit Team I in respect of advice on telecommunications, broadcasting, competition in telecommunications and broadcasting, computer contracts, e-commerce/transactions, Government procurement of goods and services, indemnities, financial arrangements (e.g. loans, guarantees and bonds) and implementation of major projects.
2. Supervising and providing guidance and training to the counsel in Commercial Unit Team I.
3. Providing legal advice on more complex commercial law matters, including:
  - (a) advising on proposals to converge the regulatory regimes of broadcasting and telecommunications and establish a Communications Authority;
  - (b) advising on the proposed legislation to protect foreign central banks' property;
  - (c) advising on the proposed change of policy on IP ownership to facilitate commercial exploitation by tenderers of Government IT systems;
  - (d) advising Government on issues relating to privatisation of retail and carparking facilities; and
  - (e) advising on proposals concerning licensing and frequency assignment for Broadband Wireless Access services.

4. Drawing up or vetting undertakings, agreements, commercial contracts, franchises and licenses, including:
  - (a) advising on matters connected with the Hong Kong Disneyland (including future expansion of the theme park);
  - (b) considering and advising on the Schemes of Control Agreements/regulatory regime for the electricity market in Hong Kong; and
  - (c) advising on the preparation, operation, termination and retendering of major computer contracts.
5. Representing the Department of Justice on high level working parties and steering groups (including the Steering Committee on the development of the Hong Kong Disneyland).
6. Advising on and vetting draft Executive Council memoranda and drafting instructions for major legislation.
7. Appearing before the Executive Council and Legislative Council panels as appropriate.
8. Performing such other duties as may be assigned from time to time by the Deputy Law Officer (Civil Law) (Commercial).

**Main Duties and Responsibilities with Some Examples of the  
Deputy Principal Government Counsel (DL2)  
(Senior Assistant Law Officer (Civil Law)(Commercial) II)**

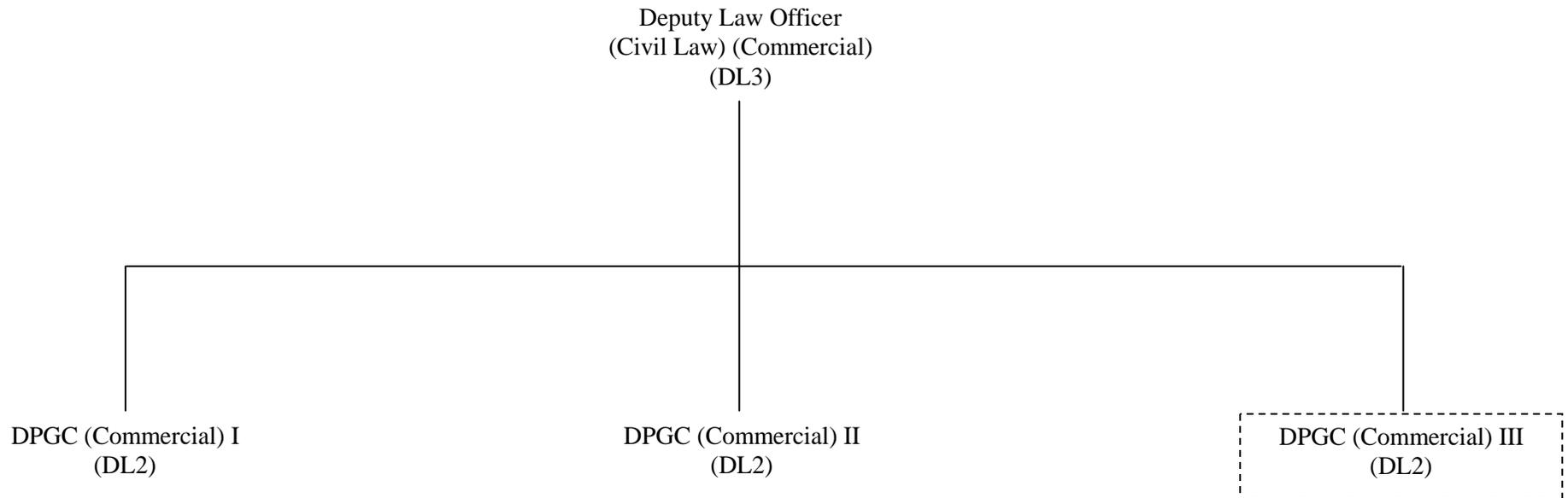
**(October 2005)**

Responsible to the Deputy Law Officer (Civil Law)(Commercial) for –

1. Handling personally and otherwise maintaining an overview of the work of Commercial Unit Team II in respect of advice on Public Private Partnership, outsourcing and public sector reform, privatisation, securities and futures, banking, company law matters, insurance, retirement protection, procurement of services, appointment of key public officers, public transport franchises and licences and coordination of major projects such as Hong Kong Zhuhai Macau Bridge.
2. Supervising and providing guidance and training to counsel in Commercial Unit Team II.
3. Providing legal advice on more complex commercial law matters, including:
  - (a) advising on and vetting drafting instructions to amend the Mandatory Provident Fund Schemes Ordinance and advising the Secretary for Financial Services and the Treasury on all matters in relation to the interpretation of the Mandatory Provident Fund Schemes Ordinance;
  - (b) advising Commissioner of Insurance in the discharge of his regulatory role as the Insurance Authority and on the interpretation of the Insurance Companies Ordinance;
  - (c) advising MC6 Co-ordination Office on insurance matters in relation to the 6<sup>th</sup> Ministerial Conference to be held in Hong Kong in December 2005; and
  - (d) advising the Government/Financial Secretary Incorporated on all matters in relation to the listing of Tradelink.

4. Drawing up or vetting undertakings, agreements, commercial contracts, franchises and licenses, including:
  - (a) advising on matters connected with Leisure and Cultural Services Department's Private Sector Involvement Pilot Schemes;
  - (b) advising on matters connected with the implementation of Southeast Kowloon Tourism Node;
  - (c) advising on matters connected with the development of the Cruise Terminal;
  - (d) advising Government on matters in relation to the appointment of key public officers and others including those appointed by the Chief Executive or Financial Secretary etc.; and
  - (e) advising Education and Manpower Bureau on matters in relation to the granting of school sites to around 150 schools, including preparation and vetting of service agreements for school sponsoring bodies and school management committees.
5. Representing the Department of Justice on high level working parties and steering groups, including the Task Force on Provision of Leisure and Cultural Facilities Projects through Private Sector Involvement, the Working Group on the implementation framework for Southeast Kowloon Tourism Node and the Working Group for Implementation of Development of Cruise Terminal.
6. Advising on and vetting draft Executive Council memoranda and drafting instructions for major legislation.
7. Appearing before the Executive Council and Legislative Council panels as appropriate.
8. Performing such other duties as may be assigned from time to time by Deputy Law Officer (Civil Law) (Commercial).

**Organisation Chart of the Commercial Unit, Civil Division, Department of Justice**



**Proposed Changes**

 Supernumerary directorate post to be created

**Legend:**

DPGC Deputy Principal Government Counsel