立法會 Legislative Council

LC Paper No. CB(1)282/19-20(05)

Ref: CB1/PL/FA

Panel on Financial Affairs

Meeting on 6 January 2020

Background brief on making permanent 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 Administration's proposal to make permanent two supernumerary directorate posts in the Financial Services Branch of the Financial Services and the Treasury Bureau ("FSTB") for undertaking responsibilities on policies and legislation relating to companies, the accounting sector, corporate insolvency and individual bankruptcy, trust, and money lenders, as well as matters relating to the development of financial technologies ("Fintech"), the Asian Infrastructure Investment Bank ("AIIB") and the Asian Development Bank ("ADB"). It also summarizes the major views and concerns expressed by Members during discussions on previous proposals to retain the two supernumerary posts at meetings of the Panel on Financial Affairs ("FA Panel"), the Establishment Subcommittee ("ESC") and the Finance Committee ("FC") from 2012-2013 to 2018-2019.

Creation and previous extensions of the two supernumerary posts

2. In mid-2006, the Administration launched a comprehensive exercise to rewrite the Companies Ordinance ("CO") adopting a phased approach. Having regard to the workload arising from the initiative, 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

- 2 -

Grade C post, designated as Principal Assistant Secretary (Finance Services)6 ("PAS(FS)6"), for four years to underpin DS(FS)3.1

3. Since creation of the DS(FS)3 and PAS(FS)6 posts, their durations have been extended for a number of times from 2010 to 2018 and their duties have also been changed in tandem with progress of their major assigned tasks, and new initiatives taken forward by FSTB. The details of the extension of the posts and the major development of the main duties of the posts are summarized in **Appendix I**.

Major views and concerns expressed by Members

4. 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, ESC and FC held from 2012-2013 to 2018-2019 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 was discussed are also summarized below.

Workload of the two proposed posts

- 5. At the ESC meeting on 19 February 2014, some members remarked that following the commencement of the Trust Law (Amendment) Ordinance 2013 ("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. Moreover, as the Companies Registry and the Financial Reporting Council were already heavily involved and providing substantial inputs in the outstanding exercises undertaken by the two posts (such as improvement to the corporate insolvency law and auditor regulatory regime, as well as introduction of a statutory corporate rescue procedure ("CRP")), ESC members sought justifications for further retaining the two posts.
- 6. The Administration pointed out that the two posts would be responsible for the review of the abscondee regime under the Bankruptcy Ordinance (Cap. 6). 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 Administration would conduct policy research and analysis, and continue to engage relevant stakeholders. As regards the proposed introduction of a new statutory CRP, the

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.

٠

Administration 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.

- 7. At the FA Panel meetings on 22 March 2016 and 5 March 2018, and the ESC meeting on 8 June 2016, noting that many duties taken up by the two posts were on-going in nature including the development of Fintech, enhanced regulation of money lenders, and matters relating to Hong Kong's participation in AIIB and ADB, some Members asked whether the Administration would consider extending the duration of the two posts for a longer period or turning them into permanent posts.
- 8. The Administration emphasized that the proposed extension duration of the two posts was determined after a careful review of the manpower requirements of FSTB. The Administration 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 Administration 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

- 9. 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 the Administration to put forward the relevant legislative proposals to the Legislative Council as soon as possible. Members also suggested that, in preparing the legislative proposals, the Administration should make reference to overseas experience to better understand the essential factors contributing to a successful CRP.
- 10. 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.

11. The Administration 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 Administration further developed a package of detailed proposals on the CRP in 2014 taking into account feedback from the public and the stakeholders. The Administration 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 Administration could explore the possibility of providing appropriate safe harbours in the proposed legislation. Given the complexities of the issues involved, the Administration would need more time to work out the detailed legislative provisions for further engagement with stakeholders and prepare the amendment bill. The Administration's latest target was to introduce the relevant amendment bill after the 2019-2020 legislative session.

Regulatory arrangements to tackle malpractices by financial intermediaries for money lending

- 12. At the FA Panel meetings on 11 April 2016, 29 May 2017, 5 February 2018 and 6 May 2019, the ESC meeting on 8 June 2016 and the FC meeting on 22 June 2018, Members expressed concern about the effectiveness of the Administration's measures to tackle the problem of unscrupulous money lenders and associated intermediaries, and urged that the Administration should tighten regulation over such money lenders and intermediaries. Suggestions raised by Members included increasing sanctions, introducing a licensing scheme for intermediaries, and reviewing the Money Lenders Ordinance (Cap. 163) ("MLO") to amend the out-dated provisions including the current cap of 60% per annum on the effective interest rate for a loan and address loopholes arising from the new *modus operandi* of money lenders.
- 13. The Administration 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 MLO. 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 intermediaries, the Administration pointed out that it would give rise to many complicated issues (such as how to define an "intermediary"), which would require careful consideration and consultation with the stakeholders and the wider public. On the review of MLO, the Administration said that adjusting the cap on effective interest rate under MLO might not be an

- 5 -

effective means to address the issue of separate fee charging by money lenders and intermediaries, and considered it more effective to address the problem through imposing more stringent licensing conditions on money lenders. The Administration currently had no plan to review MLO. The Administration stressed that the two posts would continue overseeing the measures to tackle money lending-related malpractices and assessing their effectiveness pursuant to a review of the four-pronged approach implemented since 2016.²

Development of financial technologies

- 14. At the FA Panel meetings on 22 March 2016, 18 April 2017, 3 April 2018 and 1 April 2019, and the ESC meeting on 8 June 2016, Members expressed concern about the slow progress in the development of Fintech in Hong Kong, particularly the use of new electronic payment systems, and the Fintech industry's concern about regulatory uncertainties. They urged the Administration to take proactive actions to review relevant legislation to remove barriers hindering Fintech development, and stressed the need for the Administration to take the lead in applying Fintech in government operations.
- 15. The Administration responded that it had launched a series of initiatives to promote the development of Fintech, including setting up a dedicated team under Invest Hong Kong to assist start-ups, investors and research and development institutions to establish their presence in Hong Kong, setting aside space at Cyberport to provide support to Fintech start-ups, and introducing various incubation programmes to train Fintech talents. The Administration had also collaborated with financial regulators to consult the Fintech industry in order to better understand the industry's views and aspirations on matters relating to legislative amendments. In addition, the Hong Kong Monetary Authority, the Securities and Futures Commission and the Insurance Authority had set up respective Fintech liaison platforms to enhance communication with the Fintech industry. On the use of new electronic payment systems, the Administration advised that following the enactment of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584) in 2015, there had been rapid development in stored value facilities and retail payment systems in Hong Kong.

The Administration implemented since 2016 a four-pronged approach to tackle the problem of unscrupulous money lenders and associated intermediaries, viz. imposition of more stringent licensing conditions on money lenders, enhanced Police enforcement, enhanced public education and publicity, and enhanced advisory services to the public, and conducted a review in 2017 to explore further enhancement measures to address the problem.

Hong Kong's participation in the Asian Infrastructure Investment Bank

- 16. At the FA Panel meetings on 16 March 2017 and 5 January 2018, and the FC meeting on 22 June 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, and the benefits to Hong Kong after its joining AIIB since June 2017. Some Members further urged the Administration to seek the Mainland's support on the matter and 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.
- 17. The Administration 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 Administration 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.
- 18. Regarding the benefits to Hong Kong, the Administration responded that the majority of AIIB-financed projects were co-financed with multilateral financial institutions such as The World Bank. The Administration would continue promoting Hong Kong's strengths in financial and professional services in rendering support to AIIB's operation. AIIB members were not to benefit directly from investment return in AIIB, but generally from the improved connectivity and prosperity of the region through projects financed by AIIB.

Latest development

19. The supernumerary posts of DS(FS)3 and PAS(FS)6 will lapse on 31 December 2020 and 31 December 2021 respectively. The Administration will consult FA Panel at the meeting on 6 January 2020 on the proposal to make the two posts permanent.

Relevant papers

20. A list of relevant papers is in **Appendix II**.

Council Business Division 1
<u>Legislative Council Secretariat</u>
27 December 2019

Extension of the posts of Deputy Secretary (Finance Services)3 ("DS(FS)3") and Principal Assistant Secretary (Finance Services)6 ("PAS(FS)6") and the major development of the main duties of the posts from 2010 to 2018

Year	Duration of extension	Major duties	Approval by the Finance Committee	Major development in duties
2010	DS(FS)3 – for 16 months (up to 31 July 2012) ¹	 Taking forward the Companies Ordinance ("CO") rewrite exercise The legislative exercises relating to the reform of the Trustee Ordinance (Cap. 29) and Perpetuities and Accumulations Ordinance (Cap. 257) (thereafter referred to as "the trust law reform"), and the introduction of a statutory corporate rescue procedure ("CRP") 	14 May 2010	 The Administration introduced the Companies Bill, which was the outcome of the first phase of the CO rewrite exercise, into the Legislative Council ("LegCo") in January 2011 In November 2011, the Administration rolled out the second phase of the exercise to modernize the corporate insolvency law regime ²

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

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.

Year	Duration of extension	Major duties	Approval by the Finance Committee	Major development in duties
	PAS(FS)6 – for 33 months (up to 30 June 2013) ¹	• Preparing subsidiary legislation pertaining to the CO rewrite exercise and assisting DS(FS)3 in the trust law reform		
2012	DS(FS)3 – for two years (up to 31 July 2014) ³	 To discharge the existing duties To provide high-level policy steer for the corporate insolvency law modernization exercise 	13 April 2012	 LegCo passed the Companies Bill in July 2012. The new CO commenced operation on 3 March 2014 The Administration introduced the
2013	PAS(FS)6 – for one year (up to 30 June 2014) ⁴	 To prepare the necessary subsidiary legislation to provide for various administrative, procedural and technical matters for the commencement of the new CO To carry out the policy review on the abscondee regime under the Bankruptcy Ordinance (Cap. 6) ("BO") To formulate the trust law reform proposals 	15 March 2013	Trust Law (Amendment) Bill 2013 which reflected the outcome of the trust law reform into LegCo in February 2013. The Trust Law (Amendment) Ordinance 2013 was enacted in July 2013 and commenced operation on 1 December 2013

³ The relevant proposal was set out in EC(2011-12)16.

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

Year	Duration of extension	Major duties	Approval by the Finance Committee	Major development in duties
2014	DS(FS)3 – for two years and five months (up to 1 January 2017) ⁵ PAS(FS)6 – for two years and six months (up to 1 January 2017) ⁵	To take forward the legislative exercises on corporate insolvency, CRP, auditor regulatory reform, and the abscondee regime under BO	6 June 2014	 The Bankruptcy (Amendment) Bill 2015 which sought to address the constitutionality issues of the abscondee regime was introduced into LegCo in April 2015 and passed in March 2016 The Administration 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 Administration introduced the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015 into LegCo in October 2015. The Bill was passed in May 2016

_

⁵ The relevant proposal was set out in EC(2013-14)23.

Year	Duration of extension	Major duties	Approval by the Finance Committee	Major development in duties
2016	DS(FS)3 – for two years (up to 31 December 2018) ⁶	• To oversee: (a) introduction of a new statutory CRP and insolvent trading provision; (b) reform of the regulatory regime for listed entity auditors; (c) review of regulatory and related arrangements to tackle malpractices by financial intermediaries for money lending; (d) review of the new CO and trust law; (e) development of financial technologies ("Fintech") in Hong Kong; and (f) Hong Kong's participation in the Asian Infrastructure Investment Bank ("AIIB")	11 July 2016	
	PAS(FS)6 – for two years (up to 31 December 2018) ⁶	• To support DS(FS)3 in respect of areas including policies and legislation relating to regulation of money lenders, companies, and Fintech, and matters relating to AIIB		

⁶ The relevant proposal was set out in EC(2016-17)10.

Year	Duration of extension	Major duties	Approval by the Finance Committee	Major development in duties
2018	DS(FS)3 – for two years (up to 31 December 2020) ⁷ PAS(FS)6 – for three years (up to 31 December 2021) ⁷	more or less the same, with the addition on matters relating to the Asian Development Bank ("ADB")	22 June 2018	 The Companies (Amendment) Bill 2018 which sought to amend the new CO and eight items of its subsidiary legislation to incorporate new developments and improve the clarity as well as operation of the ordinance was introduced into LegCo in April 2018. The Bill was passed in November 2018 The Financial Reporting Council (Amendment) Bill 2018 which sought to amend the Financial Reporting Council Ordinance (Cap. 588) to enable the Financial Reporting Council to act as the independent oversight body regulating auditors of public interest entities ("PIE auditors") was introduced into LegCo in January 2018 and passed in January 2019. The new regulatory regime for PIE auditors

-

⁷ The relevant proposal was set out in EC(2018-19)4.

Year	Duration of extension	Major duties	Approval by the Finance Committee	Major development in duties
				commenced operation in October 2019 8

8

The Financial Reporting Council (Amendment) Ordinance 2019 (Commencement) Notice was tabled before the Legislative Council at the meeting of 22 May 2019. By the Notice, the Secretary for Financial Services and the Treasury appointed: (a) 1 October 2019 as the day on which the Financial Reporting Council (Amendment) Ordinance 2019 ("FRCAO"), except sections 62 and 85 (concerning payment and calculation of levies payable to the Financial Reporting Council by specified parties), came into operation; and (b) 1 January 2022 as the day on which sections 62 and 85 of FRCAO came into operation.

List of relevant papers

Date	Event	Paper/minutes of meeting
8 April 2010	The Panel on Financial Affairs ("FA Panel") was briefed on the staffing proposal to retain the supernumerary posts of an Administrative Officer Staff Grade B ("AOSGB") and an Administrative Officer Staff Grade C ("AOSGC") in the Financial Services Branch ("FSB") of the Financial Services and the Treasury Bureau ("FSTB")	Administration's paper (LC Paper No. CB(1)1496/09-10(04)) Minutes (LC Paper No. CB(1)1847/09-10)
28 April 2010	The Establishment Subcommittee ("ESC") deliberated on the staffing proposal	Administration's paper (EC(2010-11)1) Minutes (LC Paper No. ESC26/09-10)
14 May 2010	The Finance Committee ("FC") approved the staffing proposal	Minutes (LC Paper No. FC164/09-10)
7 November 2011	FA Panel was briefed on the staffing proposal to retain a supernumerary post of AOSGB in the FSB of FSTB	Administration's paper (LC Paper No. CB(1)237/11-12(05)) Minutes (LC Paper No. CB(1)614/11-12)

Date	Event	Paper/minutes of meeting
18 January 2012	ESC deliberated on the staffing proposal	Administration's paper (EC(2011-12)16)
		Minutes (LC Paper No. ESC34/11-12)
13 April 2012	FC approved the staffing proposal	Minutes (LC Paper No. FC175/11-12)
7 January 2013	FA Panel was briefed on the staffing proposal to retain a supernumerary post of 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)

Date	Event	Paper/minutes of meeting
19 February 2014	ESC deliberated on the staffing proposal	Administration's paper (EC(2013-14)23) Minutes
		(LC Paper No. ESC43/13-14)
6 June 2014	FC approved the staffing proposal	(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	(LC Paper No. CB(1)1536/13-14 (01))
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	(LC Paper No. CB(1)686/15-16
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)

Date	Event	Paper/minutes of meeting
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)
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	
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)

Date	Event	Paper/minutes of meeting
5 January 2018	FA Panel was briefed on "The new Companies Ordinance (Cap. 622): proposed legislative amendments to improve its clarity and operation"	(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	
5 February 2018	FA Panel was briefed on the review of the effectiveness of the new regulatory measures to tackle money lending-related malpractices	(LC Paper No. CB(1)530/17-18 (05))
5 March 2018	FA Panel was briefed on the staffing proposal to retain the supernumerary posts of AOSGB and AOSGC in FSB of FSTB	(LC Paper No. CB(1)625/17-18 (07))
3 April 2018	FA Panel was briefed on the development of financial technologies	
29 May 2018	ESC deliberated on the staffing proposal	Administration's paper (EC(2018-19)4) Minutes (LC Paper No. ESC142/17-18)

Date	Event	Paper/minutes of meeting
		-
22 June 2018	FC approved the staffing	
	proposal	(LC Paper No. FC72/18-19)
20 November 2010	The Legislative Council	The Dill passed
28 November 2018	The Legislative Council ("LegCo") passed the	The Bill passed
	Companies (Amendment)	Report of the Bills Committee
	Bill 2018	(LC Paper No. CB(1)192/18-19)
	Biii 2010	(EC 1 uper 110. CB(1)172/10 17)
30 January 2019	LegCo passed the	The Bill passed
	Financial Reporting	*
	Council (Amendment) Bill	Report of the Bills Committee
	2018	(LC Paper No. CB(1)505/18-19)
1 April 2019	FA Panel was briefed on	
	the development of	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \
	financial technologies	(04))
		Minutes
		(LC Paper No. CB(1)1212/18-19)
		(EC 1 apel 100. CB(1)1212/10 15)
6 May 2019	FA Panel was updated on	Administration's paper
	measures to tackle money	(LC Paper No. CB(1)954/18-19
	lending-related	(05))
	malpractices	
		<u>Minutes</u>
		(LC Paper No. CB(1)1315/18-19)
22 May 2010	The Financial Departmen	The Notice
22 May 2019	The Financial Reporting Council (Amendment)	The Notice
	Ordinance 2019	Report of the Subcommittee
	(Commencement) Notice	(LC Paper No. CB(1)1209/18-19)
	was tabled before LegCo	(2014)011010101010101010101010101010101010