

CHAPTER 8

Immigration Department

<p>Immigration Department: Operation of the Enforcement Division</p>

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Hong Kong
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IMMIGRATION DEPARTMENT: OPERATION OF THE ENFORCEMENT DIVISION

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PART 1: INTRODUCTION

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

Background

1.2 The **Immigration Department (ImmD)** is responsible for two main areas of work, as follows:

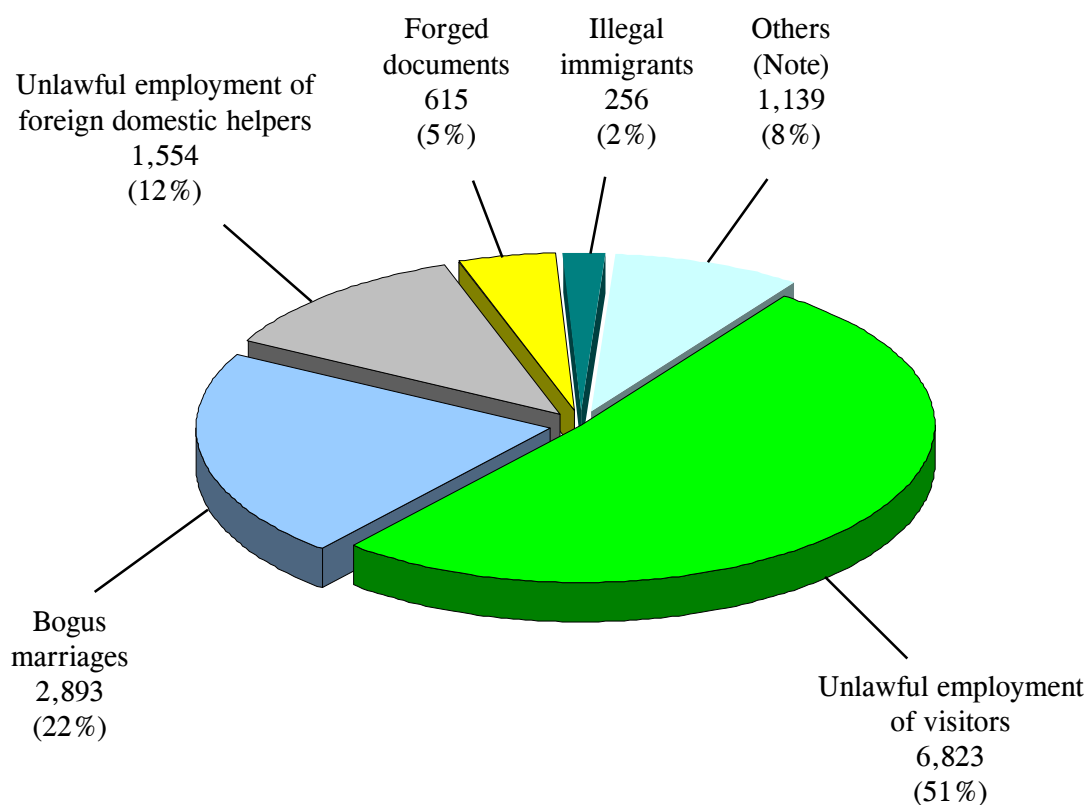
- (a) the control of people moving into and out of Hong Kong by land, sea and air; and
- (b) the documentation of local residents, including the issue of travel documents and identity cards, and the registration of births, deaths and marriages.

The work is carried out in accordance with the provisions of the Immigration Ordinance (Cap. 115) and several other ordinances (such as the Registration of Persons Ordinance — Cap. 177).

1.3 Visitors from most countries are allowed visa-free entries to Hong Kong. They are required to comply with the conditions of stay imposed by the ImmD under the Immigration Ordinance. In particular, they are not allowed to take up any employment. Persons applying for permission to work in Hong Kong are required to obtain visas or entry permits before arrival. Illegal workers and their employers will be prosecuted and fined or imprisoned. Illegal workers will also be repatriated to their places of domicile. The ImmD provides various channels for members of the public to make complaints about employment of illegal workers and other immigration offences. It screens the complaints received in accordance with established criteria for conducting investigations. Figure 1 shows an analysis of the 13,280 complaints received in 2009 by types of immigration offence.

Figure 1

**Analysis of complaints by types of immigration offence
(2009)**



Source: ImmD records

Note: These included complaints about making false representations to ImmD officers and offences under the Registration of Persons Ordinance and several other ordinances administered by the ImmD.

Enforcement Division

1.4 **Organisation.** The **Enforcement Division** of the ImmD is responsible for formulating and implementing policies in respect of investigation of immigration offences, and removal and deportation of the offenders. The **Investigation Sub-division**, being the investigative arm of the Division, is responsible for investigating immigration offences. The Sub-division is organised into five investigation sections, one research section and one support section. As at 31 December 2010, the Sub-division had an establishment of 400 staff, comprising 349 disciplined staff and 51 civilian staff. An extract of the organisation chart of the Enforcement Division (showing the seven sections) is at Appendix A.

1.5 *Instructions and manuals.* In performing their duties, the staff of the investigation sections are required to comply with the Immigration Service Standing Orders, the Immigration Service Standing Instructions (ISSIs), and Divisional and Sub-divisional Instructions. The instructions provide a consolidated reference on operational procedures which are to be applied uniformly among all sections. In addition, individual sections issue sectional operational instructions and manuals for their staff as required.

1.6 *Computer system.* The ImmD uses a computerised system, namely the Application and Investigation Easy System (APPLIES), for processing applications for visas, permits, travel passes, registration matters relating to births, deaths and marriages, as well as the investigation cases of the Enforcement Division.

Audit review

1.7 The Audit Commission (Audit) has recently conducted a review to ascertain whether there is room for improvement in the operation of the Enforcement Division relating to the investigation of immigration offences. The audit review examined the work of the Investigation Sub-division, focusing on the following areas:

- (a) screening of complaints about immigration offences (PART 2);
- (b) investigation of unlawful employment of visitors (PART 3);
- (c) investigation of unlawful employment and overstaying of foreign domestic helpers (PART 4);
- (d) investigation of bogus marriages (PART 5); and
- (e) performance measurement (PART 6).

Audit has found room for improvement in the above areas and has made a number of recommendations to address the issues.

General response from the Administration

1.8 The **Director of Immigration** agrees with all the audit recommendations.

1.9 The **Secretary for Security** welcomes the audit recommendations. He will monitor the ImmD's progress closely to ensure that the recommendations are implemented as far as possible.

Acknowledgement

1.10 Audit would like to acknowledge with gratitude the full cooperation of the staff of the ImmD during the course of the audit review.

PART 2: SCREENING OF COMPLAINTS ABOUT IMMIGRATION OFFENCES

2.1 This PART examines the following issues relating to the screening of complaints about immigration offences:

- (a) channels for making complaints (paras. 2.2 to 2.7);
- (b) screening of complaints (paras. 2.8 to 2.16);
- (c) investigation requirements for screened-in cases (paras. 2.17 to 2.26); and
- (d) investigation requirements for urgent cases (paras. 2.27 to 2.31).

Channels for making complaints

2.2 Any person may make complaints about immigration offences by:

- (a) using the 24-hour Immigration Offences Hotline;
- (b) sending letters, faxes or e-mails to the ImmD; and
- (c) using the Online Reporting of Immigration Offences System via the ImmD website.

2.3 The ImmD launched the online reporting service in January 2009. The objective was to facilitate members of the public to make complaints about immigration offences. Apart from requesting complainants to provide specific information, the system allows them to upload additional information for the ImmD's investigation purposes.

2.4 Table 1 shows an analysis of the complaints about immigration offences received by the ImmD between January 2009 (the month of launching the online reporting service) and January 2011. Of the total 27,142 complaints, only 116 (0.4%) were made by using the online reporting service.

Table 1

**Complaints about immigration offences
(January 2009 to January 2011)**

Channel	Number
Hotline	17,899 (66.0%)
Letter	4,996 (18.4%)
Fax or e-mail	4,131 (15.2%)
Online reporting	116 (0.4%)
Total	27,142 (100%)

Source: ImmD records

Remarks: Referral cases (see para. 2.13) are not included in this table.

Audit observations and recommendations

2.5 Audit noted that the ImmD's objective of launching the online reporting service was to facilitate members of the public to make complaints about immigration offences. However, as shown in Table 1, only a small number of complainants (0.4%) used the service. This suggests that there could be areas for improvement in the provision of the service.

Audit recommendations

2.6 **Audit has recommended that the Director of Immigration should:**

- (a) **conduct a review to ascertain the reasons for the low usage of the online reporting service; and**
- (b) **based on the review results, take improvement measures as appropriate with a view to further facilitating members of the public to make complaints about immigration offences.**

Response from the Administration

2.7 The **Director of Immigration** agrees with the audit recommendations. He has said that a review has been commenced to ascertain the reasons for the low usage of the online reporting service. The ImmD will take improvement measures as appropriate based on the review results.

Screening of complaints

2.8 **Recording complaints.** The **Hotline Complaint Unit** (Note 1) of the Enforcement Division operates the Immigration Offences Hotline. After recording the complaints received through the Hotline and other channels in manual registers, the Unit passes the complaints to the Complaint Handling Officer (Note 2).

2.9 **Classifying complaints.** The Complaint Handling Officer is responsible for determining whether a complaint should be classified as an urgent case. Urgent cases are passed to investigation sections for immediate actions (Note 3). Other cases, together with any information about the suspected offenders as retrieved by the Hotline Complaint Unit from the computer systems, are submitted to the **Complaint Vetting Committee (CVC — Note 4)**. In 2009, the Complaint Handling Officer classified 708 of the 13,280 complaints received as urgent cases and passed the remaining 12,572 complaints to the CVC for screening.

Note 1: *The Unit has eight staff, comprising a Senior Immigration Officer, an Immigration Officer and six Immigration Assistants.*

Note 2: *The Complaint Handling Officer is an Assistant Principal Immigration Officer. He is also the head of the Investigation Sub-division.*

Note 3: *Other sections, such as the immigration control points, will be alerted if there is indication that a traveller will shortly enter into Hong Kong by using a forged travel document.*

Note 4: *The CVC comprises a Principal Immigration Officer (Head of the Enforcement Division), the Complaint Handling Officer, four Chief Immigration Officers (Heads of investigation sections) and a Senior Immigration Officer (Head of the Hotline Complaint Unit). The CVC holds meetings weekly to review complaints about immigration offences.*

2.10 *Screening complaints.* The CVC screens the complaints to determine whether investigation should be conducted, as follows:

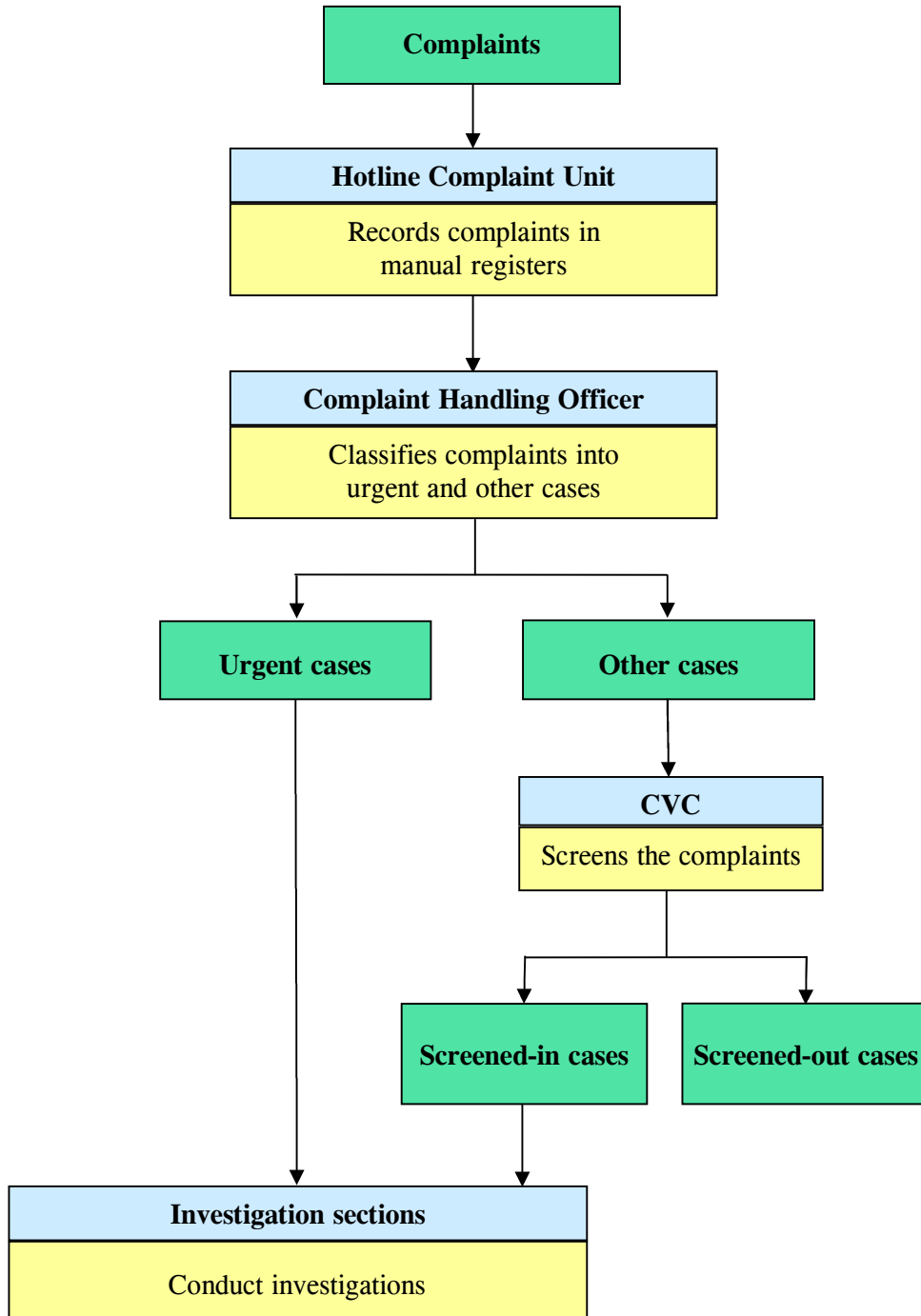
- (a) *Screened-in cases.* Cases meeting the screening criteria are assigned to investigation sections for follow-up; and
- (b) *Screened-out cases.* Other cases, where appropriate, are brought to the attention of other sections of the ImmD or other law enforcement departments before they are indexed and collectively filed for future reference (Note 5).

Figure 2 shows a flowchart of the processing of complaints.

Note 5: *Details of the screened-out cases (including the name of the suspected offender and the address of the premises) are recorded in a database to facilitate future checking of whether there are repeated complaints about the same offence.*

Figure 2

Processing of complaints



Source: ImmD records

2.11 *Screening criteria.* According to the ImmD operational manual, the CVC adopts a set of criteria for screening cases for investigation. The criteria take account of the nature and seriousness of the allegations.

Audit observations and recommendations

Need to set guidelines for classifying complaints

2.12 Audit notes that the Complaint Handling Officer alone is responsible for classifying all complaints into urgent and other cases, in order that urgent cases can be dealt with immediately. While the ImmD has vested the Complaint Handling Officer with the authority of classifying complaint cases, it has not set guidelines for the Complaint Handling Officer in exercising this authority. In Audit's view, the ImmD needs to set such guidelines, which will help ensure that complaints are properly classified in accordance with the management criteria. The guidelines are also useful for ensuring consistency in classifying complaints when there is a change in the Complaint Handling Officer post-holder.

Need to review screening criteria

2.13 In addition to complaints from members of the public, the ImmD receives complaints referred by government departments and organisations such as trade unions. At present, it is the practice of the Complaint Handling Officer to make reference to the CVC screening criteria for classifying referral cases as urgent cases. Audit notes that the screening criteria for referral cases are unclear. There is a risk that some referral cases not meeting the screening criteria might be incorrectly passed for investigation.

2.14 According to the ImmD records, the criteria for screening cases for investigation were set in 1995 and, since then, have not been reviewed. In Audit's view, the ImmD needs to regularly conduct reviews to ensure that the screening criteria are still applicable and appropriate, having regard to changed circumstances (e.g. results of investigation of past cases might point to new risk areas).

Audit recommendations

2.15 **Audit has recommended that the Director of Immigration should:**

- (a) **set guidelines for classifying complaints about immigration offences into urgent and other cases;**

- (b) specify clearly the criteria for screening referral cases for investigation; and
- (c) regularly conduct reviews to ensure that the criteria for screening complaints about immigration offences for investigation are still applicable and appropriate, having regard to changed circumstances.

Response from the Administration

2.16 The **Director of Immigration** agrees with the audit recommendations. He has said that the ImmD will issue guidelines for the classification of urgent cases, improve the criteria for screening referral cases for investigation and conduct regular reviews of the screening criteria in future.

Investigation requirements for screened-in cases

2.17 *Requirements.* For screened-in cases assigned to investigation sections, the ImmD has specified the following requirements:

- (a) *Monitoring outstanding cases.* According to the ISSIs, section heads are required to retrieve a monthly computer report “List of Outstanding Applications Pending Result Updating” from APPLIES to review outstanding cases. They are required to closely monitor long outstanding cases;
- (b) *Reporting uninvestigated cases.* Section heads are required to critically examine cases which have remained uninvestigated for over six months. They are required to report such cases to the CVC for deciding on the appropriate actions (e.g. granting more time for conducting investigations);
- (c) *Closing cases.* Investigated cases with sufficient evidence for prosecution should be passed to the Prosecution Section. For other cases requiring no further follow-up actions, investigation sections are required to seek the CVC’s approval before closing them; and
- (d) *Spot checks.* Cases to be closed are required to be passed to the **Investigation Central Administration Section** (Note 6) for processing. To ensure that all closed cases have been properly approved by the CVC, the Section is required to randomly select two cases from each investigation section weekly for the Complaint Handling Officer to conduct spot checks in accordance with the ISSIs.

Note 6: *The Section, as an administrative arm of the Enforcement Division, is mainly responsible for records management.*

2.18 *Audit's analysis of outstanding screened-in cases.* According to the ImmD records, as at 30 June 2010, there were 3,969 outstanding screened-in cases comprising both uninvestigated cases and cases still under investigation. Audit's analysis revealed that many cases had been outstanding for years. Table 2 shows the details.

Table 2
Ageing analysis of outstanding screened-in cases
(30 June 2010)

Year of receiving the complaints	Number of cases
2003 or before	153
2004	240
2005	405
2006	381
2007	540
2008	774
2009	787
2010 (Up to June)	689
Total	3,969

Source: ImmD records

2.19 *Audit examination of screened-in cases.* In the light of the many long outstanding screened-in cases as revealed in Audit's analysis, Audit sample checked these cases and other records to ascertain whether the ImmD's investigation requirements for screened-in cases had been complied with. Audit's examination has highlighted several issues that warrant the ImmD's attention. The issues are discussed in paragraphs 2.20 to 2.24.

Audit observations and recommendations

Need to provide adequate management information

2.20 As mentioned in paragraph 2.17(a), the ISSIs require section heads to retrieve a monthly computer report from APPLIES to review outstanding cases and closely monitor long outstanding cases. Audit notes that the computer report shows only the number of outstanding cases and a list of the file numbers without analysing the case progress (e.g. whether investigation has commenced, operations have been conducted or prosecution is in progress), which is not input into APPLIES (Note 7). Therefore, the computer report does not provide adequate information for case review and monitoring purposes.

2.21 In Audit's view, the ImmD needs to provide section heads with adequate management information (manual/computer) for effective review and monitoring of outstanding cases. This may include, where appropriate, enhancing APPLIES to monitor outstanding cases.

Need to clear long outstanding cases

2.22 According to the ImmD records, as at December 2001, there were 595 outstanding screened-in cases. As mentioned in paragraph 2.18, the number of outstanding cases increased to 3,969 in June 2010, of which 153 had been outstanding for more than six years (i.e. outstanding since 2003 or before). Upon Audit's enquiry, the ImmD explained that in the past years, the operation of the investigation sections had been affected by newly emerged issues (such as bogus marriage cases) and other work priorities. Audit notes the ImmD's explanations, but considers that the ImmD needs to clear the backlog of outstanding cases, particularly those which had been outstanding for years.

Need to tighten controls over uninvestigated cases

2.23 As mentioned in paragraph 2.17(b), section heads are required to report cases which have remained uninvestigated for over six months to the CVC for deciding on the appropriate actions. Audit examined 30 cases which, as at 30 June 2010, had remained uninvestigated for over six months. Audit found that:

- (a) 26 cases had not been reported to the CVC. As at 30 June 2010, these 26 cases had remained uninvestigated from over 6 months up to 40 months (20 months on average); and

Note 7: *Individual investigation sections keep manual or electronic records of the actions taken on their cases.*

- (b) 4 cases had been reported to the CVC. However, the reporting was made after they had remained uninvestigated for 7 to 14 months (10 months on average). Moreover, in giving approvals for investigating these 4 cases later, the CVC had not specified any deadline by which investigations had to be conducted.

In Audit's view, non-reporting, or delay in reporting, of uninvestigated cases to the CVC, and the absence of an investigation deadline, may weaken the controls over uninvestigated cases. The ImmD needs to address the issues.

Need to ensure controls over closed cases operate effectively

2.24 As mentioned in paragraph 2.17(d), the ISSIs require the Complaint Handling Officer to conduct spot checks on two closed cases from each investigation section weekly to ensure proper approvals. Audit reviewed how the spot checks were conducted during the 78-week period from January 2009 to June 2010. Audit found that the ISSIs had not been strictly complied with, as follows:

- (a) no spot checks were conducted in 51 weeks; and
- (b) the numbers of spot checks conducted in 6 weeks were less than the requirement.

In Audit's view, the ImmD needs to ensure that the controls over closed cases operate effectively.

Audit recommendations

2.25 **Audit has recommended that the Director of Immigration should:**

- (a) **provide section heads with adequate management information and ensure that they review and closely monitor outstanding cases of complaints about immigration offences;**
- (b) **revise the requirement of the ISSIs on retrieving computer reports from APPLIES as appropriate to reflect any changes in the procedures for case review and monitoring;**
- (c) **take measures to clear the backlog of outstanding cases, particularly those which had been outstanding for years;**

- (d) **tighten the controls over cases assigned for investigation but remain uninvestigated, by requiring:**
 - (i) **investigation sections to strictly comply with the requirement of reporting cases that have remained uninvestigated for over six months to the CVC; and**
 - (ii) **the CVC to set investigation deadlines for these cases; and**
- (e) **take measures to ensure that the controls over closed cases operate effectively.**

Response from the Administration

2.26 The **Director of Immigration** agrees with the audit recommendations. He has said that:

- (a) the ImmD will study the feasibility of enhancing APPLIES to achieve the purpose of monitoring outstanding cases. The requirement to provide section heads with more management information will be taken into account in formulating and developing the ImmD's third Information Systems Strategy;
- (b) the requirement of the ISSIs on retrieving computer reports from APPLIES has been revised;
- (c) the ImmD will continue to closely monitor the backlog situation and explore all feasible ways to expedite the investigation of outstanding cases. The pursuable cases will be followed up as appropriate whereas those without investigation value will be considered for closing;
- (d) all relevant officers have been reminded to strictly comply with the requirement of reporting cases that have remained uninvestigated for over six months to the CVC. Additional measures have been implemented to monitor cases with extended investigation deadlines granted by the CVC; and
- (e) all relevant officers have been reminded to closely adhere to the instructions regarding closed cases. In addition, the ImmD has beefed up the relevant provisions in the ISSIs.

Investigation requirements for urgent cases

2.27 **Requirements.** As mentioned in paragraph 2.9, complaints classified by the Complaint Handling Officer as urgent cases are passed to the investigation sections for immediate actions. Nevertheless, the ImmD has not made it clear whether the investigation requirements stipulated for the CVC screened-in cases (see para. 2.17) are also applicable to such urgent cases. At present, investigation sections do not report uninvestigated urgent cases to the CVC or seek its approval for closing urgent cases (i.e. not following some of the investigation requirements for screened-in cases — see para. 2.17(b) and (c)). According to the ImmD, only for some special cases, section heads would require their staff to commence investigation by a specified date.

2.28 **Audit examination of urgent cases.** In 2009, the Complaint Handling Officer passed 708 urgent cases to investigation sections for immediate actions. Audit examined 40 cases to find out when the investigation sections commenced investigating the cases. Audit found that for 31 of the 40 cases, the investigations did not commence until more than one week after receiving the complaints from the Complaint Handling Officer. Table 3 shows the details.

Table 3

Urgent cases examined by Audit

Time of commencing investigation (Note)	Number of cases
≤ 1 week	9
> 1 week to 1 month	8
> 1 month to 2 months	7
> 2 months to 6 months	9
> 6 months to 12 months	7
Total	40

} 31

Source: ImmD records

Note: The time was counted from the date when the complaint was received by the investigation sections from the Complaint Handling Officer.

Audit observations and recommendations

2.29 The ImmD classifies its complaints into urgent and other cases in order that urgent cases can be dealt with immediately. However, Audit examination of the 40 urgent cases (see Table 3) revealed that, for only nine cases (23%), the investigation sections had dealt with them within one week. In Audit's view, delays in investigating urgent cases may reduce the effectiveness of the ImmD's enforcement actions.

Audit recommendations

2.30 **Audit has recommended that the Director of Immigration should:**

- (a) **specify the investigation requirements for urgent cases;**
- (b) **review the other urgent cases to see if there are delays in commencing investigations, similar to those mentioned in paragraph 2.28, and identify the causes of delays in these cases; and**
- (c) **based on the review results, take appropriate measures to ensure that urgent cases are dealt with as soon as possible.**

Response from the Administration

2.31 The **Director of Immigration** agrees with the audit recommendations. He has said that the ImmD will:

- (a) take actions to improve the efficiency in handling urgent cases;
- (b) issue instructions/guidelines to specify the investigation requirements for urgent cases; and
- (c) take appropriate follow-up measures based on the review results.

PART 3: INVESTIGATION OF UNLAWFUL EMPLOYMENT OF VISITORS

3.1 This PART examines the investigation of unlawful employment of visitors. Audit has found that there is room for improvement in the following areas:

- (a) prioritising cases for investigation (paras. 3.5 to 3.9);
- (b) planning enforcement operations (paras. 3.10 to 3.13);
- (c) conducting enforcement operations (paras. 3.14 to 3.19); and
- (d) maintaining investigation records (paras. 3.20 to 3.26).

Unlawful employment of visitors

3.2 Visitors are subject to the condition of stay that they shall not take up any employment, whether paid or unpaid. According to section 41 of the Immigration Ordinance, any person who contravenes this condition of stay is liable to a maximum fine of \$50,000 and imprisonment for two years. Section 17I also provides that the employer of illegal workers is liable to a maximum fine of \$350,000 and three years' imprisonment.

3.3 The **Task Force** of the Enforcement Division (see Appendix A), headed by a Chief Immigration Officer, is responsible for investigating complaints about unlawful employment of visitors and conducting enforcement operations. It is organised into nine investigation teams.

3.4 In 2009, of the 13,280 complaints about immigration offences, 6,823 (51%) were related to unlawful employment of visitors (see Figure 1 in para. 1.3).

Prioritising cases for investigation

3.5 The ImmD has issued the following guidelines for prioritising cases for investigation:

- (a) **Time frame.** A top priority is given to cases where the alleged activities can only be detected within a specific time frame (e.g. illegal workers in renovating premises);

- (b) **Nature.** Complaints which implicate serious offences will be accorded with a higher priority;
- (c) **Repeated complaints.** Repeated complaints against an establishment, which has adverse records, warrant special consideration for a higher priority; and
- (d) **Identifiable complainant.** The willingness of a complainant to disclose his personal particulars adds weight to the veracity of the allegations.

Audit observations and recommendations

3.6 **Prioritisation is important.** Prioritising cases for investigation is important in using the available resources effectively to deal with a large number of complaints about unlawful employment of visitors. Without proper prioritisation of cases, enforcement actions may not be conducted at the most appropriate time to achieve the best results.

3.7 **No evidence of prioritisation.** Audit examination of 30 cases (with investigations commenced between 2007 and 2009) revealed no documentary evidence that the Task Force had prioritised the cases for investigation. In one case (Case 1), Audit found that the Task Force had not followed the ImmD guidelines for prioritising cases for investigation.

Case 1

Criteria met but higher priority not given

1. On 5 May 2009, the ImmD received a complaint about illegal workers at a recycling site in Yuen Long. After one week, two more complaints about illegal workers at the same site were received. On 14 May 2009, the case was assigned to the Task Force. On 21 August 2009, when the Task Force commenced investigation, the site was found abandoned. The villagers nearby told the Task Force that the illegal workers had left the site since June 2009. The case was then closed.

Audit comments

2. According to the ImmD guidelines for prioritising cases for investigation, a higher priority should be given to cases of repeated complaints (see para. 3.5(c)). As the case met the criteria, the Task Force should have given a higher priority to it. However, the fact that the Task Force did not commence investigation until August 2009 (i.e. three months after receiving the case) suggested that the Task Force had not strictly followed the ImmD guidelines.

Source: ImmD records

Audit recommendations

- 3.8 **Audit has recommended that the Director of Immigration should:**
- (a) **take measures to ensure that investigating sections prioritise cases of complaints about immigration offences for investigation in accordance with the ImmD guidelines; and**
 - (b) **regularly review, and where necessary revise, the guidelines to take into account changes in circumstances.**

Response from the Administration

3.9 The **Director of Immigration** agrees with the audit recommendations. He has said that the ImmD will:

- (a) issue instructions to promulgate the requirement that prioritisation of cases should be properly documented; and
- (b) introduce measures to ensure compliance, including regular review of the guidelines.

Planning enforcement operations

3.10 In investigating a case, the Task Force may conduct enforcement operations to gather evidence for initiating prosecution. Sometimes, it conducts a number of operations for gathering sufficient evidence. It may also conduct joint operations with other government departments (e.g. the Hong Kong Police Force (HKPF) and the Labour Department (LD)). Upon enquiry, the ImmD informed Audit that it had not issued any guidelines on the planning of such operations.

Audit observations and recommendation

3.11 Good planning is essential for a successful operation. In the absence of guidelines specifying the management criteria, there is a higher risk that investigation sections do not plan their operations adequately. Case 2 is an illustration of such an operation which was not successful because of inadequate planning.

Case 2

Inadequate planning of an operation

1. In November 2004, the ImmD received a complaint about illegal workers at a restaurant in Sai Kung. In January 2005, a repeated complaint about illegal workers at the same restaurant was received. The case was assigned to the Task Force. In April 2005, the Task Force conducted a reconnaissance to obtain information about the restaurant suspected to have illegal workers. The restaurant was found to be in operation. In February 2006, when the Task Force took enforcement actions, the restaurant was found to have closed down. The case was then closed.

Audit comments

2. The fact that the Task Force took enforcement actions only in February 2006 (i.e. 10 months after the conduct of a reconnaissance of the restaurant) suggested that there was scope for improving the planning of the operation.

Source: ImmD records

Audit recommendation

3.12 **Audit has recommended that the Director of Immigration should take measures to ensure that investigating sections plan their operations adequately, such as issuing guidelines and conducting experience-sharing sessions (on successful and unsuccessful cases).**

Response from the Administration

3.13 The **Director of Immigration** agrees with the audit recommendation. He has said that the relevant guidelines have been incorporated into the operational manual of the Task Force and experience-sharing sessions will be arranged as and when required.

Conducting enforcement operations

3.14 Table 4 shows an analysis of the results of operations conducted during the period 2004 to 2009.

Table 4
Enforcement operations against unlawful employment of visitors
(2004 to 2009)

Year	Number of operations conducted (a)	Number of illegal workers arrested (b)	Average number of illegal workers arrested per operation $(c) = \frac{(b)}{(a)}$
2004	7,659	5,565	0.7
2005	6,497	4,208	0.6
2006	9,183	4,267	0.5
2007	9,606	3,012	0.3
2008	10,277	3,390	0.3
2009	10,829	3,468	0.3

Source: ImmD records

3.15 As shown in Table 4, from 2004 to 2009:

- (a) the total number of enforcement operations increased by 3,170 or 41% (from 7,659 to 10,829); and
- (b) the total number of illegal workers arrested decreased by 2,097 or 38% (from 5,565 to 3,468).

In 2009, on average, 0.3 illegal worker was arrested per operation. This represented a 57% decrease from the figure of 0.7 in 2004.

Audit observations and recommendations

3.16 The increase in the total number of enforcement operations shows the ImmD's commitment to deploying additional resources as needed to combat unlawful employment. According to the ImmD, there might not be a direct correlation between the number of operations and the number of illegal workers arrested. However, in Audit's view, the significant decreases in the number of illegal workers arrested (both total and average per operation) require the ImmD's attention. There is a need to closely monitor the situation and adjust the strategy, where appropriate, in combating unlawful employment having regard to changes in circumstances.

3.17 As discussed in paragraphs 3.5 to 3.13, Audit found scope for improvement in prioritising cases for investigation and in planning for enforcement operations. In addition, Audit's analysis of 450 operations conducted during January 2008 to June 2010 (see Table 5) found that the timeliness of conducting operations was also an important factor. Table 5 shows that illegal workers were arrested in 67 (30%) of the 225 operations conducted within 30 days after receiving the complaints. Of the 66 operations conducted later than six years after receiving the complaints, the ImmD arrested illegal workers in only one operation (2%).

Table 5

**Audit's analysis of 450 enforcement operations
(January 2008 to June 2010)**

Time of commencing operation (Note)	Operations conducted (a) (Number)	Operations with illegal workers arrested	
		(b) (Number)	(c) = $\frac{(b)}{(a)} \times 100\%$ (Percentage)
≤ 1 month	225	67	30%
> 1 month to 6 months	43	11	26%
> 6 months to 1 year	13	2	15%
> 1 year to 3 years	44	4	9%
> 3 years to 6 years	59	3	5%
> 6 years	66	1	2%
Overall	450	88	20%

Source: ImmD records

Note: The time was counted from the date when the complaint was received by the Task Force.

Audit recommendations

3.18 **Audit has recommended that the Director of Immigration should:**

- (a) **conduct a review to ascertain the reasons for the significant decreases in the number of illegal workers arrested (both total and average per enforcement operation); and**
- (b) **based on the review results, take measures as appropriate to address the issues identified, with a view to improving the effectiveness of enforcement operations in future.**

Response from the Administration

3.19 The **Director of Immigration** agrees with the audit recommendations. He has said that the ImmD will conduct a review and take appropriate follow-up measures. The ImmD will continue to closely monitor the situation and adjust the strategy in combating unlawful employment having regard to changes in circumstances.

Maintaining investigation records

3.20 In addition to the case information in APPLIES (see para. 2.20), the Task Force maintains a computerised database for recording all the investigation cases assigned to it. For each case, the data required to be input into the database include the paper file reference, the date of assignment to the Task Force, the address of the suspect, the date of enforcement operation, the result of operation and the date of closing the case. As at 30 June 2010, 14,800 cases were recorded in the database (Note 8).

Audit observations and recommendations

Need to consider enhancing the database

3.21 Audit notes that:

- (a) the database does not record the case classification (i.e. whether a case is an screened-in case or urgent case);
- (b) the database records the date of one enforcement operation only. Where two or more operations have been conducted, the practice is to record either the first or the last operation; and
- (c) there are no programmed functions to produce reports readily for case management purposes (Note 9).

3.22 In Audit's view, the ImmD needs to consider enhancing the database by recording the case classification and all the operations conducted, and by providing functions to produce useful reports readily. This will facilitate effective management monitoring and control of investigation cases.

Note 8: *The 14,800 cases comprised outstanding cases and cases closed after 2004.*

Note 9: *Ad hoc reports can be produced from the database by writing computer programs to meet specific requirements.*

Need to ensure completeness and accuracy of the database

3.23 Audit selected 100 cases from the paper files and cross-checked the filed information against the data recorded in the database. Audit found that:

- (a) three cases were not recorded in the database;
- (b) six closed cases were incorrectly recorded as outstanding cases in the database; and
- (c) for 12 cases, certain information (e.g. the date of assignment to the Task Force, the date of enforcement operation and the result of operation) was recorded inaccurately, or was not recorded, in the database.

3.24 The database does not serve effectively the intended purposes if it is inaccurate or incomplete. In Audit's view, the ImmD needs to ensure the accuracy and completeness of the database.

Audit recommendations

3.25 **Audit has recommended that the Director of Immigration should:**

- (a) **consider enhancing the Task Force's database by recording the case classification and all the operations conducted, and providing functions to facilitate the generation of useful management reports; and**
- (b) **require the Task Force to take measures to ensure the accuracy and completeness of the database.**

Response from the Administration

3.26 The **Director of Immigration** agrees with the audit recommendations. He has said that:

- (a) the Task Force's database has been enhanced to record case classification and all the operations conducted since January 2011. The requirement to provide more management information will be taken into account in formulating and developing the ImmD's third Information Systems Strategy; and
- (b) relevant officers have been briefed on the importance of maintaining the accuracy and completeness of the database, and reminded to be more careful in inputting data in future. A spot check mechanism will also be introduced.

PART 4: INVESTIGATION OF UNLAWFUL EMPLOYMENT AND OVERSTAYING OF FOREIGN DOMESTIC HELPERS

4.1 As at 30 September 2010, there were 283,000 foreign domestic helpers (FDHs) working in Hong Kong. This PART examines the following issues relating to the investigation of unlawful employment and overstaying of FDHs in Hong Kong:

- (a) investigation of cases referred by LD (paras. 4.4 to 4.10);
- (b) joint enforcement operations conducted with LD (paras. 4.11 to 4.16); and
- (c) FDHs overstaying in Hong Kong (paras. 4.17 to 4.28).

Unlawful employment of foreign domestic helpers

4.2 The ImmD imposes conditions of stay on every FDH admitted into Hong Kong for employment with a specific employer under a standard two-year employment contract. The conditions of stay include the following:

- (a) ***Restrictions on deployment.*** The FDH should only perform domestic duties for the employer specified in the contract. The employer should not require or allow the FDH to carry out any non-domestic work. In addition, the FDH should not take up any other employment, including part-time domestic duties, with any other person. The employer should not require or allow the FDH to carry out any work for any other person; and
- (b) ***Limit of stay.*** The FDH is allowed to stay in Hong Kong for two years. If the contract is terminated prematurely by either party, the FDH will be allowed to stay until the limit of stay granted or two weeks after the termination of contract, whichever is the earlier.

An FDH breaching a condition of stay is liable to a maximum fine of \$50,000 and imprisonment for two years. Any aider and abetter will be liable to the same punishment.

4.3 Complaints about unlawful employment of FDHs are screened by the CVC before assigning the cases to the **Outside Investigation Section (OIS)** of the Enforcement Division for investigation. Referral cases from the LD with prima facie evidence of unlawful employment are passed directly to the **General Investigation Section** of the Enforcement Division for urgent follow-up actions. In 2009, there were 178 such screened-in cases and 20 cases referred by the LD.

Investigation of cases referred by Labour Department

4.4 Where LD officers, during an inspection (Note 10), found a case of suspected unlawful employment of an FDH, the LD will refer the case to the ImmD for follow-up actions. The General Investigation Section will review the LD's inspection report and take necessary actions to collect further evidence (e.g. checking whether the FDH has past offence records, conducting field operations and interviewing the FDH to obtain his/her cautioned statements). Prosecution action will be initiated if sufficient evidence has been collected.

Audit observations and recommendations

4.5 According to ImmD records:

- (a) the 20 cases referred by the LD in 2009 involved 21 FDHs;
- (b) the ImmD prosecuted only 3 FDHs (with 2 convicted) in 3 of the 20 cases; and
- (c) in closing the other 17 cases (involving 18 FDHs), the ImmD only informed the LD that no prosecution was initiated and did not give any reasons.

4.6 Regarding the reasons for not initiating prosecution in the 17 cases, the ImmD informed Audit that, for some of the cases, LD officers' one-off observations were too short (e.g. only for 30 seconds) to provide adequate evidence that the FDHs concerned had taken up unlawful employment. According to the LD, the duration of observation was constrained by FDHs' swift cessation of the suspected unlawful employment activities on noticing the presence of LD officers.

4.7 Audit noted that similar issue was discussed at a meeting in 2006 between the ImmD and the LD. Seminars were held in 2006 and 2008 for LD officers to improve their inspection procedures. In the light of the above findings, the ImmD needs to work closely with the LD on further measures to improve evidence collection by LD officers.

Audit recommendations

4.8 **Audit has recommended that the Director of Immigration should:**

Note 10: *The LD conducts workplace inspections to establishments of various industries to enforce legislation (including Part IVB of the Immigration Ordinance on the prohibition of employment of illegal immigrants and others).*

- (a) in collaboration with the Commissioner for Labour, provide LD officers with additional guidance on collecting evidence on any unlawful employment of FDHs which can be used effectively by the ImmD for initiating prosecution; and
- (b) where the evidence collected in a case cannot be used for initiating prosecution, inform the LD of the reasons with a view to helping LD officers make improvement as appropriate in conducting inspections in future.

Response from the Administration

4.9 The **Director of Immigration** agrees with the audit recommendations. He has said that the ImmD will:

- (a) seek to enhance the effectiveness of operations through regular experience sharing with the LD; and
- (b) continue to liaise closely with the LD on the feasibility of changing the current operation mode in dealing with similar referral cases.

4.10 The **Commissioner for Labour** welcomes the audit recommendations.

Joint enforcement operations conducted with Labour Department

4.11 The ImmD conducts two types of joint enforcement operations with the LD to combat unlawful employment of FDHs, as follows:

- (a) **“Rainbow” operation.** In each operation, ImmD and LD officers inspect some target locations (e.g. restaurants, grocery stalls and shops). LD officers make reconnaissance on suspected targets while ImmD officers arrest the suspects and make enquiries of all those at the scene; and
- (b) **“Probe” operation.** In each operation, ImmD and LD officers pay surprise visits to employment agencies on the LD’s watch list. The objectives are to detect cases of breach of conditions of stay and to deter malpractice of employment agencies (e.g. overcharging commission — Note 11).

Note 11: *Under the Employment Agency Regulations (Cap. 57A), the maximum commission which may be received by an employment agency should not exceed 10% of the first month’s wages received by the FDH.*

Audit observations and recommendations

4.12 ***“Rainbow” operations are useful.*** In 2009, 11 “Rainbow” operations were conducted and a total of 28 FDHs were prosecuted (with 22 convicted). This suggests that “Rainbow” operations are useful for combating unlawful employment of FDHs. In 2009, the ImmD proposed conducting more “Rainbow” operations and the LD agreed to revisit the proposal in early 2010. Up to December 2010, there was no further progress. In Audit’s view, conducting more “Rainbow” operations will enhance the effectiveness of the ImmD’s enforcement actions against unlawful employment of FDHs.

4.13 ***Scope for improving “Probe” operations.*** According to the ImmD records, from 2005 to 2010, a total of 124 employment agencies were visited in the “Probe” operations and no immigration offences were detected. Audit noted that, although the intention was to visit employment agencies on a surprise basis (see para. 4.11(b)), the “Probe” operations for the period 2008 to 2010 were all conducted in the same month. Upon enquiry, the ImmD explained that it was mere coincidence that these “Probe” operations fell in the same month. Audit notes the ImmD’s explanations, but considers that conducting “Probe” operations in different months each year will introduce an additional surprise element.

Audit recommendations

4.14 **Audit has recommended that the Director of Immigration should, in conjunction with the Commissioner for Labour:**

- (a) **consider conducting more “Rainbow” operations to enhance the effectiveness of the ImmD’s enforcement actions against unlawful employment of FDHs; and**
- (b) **ensure that the “Probe” operations are conducted in different months each year to introduce an additional surprise element.**

Response from the Administration

4.15 The **Director of Immigration** agrees with the audit recommendations. He has said that the ImmD will continue to liaise with the LD to improve the effectiveness of joint enforcement actions, including increasing the frequency of “Rainbow” operations and scheduling “Probe” operations in different months each year.

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

- (a) will consider mounting more “Rainbow” operations notwithstanding its heavy commitments to enforcement action on safeguarding employees’ rights, notably with the impending implementation of the Minimum Wage Ordinance; and
- (b) considers it feasible to conduct “Probe” operations in different months each year.

Foreign domestic helpers overstaying in Hong Kong

4.17 *2008 study.* In 2008, the **Operational Research Section (ORS)** of the Enforcement Division (Note 12) conducted a study to evaluate the situation of FDHs overstaying in Hong Kong. With the assistance of the ImmD’s **Information Systems Branch**, relevant data were extracted from different databases to facilitate the analysis of the overstaying cases. Based on the extracted data, it was found that there were 2,835 FDHs overstaying in Hong Kong as at 9 April 2008. The ORS also analysed the overstaying periods and other information for the FDHs considered for deportation in 2006 and 2007 (435 in 2006 and 273 in 2007, totalling 708). The ORS found that 356 FDHs (50% of 708) had overstayed for more than one year. The ORS recommended a number of measures to address the issue of the overstaying FDHs. The **Operations Committee** (Note 13) agreed that the ImmD would review the feasibility of:

- (a) regularly generating computer reports (such as trend reports and exception reports) on overstaying FDHs through enhancement of computer systems for prompting alerts on irregular trends and anomalies; and
- (b) modifying the computer systems so that all overstaying FDHs could be readily detected by HKPF officers during identity checks in the streets (Note 14).

Note 12: *The ORS is responsible for collecting and analysing information from all available sources relating to the operations of the ImmD. It also compiles topical research reports to assist operational sections in improving immigration controls and to help the formulation of departmental policies.*

Note 13: *The Operations Committee is established to deliberate matters arising from the operations of the ImmD. The Committee, chaired by the Deputy Director of Immigration, has 20 members, including six Assistant Directors and two Senior Principal Immigration Officers.*

Note 14: *Under the Immigration Ordinance, HKPF officers are empowered to inspect proof of identity from members of the public for anti-illegal immigration purposes.*

4.18 **Overstaying rate.** In response to Audit's request in June 2010, the ImmD conducted another analysis of overstaying cases (similar to the one in para. 4.17). The updated analysis indicated that there were 3,840 FDHs overstaying in Hong Kong as at 26 October 2010. The overstaying rate of FDHs remained at about 1%. Details are at Table 6.

Table 6
Overstaying rate of FDHs

Date	Total number of FDHs (a)	Number of overstaying FDHs (b)	Overstaying rate $(c) = \frac{(b)}{(a)} \times 100\%$
9 April 2008	250,000	2,835	1.1%
26 October 2010	285,000	3,840	1.3%

Source: ImmD records

4.19 **Audit's analysis of overstaying cases.** In addition, Audit examined 100 overstaying cases as detected in 2009. Audit found that in 60 cases, the FDHs had overstayed for over one year. These included seven cases where the FDHs had overstayed for over 10 years. Details are at Table 7.

Table 7

Overstaying cases examined by Audit

Overstaying period (Note)	Number of cases
≤3 months	13
>3 months to 6 months	17
>6 months to 12 months	10
>1 year to 3 years	26
>3 years to 5 years	20
>5 years to 10 years	7
>10 years to 17 years	7
Total	100

} 60

Source: ImmD records

Note: The overstaying period was counted from the date the limit of stay expired to the date the FDH surrendered himself/herself or was arrested.

Audit observations and recommendations

Need to closely monitor the overstaying situation

4.20 Although the overstaying rate of FDHs remained at about 1% (see para. 4.18), Audit's ageing analysis indicated that 60% of the cases had an overstaying period of more than one year (50% found in the ORS study of 2008). The ImmD needs to continue to monitor closely the overstaying situation with a view to determining whether enforcement actions should be stepped up to address the problem.

Need to provide adequate management reports

4.21 As mentioned in paragraph 4.17(a), in 2008 the Operations Committee agreed that the ImmD would review the feasibility of enhancing the computer systems to regularly generate computer reports on overstaying FDHs. However, there was no indication that a feasibility study had been conducted.

4.22 At present, the ImmD's computer systems do not regularly produce management reports on the total number of overstaying FDHs and their overstaying periods. Audit considers that such information will help the ImmD monitor the overstaying situation, evaluate the effectiveness of its enforcement actions and plan future actions effectively.

Need to modify computer systems to facilitate identity checks

4.23 According to the ORS study, of the 273 overstaying cases considered for deportation in 2007, 112 cases (41%) were detected during identity checks by HKPF officers. Audit notes that the relevant computer systems of the ImmD and the HKPF are interfaced to enable HKPF officers to access the identity card information possessed by the ImmD in conducting identity checks. However, due to certain technical constraints in the ImmD's computer systems, not all the information that helps identify overstaying FDHs is made available to HKPF officers.

4.24 In this connection, as mentioned in paragraph 4.17(b), in 2008 the Operations Committee agreed that the ImmD would review the feasibility of modifying the computer systems so that all overstaying FDHs could be readily detected by HKPF officers during identity checks. In Audit's view, the ImmD needs to take necessary follow-up actions.

Need to assess employers' compliance with notification requirements

4.25 If a contract for employing an FDH is prematurely terminated, the employer is required to notify the ImmD within seven days (Note 15). Audit notes that the ImmD has not regularly conducted assessments of the extent of employers' compliance with the notification requirements. In Audit's view, the ImmD will benefit from such assessments, as they will help plan future actions to enhance compliance and detect non-compliance.

Audit recommendations

- 4.26 **Audit has recommended that the Director of Immigration should:**
- (a) **continue to closely monitor the situation of FDHs overstaying in Hong Kong to determine whether enforcement actions should be stepped up to address the problem;**

Note 15: *As a condition of the employment contract, an employer undertakes to notify the ImmD of the premature termination of the contract. Employers who fail to comply with the requirement may be debarred from hiring FDHs for a certain period.*

- (b) **take prompt action to review the feasibility of enhancing the computer systems to:**
 - (i) **regularly provide adequate management reports on the total number of overstaying FDHs and their overstaying periods to facilitate monitoring; and**
 - (ii) **enable HKPF officers to detect overstaying FDHs readily during identity checks;**
- (c) **regularly conduct assessments of the extent of employers' compliance with the notification requirements for premature termination of FDH contracts; and**
- (d) **based on the assessment results in (c) above, take appropriate measures to enhance compliance and detect non-compliance.**

Response from the Administration

4.27 The **Director of Immigration** agrees with the audit recommendations. He has said that the ImmD will critically study the feasibility of producing regular management reports to monitor the FDH overstaying situation, and the cost-effectiveness in modifying the computer systems to enable HKPF officers to detect overstaying FDHs readily during identity checks.

4.28 The **Commissioner of Police** agrees that the effectiveness of the enforcement actions against the overstaying of FDHs will be increased if the ImmD's computer systems can provide HKPF officers with adequate information for identifying overstaying FDHs during identity checks. He has said that the HKPF is prepared to help intercept overstaying FDHs in its role of combating illegal immigration by conducting identity checks.

PART 5: INVESTIGATION OF BOGUS MARRIAGES

5.1 This PART examines the following issues relating to the investigation of bogus marriages:

- (a) backlog of outstanding cases (paras. 5.7 to 5.12);
- (b) investigation of bogus marriage cases (paras. 5.13 to 5.17); and
- (c) supervisory checks (paras. 5.18 to 5.22).

Bogus marriages

5.2 In recent years, the ImmD uncovered many cases in which non-Hong Kong residents obtained the permission to stay in Hong Kong by means of bogus marriages and took up unlawful employment. They contracted bogus marriages with Hong Kong residents in order to gain entry into Hong Kong and eventually for settlement.

5.3 In April 2006, the ImmD, for the first time, successfully prosecuted a non-Hong Kong resident and a Hong Kong resident for bogus marriage offences. They were convicted of conspiracy to defraud and dishonestly causing the marriage registrar to officiate their marriage, and sentenced to nine months' imprisonment each.

5.4 As at 31 December 2009, a total of 702 persons (Note 16), including the bogus couples and syndicated members, had been convicted of offences relating to bogus marriages (e.g. conspiracy to defraud and making false representations to ImmD officers). The imprisonment sentences ranged from 4 to 28 months (Note 17).

Special Task Force

5.5 Before December 2006, investigations of cases of suspected bogus marriages (including screened-in complaint cases and cases referred from the Mainland authorities) were conducted mainly by the OIS. In December 2006, the ImmD also set up a **Special Task Force (STF)**, under the Special Investigation Section of the Enforcement Division, to collate intelligence through various sources and to conduct thorough investigation with a view to taking prosecution actions against offenders.

Note 16: *The ImmD did not have readily available information on the nationality of the convicts.*

Note 17: *An offence of conspiracy to defraud is liable to 14 years' imprisonment, same as that for an offence of making a false representation to ImmD officers.*

5.6 Since the establishment of the STF in December 2006, screened-in cases and referral cases from the **Certificate of Entitlement Section** (Note 18) are assigned to the OIS, and referral cases from the Mainland authorities and HKPF are assigned to the STF. Other investigation sections also investigate bogus marriage cases detected during their investigations of other immigration offences.

Backlog of outstanding cases

5.7 In 2006, the ORS conducted a study on bogus marriages between Hong Kong and Mainland residents. The ORS recommended a number of measures to combat bogus marriages. In this connection, since June 2007, the Mainland authorities and the ImmD have implemented a mechanism for combating bogus marriages, as follows:

- (a) in processing Mainland residents' applications for one-way permit (Note 19) for permanent settlement in Hong Kong, the Mainland authorities will solicit the ImmD's assistance to verify the authenticity of documents issued by the ImmD, and the genuineness of the claimed marriages with Hong Kong residents; and
- (b) the Mainland authorities will refer cases of suspected bogus marriages to the ImmD for follow-up actions.

5.8 After implementing the mechanism, there has been a significant increase in cases referred by the Mainland authorities, resulting in the building up of outstanding cases. The ImmD has taken a number of measures to address the issue, including the following:

- (a) assigning only blatant cases (e.g. cases that involved forgery and bigamy) to the OIS and STF for investigation. Other cases are passed to the Certificate of Entitlement Section for verifying the documents submitted by the one-way permit applicants to the Mainland authorities and conducting interviews with the applicants concerned. For doubtful cases, the immigration control points will be alerted to monitor the Mainland spouses' future visits; and
- (b) streamlining the investigation procedures, including simplifying the writing of investigation reports and correspondence with the Mainland authorities.

Note 18: *The Section is mainly responsible for processing applications for Certificate of Entitlement from Mainland and overseas residents who are eligible for the right of abode in Hong Kong.*

Note 19: *A Mainland resident who enters into marriage with a Hong Kong resident is eligible for procuring one-way permit for permanent settlement in Hong Kong, and "Tanqin" (family visit) exit endorsements before the issue of the one-way permit.*

5.9 According to the ImmD records, as at 30 June 2010, the numbers of outstanding cases of the OIS, STF and other investigation sections were, respectively, 2,306, 1,037 and 111 (totalling 3,454).

Audit observations and recommendations

5.10 According to the ImmD, it has grave concerns about non-Hong Kong residents obtaining the permission to stay in Hong Kong by means of bogus marriages. On the ImmD's deployment of staff resources to combat bogus marriages, Audit has the following observations:

- (a) *Need to assess manpower requirements.* In December 2006, the ImmD temporarily redeployed 15 staff from other sections to set up the STF. As at 30 September 2010, the number of staff of the STF increased to 24, comprising 10 permanent staff and 14 staff temporarily redeployed from other sections. For these 14 staff, their "temporary" redeployment to the STF had been extended once every three months since December 2006. This arrangement is at variance with the ImmD's internal instruction on temporary redeployment of staff, which states that "indefinite redeployment" is not permitted. Moreover, it is undesirable that less than half of STF staff were permanent staff as there would be serious loss of experience when the temporarily redeployed staff leave the STF. In Audit's view, the ImmD needs to assess the manpower requirements of the STF and other sections concerned, to determine their appropriate establishments and the permanent deployment of staff accordingly; and
- (b) *Need to clear backlog of outstanding cases.* According to the ImmD records, in December 2006, there were 72 outstanding cases. Notwithstanding the setting up of the STF and the implementation of measures to address the building up of outstanding cases (see para. 5.8), the number of outstanding cases had increased by 47-fold from 72 to 3,454 as at 30 June 2010. In Audit's view, the ImmD needs to take additional measures, including deploying more staff resources as appropriate, to clear the backlog of outstanding cases.

Audit recommendations

5.11 **Audit has recommended that the Director of Immigration should:**

- (a) **assess the long-term manpower requirements of the STF and other relevant sections (from which 14 staff had been redeployed on a temporary basis to the STF) to determine their appropriate establishments and consider the permanent deployment of staff accordingly; and**

- (b) **take additional measures, including deploying more staff resources as appropriate, to clear the backlog of outstanding bogus marriage cases.**

Response from the Administration

5.12 The **Director of Immigration** agrees with the audit recommendations. He has said that the ImmD will continue to review the long-term manpower requirements of the STF and explore all feasible means to expedite clearance of the backlog of outstanding cases.

Investigation of bogus marriage cases

5.13 According to the ImmD, the investigation of bogus marriage cases involves various intricate procedures, such as locating bogus couples for enquiries and searching their premises to collect evidence. The time required to investigate a bogus marriage case varies and depends on its complexity.

5.14 *Audit examination of bogus marriage cases.* To ascertain whether there is room for improvement in the relevant procedures, Audit selected 20 completed bogus marriage investigation cases for examination. Audit found that in one case, the ImmD prosecuted a Hong Kong resident who, during the ImmD's investigation, had admitted that her marriage was bogus. However, the suspect was acquitted after trial. In another case, although the suspect confessed that the marriage was bogus, the charge of making false representation was withdrawn. Both cases indicated that there was room for improvement in the ImmD's guidance to frontline staff on the proper procedures for handling suspects.

Audit observations and recommendation

5.15 It is important that the ImmD investigation staff can learn lessons from unsuccessful prosecutions. Upon enquiry, the ImmD informed Audit that deficiencies in the ImmD procedures in the abovementioned unsuccessful prosecution cases had been verbally disseminated to the investigation teams. In Audit's view, important lessons learnt from unsuccessful prosecution cases should be disseminated through formal channels (e.g. issuing circulars and holding experience-sharing sessions) for future reference of all investigation staff.

Audit recommendation

5.16 **Audit has recommended that the Director of Immigration should disseminate through formal channels (such as issuing departmental instructions and guidelines) important lessons learnt from unsuccessful prosecution cases for future reference of all investigation staff.**

Response from the Administration

5.17 The **Director of Immigration** agrees with the audit recommendation. He has said that the study materials of case of interests have been re-circulated for the personal attention of all staff. The ImmD will arrange experience-sharing sessions as and when required.

Supervisory checks

5.18 According to the operational manual of the Special Investigation Section, the three Senior Immigration Officers are required to conduct supervisory checks on the work of the investigation officers, as follows:

- (a) they should accompany or visit at least one of the investigation teams in the field not less than twice a week; and
- (b) the supervisory checks for each week should include one conducted outside office hours.

Audit observations and recommendations

5.19 Audit notes that the objective of the supervisory checks is to ensure that investigation officers follow proper procedures in conducting investigations. Audit scrutiny of the register of supervisory checks during the 100-week period from January 2009 to November 2010 found that the numbers of supervisory checks conducted were less than the requirement. During the period, only 14 supervisory checks were conducted. In addition, the records did not indicate if the supervisory checks were conducted outside office hours.

5.20 In Audit's view, the ImmD needs to ensure that supervisory checks are conducted in accordance with the requirements.

Audit recommendations

- 5.21 **Audit has recommended that the Director of Immigration should:**
- (a) **take measures to ensure that supervisory checks are conducted on the staff investigation work in accordance with the laid-down requirements; and**
 - (b) **require the Special Investigation Section of the Enforcement Division to keep proper records of supervisory checks.**

Response from the Administration

5.22 The **Director of Immigration** agrees with the audit recommendations. He has said that the ImmD has reminded relevant officers to keep proper records of supervisory checks. The ImmD has also revised the operational manual of the Special Investigation Section to specify the operational circumstances for supervisory checks.

PART 6: PERFORMANCE MEASUREMENT

6.1 This PART examines the performance measurement for the work of the Enforcement Division and suggests areas for further improvement.

Guidelines on performance measurement

6.2 Performance management, including setting performance targets/indicators and their reporting, helps enhance government performance, transparency and accountability. According to the Guidelines issued by the Financial Services and the Treasury Bureau, Controlling Officers should:

- (a) focus on targets measured preferably in terms of intended outcome when developing their performance measures;
- (b) indicate the extent to which the department's operational objectives are being achieved. In general, outcome measures/indicators are preferred;
- (c) indicate, where relevant, the backlog of work; and
- (d) make sure that the information is substantiated and accurate.

Performance indicators

6.3 In the 2010-11 Controlling Officer's Report, in respect of the investigation activities of the Enforcement Division, the ImmD reported the numbers of investigations and operations conducted as its performance indicators. Table 8 shows the details.

Table 8

**Performance indicators in respect of investigation activities
(2008 to 2010)**

Performance indicator	2008 (Actual)	2009 (Actual)	2010 (Estimate)
Number of investigations conducted	52,922	52,627	53,680
Number of operations conducted	32,692	34,188	34,870

Source: ImmD's 2010-11 Controlling Officer's Report

6.4 The reported figures for the number of investigations conducted covered the cases of the two sub-divisions of the Enforcement Division (see Appendix A). For example, of the reported figure of 52,627 for 2009, 31,765 were Investigation Sub-division cases and 20,862 were Removal Sub-division cases. It was the practice of both sub-divisions to report the number of files opened as the number of investigations conducted. For example, for the Investigation Sub-division cases, the reported number of 31,765 for 2009 comprised:

- (a) 10,994 files opened in 2009 for screened-out cases. The files contained only the results of record checks (i.e. information about the suspected offenders as retrieved from the computer systems — see para. 2.9). Of these case files:
 - (i) 6,821 were indexed and collectively filed for future reference; and
 - (ii) 4,173 were passed to the Task Force for filing as intelligence. According to the ImmD, operations might be conducted for some of these cases, if warranted. Up to December 2010, no operations were conducted for these cases; and
- (b) 20,771 files opened in 2009 for cases requiring investigations. The files were opened by various investigation sections. There might or might not be investigations conducted by them in 2009 on such cases.

Audit observations and recommendations

Need to review performance indicators

6.5 Audit has the following observations on the performance indicators set by the ImmD in respect of the investigation activities of the Enforcement Division:

- (a) *Adequacy of indicators.* The performance indicators measure outputs (i.e. the number of investigations and operations conducted) but not productivity. There are also no indicators on the backlog of work. As such, they do not provide adequate information about how efficiently the ImmD has carried out the investigation activities. As for outcome measures, the ImmD reported the number of offenders prosecuted and persons repatriated in the 2010-11 Controlling Officer's Report. However, the reported figures covered not only the Enforcement Division cases but also the cases of the Torture Claim Assessment Division. As such, there are inadequate outcome measures/indicators to specifically reflect the effectiveness of the Enforcement Division; and

- (b) *Accuracy of information.* As mentioned in paragraph 6.4, the ImmD had reported the number of files opened by the Enforcement Division as the number of investigations it had conducted. Audit has reservations about such practice. In Audit's view, the reported information could not reflect the actual investigation activities of the Enforcement Division.

Need to consider setting performance targets

6.6 Audit notes that the ImmD has not set any performance targets in respect of its enforcement activities. In Audit's view, setting targets will help motivate performance. It will also improve accountability by providing a yardstick for assessing the ImmD's performance.

Audit recommendations

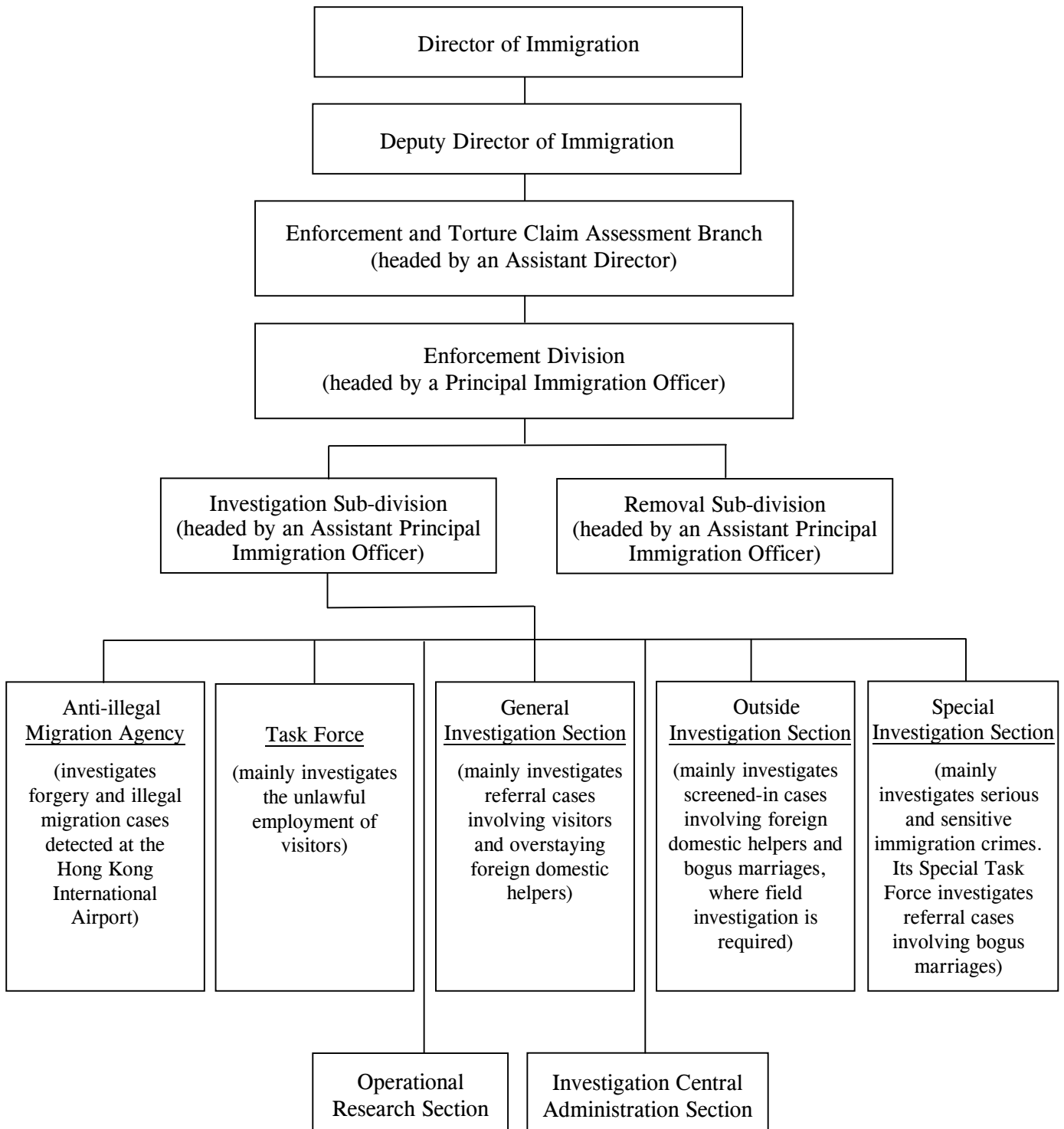
- 6.7 **Audit has recommended that the Director of Immigration should:**
- (a) **consider setting more performance indicators to provide information about how efficiently and effectively the Enforcement Division has carried out the investigation activities;**
 - (b) **rectify the practice of reporting the number of files opened by the Enforcement Division as the number of investigations conducted; and**
 - (c) **consider setting performance targets in respect of the Enforcement Division's investigation activities to help motivate performance and improve accountability.**

Response from the Administration

6.8 The **Director of Immigration** agrees with the audit recommendations. He has said that the ImmD will conduct a review on the performance indicators with a view to providing more information on the activities carried out by the Enforcement Division. The ImmD will also study the feasibility of setting performance targets in respect of the Enforcement Division's investigation activities.

6.9 The **Secretary for Financial Services and the Treasury** agrees with the audit recommendations. He has said that the Financial Services and the Treasury Bureau will work with the Security Bureau and the ImmD to follow up the audit recommendations when preparing the Controlling Officer's Report of the ImmD in future.

**Enforcement Division
Organisation chart (extract)
(31 December 2010)**



Source: ImmD records

Acronyms and abbreviations

APPLIES	Application and Investigation Easy System
Audit	Audit Commission
CVC	Complaint Vetting Committee
FDHs	Foreign domestic helpers
HKPF	Hong Kong Police Force
ImmD	Immigration Department
ISSIs	Immigration Service Standing Instructions
LD	Labour Department
OIS	Outside Investigation Section
ORS	Operational Research Section
STF	Special Task Force