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Panel on Financial Affairs

Meeting on 5 March 2018

**Background brief on the retention of two supernumerary directorate posts
in the Financial Services Branch of the Financial Services
and the Treasury Bureau**

Purpose

This paper provides background information on the proposal to retain two supernumerary directorate posts in the Financial Services Branch of the Financial Services and the Treasury Bureau for taking forward initiatives relating to introduction of a corporate rescue procedure ("CRP"), auditor regulatory reform, regulation of money lenders and related financial intermediaries, review of the new Companies Ordinance ("CO"), development of financial technologies ("Fintech") and Hong Kong's participation in the Asian Infrastructure Investment Bank ("AIIB"). It also summarizes the major views and concerns expressed by Members during discussions on previous proposals to retain the above posts and related matters at meetings of the Panel on Financial Affairs ("FA Panel") and Establishment Subcommittee ("ESC") from 2012-2013 to 2017-2018.

Creation and previous extensions of the two supernumerary posts

Creation of the two posts in 2006

2. In mid-2006, the Government launched an exercise to rewrite CO adopting a phased approach with the core company provisions affecting the daily operation of live companies in Hong Kong to be tackled in the first phase, and the review of the winding-up and insolvency-related provisions (mainly administered by the Official Receiver's Office) to be taken forward in the second phase. Having regard to the workload arising from the initiative, the Finance Committee ("FC") approved in January 2006 creation of a

supernumerary Administrative Officer Staff Grade B post, designated as Deputy Secretary (Finance Services)3 ("DS(FS)3"), for five years to spearhead the CO rewrite exercise; and a supernumerary Administrative Officer Staff Grade C post, designated as Principal Assistant Secretary (Finance Services)6 ("PAS(FS)6"), for four years to underpin DS(FS)3.¹

Extension of the two posts in 2010, 2012, 2013, 2014 and 2016

3. Since creation of the DS(FS)3 and PAS(FS)6 posts, their duration had been extended for a number of times and their duties had also been changed in tandem with progress of their major assigned tasks, and new initiatives taken forward by FSTB. In early 2010, the Government submitted a proposal to extend the duration of the DS(FS)3 and PAS(FS)6 posts for 16 months (up to 31 July 2012) and 33 months (up to 30 June 2013) respectively.² Apart from taking forward the CO rewrite exercise, the duties of DS(FS)3 were expanded to cover the legislative exercises relating to the reform of the Trustee Ordinance (Cap. 29) and Perpetuities and Accumulations Ordinance (Cap. 257) (there after referred to as "the trust law reform"), and the introduction of a statutory CRP. PAS(FS)6 was also given the additional duties of preparing subsidiary legislation pertaining to the CO rewrite exercise and assisting DS(FS)3 in the trust law reform. The establishment proposal was approved by FC on 14 May 2010.

4. The Government introduced the Companies Bill, which was the outcome of the first phase of the CO rewrite exercise, into the Legislative Council ("LegCo") on 26 January 2011. In November 2011, the Government rolled out the second phase of the exercise to modernize the corporate insolvency law regime.³ As the corporate insolvency law modernization exercise required high-level policy steer, the Government proposed retaining the DS(FS)3 post for a further period of two years (i.e. from 1 August 2012 to 31 July 2014).⁴ The proposal was approved by FC on 13 April 2012.

¹ The relevant establishment proposal was set out in EC(2005-06)9. The posts of DS(FS)3 and PAS(FS)6 were officially created in March and October 2006 respectively.

² The relevant proposal was set out in EC(2010-11)1.

³ The objectives of the corporate insolvency law modernization exercise are to streamline and rationalize the company winding-up procedures to facilitate more efficient administration of winding-up and increase protection of creditors; provide for a new statutory corporate rescue procedure for companies in short-term financial difficulty to turn around or restructure; and to enhance regulation of the winding-up regime.

⁴ The relevant proposal was set out in EC(2011-12)16.

5. The Companies Bill was subsequently passed by LegCo on 12 July 2012. In view of the substantial workload for preparing the necessary subsidiary legislation to provide for various administrative, procedural and technical matters for the commencement of the new CO, the Government proposed further extending the duration of PAS(FS)6 for a period of one year (i.e. from 1 July 2013 to 30 June 2014).⁵ The scope of responsibility of PAS(FS)6 was expanded to cover the policy review on the abscondee regime under the Bankruptcy Ordinance (Cap. 6) and formulation of relevant reform proposals. The establishment proposal was approved by FC on 15 March 2013.

6. The Trust Law (Amendment) Bill 2013 reflecting the outcome of the trust law reform was introduced into LegCo on 20 February 2013. The Trust Law (Amendment) Ordinance 2013 was enacted on 17 July 2013 and commenced operation on 1 December 2013. The new CO commenced operation on 3 March 2014.

7. In mid-2014, the Administration proposed further extending the posts of DS(FS)3 and PAS(FS)6 for two years and five months and two and a half years respectively to take forward the legislative exercises on corporate insolvency, CRP, auditor regulatory reform, abscondee regime under BO as well as other matters.⁶ Both posts would be due to lapse on 1 January 2017. The proposal was approved by FC on 6 June 2014.

8. The Bankruptcy (Amendment) Bill 2015 which sought to address the constitutionality issues of the abscondee regime was introduced into LegCo on 30 April 2015. The Bill was passed on 17 March 2016.

9. The Government conducted a public consultation on the legislative proposals to improve the corporate insolvency and winding-up provisions from April to July 2013, and published the consultation conclusions in May 2014. The Government introduced the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015 into LegCo on 2 October 2015. The Bill was passed on 27 May 2016.

10. In mid-2016, the Government proposed further extending the posts of DS(FS)3 and PAS(FS)6 for two years (i.e. from 1 January 2017 to 31 December 2018).⁷ The main responsibilities of DS(FS)3 were to oversee: (a) introduction of a new statutory CRP procedure and insolvent trading provision; (b) reform of the regulatory regime for listed entity auditors; (c) review of regulatory and

⁵ The relevant proposal was set out in EC(2012-13)22.

⁶ The relevant proposal was set out in EC(2013-14)23.

⁷ The relevant proposal was set out in EC(2016-17)10.

related arrangements to tackle malpractices by financial intermediaries for money lending; (d) review of the new CO and trust law; (e) development of Fintech in Hong Kong; and (f) Hong Kong's participation in AIIB. The main responsibilities of PAS(FS)6 were to support DS(FS)3 in respect of areas including policies and legislation relating to regulation of money lenders, companies, Fintech, and matters relating to AIIB. The proposal was approved by FC on 11 July 2016.

Major views and concerns expressed by Members

11. The major views and concerns expressed by Members on the proposals to retain the supernumerary posts of DS(FS)3 and PAS(FS)6 at meetings of FA Panel and ESC held from 2012-2013 to 2015-2016 are summarized in the ensuing paragraphs. The major views and concerns expressed by members at the FA Panel meetings when progress of the various initiatives were discussed are also summarized below.

Workload of the two proposed posts

12. At the ESC meeting on 19 February 2014, some members remarked that with completion of work for improving the trust law and company law regimes following the commencement of the Trust Amendment Ordinance and the new CO in December 2013 and March 2014 respectively, the workload of the two posts in question would be greatly reduced. As for the outstanding exercises undertaken by the two posts including improvement to the corporate insolvency law and auditor regulatory regime, as well as introduction of a statutory CRP, the Companies Registry and FRC were already heavily involved and providing a lot of input. They sought justifications for further retaining the two posts.

13. The Government pointed out that apart from the above-mentioned legislative exercises, the two posts would also be responsible for the review of the abscondee regime under BO. While the Trust Amendment Ordinance commenced operation in December 2013, there were suggestions put forward by stakeholders for further improving the trust law, which had not been incorporated in the Trust Amendment Ordinance pending further assessment and detailed examination. To this end, the Government would conduct policy research and analysis, and continue to engage relevant stakeholders. As regards the proposed introduction of a new statutory CRP, the Government responded that it was a complex project involving a number of complicated and controversial issues as well as various stakeholders. The matter required steering and input from the directorate level.

14. At the FA Panel meeting on 22 March 2016 and ESC meeting on 8 June 2016, noting that many duties taken up by the two posts were on-going in nature, some Members asked whether the Administration would consider extending the duration of the two posts or turning them into permanent posts.

15. The Government emphasized that the proposal to extend the two posts for further two years was made after a careful review of the manpower requirements of the Financial Services and the Treasury Bureau. The Government was prudent in containing directorate establishment, and would review the continued need of the two posts before their expiry having regard to the progress of the various tasks taken up by the post holders including whether to extend the duration of the posts further or turn them into permanent posts. Moreover, the Government conducted review of the human resources need at the directorate level from time to time and would put forward relevant establishment proposals as appropriate.

The timetable for introducing a statutory corporate rescue procedure

16. At the FA Panel meetings on 3 May 2013, 6 January 2014, 7 July 2014 and 22 March 2016, some members enquired about the timetable for introducing the bill on a statutory CRP, and urged that the Administration should put forward the relevant legislative proposals to LegCo as soon as possible. Members also suggested that, in preparing the legislative proposals, the Administration should make reference to overseas experiences to better understand the essential factors contributing to a successful CRP.

17. Some other members had reservations over the proposed CRP and expressed concern that only large corporations would benefit from the procedure since small and medium-sized enterprises ("SMEs") would not be able to afford the high professional fees involved. Furthermore, there was concern about including insolvent trading provisions in the proposed CRP which might place unfair responsibilities on company directors. These members pointed out that a director would face a dilemma when a limited company became insolvent. This was because if the company was declared insolvent by the director, banks would be reluctant to provide credit facility for the company. These members called on the Administration to consider the proposal on CRP carefully.

18. The Government responded that it had conducted a public consultation on the conceptual framework and some key issues of a CRP in 2009 and briefed FA Panel on the consultation conclusions in July 2010. Relevant parties, including SMEs, had been consulted. The Government remarked that, while sizable corporations were more likely to benefit from the proposed CRP, the legislative provisions would provide more protection to the employees and

suppliers in case a corporate became insolvent. For the purpose of protecting the interests of directors, the Government could explore the possibility of providing appropriate safe harbours in the proposed legislation. Given the complexities of the issues involved, it would need more time to work out the detailed legislative provisions for further engagement with stakeholders and prepare the amendment bill. The Government's target was to introduce the amendment bill into LegCo in 2017-2018.

Auditor regulatory reform

19. At the ESC meeting on 8 June 2016, some members remarked that the small and medium accounting firms were very concerned about the proposed penalty for listed entity auditors and the arrangements regarding disciplinary hearings. They called on the Administration to duly consider and respond to the views and concerns of the accounting profession.

20. The Government responded that it was aware of the concerns of the industry regarding the level of penalties and details about disciplinary hearings. In drafting the bill, the Government would maintain close contact with relevant stakeholders, and consider whether it was appropriate to allow individuals who were independent of the Financial Reporting Council to take part in the disciplinary mechanism having regard to the fact that the Council was vested with direct disciplinary powers and that the disciplinary mechanism was independent of the audit profession.

Regulatory arrangements to tackle malpractices by financial intermediaries for money lending

21. At the FA Panel meeting on 11 April 2016, 29 May 2017 and 5 February 2018 and ESC meeting on 8 June 2016, Members considered that to better tackle malpractices by financial intermediaries for money lending, the Administration should tighten regulation over unscrupulous money lenders and associated intermediaries including increasing sanctions and introducing a licensing scheme for financial intermediaries associated with money lenders.

22. The Government considered that it was of utmost importance to tackle the situation whereby unscrupulous intermediaries concealed their relationship with money lenders in order to circumvent the statutory prohibition on separate fee charging set out in the Money Lenders Ordinance (Cap. 163). The additional licensing conditions on money lenders aimed to ensure effective enforcement of the statutory prohibition on separate fee charging on borrowers, and would prevent money lenders from using the excuse of lack of knowledge to conceal their relationship with intermediaries. As regards introduction of a licensing scheme for financial intermediaries associated with money lenders, the

Government advised that it would give rise to many complicated issues (like how to define an "intermediary"), which would require careful consideration and consultation with the stakeholders and the wider public.

23. Noting that advertisements on money lending might contain misleading information, some members called on the Administration to tighten the regulation over these advertisements.

24. The Government considered that the health warning, namely "You have to repay, don't over-borrow", was appropriate in alerting the public about the problem of over-borrowing. The Government would evaluate the effectiveness of the proposed measures including the health warning after their implementation.

Development of financial technologies

25. At the FA Panel meetings on 22 March 2016 and 18 April 2017, and the ESC meeting on 8 June 2016, Members expressed concern about the slow progress in the development of Fintech in Hong Kong and the concern expressed by Fintech industry about regulatory uncertainties. They urged the Administration to take proactive actions to review relevant legislation to remove barriers hindering Fintech development. They also stressed the need for the Administration taking lead in applying Fintech in government operations.

26. The Government responded that it would undertake a series of initiatives to promote the development of Fintech, including establishment of a dedicated team under Invest Hong Kong to assist start-ups, investors and R&D institutions to establish their presence in Hong Kong, setting aside space at Cyberport to provide support to Fintech start-ups, and introduction of various incubation programmes for the training of Fintech talents. The Government would also collaborate with financial regulators to consult the Fintech industry in order to better understand the views and aspirations of the industry on matters relating to legislative amendments. In addition, the Hong Kong Monetary Authority, the Securities and Futures Commission and the Office of Commissioner of Insurance had set up respective Fintech liaison platforms to enhance communication with the Fintech industry.

Hong Kong's participation in the Asian Infrastructure Investment Bank

27. At the FA Panel meeting on 16 March 2017 and 5 January 2018, Members enquired about the progress of discussion with AIIB on the proposal to establish its corporate treasury centre ("CTC") or a sub-office in Hong Kong. Members further urged the Administration to seek the Mainland's support on the matter and the relevant bureaux/departments to examine the provision of

auxiliary facilities (like housing and international schools for expatriates) in order to complement the establishment of AIIB's CTC or sub-office in Hong Kong.

28. The Government advised that it had been maintaining close contact with the Ministry of Finance (which led the work in the establishment of AIIB) on the proposal to set up an AIIB sub-office in Hong Kong. Hong Kong had a competitive edge owing to its proximity to the Mainland and strengths in the financial services sector. As many members (both regional and non-regional) of AIIB had expressed interests in the matter, apart from liaising with the Mainland authority and AIIB, the Government would adopt other strategies including the secondment of civil servants at the request of AIIB's management to assist the latter's operations, which would help strengthen Hong Kong's standing and credibility in the bid for set up an AIIB sub-office in Hong Kong.

Latest development

29. The supernumerary posts of DS(FS)3 and PAS(FS)6 will lapse on 1 January 2019. The Administration will brief FA Panel at the meeting to be held on 5 March 2018 on the proposal to retain the two posts.

Relevant papers

30. A list of relevant papers is in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
28 February 2018

List of relevant papers

Date	Event	Paper/minutes of meeting
7 January 2013	FA Panel was briefed on the staffing proposal to retain a supernumerary post of Administrative Officer Staff Grade C ("AOSGC") in FSB of FSTB	Administration's paper (LC Paper No. CB(1)358/12-13 (06)) Minutes (LC Paper No. CB(1)782/12-13)
20 February 2013	ESC deliberated on the staffing proposal	Administration's paper (EC(2012-13)22) Minutes (LC Paper No. ESC30/12-13)
15 March 2013	FC approved the staffing proposal	Minutes (LC Paper No. FC180/12-13)
3 May 2013	FA Panel was brief on the legislative proposals to improve Hong Kong's corporate insolvency law	Administration's paper (LC Paper No. CB(1)876/12-13 (01)) Minutes (LC Paper No. CB(1)1789/12-13)
6 January 2014	FA Panel was briefed on the staffing proposal to retain the supernumerary posts of AOSGB and AOSGC in FSB of FSTB	Administration's paper (LC Paper No. CB(1)625/13-14 (08)) Minutes (LC Paper No. CB(1)1310/13-14)
19 February 2014	ESC deliberated on the staffing proposal	Administration's paper (EC(2013-14)23) Minutes (LC Paper No. ESC43/13-14)

Date	Event	Paper/minutes of meeting
6 June 2014	FC approved the staffing proposal	Minutes (LC Paper No. FC55/14-15)
7 July 2014	FA Panel was briefed on the consultation conclusions on corporate insolvency law improvement exercise and proposals on the introduction of a statutory corporate rescue procedure	Administration's paper (LC Paper No. CB(1)1536/13-14 (01)) Minutes (LC Paper No. CB(1)1998/13-14)
6 July 2015	FA Panel was briefed on the consultation conclusions on proposals to improve the regulatory regime for listed entity auditors	Administration's paper (LC Paper No. CB(1)1034/14-15 (08)) Minutes (LC Paper No. CB(1)1258/14-15)
22 March 2016	FA Panel was briefed on the staffing proposal to retain the supernumerary posts of AOSGB and AOSGC in FSB of FSTB	Administration's paper (LC Paper No. CB(1)686/15-16 (02)) Minutes (LC Paper No. CB(1)919/15-16)
11 April 2016	FA Panel was briefed on the regulatory arrangements to tackle malpractices by financial intermediaries for money lending	Administration's paper (LC Paper No. CB(1)736/15-16 (03)) Minutes (LC Paper No. CB(1)979/15-16)
11 April 2016	FA Panel was briefed on the strategies and measures to develop financial technologies	Administration's paper (LC Paper No. CB(1)736/15-16 (02)) Minutes (LC Paper No. CB(1)979/15-16)

Date	Event	Paper/minutes of meeting
8 June 2016	ESC deliberated on the staffing proposal	Administration's paper (EC(2016-17)10) Minutes (LC Paper No. ESC131/15-16)
11 July 2016	FC approved the staffing proposal	Minutes (LC Paper No. FC329/15-16)
16 March 2017	FA Panel was briefed on Hong Kong's participation and membership in the Asian Infrastructure Investment Bank	Administration's paper (LC Paper No. CB(1)660/16-17 (03)) Minutes (LC Paper No. CB(1)1178/16-17)
18 April 2017	FA Panel was briefed on the development of financial technologies	Administration's paper (LC Paper No. CB(1)777/16-17 (03)) Minutes (LC Paper No. CB(1)1344/16-17)
29 May 2017	FA Panel was briefed on the developments after implementation of the four-pronged approach for tackling money lending-related malpractices	Administration's paper (LC Paper No. CB(1)993/16-17 (04)) Minutes (LC Paper No. CB(1)1402/16-17)
5 January 2018	FA Panel was briefed on "The new Companies Ordinance (Cap. 622): proposed legislative amendments to improve its clarity and operation"	Administration's paper (LC Paper No. CB(1)401/17-18 (06))
5 January 2018	FA Panel was briefed on the contribution to the Asian Infrastructure Investment Bank Project Preparation Special Fund	Administration's paper (LC Paper No. CB(1)401/17-18 (07))

Date	Event	Paper/minutes of meeting
5 February 2018	FA Panel was briefed on the review of the effectiveness of the new regulatory measures to tackle money lending-related malpractices	Administration's paper (LC Paper No. CB(1)530/17-18 (05))