

**For discussion  
on 7 January 2013**

**Legislative Council  
Panel on Financial Affairs**

**Retention of two Supernumerary Directorate Posts for  
Implementation of the New Companies Ordinance and  
Review of the Abscondee Regime under the Bankruptcy Ordinance**

**PURPOSE**

This paper seeks Members' views on the proposed retention of –

- (a) one supernumerary Administrative Officer Staff Grade C (“AOSGC”) (D2) post in the Financial Services Branch of the Financial Services and the Treasury Bureau (“FSB”) for a period of 12 months from 1 July 2013 to 30 June 2014 to provide policy support for the implementation of the new Companies Ordinance (“CO”), the review of the abscondee regime under the Bankruptcy Ordinance (Cap.6) (“BO”) and trust law reform; and
- (b) one supernumerary Deputy Principal Solicitor (“DPS”) (DL2) post in the Companies Registry (“CR”) for a period of nine months from 1 July 2013 to 31 March 2014 to prepare for and assist in the implementation of the new CO.

**BACKGROUND**

*The new CO*

2. In mid-2006, the Administration embarked on a comprehensive rewrite of the CO with a view to enhancing Hong Kong's status as an international commercial and financial centre and its competitiveness. The objectives of the rewrite were to enhance corporate governance, ensure better regulation, facilitate business and modernise the law. Having regard to the scale and complexity of the exercise, the Finance Committee (“FC”) approved in January 2006 the creation of one supernumerary AOSGC post in FSB (designated as Principal Assistant Secretary (Financial Services) 6 (“PAS(FS)6”) and one supernumerary

DPS post in CR (designated as Deputy Principal Solicitor (Company Law Reform) 2 (“DPS(CLR)2”)) for 48 months<sup>1</sup> to cope with the workload. In May 2010, the FC approved the retention of the two posts until 30 June 2013.

3. The Companies Bill was passed in July 2012 to become the new CO. Our target is to bring the new CO into operation by the first quarter of 2014.

#### *Review of the abscondee regime under the BO*

4. Section 30A(3) of the BO provides that a bankrupt would be automatically discharged from bankruptcy after the running of a relevant period from the date of the bankruptcy order. Under section 30A(10)(b), if a bankrupt has left Hong Kong after the date of the bankruptcy order without notifying the trustee of his itinerary and his contact information (section 30A(10)(b)(i)); or fails to return to Hong Kong at such time as specified by the trustee (section 30A(10)(b)(ii)), the relevant period will automatically be suspended from running until the bankrupt returns to Hong Kong and notifies the trustee of his return. Bankrupts who left Hong Kong and could not be contacted are known as “abscondee”.

5. In an earlier court case, section 30A(10)(b)(i) was ruled by the Court of Final Appeal as unconstitutional on grounds that the provision is unreasonably restrictive of the right to travel guaranteed under the Basic Law. In view of the ruling, the Administration intends to take forward a review of the abscondee regime.

#### *Trust law reform*

6. In 2008, we launched a review of the trust law regime with the objective of enhancing Hong Kong’s status as an international asset management centre. The reform seeks to facilitate effective administration of trusts through enhancing trustees’ powers whilst providing for appropriate checks and balances, as well as modernises the trust law. We completed a public consultation on the detailed legislative proposals earlier this year and published the consultation conclusions in

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<sup>1</sup> Approval was also given for the creation of one supernumerary Administrative Officer Staff Grade B (D3) post in FSB for 60 months who oversees the CO rewrite exercise, the corporate insolvency reform and accountancy matters. We subsequently obtained FC’s approval for retention of the post twice in May 2010 and April 2012 respectively. The post will lapse on 1 August 2014 and its operational needs will be subject to review.

November 2012. We also briefed Members vide LC Paper No. CB(1)207/12-13(05) on the legislative proposals and consultation outcome at the Panel meeting of 3 December 2012. The reform proposals will be taken forward through the Trust Law (Amendment) Bill 2013 to be introduced in the 2012-13 legislative session.

## **JUSTIFICATION**

7. The supernumerary posts of PAS(FS)6 and DPS(CLR)2 will lapse on 1 July 2013. The Administration has conducted a review on the operational needs of the two posts and considered it necessary to retain them to provide policy and legal inputs to the work as elaborated in paragraphs 8 to 13 below.

### *Ensure smooth transition to the new CO regime*

8. Our target is for the new CO to commence operation in the first quarter of 2014. In this connection, FSB and CR are undertaking preparatory work for bringing the new CO into operation on the following three fronts –

- (a) *Preparation of subsidiary legislation* : Before the new CO can commence operation, 13 pieces of subsidiary legislation have to be made to provide for various administrative, procedural and technical matters. In addition, it will also be necessary to amend Schedules 7, 9 and 10 to the new CO to provide for consequential amendments. Members may refer to the discussion paper entitled *Subsidiary Legislation for Implementation of the New Companies Ordinance* (LC Paper No. CB(1)358/12-13(04)) for details of the work on this front.
- (b) *Implementation of changes in relevant forms and procedures* : CR will need to design at least 30 new specified forms<sup>2</sup> and revise 55 existing specified forms for use by all companies to tie in with the changes to be brought by the new CO. The workflows and procedures have to be reviewed to meet the changing operational needs. In particular, CR's computer system has to undergo

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<sup>2</sup> A specified form refers to a form which is specified by the Registrar of Companies pursuant to provisions of the new CO. The preparation of specified forms would demand extensive legal inputs as the contents of the forms would need to comply with the relevant statutory provisions.

major enhancement to tie in with the new forms, workflows and procedures;

- (c) *Publicity and engagement with stakeholders* : We will conduct briefings for, and liaise with, relevant professional bodies, the business community and stakeholders on the requirements under the new CO and the transitional and implementation issues. CR will publish new sample articles of association, new guidelines and external circulars and will send letters and pamphlets to over one million live companies to draw their attention to the key changes. In anticipation of increasing number of public enquiries towards the commencement of the new CO, CR will devise a mechanism for responding to enquiries and strengthen staff education so as to meet the needs of the public.

9. From now until the new CO commences operation in the first quarter of 2014, we envisage that the above preparatory work will continue to entail substantial workload in dealing with policy and legal issues. We have to ensure smooth commencement of the new CO to maintain Hong Kong's status as an international financial centre and a leading corporate domicile. Having regard to the extent of changes that the new CO will bring to the business community as well as the scale of the work involved, there is a genuine need to extend the posts of PAS(FS)6 and DPS(CLR)2 to continue to provide high-level policy and legal input to the preparatory work, and to oversee the implementation progress throughout this critical period.

#### *Review of the abscondee regime*

10. The review of the abscondee regime will require careful consideration of various complex issues, including the need to balance the bankrupt's right to travel and the creditor's right to properties. We have been studying the experience of other common law jurisdictions with a view to developing policy options. We will assess the options critically from the constitutional, legal and operational perspectives and will engage relevant stakeholders as we formulate detailed legislative proposals. Our target is to complete the review by around mid-2014. PAS(FS)6 will be responsible for taking forward the review.

### *Trust law reform*

11. Apart from the implementation of the new CO and review of the abscondee regime, PAS(FS)6 is also responsible for the trust law reform exercise. With the upcoming introduction of the Trust Law (Amendment) Bill 2013 in the 2012-13 legislative session, PAS(FS)6 will assist in the scrutiny of the Bill by the Legislative Council (“LegCo”) and make preparation for the implementation of the reform proposals.

### *Extension of the PAS(FS)6 post in FSB and the DPS(CLR)2 post in CR*

12. Having considered the complexity of the issues mentioned above, dedicated directorate support is essential in providing policy input on the preparatory work for commencement of the new CO in the first quarter of 2014, taking forward the review of the abscondee regime and assisting LegCo in the scrutiny of the Trust Law (Amendment) Bill 2013. Given the timeframe of these exercises, we propose to retain the post of PAS(FS)6 for a period of 12 months, i.e. from 1 July 2013 to 30 June 2014. On the other hand, DPS(CLR)2 will be heavily involved in rendering legal support on new CO matters and we propose to retain the post for a period of nine months, i.e. from 1 July 2013 to 31 March 2014. The proposed job descriptions of PAS(FS)6 and DPS(CLR)2 are at Annex A and Annex B respectively.

13. As mentioned above, our target is to commence the new CO in the first quarter of 2014 and complete the review of the abscondee regime by around mid-2014. Taking into account the progress of these tasks and other relevant factors, we will consider the manpower resources requirements and, if necessary, seek the additional resources through the established mechanism in due course.

### *Non-directorate support*

14. Throughout the additional period, PAS(FS)6 will be supported by a team of four time-limited civil service non-directorate posts, comprising one Senior Administrative Officer, one Administrative Officer, one Personal Secretary I (“PS I”) and one Assistant Clerical Officer. DPS(CLR)2 will be supported by one Solicitor and one PS I through redeployment within CR.

## ALTERNATIVES CONSIDERED

15. We have considered whether the duties of PAS(FS)6 and DPS(CLR)2 can be absorbed by other colleagues in FSB and CR respectively upon lapsing of the posts on 1 July 2013.

16. Regarding PAS(FS)6, there are at present seven other Principal Assistant Secretaries (“PASes”) in FSB overseeing different policy areas including securities and futures, banking, insurance, insolvency and accountancy, mandatory provident funds and Mainland-related measures on financial services. All of them are fully committed to other policy initiatives and legislative exercises which are significant to the development of financial services sector in Hong Kong. Regarding legislative work, FSB is preparing to introduce legislation for the development of Islamic finance, the regulation of over-the-counter derivatives financial products, the implementation of the scripless securities markets, the reform of corporate insolvency regime and the establishment of an Independent Insurance Authority. The Branch is also seeking to implement measures that aim to enhance the Mandatory Provident Fund Schemes and consolidate Hong Kong’s position as an offshore platform for Renminbi businesses. It will not be viable to redeploy other PASes to take up the proposed duties of PAS(FS)6 without prejudicing the delivery of policy initiatives and legislative exercises under their respective portfolios. An organisation chart of the FSB is at Annex C and the existing job descriptions of all other PASes are at Annex D.

17. As regards the post of DPS(CLR)2, there are at present two other DPSs in CR, namely Registry Solicitor (“RS”) and Deputy Principal Solicitor (Company Law Reform) 1 (“DPS(CLR)1”). RS has been fully engaged with providing legal support on the daily operation and enforcement actions of the Registry. RS is also responsible for providing legal advice on policy matters, issues relating to licences granted to companies limited by guarantee, company name complaints, the restoration, deregistration and striking off of companies and the administration of other ordinances falling within the purview of CR. On the other hand, as company law encompasses a wide spectrum of complex subjects and in light of the volume of legal work involved, the work in respect of CO rewrite has all along been shared by two DPSs, i.e. DPS(CLR)1 and DPS(CLR)2, with each of them specialising in different substantive parts of the new CO. DPS(CLR)1 will be fully committed to the preparatory work and legislative work relating to the new CO in areas including company administration, accounts and auditing

requirements and the provisions relating to company directors, company secretaries and takeovers and acquisitions. DPS(CLR)1 will also serve as the Secretary to the Standing Committee on Company Law Reform. In view of the above, it will be impossible for the other two legally qualified directorate officers in CR to absorb the work of DPS(CLR)2 without adversely affecting the discharge of their duties. The organisation chart of CR is at Annex E.

## **FINANCIAL IMPLICATIONS**

18. The proposed retention of the two supernumerary directorate posts will bring about an additional notional annual salary cost at mid-point of \$ 3,392,400. The additional full annual average staff cost, including salaries and staff on-cost, is \$4,920,000.

19. As for the four time-limited non-directorate civil service posts supporting PAS(FS)6 referred to in paragraph 14 above, the notional annual salary cost at mid-point is \$2,436,100 and the full annual average staff cost, including salaries and staff on-cost, is \$3,274,400.

20. The cost pertaining to DPS(CLR)2 will be met by the Companies Registry Trading Fund (“CRTF”). As to the PAS(FS)6 post, the current arrangement is for CRTF to bear 75% of the salary while the remaining 25% is met by provisions of FSB. The arrangement will be preserved until 31 March 2014 while FSB will start to assume the full cost thereafter. We shall include sufficient provision in the draft Estimates of 2013-14 and 2014-15 to meet the cost of the proposals.

## **ADVICE SOUGHT**

21. Members are invited to comment on the proposals. Subject to Members’ views, we will seek the recommendation of the Establishment Subcommittee in February 2013 and approval from the FC in May 2013.

**Financial Services and the Treasury Bureau  
Companies Registry  
December 2012**

**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 (“DS(FS)3”)

**Main Duties and Responsibilities –**

1. To provide policy input on matters relating to the implementation of the new Companies Ordinance (“CO”) and its subsidiary legislation.
2. To provide policy support on the preparation of the subsidiary legislation to be made under the new CO and throughout the vetting of the same by the Legislative Council (“LegCo”), and to make preparation for implementation.
3. To provide policy input on the reform of our trust law and policy support throughout the vetting of the Trust Law (Amendment) Bill 2013 by LegCo, and make preparation for implementation of the reform proposals.
4. To take forward a policy review on the abscondee regime under the Bankruptcy Ordinance and formulate detailed proposals on the way forward.
5. To be responsible for housekeeping matters of the Companies Registry.
6. To undertake any other duties as assigned by DS(FS)3.



**Proposed Job Description  
Deputy Principal Solicitor (Company Law Reform) 2**

**Rank :** Deputy Principal Solicitor (DL2)

**Responsible to:** Registrar of Companies (“R of C”)

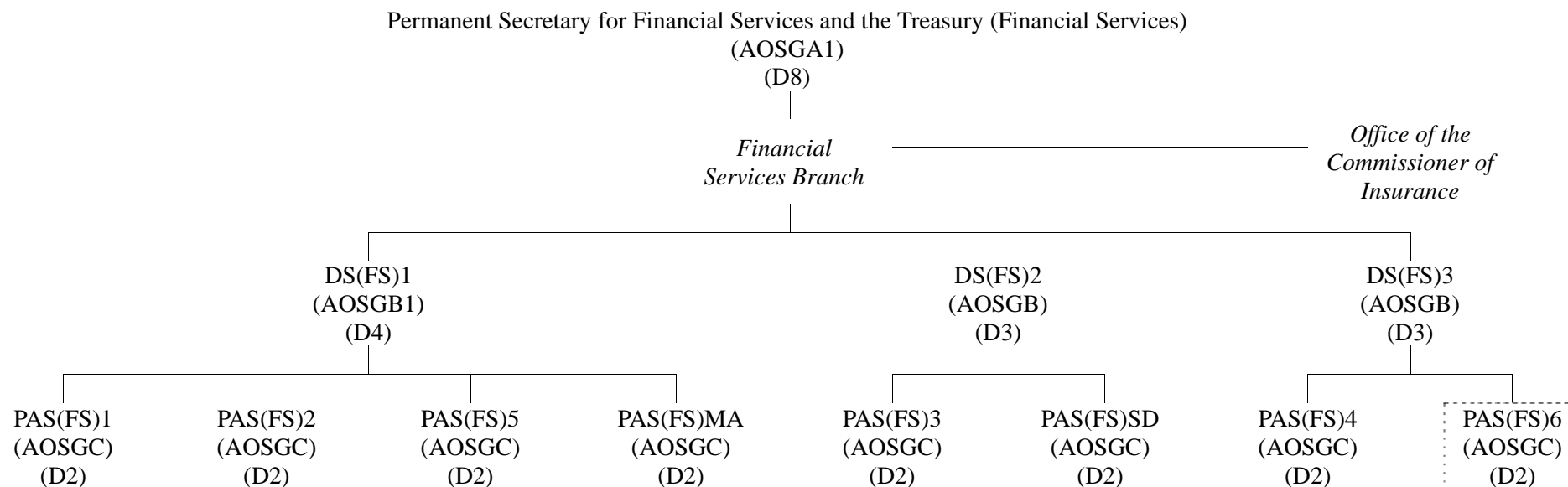
**Main Duties and Responsibilities –**

1. To provide and co-ordinate legal input and support to the R of C and the Financial Services and the Treasury Bureau on the following –
  - (a) To act as a key personnel for providing legal support in preparing the subsidiary legislation to be made under the new Companies Ordinance (“CO”) and throughout the vetting of the same by the Legislative Council;
  - (b) To prepare for the commencement of the new CO, including advising on the specification of new forms, the formulation of new procedures, and the revision of existing specified forms and work procedures;
  - (c) To prepare guidelines, for use internally and externally, on the operational requirements and transitional arrangements to facilitate compliance with and enforcement of the new CO. This will cover areas including the abolition of par values of shares, the abolition of memoranda of association of companies, a new compound offer regime for specified offences and a new system for registration of charges;
  - (d) To conduct seminars and briefing sessions for professional bodies, the business community and relevant stakeholders on changes to be brought by the new CO and issues relating to the implementation of the new CO, including transitional arrangements; and
  - (e) To conduct legal researches into matters arising from implementation of the provisions of the new CO and public

enquiries, and to co-ordinate and devise a public enquiry mechanism to respond to enquiries relating to legal aspects of the new requirements under the new CO, including transitional arrangements.

2. To undertake any other tasks as may be assigned by the R of C.

## Organisation Chart of the Financial Services Branch of the Financial Services and the Treasury Bureau



### Legend

- Supernumerary directorate post to be retained
- 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)
- PAS(FS) – Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)

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

PAS(FS)1 is responsible for policy and matters relating to investor protection in the securities and futures markets and the development of the asset management industry. 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, provides secretariat support for the Process Review Panel for SFC, and coordinates among the financial regulators on risk management matters.

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 legislation on the regulation of over-the-counter derivatives market to implement the G20’s commitment and a scripless securities market in Hong Kong. He/She also handles matters relating to the development of the commodities market in Hong Kong.

3. PAS(FS)3 oversees policy and legislative matters over the Mandatory Provident Fund (“MPF”) Schemes and the Occupational Retirement Schemes. His/Her portfolio covers all MPF-related matters, including the housekeeping matters of the Mandatory Provident Fund Schemes Authority. He/She also handles housekeeping matters of the Census and Statistics Department.

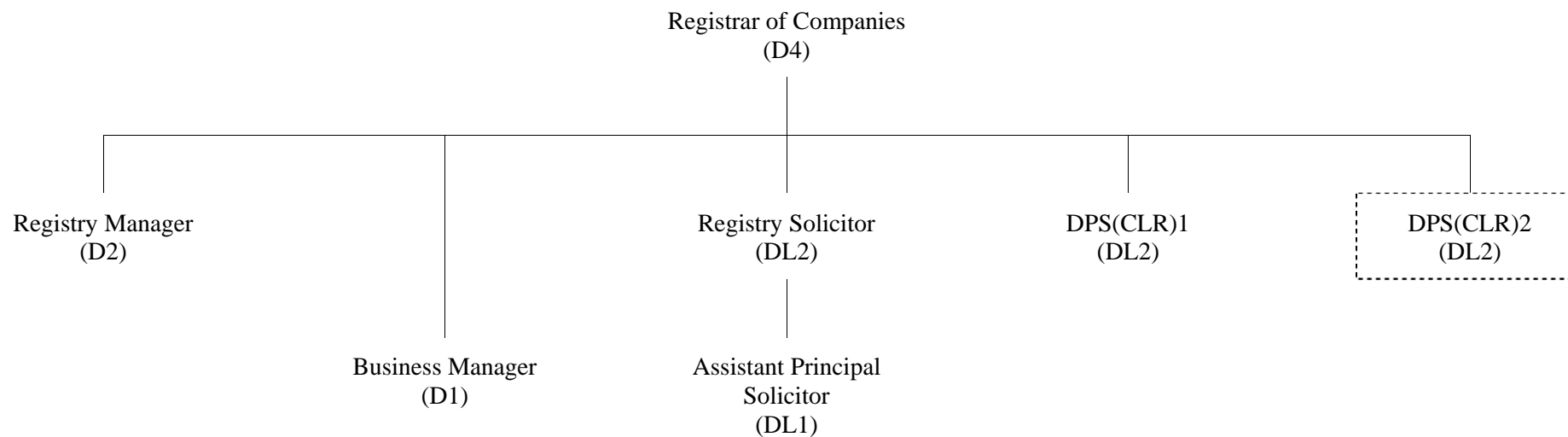
4. PAS(FS)4 oversees a new exercise to modernise Hong Kong’s corporate insolvency law and is responsible for formulating the proposal on the introduction of a new corporate rescue procedure. He/She also oversees public and legislative matters concerning the accountancy profession, and assists in handling insolvency policy and administration and corporate governance of non-listed companies. He/She also deals with housekeeping matters of the Official Receiver’s Office and the Financial Reporting Council (“FRC”), and provides secretariat support for the Process Review Panel for FRC.

5. PAS(FS)5 is responsible for the review and maintenance of the Banking Ordinance including implementation of Basel III, 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, anti-money laundering for financial institutions 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)MA coordinates the implementation of new measures by the Central People's Government ("CPG") announced in August 2011 to support the economic and social development in Hong Kong. He/She also oversees the financial co-operation with the Mainland at the CPG and regional levels as a strategic goal under the National 12<sup>th</sup> Five-Year Plan as well as the development of offshore RMB business in Hong Kong.

7. PAS(FS)SD oversees policy and legislative matters over the insurance sector. His/her portfolio covers all insurance-related policies, including the housekeeping matters of the Office of the Commissioner of Insurance. He/She oversees the proposed establishment of an independent Insurance Authority ("IIA") and a Policyholders' Protection Fund ("PPF"), engages the industry and stakeholders in developing detailed proposals, and formulates detailed legislative proposals for the establishment of the IIA and PPF.

### Organisation Chart of the Companies Registry



**Legend**

-  – Supernumerary directorate post to be retained
- DPS(CLR) – Deputy Principal Solicitor (Company Law Reform)