

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

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

Subhead 000 Operational expenses

Members are invited to recommend to Finance Committee the retention of the following supernumerary post in the Financial Services and the Treasury Bureau (Financial Services Branch) for a period of about 17 months from 13 February 2011 to 15 July 2012 –

1 Administrative Officer Staff Grade C
(D2) (\$117,950 - \$129,000)

PROBLEM

The existing supernumerary post of an Administrative Officer Staff Grade C (AOSGC) (D2) in the Financial Services Branch (FSB) of the Financial Services and the Treasury Bureau (FSTB), designated as Principal Assistant Secretary (Financial Services) 7 (PAS(FS)7), will lapse on 13 February 2011. Retention of this post is required to provide continued directorate support to complete the current legislative and related work in relation to the enhancement of the anti-money laundering (AML)¹ regime in Hong Kong.

/PROPOSAL

¹ For the purpose of this paper, references to “AML” include the meaning of both anti-money laundering and counter-financing of terrorism.

PROPOSAL

2. We propose to retain the supernumerary post of AOSGC (D2) in FSB under FSTB for a period of about 17 months from 13 February 2011 to 15 July 2012 to cope with the additional workload arising from the legislative and related work in relation to the follow up to the mutual evaluation (ME) conducted by the Financial Action Task Force (FATF)² on Hong Kong, most notably the enhancement of the AML regulatory regime.

JUSTIFICATION

Legislation to Enhance AML Regulation for Financial Sectors

3. As a member of FATF, the international standard-setter on AML, Hong Kong is obliged to implement the international AML standards as promulgated by FATF and subject to its evaluation on the effectiveness of the AML regulatory regime. FATF conducted the ME on Hong Kong in 2007 and published a report in July 2008 which recommended inter alia that the AML regulatory regime for financial sectors in Hong Kong should be enhanced to better align with the prevailing international standards. The major deficiencies to be addressed include the lack of statutory backing for the customer due diligence and record-keeping requirements, the lack of appropriate sanctions for breaching these requirements, and the absence of an AML regulatory regime for remittance agents and money changers. On the basis of the outcome of the ME, FATF has put Hong Kong under its regular follow-up process. Under this process, Hong Kong is required to provide regular progress reports on improvement efforts and is expected to address the major deficiencies identified in the ME and seek FATF's agreement for Hong Kong to be removed from the follow-up process within a reasonable period after the adoption of the ME report in 2008.

4. FSB completed a comprehensive review on the AML regulation for financial sectors in conjunction with the relevant financial regulators and conducted two rounds of public consultation in July and December 2009 to gauge views on the legislative proposals. We also briefed the Legislative Council (LegCo) Panel on Financial Affairs on the legislative framework and the detailed proposals on 11 June 2009 and 14 December 2009 respectively and attended a public hearing session organised by the Panel on 24 May 2010. Subsequently, we introduced the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill (the Bill) into LegCo on 10 November 2010 to address the key deficiencies highlighted in paragraph 3 above. A LegCo Bills Committee has been formed to examine the Bill. Subject to LegCo's approval of the Bill, we

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² FATF is an inter-governmental body which sets the international AML standards.

will work closely with the Customs and Excise Department in preparing the requisite subsidiary legislation on the licensing regime for money service operators³. Our target is to implement the enhanced AML regulatory regime on 1 April 2012.

Preparatory Work for the Implementation of the AML Legislation

5. Pursuant to the comments raised during the public consultation, the Administration and the relevant authorities will continue to engage and consult the financial sectors after the passage of the Bill in working out detailed guidelines to facilitate financial institutions' compliance with the AML legislation. Taking into account the comments received in the public consultation on the approach for setting the guidelines, FSB will coordinate the work of the relevant authorities in the drafting of guidelines and the subsequent consultation with the stakeholders.

6. FSB will also make detailed preparations to facilitate a smooth transition to the new AML legislation, including overseeing the relevant authorities' efforts in providing technical assistance and focused training to financial institutions, in particular those with a smaller set-up such as the money service operators in the period leading to the implementation of the new legislation as well as the initial phase of the operation of the new regime.

New FATF Follow-up Process and Implications on Hong Kong as an International Financial Centre

7. To ensure that member jurisdictions under FATF's follow-up process (including Hong Kong, as explained in paragraph 3 above) would take early and effective actions to address major deficiencies identified during their ME exercises, FATF promulgated a specific requirement in early 2010 that such jurisdictions should address the major deficiencies in their AML system and seek removal from the follow-up process within four years after the adoption of the relevant ME reports. Accordingly, Hong Kong is required to address the major deficiencies and seek removal from FATF's follow-up process by June 2012. Should Hong Kong fail to do so, FATF may consider applying enhanced scrutiny and monitoring on Hong Kong. This could affect Hong Kong's status as an international financial centre.

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³ Remittance agents and money changers are referred to as "money service operators" under the Bill.

8. At its plenary meeting in June 2010, FATF noted the first progress report made by Hong Kong on improvement measures taken and planned to deal with the deficiencies highlighted in the ME report. FSB will coordinate the preparation of Hong Kong's next submission to FATF in mid 2011 and liaise closely with the FATF Secretariat on the relevant arrangements for the submission and on any follow-up questions and enquiries on our submission.

9. For the purpose of seeking removal from FATF's follow-up process, Hong Kong is required to submit a comprehensive report by mid-2012 setting out the full details of the improvement actions taken, including the explanation of legislative provisions and various operational and implementation details. FSB needs to engage in intensive discussions and liaison with the concerned bureaux and departments as well as the relevant authorities in order to prepare the report. In addition, FSB will lead the Hong Kong delegation in presenting the comprehensive report to FATF at the plenary meeting in mid-2012 and responding to questions raised by members in order to seek FATF's approval for Hong Kong to be removed from its follow-up process. As the new FATF requirement has not been promulgated until after LegCo has approved the creation of the supernumerary post of AOSGC (D2) in FSB up to February 2011, we had not taken into account the workload related to seeking removal from FATF's follow-up process in mid-2012 in determining the period the supernumerary post is required when we sought the approval from the Finance Committee for the creation of the post.

Hong Kong's Participation in AML-related International Fora and Preparation for the next ME

10. Since October 2008, FSB has led multi-agency efforts to participate actively in the deliberations on various AML-related issues by FATF and other international AML fora, such as the Asia-Pacific Group on Anti-Money Laundering. FSB heads the Hong Kong delegation at these international meetings and liaises with other members in the margin on issues of common interests.

11. FATF is conducting an on-going review of the prevailing international AML standards. The revised standards will form the basis for the next round of FATF's ME on member jurisdictions, including Hong Kong, which is expected to commence in around 2013. FSB is keeping a close watch over FATF's review and will coordinate Hong Kong's input to the review. FSB is in close collaboration with the financial regulators and other relevant bureaux and departments in assessing the possible impact of the revised standards on Hong Kong.

/Need

Need for Retention of the Supernumerary AOSGC Post

12. Following the approval by the LegCo Finance Committee on 13 February 2009, FSB created a supernumerary post of AOSGC (D2), titled PAS(FS)7, on the same day for a period of 24 months up to 12 February 2011 to undertake follow-up actions in response to the ME.

13. In light of the various tasks set out in paragraphs 3 to 11 which are instrumental to enhancing the local AML regulatory regime, and thereby projecting a positive image of Hong Kong in AML cooperation at the international level, we propose that the post of PAS(FS)7 should be extended for 17 months up to 15 July 2012 to provide continued directorate support in these important tasks.

Encl. 1 The job description of the post of PAS(FS)7 is at Enclosure 1. An organisation chart of FSB showing the proposed extension of the post of PAS(FS)7 is at
Encl. 2 Enclosure 2. Upon the implementation of the new AML regulatory regime and completion of the other related policy work, we expect the complexity and volume of policy and coordination work related to AML will be reduced, and FSB can perform the relevant functions without the PAS(FS)7 post through internal redeployment, as appropriate.

ALTERNATIVES CONSIDERED

14. At present, there are six other Principal Assistant Secretaries (PAS(FS)s) in FSB overseeing different policy portfolios, including securities and futures, banking, insurance, mandatory provident fund (MPF), accountancy, insolvency and other companies-related matters. Their existing job descriptions are set out in Enclosure 3.

Encl. 3

15. We have examined critically whether any of the existing PAS(FS)s in FSB can absorb the work of PAS(FS)7 upon the expiry of the current supernumerary post. However, since these other PAS(FS)s are already fully occupied with the workload arising from various new initiatives, major legislative exercises and numerous on-going commitments including the proposed establishment of an Investor Education Council and a Financial Dispute Resolution Centre; the proposed transfer of the public offering regime for structured products from the Companies Ordinance to the Securities and Futures Ordinance; the development of offshore Renminbi business, asset management industry and bond market; the proposed statutory disclosure requirements for price sensitive information of listed companies; the enhancement of the regulatory regime for MPF intermediaries and the planned implementation of the portability proposal to increase employees' control of their MPF investment; the proposed establishment of an independent Insurance Authority and a policyholders' protection fund; and

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the Companies Ordinance rewrite, it is operationally not feasible for any of them to take up the AML-related tasks upon the expiry of the current supernumerary post of PAS(FS)7 without seriously affecting the discharge of their current duties.

NON-DIRECTORATE SUPPORT

16. The post of PAS(FS)7 is supported by a team of five non-directorate officers, comprising one Senior Administrative Officer (SAO), one Superintendent of Police (SP), one Executive Officer (EO) I, one Personal Secretary I and one Personal Secretary II. The SAO and two Personal Secretary posts are time-limited for two years from 2009-10 to 2010-11 mainly to assist in coordinating the follow-up work with regard to the FATF's ME report on Hong Kong and taking forward the above-mentioned legislative exercise. The SP and EO I are permanent posts responsible for handling AML-related matters on an on-going basis. In view of the operational need, we have extended the term of the three time-limited posts which originally are scheduled to expire in March 2011 to tie in with the proposed extended term of the post of PAS(FS)7, i.e. up to 15 July 2012.

FINANCIAL IMPLICATIONS

17. The proposed extension of the post of PAS(FS)7 will bring about an additional notional annual salary cost at mid-point of \$1,503,000. The full annual average staff cost of the proposal, including salaries and staff on-cost is \$2,097,000.

18. The notional annual salary cost at mid-point for the five non-directorate supporting staff mentioned in paragraph 16 above is \$3,024,900, and the full annual average staff cost, including salaries and staff on-cost, is \$4,516,000.

19. We will absorb the additional expenditure from within the existing provision in 2010-11 and include the necessary provision in the Estimates of subsequent years to meet the cost of the proposed extension of the supernumerary post and the five non-directorate posts.

PUBLIC CONSULTATION

20. We consulted the LegCo Panel on Financial Affairs on 29 November 2010. Members supported the proposed extension of the supernumerary AOSGC post.

ESTABLISHMENT CHANGES

21. The establishment changes in FSB for the last two years are as follows –

Establishment (Note)	Number of posts			
	Existing (As at 1 December 2010)	As at 1 April 2010	As at 1 April 2009	As at 1 April 2008
A	12 + (3)#	12 + (3)	12 + (3)	12 + (2)
B	59	57	53	51
C	91	91	89	88
Total	162 + (3)	160 + (3)	154 + (3)	151 + (2)

Note:

- A – ranks in the directorate pay scale or equivalent
- B – non-directorate ranks, the maximum pay point of which is above MPS Point 33 or equivalent
- C – non-directorate ranks, the maximum pay point of which is at or below MPS Point 33 or equivalent
- () – number of supernumerary directorate posts
- # – as at 1 December 2010, there was no unfilled directorate post in FSB.

CIVIL SERVICE BUREAU COMMENTS

22. The Civil Service Bureau supports the proposed retention of the supernumerary AOSGC post. The proposed ranking of the post is considered appropriate having regard to the level and scope of the responsibilities concerned.

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

23. As the post is proposed on a supernumerary basis, its retention, if approved, will be reported to the Standing Committee on Directorate Salaries and Conditions of Service in accordance with the agreed procedure.

**Job Description of
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services) 7**

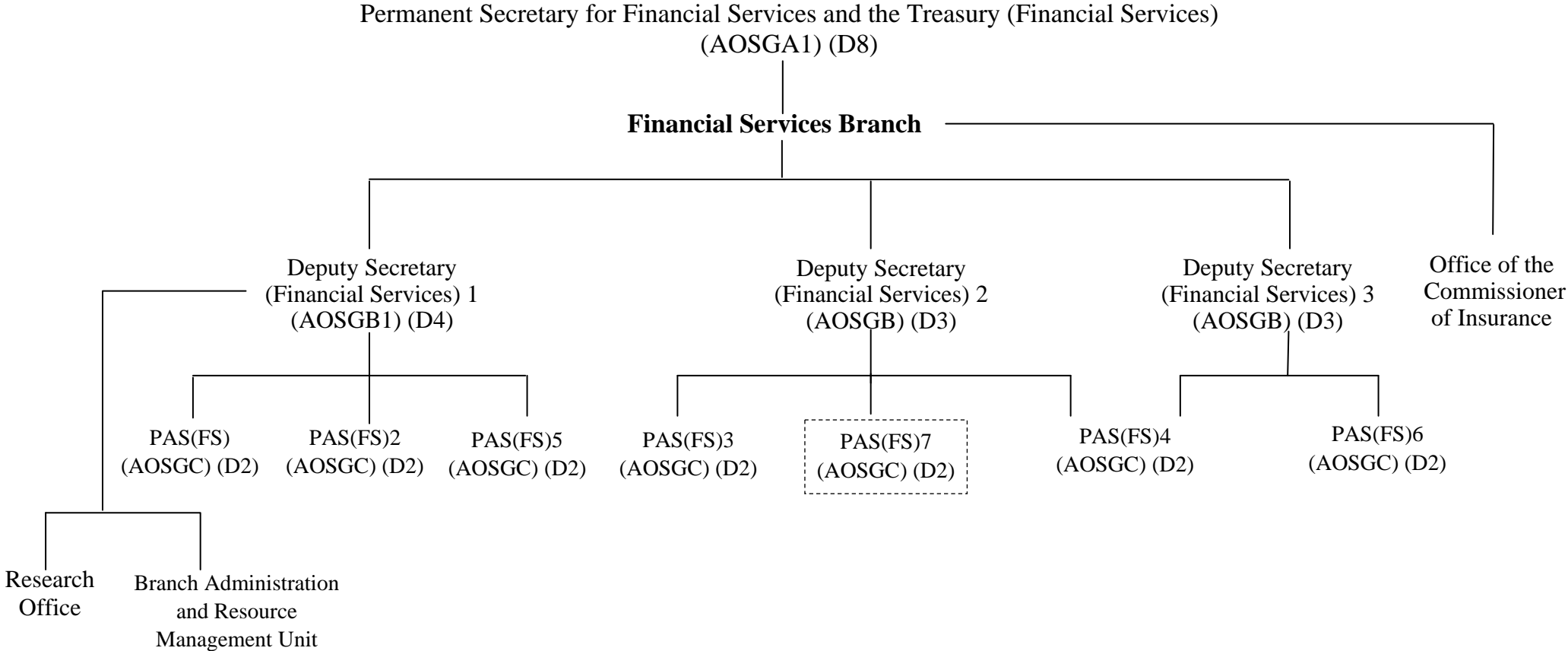
Rank : Administrative Officer Staff Grade C (D2)

Responsible to : Deputy Secretary for Financial Services and the Treasury
(Financial Services) 2

Major Duties and Responsibilities –

1. To take forward the policy and legislative work in relation to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill, including the preparatory work in respect of subsidiary legislation and guidelines for the implementation of the new legislation.
2. To compile submissions to FATF on improvement actions to the AML regime of Hong Kong in coordination with the financial regulators and Government bureaux and departments.
3. To take lead in drawing up Hong Kong's inputs to the deliberations on AML issues by FATF and other AML-related fora and to be a member of the Hong Kong delegation to FATF and the other relevant international AML fora as appropriate.
4. To serve as secretary to the dedicated multi-agency coordinating committee on anti-money laundering and counter financing of terrorism.
5. To coordinate and provide policy support to the above committee and senior officials in putting in place the appropriate legal and regulatory systems to fight money laundering and terrorist financing, having regard to the prevailing international standards.

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



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

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

PAS(FS)1 is responsible for policy and matters relating to investor protection of the securities and futures markets. In addition, he/she provides policy input on supervision of intermediaries and of market operation, and deals with the housekeeping matters of the Securities and Futures Commission (SFC). He/She also coordinates the operation of the Securities and Futures Appeals Tribunal and the Market Misconduct Tribunal. He/she provides secretariat support for the Process Review Panel for SFC, and coordinates among the financial regulators on risk management matters and is now working on the proposed establishment of an Investor Education Council and a Financial Dispute Resolution Centre.

2. PAS(FS)2 is responsible for listing related matters and liaison with the Hong Kong Exchanges and Clearing Limited. He/She is working on the proposed statutory disclosure requirements for price sensitive information of listed corporations, and the legislative exercise to transfer the public offering regime for structured products from the Companies Ordinance to the Securities and Futures Ordinance. He/She also oversees the development of commodities market in Hong Kong.

3. PAS(FS)3 oversees policy and legislative matters over the insurance sector, the Mandatory Provident Fund (MPF) Schemes and the Occupational Retirement Schemes. His/her portfolio covers all MPF-related and insurance-related matters, including the housekeeping matters of Mandatory Provident Fund Schemes Authority and Office of the Commissioner of Insurance. He/she is also working on the proposed establishment of an independent Insurance Authority and policyholders' protection funds, and the enhancement of the regulatory regime for MPF intermediaries and the planned implementation of the portability proposal to increase employees' control of their MPF investment.

4. PAS(FS)4 is partially deployed to one of the divisions in the Companies Bill Team to assist in taking forward the rewrite of the Companies Ordinance and corporate rescue review. Apart from these duties, he/she also assists in handling insolvency policy and administration, accounting sector policy and legislation and corporate governance of unlisted companies. He/She deals with housekeeping matters of the Official Receiver's Office and the Financial Reporting Council (FRC), and provides the secretariat support for the Process Review Panel for FRC.

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 other related issues. He/She oversees policy matters and legislation concerning the Deposit Protection Scheme as well as those relating to bond market development and Islamic finance. In addition, he/she coordinates input from financial services perspective in connection with Hong Kong's participation in relevant international and regional fora, including G20, Financial Stability Board, International Monetary Fund, Asia-Pacific Economic Cooperation, Asian Development Bank and the Organization for Economic Co-operation and Development.

6. PAS(FS)6 deals with policies and legislation relating to companies and trust companies. He/She coordinates the work relating to rewrite of the Companies Ordinance as well as review of the Trustee Ordinance. He/She also deals with the housekeeping matters of the Companies Registry.
