

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

HEAD 46 – GENERAL EXPENSES OF THE CIVIL SERVICE Subhead 006 Recoverable salaries and allowances (Companies Registry Trading Fund)

Members are invited to recommend to Finance Committee the creation of the following permanent post in the Companies Registry with effect from the date of approval by the Finance Committee –

1 Registry Manager
(D2) (\$164,500 – \$179,850)

PROBLEM

The Companies Registry (CR) needs dedicated directorate support to head, and continuously oversee, the operation of a new Registry set up to implement a new regulatory regime for trust or company service providers (TCSPs). The licensing regime is instituted for the purpose of enforcing statutory customer due diligence (CDD) and record-keeping requirements for TCSPs so as to fulfil Hong Kong's international obligation under the Financial Action Task Force (FATF), thereby strengthening our reputation as an international financial centre and a safe and clean city for doing business.

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PROPOSAL

2. The CR proposes to create a permanent Registry Manager (RM) (D2) post with effect from the date of approval by the Finance Committee.

JUSTIFICATION**The need for enhancement of the anti-money laundering and counter-terrorist financing (AML/CTF) regime of Hong Kong**

3. The FATF is an inter-governmental body established in 1989 that sets international standards on combating money laundering and terrorist financing (ML/TF). Over the years, the FATF has developed an elaborate set of 40 recommendations, based on which the international community has been strengthening regulation to combat ML/TF. Member jurisdictions take turns to evaluate the domestic AML/CTF regime of each other, and assess the extent to which the relevant FATF recommendations are observed, both in terms of technical compliance and effectiveness of implementation.

4. Hong Kong has been a member of the FATF since 1991. The FATF will conduct a mutual evaluation (ME) of the AML/CTF regime of Hong Kong in 2018/19. To prepare for the ME, the Government has conducted a gap analysis which suggests that one of the key deficiencies in our AML/CTF regime vis-à-vis the FATF recommendations is the absence of statutory CDD and record-keeping requirements for designated non-financial businesses and professions (DNFBPs) (viz. solicitors, accountants, estate agents and TCSPs) when they engage in specified transactions.

5. Given the openness of Hong Kong's economy, we expect keen interest and heightened scrutiny from other FATF members in the upcoming ME. If no remedial actions are taken to address the above deficiencies in the run-up to 2018, it is almost certain that Hong Kong will receive adverse ratings. Hong Kong will then be subject to an enhanced follow-up procedure. This will affect our reputation as an international financial centre and a safe and clean city for doing business.

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6. To enhance AML/CTF regulation of DNFBPs, the Government introduced the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 (AML Bill) into LegCo on 28 June 2017 to –

- (a) apply statutory CDD and record-keeping requirements to solicitors, accountants, estate agents, and TCSPs when these professionals engage in specified transactions; and
- (b) introduce a licensing regime for TCSPs to require them to apply for a licence from the Registrar of Companies (the Registrar) and satisfy a fit-and-proper test before they can provide trust or company services as a business in Hong Kong.

7. Following the passage of the AML Bill on 24 January 2018, the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance 2018 (the Amendment Ordinance) commenced operation on 1 March 2018.

The need for a TCSP Licensing Regime

8. CDD and record-keeping requirements are the main strands of an effective AML/CTF regime to counter money laundering activities and ensure the integrity of a financial system. The FATF considers that, in addition to financial institutions, DNFBPs that engage in specified transactions should also be subject to similar statutory CDD and record-keeping requirements. The FATF also requires competent authorities or self-regulatory bodies with adequate powers to be designated to monitor and ensure compliance with AML/CTF requirements by the relevant DNFBP sectors, including TCSPs.

9. To enforce the statutory CDD and record-keeping requirements for TCSPs, the Registrar of Companies has been designated as the regulatory authority to oversee the licensing regime for TCSPs under the Amendment Ordinance.

10. Under the new licensing regime, TCSPs are required to apply for a licence from the CR and satisfy a fit-and-proper test before they can provide trust or company services as a business in Hong Kong. It will be a criminal offence to operate a TCSP business without a licence. The Registrar is empowered to grant, renew, refuse, suspend or revoke a licence, or impose or vary the conditions on a licence. TCSP licensees are required to obtain prior approval from the Registrar in respect of any person proposing to become an ultimate owner, a partner or a director of a licensee and give notifications to the Registrar of any changes in reported particulars within the statutory time period. TCSP licensees are also required to comply with the statutory CDD and record-keeping requirements as set

out in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (the AMLO). We do not propose to impose criminal sanctions for non-compliance with the AMLO requirements in view of the lesser risks concerning TCSPs when compared with financial institutions.

11. On enforcement, the Registrar is empowered to conduct on-site inspections, investigate any non-compliance of TCSP licensees, initiate disciplinary actions, impose sanctions (such as public reprimand, remedial order, pecuniary penalty and suspension or revocation of the licence) and institute prosecution actions in appropriate cases.

12. To take on the new regulatory role in respect of TCSPs, a new TCSP Registry comprising a Licensing Division and a Compliance Division has been set up under the CR and commenced operation on 1 March 2018. The main duties of the two Divisions are as follows –

Licensing Division

- (a) to vet applications for grant/renewal of licences from TCSPs;
- (b) to carry out the fit-and-proper test on applicants (including their ultimate owners, partners or directors (if any)) and to conduct interviews with applicants and other relevant persons as required;
- (c) to process applications for approval to become an ultimate owner, a partner or a director of a TCSP licensee;
- (d) to register notifications reporting changes in particulars of TCSP licensees;
- (e) to provide general support services such as counter services, shroff services for receiving applications and collecting fees;
- (f) to maintain a Register of TCSP licensees (the Register) for public inspection;
- (g) to provide certified copies of an entry from the Register;
- (h) to issue certificates stating that the name of a person has or has not been entered or removed from the Register; and

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- (i) to attend to public enquiries, perform administrative work of the Registry, perform IT system tests, etc.

Compliance Division

- (a) to conduct on-site inspections to ensure that TCSP licensees comply with the statutory CDD and record-keeping requirements;
- (b) to review regularly the policies and procedures on CDD and record-keeping of licensees to ensure that risk mitigation measures and controls are in place for TCSP licensees;
- (c) to investigate suspected cases of breaches of statutory provisions governing the conduct of TCSP licensees and complaint cases received from other regulatory authorities or members of the public;
- (d) to initiate disciplinary actions and impose sanctions on licensees for failing to comply with the statutory CDD or record-keeping requirements or any conditions imposed on the grant or renewal of a licence; and
- (e) to institute prosecution actions for carrying on a TCSP business without licence and in other appropriate cases.

13. It is estimated that the TCSP Registry will handle a caseload of around 10 000 TCSPs, involving 7 500 corporations and 2 500 individuals, from its inception. The TCSP Registry will have to determine if an applicant for a licence is a fit and proper person for carrying on trust or company services business. Vetting of applications for applicants that are partnerships or corporations will require more time and resources as the fit-and-proper test will apply to the owners, partners and directors, as appropriate, of the partnerships or corporations concerned. It is projected that for a caseload of 10 000 applications, around 17 500 individuals will be subject to the fit-and-proper test. Interviews would also have to be conducted whenever necessary.

The need for a permanent RM post

14. An RM, who is a directorate (D2) officer, will head the TCSP Registry and be responsible for the overall management and daily operation of the

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Registry, including assisting the Registrar in devising strategies in implementing and enforcing the new licensing and regulatory requirements.

15. The TCSP Registry has been set up on a permanent basis to administer the TCSP licensing regime and oversee the AML/CTF-related conduct of TCSP licensees under the AMLO. In addition to the core licensing work which includes the assessment of whether an applicant is a fit and proper person, enforcement measures such as on-site inspections, regular review of policies and procedures on CDD and record-keeping requirements, disciplinary measures and prosecution actions are to be undertaken on a continuous basis in order to uphold the regulation of TCSP licensees and ensure the effectiveness of the licensing regime. The review and co-ordination work requires supervision and close monitoring from senior management. Hence, there is a genuine need to have a dedicated and permanent directorate grade officer to head and lead the TCSP Registry to ensure smooth operation, and assist the Registrar and the Financial Services and the Treasury Bureau in addressing the increasingly complex regulatory issues involved given the fast-changing security landscape and corresponding international AML/CTF standards.

Encl. 1 16. The detailed job descriptions of the proposed RM (Trust and Company Service Providers) (RM(TCSP)) post are set out at Enclosure 1.

Non-directorate support

Encl. 2 17. The proposed permanent RM(TCSP) post will be supported by a team of 59 non-directorate staff of the Solicitor, Companies Registration Officer, Analyst/Programmer, secretarial and clerical grades. The proposed organisation chart of the TCSP Registry is at Enclosure 2.

ALTERNATIVE CONSIDERED

18. There is an existing permanent RM post in the CR. However, the incumbent of the post is already fully stretched with her own schedule of duties including assisting the Registrar in the overall management and operation of the CR and overseeing other new initiatives to be implemented, including the enhanced regulation of licensed money lenders, introduction of a new beneficial ownership disclosure regime under the Companies Ordinance (CO) (Cap. 622), implementation of the Open-ended Fund Companies regime, implementation of new provisions in a major amendment exercise to the CO and revamping the CR's Information System. The existing RM directly oversees three major

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operational areas in the CR (namely, the Company Formation and Enforcement Division, the Registration Division and the Public Search Division) and is the only directorate officer supporting the Registrar in providing strategic and high-level guidance to other managers of the operational Divisions. Having regard to the on-going nature of the additional duties involved in the operation of the new TCSP Registry, the existing RM will have no spare capacity to take up the duties of the proposed RM(TCSP) post.

FINANCIAL IMPLICATIONS

19. The proposed creation of the permanent RM post will incur an additional notional annual salary cost at mid-point of \$2,094,600. The full annual average staff cost, including salaries and staff on-cost, is \$3,247,000. All the funds involved will be borne by the CR Trading Fund.

20. The additional notional annual salary cost at mid-point for the 59 non-directorate posts as mentioned in paragraph 17 above is \$30,480,300 and the full annual average staff cost, including salaries and staff on-cost, is \$39,809,000. The funds will also be borne by the CR Trading Fund.

PUBLIC CONSULTATION

21. We consulted the LegCo Panel on Financial Affairs on 8 January 2018. The Panel indicated support for the proposal.

ESTABLISHMENT CHANGES

22. The establishment changes in the CR for the past two years are as follows –

Establishment (Note)	Number of posts			
	Existing (as at 1 May 2018)	As at 1 April 2018	As at 1 April 2017	As at 1 April 2016
A	6 [#]	6	6	6
B	39	38	34	34
C	305	306	282	276
Total	350	350	322	316

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Note:

A - ranks in the directorate pay scale or equivalent

B - non-directorate ranks the maximum pay point of which is above MPS Point 33 or equivalent

C - non-directorate ranks the maximum pay point of which is at or below MPS Point 33 or equivalent

- as at 1 May 2018, there was no unfilled directorate post in CR

CIVIL SERVICE BUREAU COMMENTS

23. The Civil Service Bureau supports the creation of the proposed permanent RM post. The grading and ranking of the proposed post are considered appropriate having regard to the level and scope of responsibilities required.

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

24. The post is proposed to be created on a permanent basis. The Standing Committee on Directorate Salaries and Conditions of Service has advised that the grading proposed for the post of RM is appropriate.

Financial Services and the Treasury Bureau
Companies Registry
May 2018

**Proposed Job Description
Registry Manager (Trust and Company Service Providers)**

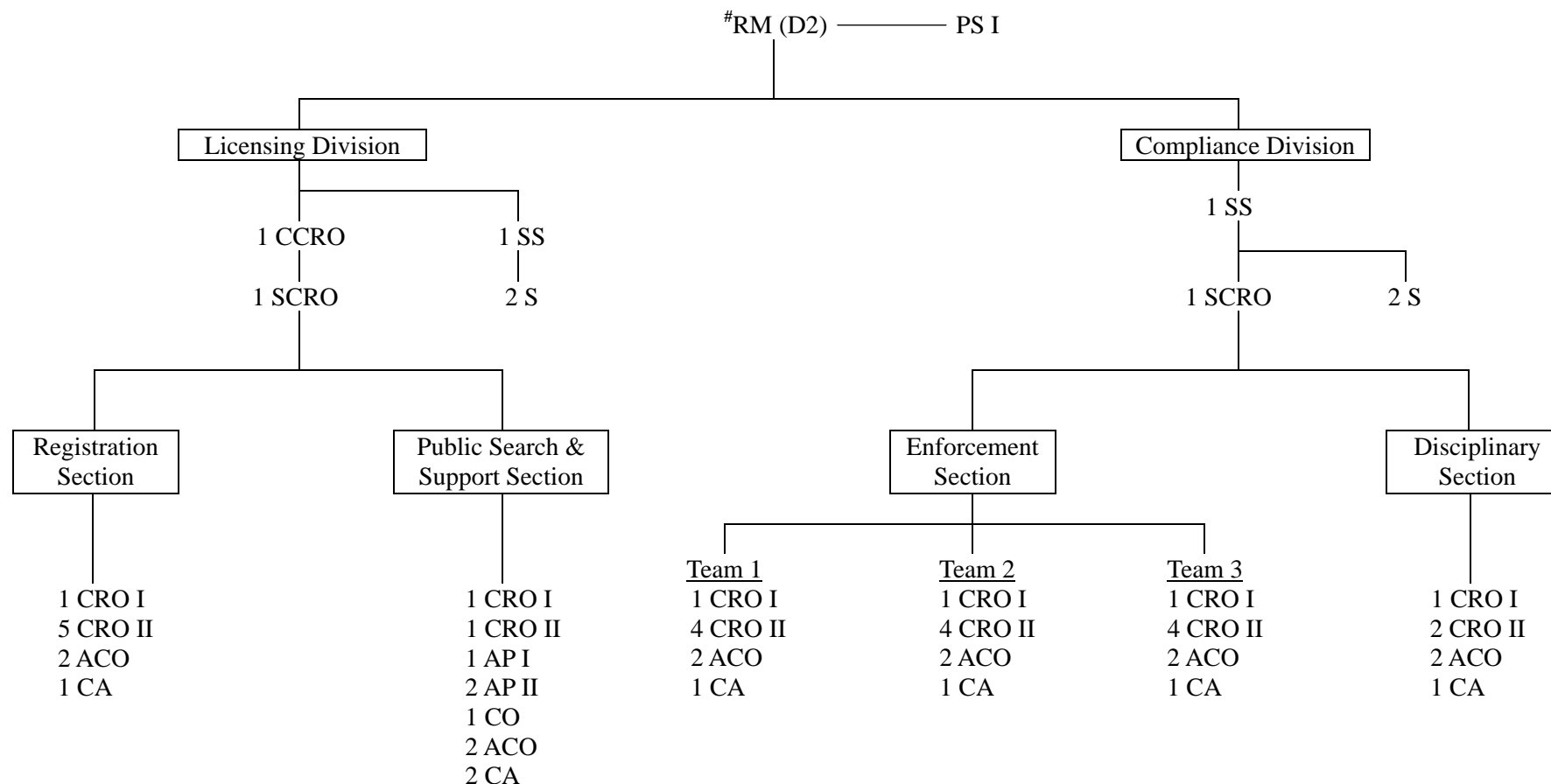
Rank : Registry Manager (D2)

Responsible to : Registrar of Companies (D4)

Duties and Responsibilities –

- (1) overall planning of the operation and supervision of the Trust and Company Service Providers Registry including accommodation matters, design of the operation of the licensing regime and renewal procedures, manpower planning, setting up and maintaining an IT system to facilitate operation, compiling guidelines for compliance by licensees of trust or company service providers;
 - (2) overall planning, co-ordination and supervision of the Licensing and Compliance Divisions;
 - (3) ensuring the provision of licensing services within the statutory framework;
 - (4) ensuring the proper conduct of investigations, site inspections and disciplinary matters;
 - (5) supporting the Registrar of Companies in handling media enquiries and implementing publicity measures, including speaking at seminars, engaging relevant stakeholders and professional bodies, and attending international conferences and evaluation meetings of the Financial Action Task Force whenever necessary to present the case for Hong Kong;
 - (6) advising the Registrar of Companies and the Financial Services and the Treasury Bureau on policy and operational issues relating to anti-money laundering issues, risk assessment reports and regulation of TCSP licensees;
 - (7) considering and providing input to legislative proposals from an operational perspective and attending meetings of the Bills Committee of the Legislative Council whenever required; and
 - (8) any other duties as may be assigned by the Registrar of Companies.
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**Proposed Organisation Chart of the Trust and Company Service Providers Registry,
Financial Services and the Treasury Bureau**



Legend

ACO – Assistant Clerical Officer
 AP I – Analyst/Programmer I
 AP II – Analyst/Programmer II
 CA – Clerical Assistant

Proposed new post

CCRO – Chief Companies Registration Officer
 CO – Clerical Officer
 CRO I – Companies Registration Officer I
 CRO II – Companies Registration Officer II

RM – Registry Manager
 SCRO – Senior Companies Registration Officer
 S – Solicitor
 SS – Senior Solicitor