

**For discussion
on 6 January 2020**

Legislative Council Panel on Financial Affairs

**Creation of two permanent directorate posts
in Financial Services Branch of the Financial Services and the Treasury
Bureau to spearhead various major policy and legislative initiatives**

PURPOSE

This paper seeks Members' views on the proposed creation of the following two permanent directorate posts in the Financial Services Branch ("FSB") of the Financial Services and the Treasury Bureau ("FSTB") to take forward various major policy and legislative initiatives –

- (a) one Administrative Officer Staff Grade B ("AOSGB") (D3) post, to be designated as Deputy Secretary for Financial Services and the Treasury (Financial Services) 3 ("DS(FS)3"), with effect from 1 January 2021 or upon approval by the Finance Committee ("FC"), whichever is the later; and
- (b) one Administrative Officer Staff Grade C ("AOSGC") (D2) post, to be designated as Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) 6 ("PAS(FS)6"), with effect from 1 January 2022 or upon FC's approval, whichever is the later.

JUSTIFICATIONS

Background

2. Currently, DS(FS)3 is a supernumerary AOSGB post in FSB¹. The post is responsible for, *inter alia*, overseeing the policies and legislation relating to the accountancy sector, corporate insolvency, individual bankruptcy, companies, money lenders and trusts; measures to promote the development of financial technologies (“Fintech”); as well as matters relating to the Asian Infrastructure Investment Bank (“AIIB”) and the Asian Development Bank (“ADB”). Among others, one supernumerary AOSGC post², i.e. PAS(FS)6, provides support to DS(FS)3, in particular for policy matters relating to companies, money lenders and trusts, measures to promote the development of Fintech, and Hong Kong’s participation in the AIIB and the ADB.

3. The supernumerary posts of DS(FS)3 and PAS(FS)6 will lapse on 1 January 2021 and 1 January 2022 respectively. Given that both supernumerary posts have been created in 2006 and been extended five times since then and that there will be a continued need for the two posts, the Government has concluded that it is necessary to retain them permanently to provide long-term and senior-level policy steer and inputs to the work as elaborated in paragraphs 4 to 17 below.

Major Policy and Legislative Initiatives

Implementing the new auditor regulatory regime

4. To enhance the independence of the existing regulatory regime for listed entity auditors from the audit profession so as to enhance investor protection and to ensure that the regime is benchmarked against the international standard and practice, the Government introduced an amendment bill into the Legislative Council (“LegCo”) in January 2018. The bill was

¹ The FC approved the creation of the post in January 2006 and the extensions of the post in May 2010, April 2012, June 2014, July 2016 and June 2018 respectively.

² The FC approved the creation of the post in January 2006 and the extension of the post in May 2010, March 2013, June 2014, July 2016 and June 2018 respectively.

passed by LegCo on 30 January 2019 and enacted as the Financial Reporting Council (Amendment) Ordinance 2019 (“the Amendment Ordinance”). The Amendment Ordinance, through amending the Financial Reporting Council Ordinance (Cap. 588), enables the Financial Reporting Council (“FRC”) to become a full-fledged and independent oversight body regulating listed entity auditors and be responsible for the inspection, investigation and disciplinary functions with regard to these auditors. Under the new regime, the Hong Kong Institute of Certified Public Accountants (“HKICPA”) continues to perform the statutory functions of registration, setting requirements for continuing professional development, and also setting standards on professional ethics, auditing and assurance in respect of relevant auditors, subject to oversight by the FRC.

5. The new regulatory regime commenced operation on 1 October 2019. Important regulatory functions of inspection and disciplinary proceedings in relation to auditors of listed entities have been transferred from the HKICPA to the FRC. During the initial period for implementing the new regime, FSB needs to maintain heavy policy oversight to ensure smooth transition of the FRC to the new regime. In addition, as announced in the 2019-20 Budget, the Government has provided a seed capital of \$400 million to help the FRC migrate to the new regime, and exempt the new levies introduced in the Amendment Ordinance for the first two years upon the implementation of the new regime. FSB needs to closely monitor the use of the seed capital by the FRC in establishing the new systems for its expanded operations.

Introduction of a new statutory Corporate Rescue Procedure (“CRP”) and insolvent trading provisions

6. The Government has committed to introducing a new statutory CRP and insolvent trading provisions. The CRP aims to facilitate companies in short-term financial difficulty to turnaround and revive their businesses. A key objective of the CRP is to maximise the chance of existence of a company thereby preserving jobs and, if this is not attainable, to achieve a better return for the creditors of the company than in the case of an immediate insolvent winding-up. Besides, in the absence of insolvent trading provisions which impose civil liabilities on company directors in specified circumstances, our

current corporate insolvency regime is short of a legislative tool to protect the interests of creditors dealing with a company which is in financial difficulty. It is therefore important that Hong Kong has in place an effective CRP and insolvent trading provisions as soon as possible.

7. Under our proposals, the CRP would provide for the appointment of an independent third party, namely the provisional supervisor, to take temporary control of the company, consider specified options for rescuing the company within a specified period, and prepare proposals for a voluntary arrangement for creditors' approval in a speedy manner. It would also ensure that the interests of employees will be safeguarded in the CRP process. At the same time, to provide more certainty so that the provisional supervisor can formulate a voluntary arrangement, there would be a moratorium on legal actions and proceedings against the company when it is under provisional supervision. In respect of the introduction of insolvent trading provisions, there would be appropriate statutory defence for directors of the company in genuine cases.

8. The proposals above were broadly supported by respondents and the LegCo Panel on Financial Affairs ("FAP") in earlier consultation exercises. The Government announced a package of detailed proposals, taking into account feedback from the public and stakeholders. The LegCo FAP was also briefed on the detailed proposals. On this basis, we are preparing a bill to introduce the new statutory CRP and insolvent trading provisions. In view of the technical complexities of the bill, we will be having in-depth exchanges and discussions with various stakeholders on specific areas. We plan to introduce the bill into LegCo in the second half of 2020.

9. Given the scale and complexity of this legislative exercise, sufficient policy input at the directorate level is essential in steering the introduction of the bill into LegCo and its subsequent scrutiny. Subject to the enactment of the bill, we then need to provide policy steer to the Official Receiver's Office for implementation as well as intensive education and publicity programmes for both local and international practitioners and the business community.

10. In the meantime, against the background of globalisation of

economic activities, we note that there have been suggestions from various stakeholders for introducing a domestic legislation for cross-border insolvency in Hong Kong. We will consider how best to take this new initiative forward while pressing ahead with the CRP legislative exercise.

Enhanced regulation of money lenders

11. The regulation of money lenders has continued to draw public attention and requires senior-level policy steer and inputs to enhance the regulatory regime. To address the public concerns over money lending-related malpractices, particularly with respect to financial intermediaries, the Government has implemented a four-pronged approach³ since 2016 to tackle the problems. The approach has been found generally effective as reflected in the significant drop of complaint cases against financial intermediaries in the past two years⁴. To further enhance the regulatory regime, two additional licensing conditions have been imposed on licensed money lenders since October 2018, requiring them to (a) comply with the Guideline on Anti-Money Laundering and Counter-Terrorist Financing Requirements for Licensed Money Lenders as published by the Companies Registry, and (b) obtain referee's consent through the borrower if there is any referee involved in the loan.

12. The above notwithstanding, we are mindful of the continuing public concerns over the money lending industry, particularly money lenders' rampant advertisements which apparently encourage over-consumption, loose loan approval process leading to excessive borrowing, and high interest rates particularly for unsecured personal loans. The Consumer Council also published a report titled "Money Lending – Reforming Law and Trade Practices for Consumer Protection" in September 2019, raising concerns over money lenders' advertisements and over-borrowing. In this connection, we

³ The four-pronged approach involves (a) imposition of more stringent licensing conditions on money lender licences since December 2016; (b) enhanced enforcement actions by the Police and Companies Registry; (c) enhanced public education and publicity; and (d) enhanced debt-advisory services to the public through non-Government organisations.

⁴ The complaint figures against unscrupulous intermediaries had dropped significantly since the imposition of the additional licensing conditions in December 2016, from some 600 cases in 2016 to less than 200 cases a year in both 2017 and 2018. The outcome of the review of the four-pronged approach was reported to the LegCo Panel on Financial Affairs in February 2018.

are conducting a thematic survey on the unsecured personal loan business of licensed money lenders, and the outcomes of the survey shall form the basis to consider whether and how to further enhance the regulatory regime. In parallel, we are preparing for a year-long publicity campaign to remind the public of the importance of prudent borrowing and providing additional resources to non-Government organisations to enhance debt-counselling services. Steer at the directorate level would be necessary to sustain Government's efforts on this regulatory front.

Measures to promote the development of Fintech

13. Fintech is a fast-evolving field, and is crucial for maintaining and enhancing the overall competitiveness of the financial services industry in Hong Kong. Given our status as the leading international financial services centre in Asia, Hong Kong is well positioned to develop Fintech through harnessing our tradition strengths in financial service and combining them with emerging technologies to enhance the delivery of financial services. The Government has adopted a multi-pronged approach⁵ in facilitating Fintech development in Hong Kong since 2016. Over the past three years, we have seen the growth of our Fintech community from less than 100 Fintech start-ups in 2016 to some 600 Fintech companies in 2019, spreading over the Cyberport, the Hong Kong Science and Technology Park and other co-working and office spaces. World-renowned innovation laboratories and accelerator programmes, such as the Accenture Fintech Innovation Lab and the Deloitte Asia Pacific Blockchain Lab, have also established their presence in Hong Kong, acknowledging Hong Kong's unique advantages in combining "Fin" and "Tech". The strength of the Fintech community in Hong Kong is also recognised by investors, who, over the past five years (2014-2018), have invested over US\$1.1 billion in Hong Kong-based Fintech companies, surpassing those based in Singapore.

14. Our long-term goal is to establish Hong Kong as a leading Fintech hub in Asia. It is necessary to have continued leadership and steer at the directorate level in devising and pushing forward an array of initiatives to

⁵ As recommended by the Steering Group on Fintech, the Government has adopted a five-pronged approach in developing Fintech, namely promotion, facilitation, regulation, funding and talents.'

promote the development of Fintech. It should be noted that Fintech does not develop in silo but would impact on all financial services sectors, including banking, insurance, securities trading and asset management. The introduction of eight virtual bank licences and two virtual insurer authorisations by 2019 is a case in point, where senior-level policy steer and regulatory coordination are necessary to bring about the full embracement of Fintech in these sectors. In addition to policy and regulatory efforts, other priority initiatives include stepping up the overall promotion strategy overseas and in the Mainland to attract Fintech companies, giants and start-ups alike, to establish and expand in Hong Kong; devising new facilitating measures, including a new Fintech in-town event space to better support the Fintech community; promoting the use of Fintech infrastructures, such as the Faster Payment System, across sectors (e.g. FPS QR code payments in the retail sector and to settle Government bills) and across boundary (e.g. the use of Hong Kong e-wallets in the Mainland); facilitating industry-wide initiatives including the Open Application Programming Interface for the banking sector; nurturing Fintech talents, including a new Fintech training programme to upskill in-service practitioners; and liaising with overseas and the Mainland Fintech hubs to strengthen cooperation. All these require continued support at the directorate level.

Hong Kong's participation in the AIIB and the ADB

15. The AIIB is a multilateral development bank which supports infrastructure development in Asia with a view to expanding regional connectivity and improving regional integration. Hong Kong became a member of the AIIB in June 2017. We have been liaising with the AIIB on rendering support to its operation by leveraging on Hong Kong's strengths in financial services. We are in discussion with the AIIB on the setting up of an office in Hong Kong and making use of Hong Kong's capital market for bond issuance, after its inaugural bond issuance in London in 2019. We have also been participating in the Board of Governors and the Board of Directors Meetings on a regular and on-going basis to pursue our interests.

16. The ADB is another multilateral development bank which Hong Kong has been participating since 1969. Given the synergy with the AIIB portfolio, the ADB portfolio was transferred from the Hong Kong Monetary

Authority to the FSTB with effect from April 2018. Apart from pursuing our interests, including bond issuance in Hong Kong and procurement opportunities for Hong Kong service providers, at the Board of Governors and Board of Directors meetings, we also handle matters relating to professional exchanges with the ADB and the replenishment of the Asian Development Fund.

17. Hong Kong's active participation in the AIIB and the ADB, as a full and separate member, showcases the successful implementation of "One Country, Two Systems". Continued involvement of directorate officers is necessary to ensure that various initiatives with these two multilateral development banks are given sufficient weight and be brought to fruition.

Creation of permanent AOSGB and AOSGC posts

18. The policy and legislative initiatives elaborated above are long-term and permanent in nature and require continuous reviews and updates, on-going engagement with stakeholders, and proactive senior-level steer and participation. Dedicated directorate support is considered essential in spearheading these initiatives. We therefore propose to make permanent the posts of DS(FS)3 and PAS(FS)6. The proposed job descriptions of the two posts are at **Annex A** and **Annex B** respectively.

Non-directorate support

19. The proposed permanent post of PAS(FS)6 will continue to be supported by a team of five non-directorate posts, namely one Senior Administrative Officer, one Administrative Officer, one Senior Executive Officer, one Personal Secretary I and one Assistant Clerical Officer posts.

ALTERNATIVES CONSIDERED

20. We have considered whether the duties of DS(FS)3 and PAS(FS)6 can be absorbed by other officers in FSB but found it not feasible.

21. There are at present two other Deputy Secretaries ("DSes") and

seven other Principal Assistant Secretaries (“PASes”) in FSB overseeing different policy areas including regulation and development of securities and capital markets, asset and wealth management, banking, anti-money laundering, corporate insolvency, accounting, financial cooperation with the Mainland, and insurance and mandatory provident fund related policy initiatives. All of them are fully engaged with their existing policy initiatives and legislative exercises which are critical to the development of the financial services sector in Hong Kong. It would not be operationally feasible to redeploy them to take up the duties of DS(FS)3 and PAS(FS)6 posts without prejudicing the delivery of work under their respective heavy portfolios. The proposed organisation chart of FSB is at Annex C and the existing job descriptions of all other DSeS and PASes are at Annex D and Annex E respectively.

FINANCIAL IMPLICATIONS

22. The proposed creation of two permanent directorate posts will bring about an additional notional annual salary cost at mid-point of \$4,710,600. The additional full annual average staff cost, including salaries and staff on-cost, is \$6,715,000.

23. We will include sufficient provision in the draft Estimates of 2020-21 to meet the cost of the proposal and will reflect the resources required in the Estimates of the subsequent years concerned.

ADVICE SOUGHT

24. Members are invited to comment on the proposal. Subject to Members’ views, we will seek the necessary approval from LegCo.

Financial Services Branch
Financial Services and the Treasury Bureau
December 2019

Proposed Job Description
Deputy Secretary for Financial Services and the Treasury
(Financial Services) 3

Rank : Administrative Officer Staff Grade B (D3)

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

Main Duties and Responsibilities –

1. Responsible for the policy and legislation relating to the accounting sector, including the reform of the auditor regulatory regime.
2. Responsible for the policy and legislation on corporate insolvency and individual bankruptcy, in particular the introduction of a new statutory corporate rescue procedure and insolvent trading provisions.
3. Responsible for the policy and legislation relating to companies and trusts.
4. Responsible for policy initiatives concerning the development of Hong Kong into a leading Fintech hub, including regulatory issues to enable adoption of Fintech across various financial services sectors.
5. Responsible for the policy and legislation relating to money lenders, in particular measures to tackle money lending-related malpractices.
6. Responsible for matters relating to Hong Kong's participation in the Asian Infrastructure Investment Bank and the Asian Development Bank.

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

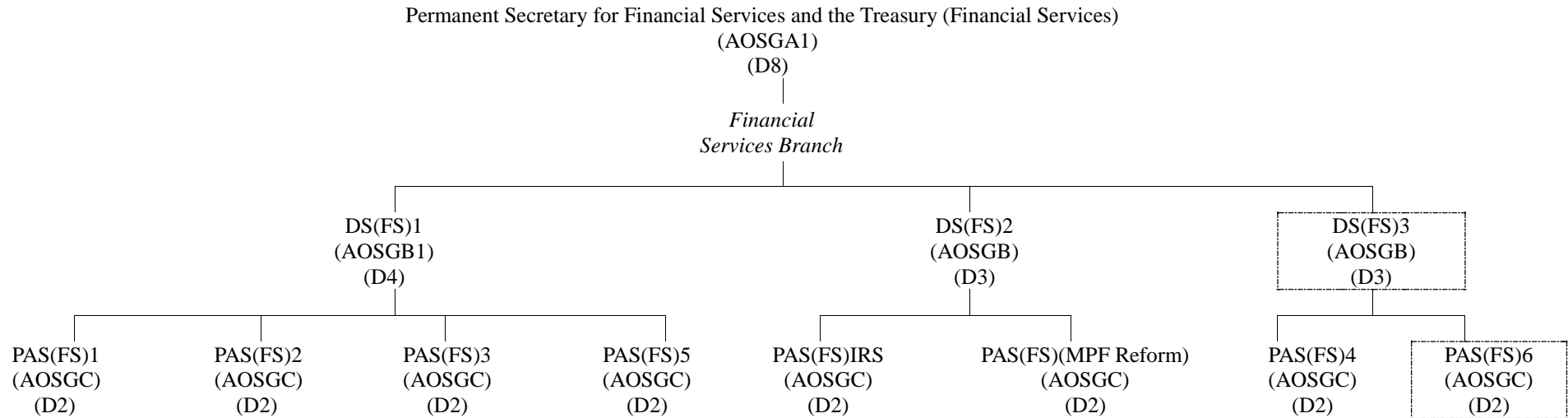
Rank : Administrative Officer Staff Grade C (D2)

Responsible to : Deputy Secretary for Financial Services and the Treasury
(Financial Services) 3

Main Duties and Responsibilities –

1. Responsible for policy and legislation relating to companies and trusts, and housekeeping matters in respect of the Companies Registry.
2. Responsible for policy and initiatives concerning the development of Hong Kong into a leading Fintech hub.
3. Responsible for policy issues concerning the Money Lenders Ordinance (Cap. 163) and measures to tackle money lending-related malpractices.
4. Responsible for policy matters relating to Hong Kong's participation in the Asian Infrastructure Investment Bank and the Asian Development Bank.
5. Responsible for policy and legislation on individual bankruptcy, and housekeeping matters in respect of the Official Receiver's Office.

**Proposed Organisation Chart of the Financial Services Branch of
the Financial Services and the Treasury Bureau**



Legend

- Supernumerary directorate posts to be made permanent
- AOSGA1 – Administrative Officer Staff Grade A1
- AOSGB1 – Administrative Officer Staff Grade B1
- AOSGB – Administrative Officer Staff Grade B
- AOSGC – Administrative Officer Staff Grade C
- DS(FS) – Deputy Secretary for Financial Services and the Treasury (Financial Services)
- IRS – Insurance and Retirement Scheme
- MPF – Mandatory Provident Fund
- PAS(FS) – Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)

**Major Duties and Responsibilities of the Existing
Deputy Secretaries (Financial Services)**

DS(FS)1 is mainly responsible for policy matters and legislation relating to securities and futures, asset and wealth management, banking and monetary matters, financial market development including co-operation with the Mainland, financial infrastructure, and anti-money laundering and counter terrorist financing in respect of the financial sectors. Within these policy areas, there are a number of key initiatives which are being pursued and will require active follow-up within the next few years. These include the further development of offshore Renminbi business, mutual market access of the capital market in the Mainland and in Hong Kong, and asset and wealth management industry in Hong Kong; promotion of the further and sustainable development of the local bond market; implementation of relevant regulatory reforms to enhance investor protection and market quality; development of financial infrastructure; formulation of legislative proposals for implementing other enhancement measures on financial stability promulgated by international forums including G20 (e.g. over-the-counter derivative regulation and resolution regime) and standard setting bodies including the Basel Committee on Banking Supervision; and implementation of the recommendations made in the mutual evaluation report on Hong Kong's anti-money laundering and counter-terrorist financing regime by the Financial Action Task Force.

2. DS(FS)2 is mainly responsible for policy matters and legislation relating to the insurance sector, Mandatory Provident Fund (“MPF”) schemes and other retirement schemes. There are a number of key initiatives currently underway, notably the legislative work for providing tax relief for insurance-related business, facilitating the issuance of insurance-linked securities, enhancing the regulatory framework for supervising insurance groups, establishing the Policyholders’ Protection Scheme and the Risk-based Capital Regime, and improving the MPF system (including the development of the eMPF platform). DS(FS)2 is also responsible for the initiative for enhancing talent training and development for the insurance industry as well as the housekeeping of the Census and Statistics Department.

**Major Duties and Responsibilities of the Existing
Principal Assistant Secretaries (Financial Services)**

PAS(FS)1

Responsible for formulating policy and legislation relating to the regulation of the securities and futures markets, asset and wealth management, investor protection and education, and co-ordination among the financial regulators on risk management matters. Also handles housekeeping matters of the Securities and Futures Commission (“SFC”) and coordination of matters relating to the Securities and Futures Appeals Tribunal, the Market Misconduct Tribunal and the Process Review Panel for the SFC.

PAS(FS)2

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

PAS(FS)3

Responsible for formulating policy and initiatives relating to financial co-operation with the Mainland (including the promotion of offshore Renminbi business in Hong Kong), and overseeing policy and legislation relating to the resolution regime for financial institutions in Hong Kong and the development of green finance (including green bonds).

PAS(FS)4

Responsible for formulating policy and legislation relating to the accountancy sector, corporate insolvency, reform of auditor regulatory regime, legislative exercise on introduction of a corporate rescue procedure, liaison with the Financial Reporting Council (“FRC”) and the Hong Kong Institute of Certified Public Accountants, and providing secretariat support for the Process Review Panel for FRC.

PAS(FS)5

Responsible for formulating policy and legislation relating to banking including implementation of Basel III, bond market development, Islamic finance, anti-money laundering and counter financing of terrorism, corporate treasury centres, as well as liaison with the Hong Kong Monetary Authority on banking, monetary and other related issues. Also oversees policy matters relating to the Deposit Protection Scheme and payment systems.

PAS(FS) MPF Reform

Responsible for formulating policy and legislation relating to Mandatory Provident Fund (“MPF”) Schemes including the development of the eMPF and other improvements to the MPF system, and liaison with the Mandatory Provident Fund Schemes Authority.

PAS(FS)IRS

Responsible for formulating policy and legislation relating to the insurance sector including the legislative exercise on providing tax relief for insurance-related business, facilitating the issuance of insurance-linked securities, enhancing the regulatory framework for supervising insurance groups as well as establishing the Policyholders' Protection Scheme and the Risk-based Capital Regime. Also responsible for the initiative for enhancing talent training and development for the insurance industry, liaison with the Insurance Authority and handling housekeeping matters of the Census and Statistics Department.