

CHAPTER 8

Labour Department

**Provision of labour inspection services
and administration of the
Protection of Wages on Insolvency Fund**

**Audit Commission
Hong Kong
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This audit review has been carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and have been accepted by the Government of the Hong Kong Special Administrative Region.

The Report is available on our website at <http://www.info.gov.hk/aud/>

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PROVISION OF LABOUR INSPECTION SERVICES AND ADMINISTRATION OF THE PROTECTION OF WAGES ON INSOLVENCY FUND

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PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives.

Labour inspection services

1.2 Safeguarding the rights and benefits of employees is a main objective of the Labour Department (LD), which is headed by the Commissioner for Labour (Note 1). From 2000 to 2003, the LD spent about \$200 million each year to achieve this objective. Workplace inspections and administration of the Protection of Wages on Insolvency Fund (hereinafter referred to as the Fund) are two key measures to safeguard the rights and benefits of employees.

1.3 The Labour Inspection Division (LID) of the LD inspects workplaces to ensure compliance with the terms and conditions of employment contracts for imported workers and the requirements laid down by labour legislation for local and imported workers. As at 30 June 2003, the LID's staff establishment and strength were 193 and 189 respectively (see Appendix A).

Protection of Wages on Insolvency Fund

1.4 In April 1985, the Protection of Wages on Insolvency Ordinance (hereinafter referred to as the Ordinance —Cap. 380), came into effect with the objective of providing timely financial relief in the form of ex-gratia payment to employees of insolvent employers. The Ordinance provides for the establishment of the Fund. Employees who are owed wages, wages in lieu of notice, and severance payment by insolvent employers may apply for ex-gratia payment from the Fund.

1.5 The Ordinance provides for the establishment of a Protection of Wages on Insolvency Fund Board (hereinafter referred to as the Board —Note 2) to administer the

Note 1: *With effect from 1 July 2003, following the merging of the Labour Branch of the Economic Development and Labour Bureau and the Labour Department, the Permanent Secretary for Economic Development and Labour (Labour) assumes also the statutory responsibilities of the Commissioner for Labour.*

Note 2: *The Board comprises a Chairman, three employers' representatives, three employees' representatives, and one senior officer each from the LD, the Official Receiver's Office and the Legal Aid Department.*

Fund. The Ordinance also empowers the Commissioner for Labour to make ex-gratia payment out of the Fund. The Wage Security Unit of the LD is responsible for processing and approving applications for ex-gratia payment from the Fund and for providing administrative support to the Board.

1.6 According to the LD, there has been considerable Legislative Council and public concern about possible abuses of the Fund. To prevent and combat abuses, the Administration and the Board have taken the initiative to introduce the following major control measures:

- (a) putting in place a stringent mechanism for vetting claim applications and screening out unqualified claims;
- (b) forming a Task Force comprising representatives of the LD, the Commercial Crime Bureau of the Hong Kong Police Force, the Official Receiver's Office and the Legal Aid Department to proactively investigate into suspected offences of fraud, misfeasance, theft by directors, and conspiracy to defraud the Fund. Up to 31 December 2003, the LD had referred 37 cases to the Commercial Crime Bureau and the Official Receiver's Office for investigation; and
- (c) stepping up prosecution against wage offences and publicity on the importance of keeping wage and employment records.

Audit review

1.7 The Audit Commission (Audit) has conducted a review to examine the LD's provision of labour inspection services and administration of the Fund. The audit focused on the following areas:

- (a) use of staff resources for delivering labour inspection services (PART 2);
- (b) labour inspection practices (PART 3);
- (c) performance reporting of labour inspection services (PART 4); and
- (d) administration of the Fund (PART 5).

PART 2: USE OF STAFF RESOURCES FOR DELIVERING LABOUR INSPECTION SERVICES

2.1 This PART examines the use of staff resources for delivering labour inspection services and suggests measures for improvement.

Strategy for delivering labour inspection services

Work of the Labour Inspection Division

2.2 The LID enforces the following labour legislation in order to safeguard the rights and benefits of employees:

- (a) *Employment Ordinance (Cap. 57)*. This ordinance governs the conditions of employment of workers and provides for their basic rights and benefits (such as wage protection, rest days, statutory holidays, annual leave and long service payment) in the course of employment;
- (b) *Employment of Children Regulations*. These regulations (made under the Employment Ordinance) prohibit the employment of children under the age of 15 in industrial undertakings and regulate the employment of children aged between 13 and 15 in non-industrial establishments;
- (c) *Employment of Young Persons (Industry) Regulations*. These regulations (made under the Employment Ordinance) set out the requirements on the working time arrangements for young persons employed in the industrial sectors and prohibit their employment in dangerous trades;
- (d) *Employees' Compensation Ordinance (Cap. 282)*. This ordinance requires employers to take out insurance policies to cover their liability to pay employees' compensation; and
- (e) *Part IVB of the Immigration Ordinance (Cap. 115)*. This legislation (also administered by the Immigration Department and the Hong Kong Police Force) prohibits the employment of illegal workers.

Establishment and strength of inspectorate staff of the Labour Inspection Division

2.3 As at 30 June 2003, the LID operated in 19 District Offices (DOs) throughout the territory. It also maintained eight Special Enforcement Teams (SETs). Table 1 shows the establishment and strength of inspectorate staff in DOs and SETs as at that date.

Table 1

**Establishment and strength of inspectorate staff
in District Offices and Special Enforcement Teams
(30 June 2003)**

Rank	DOs		SETs		Total	
	Establishment	Strength	Establishment	Strength	Establishment	Strength
Senior Labour Inspector	19	18	8	7	27	25
Labour Inspector I	53	43	40	45	93	88
Labour Inspector II	34	36	-	1	34	37
Total	106	97	48	53	154	150

Source: LD records

Remarks: On 1 July 2003, the two SETs which were previously under the establishment of the Job Matching Centre and responsible for the pre-entry vetting of applications submitted under the Supplementary Labour Scheme were transferred to the LID.

Two-tier inspection and referral system

2.4 DOs are responsible for the enforcement of the Employment of Children Regulations, the Employment of Young Persons (Industry) Regulations, the Employees' Compensation Ordinance and Part IVB of the Immigration Ordinance. The enforcement of the Employment Ordinance is mainly carried out by SETs (see para. 2.6). To enhance the effectiveness in the enforcement of the Employment Ordinance, the LID has put in place a two-tier inspection and referral system. Under this system, labour inspectors of DOs are required to refer to SETs suspected offences under the Employment Ordinance detected in the course of routine inspections (see para. 2.5(a)), for in-depth investigation and institution of prosecution of employers in breach of the Employment Ordinance. During inspections, labour inspectors of DOs are required to make enquiries with employees to ascertain whether they have enjoyed statutory benefits, especially the latest statutory holiday and payment of wages. They make referrals to the respective SETs for investigation if their enquiries reveal the following anomalies:

- (a) an employee has not been granted the statutory leave or holiday;
- (b) an employee has been paid a sum in lieu of the grant of leave or holiday;
- (c) an eligible employee has been granted leave or holiday but no payment has been made to him;
- (d) there has been a suspected underpayment of benefit entitlements; and
- (e) there has been non-payment, underpayment or late payment of wages.

Inspections conducted by DOs

2.5 Labour inspectors of DOs conduct different types of inspections for various purposes. These inspections include:

- (a) ***Routine inspections.*** These are regular comprehensive inspections to establishments to check whether the provisions of the Employment of Children Regulations, the Employment of Young Persons (Industry) Regulations and the Employees' Compensation Ordinance are complied with. To combat the employment of illegal workers, labour inspectors also enforce Part IVB of the Immigration Ordinance by inspecting employees' proof of identity and employees' records kept by employers during routine inspections;
- (b) ***Campaign inspections.*** These are mainly stepped-up inspections for the enforcement of Part IVB of the Immigration Ordinance to combat illegal employment. These inspections are sometimes carried out jointly with the Immigration Department and the Hong Kong Police Force. Other campaign inspections conducted in recent years include those for the enforcement of the compulsory insurance requirement under the Employees' Compensation Ordinance, and the wage and benefit provisions of the Employment Ordinance;
- (c) ***Supervisory inspections.*** For control and quality assurance purposes, Chief Labour Inspectors and Senior Labour Inspectors conduct inspections to a sample of the establishments previously visited by Labour Inspectors I and Labour Inspectors II. These supervisory inspections were endorsed by the Independent Commission Against Corruption; and
- (d) ***Other inspections.*** Labour inspectors visit establishments to follow up cases with offences detected and to collect information. They pay regular visits to construction sites to ensure that no illegal workers and children are employed. They also conduct investigations into public complaints on breaches of labour laws.

Inspections conducted by SETs

2.6 Labour inspectors of SETs enforce the wage and benefit provisions of the Employment Ordinance, which govern the granting of maternity leave, maternity leave pay, rest days, sickness allowance, holidays with pay and annual leave with pay, the maintenance of wage and employment records, and the provision of copies of written employment contracts and payment of wages. They conduct the following types of inspections to ascertain whether the employees have enjoyed their statutory benefits in accordance with the Employment Ordinance:

- (a) ***Inspections for local workers.*** These are inspections to establishments of selected trades which are considered to be more prone to benefit offences and to workplaces of non-skilled employees engaged by government contractors, so as to protect the rights and benefits of local workers;
- (b) ***Inspections for imported workers.*** These are inspections to places of employment and accommodation of workers recruited under labour importation schemes. In addition to inspecting the establishments for compliance with the provisions of the Employment Ordinance, labour inspectors check their records to ensure that the terms specified in the labour importation schemes and employment contracts are complied with. They also collect feedback from imported workers to ascertain whether there are allegations of exploitation;
- (c) ***Labour Tribunal and Minor Employment Claims Adjudication Board referral cases.*** These are inspections to investigate cases of non-compliance with court orders by employers who failed to pay wages and grant other employee entitlements;
- (d) ***Referrals from DOs.*** These are inspections to follow up suspected offences under the Employment Ordinance which were referred by DOs;
- (e) ***Inspections based on complaints.*** These are inspections to investigate complaints referred by other divisions of the LD or by the public; and
- (f) ***Supervisory and other inspections.*** These inspections are similar to those conducted by DOs, except that SETs do not conduct regular construction site inspections.

Types and numbers of inspections conducted by DOs and SETs

2.7 Table 2 shows the types and numbers of inspections conducted by DOs and SETs from July 2002 to June 2003.

Table 2

**Inspections conducted by District Offices and Special Enforcement Teams
(July 2002 to June 2003)**

Type of inspections	Inspections conducted			
	(Number)		(Percentage)	
(A) Inspections conducted by DOs				
Routine inspections	79,250		47.8%	
Campaign inspections	65,603		39.6%	
	144,853		87.4%	
Supervisory inspections	3,906		2.4%	
Other inspections	8,311	157,070	5.0%	94.8%
(B) Inspections conducted by SETs				
Inspections for local workers	4,827		2.9%	
Inspections for imported workers	1,913		1.2%	
	6,740		4.1%	
Labour Tribunal and Minor Employment Claims Adjudication Board referral cases	319		0.2%	
Referrals from DOs	858		0.5%	
Inspections based on complaints	229		0.1%	
Supervisory and other inspections	546	8,692	0.3%	5.2%
Total		165,762		100%

Source: LD records

Reorganisation of the Labour Inspection Division

2.8 From time to time, the LD conducted reviews of the LID's organisational structure to enhance labour inspection strategies. At the time of the audit in the second half of 2003, the LD conducted a comprehensive reorganisation exercise of the LID with a view to tackling the problems of increasing illegal employment and wage offences more effectively and efficiently as a result of reduction in manpower. The reorganisation took effect from January 2004.

2.9 As a result of the LID's reorganisation, the number of DOs has been reduced from 19 to 12 and the number of SETs increased from 10 to 15. Taking into consideration the characteristics and distribution of industrial undertakings and non-industrial establishments in different districts, the whole territory is divided into 12 districts, each with a pair of DO and SET. Each pair of DO and SET is responsible for enforcing various labour laws concerning local workers in the same district. They share the same database of establishments within the same boundary, and will be housed progressively under the same roof as far as practicable for better coordination of inspection strategies and retrieval of offence records. Besides, three functional SETs handle matters concerning the pre-entry vetting of applications for importation of labour under the Supplementary Labour Scheme, the post-entry enforcement of the conditions of the Supplementary Labour Scheme, and the monitoring of government contractors. In February 2004, the LD expected the co-location of all DOs and SETs to materialise by the end of 2004.

2.10 The LD envisaged that the LID's new organisational structure would enable the LID to better utilise its resources, to be more flexible in staff deployment, to enhance enforcement effectiveness, and to step up the enforcement of the Employment Ordinance (especially wage provisions). Consequently, the LID could better meet future challenges and rising public expectation for protection of employees' rights and benefits.

Audit observations and recommendations

2.11 Audit notes that under the two-tier inspection and referral system, DOs play a preventive role and maintain enforcement presence in districts while SETs specialise in investigation and evidence collection with a view to prosecution. From July 2002 to June 2003, DOs referred 858 cases of suspected offences under the Employment Ordinance detected in the course of inspections to SETs for investigation. At the time of the audit in the second half of 2003, while there were 19 DOs, there were only eight SETs (see para. 2.3). Furthermore, most DOs and SETs were not co-located in the same office. The time gap between referral from DOs and subsequent follow-up action by SETs could sometimes result in delayed follow-up.

2.12 After the LID's reorganisation, eventually a pair of DO and SET will be jointly responsible for enforcing various labour laws concerning local workers in the same district. **Audit considers that this new organisation structure will:**

- (a) **speed up follow-up action by SETs on referrals from DOs; and**
- (b) **enable more resources to be allocated for the inspection work of SETs, thus leading to the detection of more offences. This is evidenced by the fact that, in their 8,692 inspections conducted from July 2002 to June 2003, SETs detected 4,119 offences, representing a 47% detection rate.**

2.13 **Audit has recommended that the Commissioner for Labour should:**

- (a) **monitor closely the progress of the LID's reorganisation; and**
- (b) **ascertain whether the LID's new organisation structure brings about the LD's expected benefits and, if not, revise the labour inspection strategy.**

Response from the Administration

2.14 The **Commissioner for Labour** agrees with the audit recommendations. He has said that:

- (a) the implementation of the first phase of the LID's reorganisation in January 2004 has increased the number of SETs responsible for inspections for local workers from 5 to 12 to speed up the follow-up of referrals from DOs. The second phase of the reorganisation is scheduled to take place in July 2004; and
- (b) the LD will monitor closely the progress of the LID's reorganisation and conduct a review on the reorganisation towards the end of 2004.

Utilisation of staff resources of the Labour Inspection Division

2.15 As a result of the Director of Audit's Report Nos. 30 and 31 issued in 1998 which revealed a number of irregularities related to the efficient use of staff resources in various government departments, the Administration asked Heads of Departments to review

the systems on supervision of staff employed in outdoor work to enhance productivity. In 1998, a working group was set up within the LID to conduct such a review. The working group concluded that the practice of keeping official diaries by labour inspectors would:

- (a) enable the direct supervisors to ensure that their fellow labour inspectors had fully utilised their duty hours; and
- (b) allow them to identify deficiencies in their subordinates' performance (such as inefficient organisation of inspection itinerary) so as to enable expeditious improvement to be made to enhance productivity.

Presently, all labour inspectors below the rank of Chief Labour Inspector are required to keep official diaries.

2.16 According to the LID's Operation Manual, labour inspectors below the rank of Chief Labour Inspector are required to complete official diaries at the end of every working day or as soon as possible on the following working day. They have to provide in their diaries details of inspections (which include names and file references of establishments visited), special campaigns, interviews, office work, training and seminars, etc.

2.17 Official diaries of Labour Inspectors I and Labour Inspectors II have to be checked and initialled by Senior Labour Inspectors at least once every two weeks, by Chief Labour Inspectors at least once every month, and by Labour Officers at least once every six months.

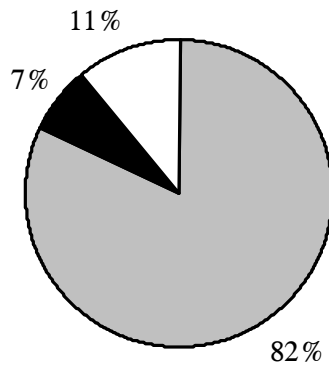
Audit analysis of time spent by labour inspectors

2.18 To ascertain the utilisation of the LID's staff resources, Audit conducted an analysis of the official diaries kept by labour inspectors. Audit randomly selected the diaries of the months of December 2002 and June 2003 of a Senior Labour Inspector, a Labour Inspector I and a Labour Inspector II from each of the 19 DOs (i.e. a total of 57 labour inspectors) for analysis. The samples were drawn from the DOs because their routine and campaign inspections accounted for 87.4% of all LID inspections (see Table 2 in para. 2.7). The results of the analysis are shown in Figure 1.

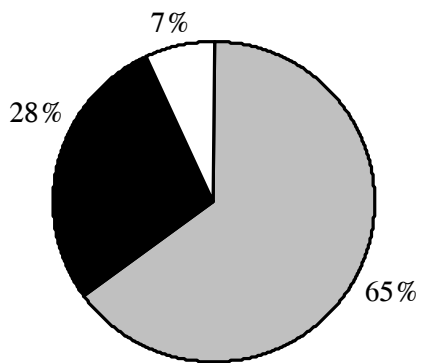
Figure 1

Analysis of time spent by labour inspectors of District Offices
(December 2002 and June 2003)

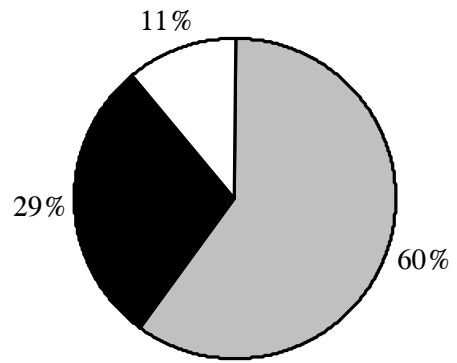
(A) Senior Labour Inspectors






(B) Labour Inspectors I



(C) Labour Inspectors II



Legend:  Office work
 Inspections
 Others (e.g. training and seminars)

Source: LD records

Note: Audit has excluded the leave taken by the labour inspectors within this period.

Audit observations and recommendations

2.19 As indicated in Figure 1, in December 2002 and June 2003, on average, Labour Inspectors I and Labour Inspectors II spent 65% and 60% of their time on office work respectively. The types of office work recorded in their diaries included frequent tasks such as “report writing” and “data input”, and other less frequent tasks such as “file studying/preparation work for visits”, “office meetings”, “reading circulars” and “diary writing”. Consequently, Labour Inspectors I and Labour Inspectors II could only spend about 29% of their time on inspections. Senior Labour Inspectors spent as much as 82% of their time on office work and only 7% on inspections.

2.20 In January 2004, in response to Audit enquiry on the high proportion of time spent on office work and little time spent on inspections by labour inspectors, the LD informed Audit that:

- (a) most of the office work performed by labour inspectors was enforcement-related. This included:
 - (i) pre-visit preparation work such as studying establishment files, planning visit itinerary, and attending briefing/debriefing by supervisors;
 - (ii) post-visit work such as writing inspection reports, updating inspection records in the computer system, issuing letters to employers demanding the production of relevant documents (e.g. employees’ compensation insurance policy), and preparing prosecution recommendations on offences detected; and
 - (iii) follow-up work such as preparing referral memoranda to SETs on offences under the Employment Ordinance detected and to the Immigration Department on illegal workers detected, interviewing employers, and checking documents submitted to the office after inspections;
- (b) most of the office work performed by Senior Labour Inspectors was also enforcement-related. This included scrutinising inspection reports of subordinate labour inspectors, assigning routine inspections, planning inspection campaigns (including selection and allocation of establishment files for visits), and processing offence cases and applications for special permissions and exemptions;
- (c) since June 2003, labour inspectors had been instructed to specify more clearly the kinds of work performed in office, instead of just putting down the general term “office work”, to allow better monitoring of their work; and

- (d) the LID had sustained, as an on-going initiative, the streamlining of enforcement-related work so as to release more resources for workplace inspections. Examples included:
 - (i) from March 2000, labour inspectors were no longer required to complete the inspection report after an inspection unless irregularities or possible offences were detected during the inspection;
 - (ii) in December 2002, the content of the inspection report was reduced from four to two pages after revision; and
 - (iii) from 2000 to 2003, more than ten internal registers/statistical returns were cancelled. Besides, a number of standard memoranda/letters were introduced to facilitate labour inspectors to communicate within the LID and with other divisions and other departments/outside organisations on routine matters.

2.21 Audit noted that labour inspectors recorded details of their outdoor enforcement activities in their official diaries. However, their diaries did not elaborate details of their office work (see para. 2.20(c)). Audit considers it necessary for the LD to remind its staff of the need to record their office work in detail in their official diaries so as to facilitate independent checking by LID management.

2.22 Audit has recommended that the Commissioner for Labour should:

- (a) **ensure that the official diaries kept by labour inspectors show clearly details of their office work, similar to the detailed recording of their outdoor enforcement activities, so as to enable LD management to monitor effectively their work;**
- (b) **continue to identify areas for streamlining enforcement-related work to allow more resources to be spent on inspections; and**
- (c) **conduct periodic reviews to ensure that the work profile of labour inspectors represents proper utilisation of staff resources.**

Response from the Administration

2.23 The Commissioner for Labour agrees with the audit recommendations. He has said that supervisors will ensure that labour inspectors comply with the new guideline in regularly checking their subordinates' official diaries.

PART 3: LABOUR INSPECTION PRACTICES

3.1 This PART examines the labour inspection practices and suggests measures for improvement.

Keeping of establishment records

3.2 Each DO of the LID maintains establishment records of workplaces (i.e. industrial undertakings and non-industrial establishments) within the district. These records contain essential information of each establishment such as its name, address, telephone number, file reference, nature of trade, business hours, and number of employees.

3.3 DOs regularly update the establishment records. Under the current inspection mechanism, labour inspectors of DOs are required to look for new establishments during routine inspections. Senior Labour Inspectors also arrange visits to premises reported to be locked or vacant during previous inspections to see if any new establishments have since been opened. When a new establishment is discovered during an inspection, a new record will be created by the respective DO. When an establishment is confirmed to have been closed or moved from the district, the DO will close the establishment record. As at 30 June 2003, there were some 200,000 active establishments as recorded by the LID. These records form the basis for selecting establishments for inspection and for assigning inspection duties to labour inspectors.

Labour inspection cycles

3.4 Senior Labour Inspectors are responsible for assigning inspection duties to Labour Inspectors I and Labour Inspectors II. The LID's Operation Manual gives Senior Labour Inspectors the discretion to assign any number of labour inspectors to perform any inspection duties, as long as they assign the duties fairly and systematically. In arranging inspections, Senior Labour Inspectors need to ensure that all the establishments in their districts are covered. However, for more effective utilisation of staff resources, the manual allows Senior Labour Inspectors to accord lower priority to visiting establishments such as reputable organisations (e.g. consulates, statutory bodies, and places of worship) and law-compliant trades (e.g. subsidised schools, banks, and Jockey Club off-course betting centres).

3.5 Audit analysed the inspections to establishments performed by labour inspectors of DOs in order to establish the inspection cycles, i.e. the re-inspection frequencies. Audit analysed the inspection cycles based on the routine and campaign inspections conducted from July 2002 to June 2003. The results of the analysis are at Appendix B.

Audit observations and recommendations

3.6 The inspection cycles of routine and campaign inspections of individual DOs ranged from 12 months in the case of the Yuen Long DO to 23 months in the case of the Hong Kong East DO (see Appendix B). This indicates that, while labour inspectors in some districts conducted inspections and re-inspections frequently, labour inspectors in other districts did not often conduct inspections to some establishments. The uneven re-inspection frequencies of DOs cast doubts on the effectiveness of the LID's inspection programme. **The multifarious inspection cycles of DOs indicated that labour inspectors did not render timely inspection services to some establishments.**

3.7 In January 2004, in response to Audit observations stated in paragraph 3.6, the LD informed Audit that:

- (a) LID management reviewed the inspection cycles of DOs annually. The service boundary of individual DOs would be adjusted after such reviews; and
- (b) as a result of the overall organisation review of the LID completed in November 2003, the service boundaries of DOs were realigned with due regard to the number of recorded establishments and the length of the inspection cycles in individual districts.

3.8 **Audit has recommended that the Commissioner for Labour should:**

- (a) **continue to monitor the inspection cycles of DOs so as to ascertain whether:**
 - (i) **after the reorganisation of the LID, the service boundaries of DOs have been effectively realigned to prevent uneven spread in inspection cycles; and**
 - (ii) **the target inspection cycles set by the LID have been accomplished; and**
- (b) **ensure that the service boundary of individual DOs is reviewed regularly and, if necessary, realigned.**

Response from the Administration

3.9 The **Commissioner for Labour** agrees with the audit recommendations. He has said that the LID will continue to review annually the inspection cycles of different DOs and,

if necessary, realign their service boundaries to rationalise the workload of different districts for the effective enforcement of labour laws.

Inspections to construction sites

3.10 The construction industry is one of the major economic sectors in Hong Kong. In June 2003, about 63,000 employees were engaged in manual work at construction sites. The LID conducted 863 inspections to construction sites from July 2002 to June 2003. When visiting construction sites, labour inspectors are required to concentrate mainly on enforcing Part IVB of the Immigration Ordinance, and to ensure that child workers are not employed. **However, during routine inspections to construction sites, labour inspectors do not actively enforce the Employment Ordinance** due to the following special features of construction sites:

- (a) labour inspectors need to interview employees when investigating the offences. However, the work environment at construction sites causes employees to be spread over different areas at the sites. Labour inspectors therefore have to seek the assistance of construction site offices in identifying employees. This requires the employees to stop work and to gather at the construction site offices for interview by labour inspectors;
- (b) labour inspectors need to inspect employment records when investigating the offences. However, direct employers of the employees usually do not place the necessary records (e.g. wage records) at construction sites. Besides, the direct employers may not be present on the spot to assist labour inspectors with their investigation;
- (c) to investigate the offences, labour inspectors need information such as the wage calculation method and the outstanding amount of wages. Labour inspectors are unable to obtain this information unless the employees are willing to assist. However, such assistance is not always forthcoming. This is because employees usually refuse to be identified, unless the hope of recovering the outstanding wages is diminishing and the construction works are near completion; and
- (d) workers at construction sites obtain their jobs from contractors. They mainly want to get back their wages and usually refuse to serve as prosecution witnesses against the contractors.

3.11 In view of their unique nature and the growing concern over wage disputes there, the LD has, through the concerted efforts of its various divisions, taken a multi-pronged approach to tackling wage offences at construction sites by implementing the following measures:

- (a) Part IXA of the Employment Ordinance was enacted to make principal contractors and superior subcontractors liable for the first two months' unpaid wages of construction workers employed by the subordinate subcontractor;
- (b) free conciliation service is provided by the Labour Relations Division to assist construction workers to claim outstanding wages. Officers of the Labour Relations Division will also resolve wage disputes on the spot at construction sites;
- (c) the LD has liaised with principal contractors to strengthen supervision of their subcontractors so as to ensure prompt payment of wages;
- (d) the LD has solicited the assistance of the Hong Kong Construction Association and the Hong Kong Federation of Electrical and Mechanical Contractors Ltd in appealing to their members to ensure that wages are paid on time;
- (e) the LD has set up a communication channel to gather intelligence from trade unions on incidents of non-payment of wages;
- (f) the LD has produced, for display at construction sites, posters listing the telephone numbers of offices of its Labour Relations Division, the principal contractor and the person responsible at the site for information of workers;
- (g) to minimise wage disputes in the construction industry, the LD has promoted the proper keeping of wage and attendance records by contractors and workers through seminars and publicity booklets with sample records and highlights on penalty clauses for wage offences;
- (h) labour inspectors will investigate complaints on breaches of the Employment Ordinance where the aggrieved employees and their employers could be identified; and
- (i) in August 2002, following an upsurge in labour disputes over the non-payment of wages in the construction industry, the LD launched a campaign to ascertain the problem of unpaid wages at construction sites. During the campaign, Occupational Safety Officers of the LD's Occupational Safety and Health Branch (Note 3) visited 2,515 construction sites to inquire into non-payment or

Note 3: *The Occupational Safety and Health Branch of the LD is responsible for enforcing legislative requirements on workplace safety and health. Occupational Safety Officers of the Branch conduct inspections to workplaces (including construction sites) to ensure that safe and healthy working environments are provided there.*

late payment of wages while performing their routine task of enforcing the safety regulations. They referred suspected offences to the Labour Relations Division for follow-up action.

3.12 The LD considered that the measures stated in paragraph 3.11 were effective in tackling wage offences at construction sites. It had continued to adopt the multi-pronged approach aimed at curbing the problem. **However, the LD did not require labour inspectors or other staff to look for other instances of non-compliance with the Employment Ordinance (e.g. failing to grant statutory holidays and rest days) at construction sites.**

3.13 In January 2004, in response to Audit enquiry on inspections to construction sites, the LD informed Audit that offences relating to statutory benefits (such as the granting of rest days and statutory holidays) were generally not serious at construction sites for the following reasons:

- (a) there were almost no complaints from construction workers about holiday offences in the past four years;
- (b) construction sites normally stopped work on general holidays due to noise control under the Noise Control Ordinance (Cap. 400) administered by the Environmental Protection Department (Note 4); and
- (c) due to the poor performance of the real estate market in Hong Kong in recent years, many real estate developers had suspended or slowed down their construction projects. Given insufficient work, there was no difficulty for contractors to grant holidays and rest days to their employees.

Audit observations and recommendations

3.14 Notwithstanding the LD's comments in paragraph 3.13, **Audit considers that the LD needs to keep in view changes in the construction industry, which may call for the need to allocate staff to identify non-compliance with other benefit provisions of the Employment Ordinance at construction sites (see para. 3.12).**

Note 4: *Section 6(1) of the Noise Control Ordinance prohibits the use of any powered mechanical equipment for the purpose of carrying out any construction work at any place at any time on a general holiday unless a construction noise permit in respect of the equipment is in force.*

- 3.15 **Audit has recommended that the Commissioner for Labour should:**
- (a) **ensure that LD staff continue to identify cases of unpaid wages at construction sites; and**
 - (b) **keep in view the need for extending the scope of construction site inspections beyond the detection of unpaid wages to include other benefit provisions of the Employment Ordinance.**

Response from the Administration

3.16 The **Commissioner for Labour** agrees with the audit recommendations. He has said that:

- (a) the LD emphasises that it treats breaches of employee wage and benefit provisions of the Employment Ordinance with equal weight. The LD will conduct immediate investigations into such complaints when received. However, as the LD received very few complaints about statutory benefit offences from construction workers in the past four years, it had focused its efforts on tackling the problem of wage offences at construction sites since the end of 2002; and
- (b) the LD will keep a close watch over compliance with wage and benefit provisions of the Employment Ordinance in the construction industry. It will monitor the effectiveness of the measures stated in paragraph 3.11 in identifying suspected breaches in the industry such that prompt assistance can be rendered to construction workers in pursuing their claims for wage and statutory benefits.

Inspections to workplaces of child entertainers

3.17 According to the Employment of Children Regulations, no person shall employ a child under the age of 13. For children aged between 13 and 15, these regulations impose restrictions on their working hours, conditions of work, the occupations into which they can enter, etc. For the development of art or training, the Commissioner for Labour may permit the employment of children of different ages as entertainers by granting exemption from provisions of the Employment of Children Regulations. An employer intending to employ child entertainers should apply to the Commissioner before the employment commences. From July 2002 to June 2003, the LD issued 75 permits for employing some 3,000 child entertainers.

3.18 To ensure that the child entertainers' schooling is not interfered with and their well-beings (including safety, health and moral) are not jeopardised, the Commissioner for Labour has imposed specific conditions upon the grant of permissions. Examples of the conditions are at Appendix C. Breaching any of the conditions by employers of the child entertainers might result either in cancellation of the permits or in prosecution.

Audit observations and recommendation

3.19 From time to time, employers in the show business applied to the LID for employing children to act in movies and shows. In considering the applications, the LID took into account the conditions of employment (e.g. the period of employment and working hours), and whether the acts of the children were prejudicial to their life, health or moral. The LID also visited the employers' offices in processing the applications. Audit review of LID records relating to the employment of child entertainers from July 2002 to June 2003 revealed that the LID did not adequately check their conditions of work. During this period, the LID randomly checked the working conditions of child entertainers performing on the stage. **For those child entertainers performing outdoor filming, the LID did not conduct any inspections to the filming locations to ascertain whether the employers had actually complied with the stipulated conditions of employment.**

3.20 In January 2004, in response to the audit observations stated in paragraph 3.19, the LD informed Audit that for outdoor filming cases, as there were frequent, last-minute changes in venues and time, it was difficult and not cost-effective to conduct surprise on-site inspections.

3.21 Audit considers that frequent, last-minute changes in filming venues and time might lead to breaches of the child entertainers' conditions of work. For example, frequent changes in filming time might clash with a child entertainer's school hours, or might cause the child to work more hours than allowed. **Without conducting inspections to the filming locations, it is doubtful whether the child entertainers' rights and benefits have been adequately safeguarded.**

3.22 **Audit has recommended that the Commissioner for Labour should conduct more random inspections to workplaces of child entertainers, including filming locations, to ensure that employers of child entertainers comply with the stipulated conditions of employment.**

Response from the Administration

3.23 The Commissioner for Labour has said that:

- (a) the LD, understanding Audit concern over the protection for child entertainers, will conduct more random inspections to their workplaces to check employers' compliance with the approved conditions of employment; and
- (b) apart from conducting random and surprise inspections to the outdoor filming locations, the LD has built in the following mechanisms to safeguard the well-beings of child entertainers:
 - (i) every year the LID, in cooperation with the Education and Manpower Bureau, issues circulars to school principals and parent-teacher associations to remind them of the legislative protection for child entertainers;
 - (ii) in processing individual applications for employing child entertainers, labour inspectors require prospective employers to obtain valid school attendance certificates from the schools of child entertainers. This will keep the principals concerned informed of the employment of their students and can ensure that schooling of the child entertainers is not disrupted by the employment; and
 - (iii) starting from January 2004, the LID has taken further measures to inform parents of the child entertainers of the approved employment conditions such that they can lodge complaint with the LD, should employers fail to observe such conditions.

Extent and timeliness of labour inspections

3.24 To ascertain the adequacy of the enforcement work in labour inspections, Audit randomly selected 469 inspection files of ten DOs and five SETs from July 2002 to June 2003 for review. The inspection files indicate that, at the time of the inspections, the labour inspectors found that:

- (a) 103 establishments were not in operation;
- (b) 136 establishments were in operation but no employees were seen; and
- (c) 230 establishments were in operation, and hence, their selected employees were interviewed.

Audit found that there was room for improvement in the extent of check in inspections, and timeliness of inspections.

Audit observations and recommendations

Extent of check in inspections

3.25 SETs regularly conduct inspections to establishments of selected trades which are considered to be more prone to benefit offences. According to the LID's Operation Manual, labour inspectors are required to randomly select five employees present at the time of inspection for interview to verify their benefit payment particulars. However, the manual does not specify whether the sample size should be extended when suspected offences are detected through interviewing these five employees. Audit review of inspection files of SETs revealed two cases where the labour inspectors concerned did not take the initiative to interview more employees, after suspected offences had been detected from the sample of employees interviewed. An example of the cases is given below.

Case study 1

Labour inspectors did not interview more employees despite detection of suspected offences

An SET inspected a restaurant in December 2002. The establishment records kept by the LID showed that the restaurant employed 28 employees. When labour inspectors visited the restaurant, there were 15 employees on site. The labour inspectors interviewed five employees in accordance with the LID's Operation Manual. It was found that their employer had not granted to three of them a total of eight days of statutory holidays during the first three months of employment because it was not the restaurant's policy to grant statutory holidays to employees with less than three months' service. This was not in compliance with the provisions of the Employment Ordinance that statutory holidays must be granted to employees. The employer of the restaurant was subsequently prosecuted by the LID on eight counts of failure to grant statutory holidays, and was convicted and fined by the magistrate court. According to LID records, the remaining ten employees also had less than three months' service with the restaurant at the time of the inspection. However, the available records did not indicate that the SET had interviewed these ten employees.

Source: LD records

3.26 In January 2004, in response to the audit observations stated in paragraph 3.25, the LD informed Audit that:

- (a) according to the published standing prosecution policy of the Department of Justice (DoJ), departments taking out prosecution action must:
 - (i) keep the number of charges to the minimum possible, on the consideration that a multiplicity of charges would not only impose an unnecessary burden on the administration of the Courts and on the prosecution but would often tend to obscure the essential features of the case; and
 - (ii) always consider using specimen charges where the evidence disclosed a large number of offences of a similar nature;
- (b) in the light of the DoJ's advice, the LD's Prosecutions Division and the LID had agreed on the existing prosecution guidelines that labour inspectors were required to randomly select five employees present during the inspection for interview and to limit the number of summonses recommended for prosecution to 20. The LD considered the present guidelines of interviewing a sample of employees appropriate to serve the punishment and deterrent purposes; and
- (c) it was the practice for field inspectors to seek approval from their supervising Chief Labour Inspector/Senior Labour Inspector for deviation from the existing guidelines in the LID's Operation Manual. The Chief Labour Inspector/Senior Labour Inspector could exercise his discretion to interview more employees if he considered that the circumstances in the field so warranted. Such discretion was often exercised.

3.27 Audit notes that it may not be practicable to prosecute all offences of a similar nature in a case. **However, Audit considers that when suspected offences are detected in an establishment through a sample check of the employees, SETs should, as far as possible, extend the checks to cover more employees.** This could help SETs ascertain the magnitude of the problem, and decide the appropriate strategy and course of action (e.g. to conduct more inspections to establishments of similar nature) to be taken.

3.28 **Audit has recommended that the Commissioner for Labour should consider revising the LID's Operation Manual to specify the circumstances under which the sample of employees selected for checking during inspections needs to be increased and how this could be achieved.**

Timeliness of inspections

3.29 As mentioned in paragraph 3.24(a), of the 469 inspection files selected for Audit review, 103 inspections were related to inspections to establishments which were found not in operation at the time of inspection. Audit review of these 103 inspections revealed two cases where inspections could have been successfully conducted, had prompt action been taken. These two cases were referrals from DOs to SETs for investigations of suspected contravention of provisions of the Employment Ordinance which were detected by DOs during inspections. In these two cases, SETs only carried out the investigations a few months after receipt of the referrals. In the event, investigations into the suspected offences could not proceed because the establishments had already moved. **Audit considers that this is unsatisfactory.** An example of the cases is given below.

Case study 2

Delay in carrying out investigation into suspected offence

In January 2003, the LID launched an inspection campaign in which all DOs were asked to survey the payment of wages to employees in the catering trade. A labour inspector of a DO inspected a restaurant and found that seven employees were not granted statutory holidays by the employer, thereby contravening the provisions of the Employment Ordinance. The case was immediately referred to the responsible SET for investigation. However, the follow-up inspection by the SET was made in May 2003 (i.e. four months later). Meanwhile, the restaurant had already moved. In the event, the case was closed.

Source: LD records

3.30 **Audit has recommended that the Commissioner for Labour should ensure that SETs conduct promptly follow-up inspections to establishments suspected of having breached the provisions of the Employment Ordinance so as to properly safeguard the rights and benefits of employees.**

Response from the Administration

3.31 The **Commissioner for Labour** has said that:

Extent of check in inspections

- (a) the LD considers that the current practice in which field inspectors seek approval from their supervising Chief Labour Inspector/Senior Labour Inspector for deviation from the existing guidelines provides more flexibility for them to cope with different scenarios in the field. However, the LID is prepared to revise its Operation Manual to specify the circumstances as recommended by Audit, as necessary;

Timeliness of inspections

- (b) he agrees with the importance of taking timely follow-up action on suspected offences;
- (c) the LID's Operation Manual has stipulated that SETs must conduct inspections to the establishments concerned within three months of receipt of referrals from DOs. However, since the third quarter of 2002, SETs have been facing a tremendous increase in workload. SETs had to handle more cases of non-compliance of awards of the Labour Tribunal and the Minor Employment Claims Adjudication Board since September 2002. There was also a sudden influx of a large number of referrals on suspected breaches of the Employment Ordinance from 19 DOs, which conducted a territory-wide campaign to enforce wage provisions in more than 3,000 catering establishments from December 2002 to February 2003. The sudden, huge increase in workload rendered SETs unable to commence investigation of all referrals within the stipulated timeframe, given the tight field resources. Deciding that prosecution priority should be focused on wage offences in that period, the LD granted special approval to SETs to accord priority to the investigation of wage offences. Consequently, investigation of some of the holiday offences was accorded a lower priority; and
- (d) to cope with the heavy workload of SETs, the LD has increased the number of SETs since the recent reorganisation of the LID in January 2004. With increased manpower, SETs will be able to follow up the referrals from DOs within a shorter time span.

PART 4: PERFORMANCE REPORTING OF LABOUR INSPECTION SERVICES

4.1 This PART examines the performance reporting of the labour inspection services and suggests measures for improvement.

Performance indicators published by the Labour Department

4.2 The LD uses a set of performance indicators to measure the LID's performance in safeguarding the rights and benefits of employees through the provision of labour inspection services. These indicators are published in the LD's annual report and Controlling Officer's Report (COR) of the Estimates. The key performance indicators for the provision of labour inspection services used by the LD are as follows:

- (a) number of inspections to workplaces;
- (b) number of warnings issued;
- (c) number of prosecutions taken; and
- (d) number of inspections per field labour inspector.

Audit observations and recommendations

4.3 The performance indicators published by the LD are limited in number. Audit notes that, apart from the performance indicators published in the LD's annual report and COR, the LID maintains a number of performance indicators for reviewing its performance and the performance of individual labour inspectors. These indicators include the number of offences detected, the number of summonses recommended, the number of employees checked for proof of identity, and the number of illegal workers detected. However, they are for internal monitoring purpose only and have not been published. **To enhance the transparency and accountability of the LID's performance, Audit considers it desirable for the LD to consider publishing more performance indicators in its annual report and COR.**

4.4 **Audit has recommended that the Commissioner for Labour should:**

- (a) **review whether the existing performance indicators published in the LD's annual report and COR are adequate; and**

- (b) **if not, consider publishing more performance indicators in the LD's annual report and COR, having regard to those performance indicators which the LID is using for internal monitoring.**

Response from the Administration

4.5 The **Commissioner for Labour** has said that:

- (a) the existing indicators published in the LD's COR were studied by the then Finance Branch. They have been recognised as appropriate efficiency and effectiveness indicators to assess the LID's performance as a whole; and
- (b) in view of the audit recommendations, the LD will consider reviewing and identifying additional indicators for discussion with the Financial Services and the Treasury Bureau.

Adequacy of the Labour Inspection Division's management information system

4.6 The computerised management information system presently used by the LID is known as the Labour Inspection Information System (LIS). The LIS has been installed in DOs and SETs. Each of the DOs and SETs has its individual database, which contains information on inspections, offences detected, follow-up actions taken, details of establishments, etc. However, there is no central system in the LD which links the databases together.

4.7 In September 2003, the LID requested the Information Technology Management Unit of the LD to revamp the LIS at an estimated cost of some \$700,000. The cost would cover the upgrading of hardware and the re-engineering of the overall database structure and design of the LIS. The target completion date is early 2004. However, the revamped LIS would still not provide a centralised database.

Audit observations and recommendations

4.8 Audit considers that a centralised database is essential both for data-sharing among various offices of the LID and for the production of management information. A centralised database would overcome the following existing deficiencies:

- (a) since each office keeps its own database, labour inspectors do not have ready access to all the information about employers who might have multiple workplaces in different districts. As a result, labour inspectors cannot readily determine whether an employer who had not complied with labour laws in one district had similar cases of non-compliance in other districts; and
- (b) the LID compiles some 60 statistical reports every month. As the LIS does not have a centralised database to produce territory-wide statistical reports, every DO or SET has to prepare its own reports which are then forwarded to the LID Headquarters for subsequent manual consolidation.

4.9 **Audit has recommended that the Commissioner for Labour should:**

- (a) **assess whether, after revamping, the LIS is adequate in meeting the LID's management information needs, taking into consideration those deficiencies stated in paragraph 4.8; and**
- (b) **if the assessment indicates that the LIS still has deficiencies, take action to address them by further enhancing the LIS or developing a new computerised management information system.**

Response from the Administration

4.10 The **Commissioner for Labour** agrees with the audit recommendations. He has said that:

- (a) the LD shares Audit view on the merits of having a centralised computer database;
- (b) the LID is consolidating the 24 district databases into 12 to cater for the operational needs of the 12 pairs of DO and SET under its new organisational structure; and
- (c) the current approach to revamping the LIS step by step is pragmatic, achievable and affordable, given the LD's existing allocated resources. The LD will seek additional resources to further revamp the LIS to achieve the ultimate aim of building up a centralised territory-wide database.

PART 5: ADMINISTRATION OF THE PROTECTION OF WAGES ON INSOLVENCY FUND

5.1 This PART examines the administration of the Fund and suggests measures for improvement.

Financial viability of the Fund

5.2 Presently, the Fund is mainly financed by a flat annual levy (\$600) on each Business Registration Certificate (BRC). Other sources of income include money recovered from the remaining assets of insolvent employers through subrogation, and returns from investment and deposits. In 2002-03, 95% of the total income of the Fund came from the levy and the remaining 5% was from subrogation and interest income.

5.3 Claim payments account for the largest share of the Fund's expenditure. In 2002-03, about 96% of the Fund's expenditure was spent on claim payments and the remaining 4% was on supervision fee (Note 5) and other expenses. The maximum amounts payable for each application for claim payment (hereinafter referred to as claim application) are at Appendix D.

5.4 During its first 12 years of operation (1985-86 to 1996-97), the Fund operated at a surplus. Its balance reached a peak of \$878 million as at 31 March 1997. However, since 1997-98, it has been operating at a deficit. In 2002-03, it suffered a deficit of \$160 million. Its balance dropped to \$35 million as at 31 March 2003. The financial position of the Fund since 1996-97 is shown in Table 3.

Note 5: *Supervision fee refers to the charge of two-thirds of the costs incurred by the Government in administering the Fund against the income of the Fund.*

Table 3

**Financial position of the Fund
(1996-97 to 2002-03)**

	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03
	(\$ million)						
Balance at beginning of year	830	878	853	668	463	333	195
<i>Income</i>	242	262	254	269	236	201	416
<i>Expenditure</i>	194	287	439	474	366	339	576
<i>Surplus/(Deficit)</i>	48	(25)	(185)	(205)	(130)	(138)	(160)
Balance at end of year	878	853	668	463	333	195	35

Source: Fund records

5.5 The deficits incurred by the Fund since 1997-98 are mainly due to an upsurge in claim applications received following the Asian financial crisis. From 1996-97 to 2002-03, the number of claim applications approved increased by 196% (from 6,875 to 20,341) and the amount of claim payments increased by 207% (from \$181 million to \$556 million). However, during this period, the Fund's income was unable to match the huge increase in claim payments as it increased by only 72% (from \$242 million to \$416 million).

5.6 After considering the pros and cons of the various options to restore the financial viability of the Fund, the Administration decided in 2002 that an increase in BRC levy would be the most effective and viable option to improve the Fund's financial position. Consequently, the levy was increased from \$250 to \$600 per annum with effect from May 2002. The Administration anticipated that annual surpluses ranging from \$24 million to \$25 million could be achieved for the Fund in the coming years, and that the Fund's reserve could be built up gradually and reach \$200 million in 2006.

5.7 Despite the increase in BRC levy, the prevailing difficult economic climate had continued to exert great pressure on the Fund. The number of claim applications continued to increase. Following the collapse of a large group of companies involving 2,100 employees in June 2002, the Administration anticipated that the Fund would be facing a serious cash flow problem in the near future. The Fund was expected to be fully depleted before the increase in BRC levy could help restore its financial viability.

5.8 In November 2002, the Finance Committee of the Legislative Council approved the provision of a bridging loan of \$695 million to the Fund to tide over its cash flow problem in meeting its financial commitments. The loan would be drawn down by instalments, as and when necessary, by 31 March 2006. Interest would be charged against the loan at the Government's "no-gain-no-loss" interest rate. The Fund was expected to be able to repay the loan of \$695 million in full by 2015-16, in the event of the loan being fully drawn down.

Audit observations and recommendations

5.9 The Fund has been operating at a deficit since 1997-98. As at 31 March 2003, the Fund's reserve fell to a record low of \$35 million and there were contingent liabilities of \$521 million in respect of claims received but not yet approved. While the increase in BRC levy in May 2002 has increased the Fund's income, thereby narrowing its deficit, the bridging loan may still have to be drawn down from the Government to enable the Fund to tide over its immediate cash flow problem. **In view of this development, Audit considers that the Administration needs to continue to closely monitor the financial position of the Fund to ensure its long-term financial viability.**

5.10 **Audit has recommended that the Commissioner for Labour should, in conjunction with the Board:**

- (a) **continue to closely monitor the financial position of the Fund; and**
- (b) **if necessary, take further action to ensure the long-term financial viability of the Fund.**

Response from the Administration

5.11 The **Commissioner for Labour** agrees with the audit recommendations. He has said that:

- (a) the LD has, in conjunction with the Board, been monitoring closely the financial position of the Fund. To ensure both the short-term and long-term financial viability of the Fund, the LD has increased the BRC levy from \$250 to \$600 per annum since May 2002. As a result, the amount of levy income increased by 148% from \$172.8 million in 2001 to \$427.8 million in 2003. In addition, the LD secured from the Government a standby loan of \$695 million in November 2002. The loan will be drawn on, if necessary, to tide the Fund over any cash flow problems. The LD has also taken other actions stated in paragraph 1.6 to ensure the Fund's financial viability; and

- (b) the following developments are expected to have a positive impact on the financial position of the Fund:
 - (i) experience shows that there is a high correlation between the state of the economy and the number of claim applications received. The number of claim applications received in 2003 dropped by 2.9%, compared with the record high of 23,023 claim applications received in 2002. Should the present economic recovery be sustained, this downward trend of claim applications will likely continue; and

 - (ii) the amount of severance payment payable to employees can be offset by the employer's contribution to the Mandatory Provident Fund Scheme. The introduction of the Scheme has thus lightened the burden of the Fund in respect of ex-gratia severance payment. Savings to the Fund resulting from the Scheme's contribution increased from \$2 million in 2001 to \$35.1 million in 2002 and further to \$65.2 million in 2003. With the further accumulation of the Scheme's contributions, this positive impact will increase in significance in the years ahead.

Caseload of the Fund

Workload of the Wage Security Unit

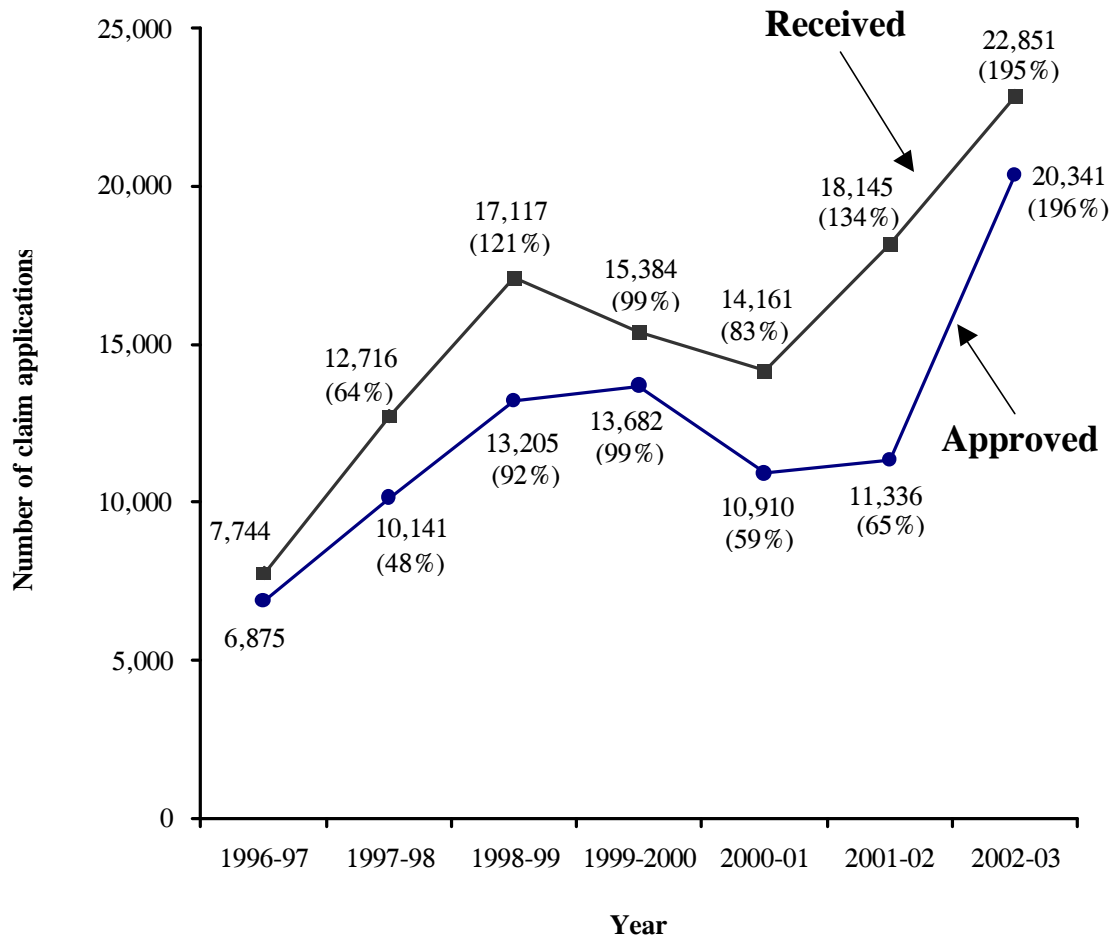
5.12 The Wage Security Unit (WSU) of the LD is responsible for processing and approving claim applications to the Fund. As at 30 June 2003, the WSU had a staff strength of 56 (Note 6), comprising labour officers and contract and supporting staff.

Note 6: *These included eleven officers on loan from other sections of the LD.*

5.13 As indicated in Figure 2, from 1996-97 to 2002-03, the numbers of claim applications received and approved by the WSU increased by almost two-fold. During this period, the staff costs incurred for the administration of the Fund increased by 52% (from \$12.6 million to \$19.1 million). The increase in the number of claim applications was mainly due to the increasing number of businesses closed as a result of the economic downturn.

Figure 2

Number of claim applications received and approved by the Wage Security Unit (1996-97 to 2002-03)

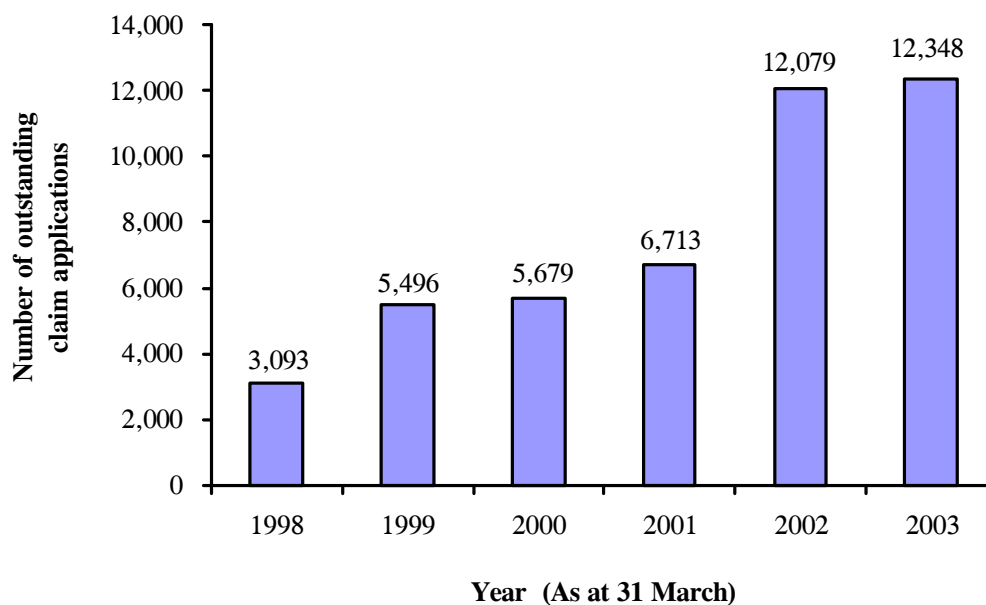


Source: Fund records

Note: The figure in brackets represents the percentage increase of claim applications since 1996-97.

Backlog of outstanding claim applications

5.14 Due to the two-fold increase in the number of claim applications received in the past seven years from 1996-97 to 2002-03 (see Figure 2), the WSU experienced difficulties in clearing the backlog of outstanding claim applications. As a result, the number of claim applications under processing by the WSU from 1998 to 2003 increased by three-fold from 3,093 to 12,348 (see Figure 3).

Figure 3**Claim applications under processing by the Wage Security Unit
(1998 to 2003)**

Source: Fund records

5.15 According to WSU records, 3,907 (32%) of the 12,348 outstanding claim applications as at 31 March 2003 had been received for more than six months. An ageing analysis of these outstanding claim applications as at that date is summarised in Table 4.

Table 4

**Ageing analysis of outstanding claim applications
(31 March 2003)**

Period for which claim applications had been outstanding	Number of claim applications
5 months or less	7,321 (59%)
6 months	1,120 (9%)
More than 6 months	3,907 (32%)
Total	<u>12,348</u>

Source: Fund records

5.16 To help clear the large backlog of outstanding claim applications, the LD had, since April 2002, implemented a series of improvement measures to speed up case processing work. These included, among others, simplifying WSU case processing guidelines, requiring employees to turn up at the WSU for interviews only when necessary, and promulgating a set of guidance notes to facilitate employees to prepare necessary documents and information for the WSU's processing of their claim applications. The LD had also made efforts to redeploy staff from other sections of the LD to the WSU. As at 30 June 2003, eleven officers were on loan to the WSU. Furthermore, since October 2003, 14 newly employed contract staff had been posted to the WSU (in addition to the 13 contract staff hired in 2002) to help relieve the heavy workload of the unit.

Audit observations and recommendations

5.17 The objective of the Fund is to provide timely financial relief to employees of insolvent employers. **The large number of long outstanding claim applications indicates that this objective has not been achieved.** Audit appreciates that the LD had taken action to tackle the backlog problem. Nevertheless, the LD needs to take further action to clear the backlog of outstanding claim applications. For example, the LD could consider

conducting reviews of staff resources of its different divisions/sections with a view to deploying more staff to the WSU.

5.18 Audit has recommended that the Commissioner for Labour should:

- (a) **closely monitor the backlog of outstanding claim applications; and**
- (b) **explore other means to clear the backlog.**

Response from the Administration

5.19 The **Commissioner for Labour** shares Audit concerns on the number of outstanding claim applications and agrees with its recommendations. He has said that the LD has been monitoring the situation of outstanding claim applications closely and has taken concrete action to expedite payment from the Fund (see para. 5.16).

Customer opinion survey

5.20 In 1997, the WSU initiated an internal review of its operation. As part of the review, the WSU conducted a customer opinion survey to collect direct feedback from the clients regarding their needs and expectations, with a view to finding out what needed to be done to improve its service. The survey findings generally indicated a high level of customer satisfaction. The major findings were as follows:

- (a) 86% of the respondents had average or above average understanding of the purpose and functions of the Fund;
- (b) 75% of the respondents rated the attitude of WSU staff as “good” or “very good”;
- (c) 51% of the respondents considered the payment time acceptable while 28% of them regarded it as “long” and 13% regarded it as “very long”; and
- (d) 71% of the respondents indicated no problem in filling in the claim application forms.

Audit observations and recommendations

5.21 **Audit notes that the WSU does not have a system in place to collect regularly feedback from its clients regarding their needs and expectations.** The 1997 opinion survey was the last one carried out. Customer survey is a useful tool to find out the level of customers' satisfaction, their concerns and desired improvements to further improve a service.

5.22 **Audit has recommended that the Commissioner for Labour should:**

- (a) **conduct periodic client satisfaction surveys of the WSU covering issues such as clients' satisfaction levels in terms of efficiency and quality of service, and suggestions for further improvement; and**
- (b) **based on the results of the customer surveys, take action to further improve the WSU's service.**

Response from the Administration

5.23 The **Commissioner for Labour** agrees with the audit recommendations. He has said that the LD will, in conjunction with the Board, conduct customer surveys biennially and plans to conduct another survey in 2004-05.

**Staff establishment and strength of the Labour Inspection Division
(30 June 2003)**

Rank	Establishment	Strength
Senior Labour Officer	1	1
Labour Officer	4	4
Chief Labour Inspector	9	8
Senior Labour Inspector	32	30
Labour Inspector I	100	95
Labour Inspector II	47	51
	—	—
Total	<u>193</u>	<u>189</u>

Source: LD records

Inspection cycles of District Offices' routine and campaign inspections

District Office	No. of routine and campaign inspections (July 2002 to June 2003)	No. of active establishments as at 30 June 2003	Inspection cycle
	(a)	(b)	(c) = $\frac{(b)}{(a)} \times 12$ months
Hong Kong East	7,283	14,013	23 months
Mong Kok South	7,250	14,189	23 months
Hong Kong South	8,075	13,808	21 months
Sha Tin	7,073	11,926	20 months
Lai Chi Kok	8,093	12,689	19 months
Hong Kong West	7,095	10,729	18 months
Kwun Tong East	7,574	10,708	17 months
To Kwa Wan and Hung Hom	8,155	11,743	17 months
Tsuen Wan North	7,668	10,623	17 months
Ha Kwai Chung	6,675	9,012	16 months
San Po Kong	7,176	9,769	16 months
Kowloon Bay	8,049	10,357	15 months
Kwun Tong West	9,389	11,349	15 months
Mong Kok North	8,294	10,456	15 months
Sheung Kwai Chung	7,742	8,915	14 months
Tai Po and North	7,336	8,255	14 months
Tsuen Wan South	7,336	8,805	14 months
Tuen Mun	7,413	8,794	14 months
Yuen Long	7,177	7,459	12 months

Source: LD records

**Examples of conditions for
granting permission to employ child entertainers**

- (a) No child shall be employed:
 - (i) before 7 a.m. or after 11 p.m.;
 - (ii) for more than eight hours on any day;
 - (iii) during school hours;
 - (iv) for more than four days in a week and during school term for more than three days from Monday to Saturday;
 - (v) during the 12 hours immediately following the ending of his work on any day; and
 - (vi) to work continuously for more than five hours without a break of not less than one hour for meal or rest and, in the case of a child under the age of six, without an additional rest period of not less than half an hour within the said spell of five hours.
- (b) Free transport shall be provided to take each child employee home if he is required to work after 7 p.m.
- (c) No child shall be engaged in any act which is dangerous to his life, health or moral.
- (d) The child shall be accompanied by his instructor/teacher throughout each and every of his performance.
- (e) The child shall be accompanied by a chaperone throughout each and every of his performance.

Maximum amounts payable for each claim application

Nature of payment	Maximum amount payable
Arrears of wages	\$36,000 comprising: <ul style="list-style-type: none">(i) wages owed to an applicant in respect of services rendered to his insolvent employer during the period of four months prior to the last day of service;(ii) outstanding payment of annual leave or statutory holiday taken, maternity leave pay and sickness allowance; and(iii) end of year payment
Wages in lieu of notice	One month's wages or \$22,500, whichever is the less
Severance payment	\$50,000 plus 50% of any entitlement in excess of \$50,000 (up to \$210,000 as at 30 September 2003)

Source: Fund records

Acronyms and abbreviations

Audit	Audit Commission
BRC	Business Registration Certificate
COR	Controlling Officer' s Report
DO	District Office
DoJ	Department of Justice
LD	Labour Department
LID	Labour Inspection Division
LIS	Labour Inspection Information System
SET	Special Enforcement Team
WSU	Wage Security Unit