

CHAPTER 6

Labour Department Employees Compensation Assistance Fund Board

Employees' compensation for injuries and fatalities

**Audit Commission
Hong Kong
1 April 2015**

This audit review was 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 accepted by the Government of the Hong Kong Special Administrative Region.

Report No. 64 of the Director of Audit contains 8 Chapters which are available on our website at <http://www.aud.gov.hk>

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EMPLOYEES' COMPENSATION FOR INJURIES AND FATALITIES

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EMPLOYEES' COMPENSATION FOR INJURIES AND FATALITIES

Executive Summary

1. Employees are protected by the Employees' Compensation Ordinance (ECO — Cap. 282), which provides for the payments of employees' compensation in respect of injuries or deaths caused by accidents arising out of and in the course of employment, or prescribed occupational diseases. The Labour Department (LD) is responsible for administering the ECO. The Employees' Compensation Division (ECD) of the LD handles employees' compensation claims and assesses the compensation payable by employers. To ensure that employers take out employees' compensation insurance to cover their liabilities both under the ECO and common law, the Labour Inspection Division (LID) of the LD conducts inspections to workplaces.

2. If an employee, or the eligible family member(s) in cases of fatalities, fails to receive from the employer employees' compensation under the ECO and/or common law damages for which the employer is liable after exhausting legal and financially viable means of recovery, the employee or the eligible family member(s) may apply for assistance payment (in relation to the unpaid compensation) and/or relief payment (in relation to the unpaid damages) from the Employees Compensation Assistance Fund (ECAAF). The ECAAF, established on 1 July 1991 under the Employees Compensation Assistance Ordinance (Cap. 365), is administered by the Employees Compensation Assistance Fund Board (ECAFB). In the period from 1 July 1991 to 31 March 2014, payments of \$1,115 million had been made to 2,270 applicants.

3. The Audit Commission (Audit) has recently conducted a review of the work of the LD and the ECAFB in protecting employees in cases of sustaining work injuries and fatalities.

Executive Summary

Processing of employees' compensation claims by the Labour Department

4. *Time taken for processing claims.* As at 30 September 2014, 7,470 (5%) of the 148,490 claims (excluding fatal claims) received by the ECD during the period from 1 January 2009 to 31 December 2013 were still not settled. Of the 7,470 outstanding claims, 1,776 (24%) were pending assessment by the Employees' Compensation (Ordinary Assessment) Board. The average time for attending the Board ranged from 6 to 17 weeks. In December 2013, the LD commenced a review to identify measures (such as increasing the Board's capacity) to shorten the time taken for processing claims. The LD needs to implement the measures identified as soon as practicable and to monitor the effectiveness of these measures. Moreover, in the period from January to September 2014, the no-show rate of the Board's appointments was 7%. The LD needs to explore measures to better utilise the unused appointment quotas (paras. 2.4, 2.6 and 2.8 to 2.10).

Administration of the ECAF

5. *Processing time of ECAF applications.* Audit examined 20 cases assisted by the ECAFB. Audit noted that the average time taken by the ECAFB in processing an application was 5.7 months (ranging from 1.3 to 19.6 months) for assistance payment and 5.1 months (ranging from 0.1 to 21.1 months) for relief payment. The ECAFB did not require the Secretariat to report regularly the progress of all cases to the ECAFB. With a mechanism for periodic reporting of progress of applications by the Secretariat, the ECAFB could instruct the Secretariat to carry out follow-up actions more expeditiously (paras. 3.7, 3.10 and 3.11).

6. *Measures to help streamline the operations.* The hiring of in-house legal staff may help the ECAFB to monitor the progress of the cases more efficiently and effectively. Out-of-court settlement and mediation have the advantage of settling cases more quickly and could save legal costs. In the period from 1 April 2011 to 31 March 2014: (a) 13 (11%) of the 117 settled cases for assistance payment were settled out-of-court; and (b) 22 (28%) of the 80 settled cases for relief payment were settled either out-of-court or by mediation. The ECAFB needs to make better use of these measures to help streamline its operations (paras. 3.14 to 3.16).

Executive Summary

7. *Procurement practice for selecting retained lawyers.* Given the fact that the three retained lawyers of the ECAFB have been engaged for a long time, the ECAFB needs to devise a suitable mechanism (e.g. through open tendering) for selecting lawyers as retained lawyers (para. 3.18).

8. *Management of surplus funds.* In recent years, the ECAF has been operating in surplus. Its accumulated surplus had increased significantly from \$37 million as at 31 March 2009 to \$468 million as at 31 March 2014. The ECAFB needs to consider how the issue of increasing amount of accumulated surplus should be addressed (paras. 3.19 and 3.20).

Ensuring employees are covered by employees' compensation insurance

9. *Need to document the basis of selecting workplaces for inspection.* Under the ECO, employers are required to take out employees' compensation insurance and display a notice of insurance at the workplaces. The Labour Inspectors of the LID conduct inspections to enforce the ECO. According to the Operation Manual, the LID should adopt an offence-prone approach in selecting workplaces from the workplace database for routine inspection. Audit noted that there was no documentation showing that the offence-prone approach was adopted in selecting workplaces for routine inspections (paras. 4.2, 4.5 and 4.6).

10. *Many workplaces not inspected for over three years.* In its response to an assignment report of May 2007 on the Labour Inspections Procedures of the LD issued by the Independent Commission Against Corruption, the LD stated that a workplace would be inspected once every two to three years. Audit, however, noted that up to 17 December 2014, 127,039 (37%) of the 344,172 workplaces in the LID's workplace database had not been inspected for over three years (from 3 to 10 years) (para. 4.8).

Executive Summary

11. ***Need to improve measures to ensure proper display of notice of insurance.*** The LID conducts inspections to check the employers' compliance with the requirement of displaying, in a conspicuous place, a notice of insurance at the workplaces. Under the existing practice, only employers who had been given the warning for more than two times regarding the same offence within three years would be referred to the Prosecutions Division of the LD. Audit noted that in the three-year period from 2011 to 2013, of the 196,586 workplaces inspected, only 2,416 (1.2%) had been inspected for three times or more. This implies that employers of 194,170 (98.8%) workplaces would not be prosecuted even if they failed to display the notice of insurance throughout the period. The LD needs to review its existing practice of enforcing the display of notice of insurance (paras. 4.2, 4.15 and 4.16).

12. ***Monitoring of inspections.*** Supervisory inspection (i.e. a Senior Labour Inspector re-inspects on a monthly basis a workplace inspected by a Labour Inspector) is an effective means to ensure the consistency and quality of inspections. Audit, however, noted that in the period from 1 January 2013 to 31 December 2014, some Senior Labour Inspectors had not conducted supervisory inspections as frequently as required (paras. 4.19 and 4.20).

13. ***Not all offence-prone workplaces were included in the database.*** According to the Operation Manual, new concerns are offence-prone workplaces, and the Labour Inspectors have to keep a close watch on new workplaces in their course of inspections and the workplace database will be updated once new workplaces are noted. In January 2015, Audit visited 39 workplaces on Russell Street in Causeway Bay. Eight of the 39 workplaces visited had been in operation on Russell Street but had not been detected by the Labour Inspectors for some time (from more than one year to 14 years) (paras. 4.28 and 4.29).

14. ***Performance information.*** The LD reported in its Controlling Officer's Report a key performance indicator "Inspections to workplaces". Audit found that in the years from 2009 to 2013, the number of inspections reported in the Controlling Officer's Reports included 393,203 inspections conducted by the LID. However, 163,519 (41.6%) of the 393,203 inspections were conducted on removed, locked or vacant workplaces and therefore no enforcement work (i.e. ensuring that employers have taken out employees' compensation insurance) had been carried out (paras. 4.34 to 4.36).

Executive Summary

Audit recommendations

15. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Commissioner for Labour should:**

Processing of employees' compensation claims by the Labour Department

- (a) **expedite the processing of the outstanding employees' compensation claims (para. 2.11(a));**
- (b) **continue to monitor the time taken for processing employees' compensation claims and, where warranted, take appropriate measures to address the issue (para. 2.11(b));**

Ensuring employees are covered by employees' compensation insurance

- (c) **take measures to improve the existing inspection strategies (para. 4.17);**
- (d) **take measures to ensure that supervisory inspections are conducted in accordance with the Operation Manual (para. 4.23(a));**
- (e) **take measures to enhance the integrity of the workplace database (para. 4.32); and**
- (f) **review the performance indicators of the LID so that inspections where no enforcement work is carried out are excluded or separately reported in the Controlling Officer's Report (para. 4.38(a)).**

Executive Summary

16. Audit has also *recommended* that the ECAFB should:

Administration of the ECAF

- (a) take measures to shorten the time taken for processing ECAF applications (para. 3.24(a));
- (b) consider the feasibility of hiring in-house legal staff (para. 3.24(b));
- (c) where appropriate, explore the possibility of settling cases out-of-court or by mediation (para. 3.24(c));
- (d) devise a suitable mechanism for selecting lawyers as retained lawyers (para. 3.24(d)); and
- (e) monitor the issue of increasing amount of accumulated surplus funds of the ECAF, and when necessary, take appropriate measures to address the issue (para. 3.24(e)).

Response from the Government and the ECAFB

17. The Commissioner for Labour and the ECAFB agree with the audit recommendations.

PART 1: INTRODUCTION

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

Employees' Compensation Ordinance

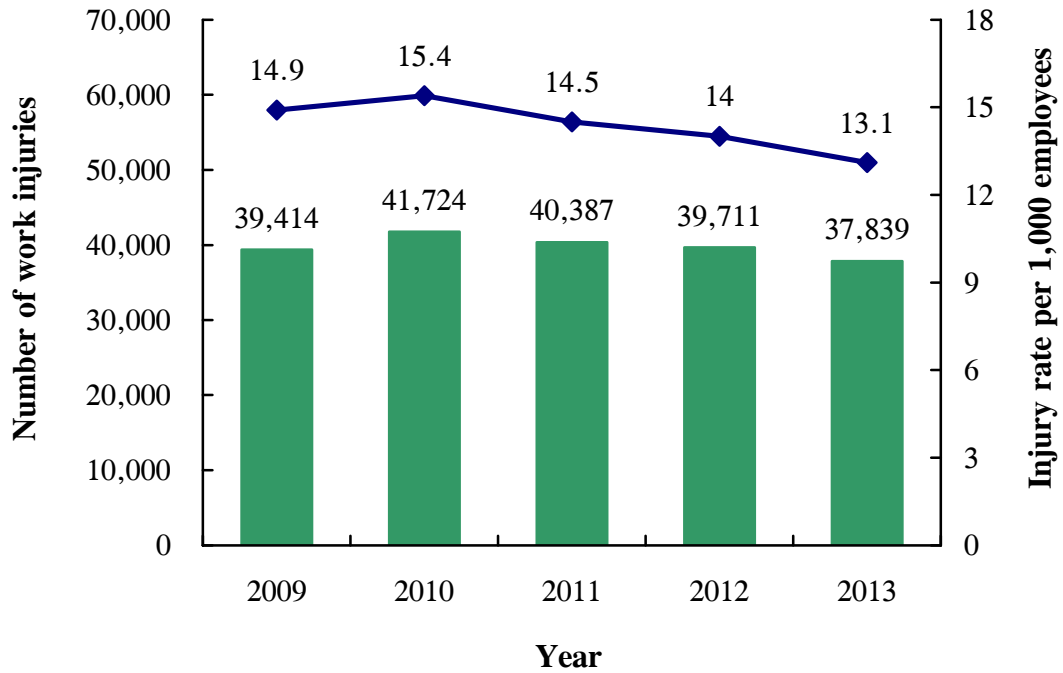
1.2 Employees are protected by the Employees' Compensation Ordinance (ECO — Cap. 282), which provides for the payments of employees' compensation by employers to employees (or to employees' family members in cases of fatalities) for injuries caused by accidents arising out of and in the course of employment. The ECO also covers payments to employees suffering from prescribed occupational diseases specified in the ECO (e.g. Tuberculosis and infection by *Streptococcus suis*).

Statistics on work injuries, fatalities and prescribed occupational diseases

1.3 Figure 1 shows the statistics on work injuries (excluding fatalities) for the period from 2009 to 2013. Figures 2 and 3 show for the same period the statistics on fatalities and prescribed occupational diseases.

Figure 1

Work injuries
(2009 to 2013)



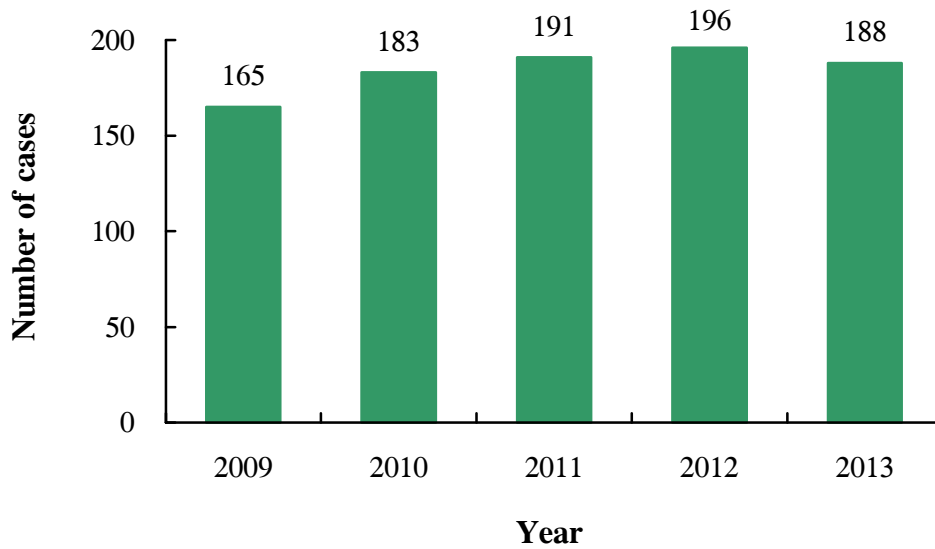
Legend: ■ Number of work injuries
◆ Injury rate per 1,000 employees

Source: *Occupational Safety and Health Statistics of the Labour Department*

Remarks: *The statistics only included work injuries (excluding fatalities) resulting in incapacity for work for more than three days.*

Figure 2

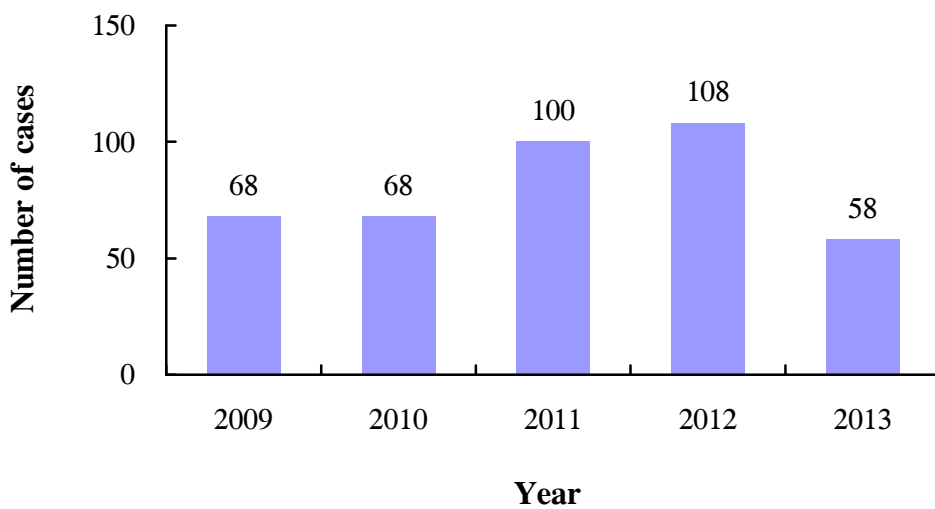
**Fatalities
(2009 to 2013)**



Source: *Occupational Safety and Health Statistics of the Labour Department*

Figure 3

**Prescribed occupational diseases
(2009 to 2013)**



Source: *Occupational Safety and Health Statistics of the Labour Department*

Introduction

Obligations of employers under the ECO

1.4 An employer must be in possession of a valid employees' compensation insurance policy to cover his liabilities both under the ECO and common law (Note 1) for work injuries and fatalities as well as prescribed occupational diseases of his employees. An employer who fails to take out such an insurance policy is liable on conviction to a maximum fine of \$100,000 and imprisonment for two years. An employer is also required to display, at a conspicuous place, a notice of the insurance at the workplace (a place where employees are employed). The purpose of displaying the notice is to enable employees to know whether their employers have taken out the insurance, so that they can lodge complaints with the Labour Department (LD) if they found that their employers have not done so. An employer who fails to display the notice may be subject to a maximum fine of \$10,000 upon conviction.

1.5 Under the ECO, in cases of work injuries or prescribed occupational diseases, the employer must notify the LD within 14 days. If an employee dies as a result of accident, the employer must notify the LD within seven days. An employer who, without reasonable excuse, fails to fulfill the requirements may be liable, upon conviction, to a maximum fine of \$50,000.

Insurance premiums and employees' compensation

1.6 Table 1 shows for the period from 2010 to 2014 (up to September 2014), the insurance premiums paid by employers to insurers for employees' compensation insurance policies. It also shows the employees' compensation (including ECO compensation and common law damages) paid by insurers together with their commissions and other expenses.

Note 1: *In addition to the protection of the ECO, an injured employee, an employee suffering from a prescribed occupational disease or a deceased employee's family members may start a civil suit for claiming common law damages against the employer if the injury or death is caused by the negligence or other wrongful acts of the employer.*

Table 1

**Insurance premiums, employees' compensation,
and commissions and other expenses
(2010 to 2014)**

	2010 (\$ million)	2011 (\$ million)	2012 (\$ million)	2013 (\$ million)	2014 (up to 30 September) (\$ million)
Gross premiums (Note 1)	3,731	4,063	5,540	6,601	5,155
Earned premiums (Note 2)	2,908	3,263	3,971	5,006	4,224
Net employees' compensation claims incurred (Note 3)	2,318	2,530	3,387	3,865	2,983
Commissions and other expenses	914	993	1,233	1,518	1,228

Source: Office of the Commissioner of Insurance website

Note 1: Gross premiums refer to insurance premiums paid by employers.

Note 2: Earned premiums are gross premiums after deducting reinsurance outward premiums and making adjustment for unearned premiums.

Note 3: Net employees' compensation claims incurred are gross claims paid after deducting claims recovered from reinsurers and making adjustment for outstanding claims provision.

Terms of employees' compensation under ECO

1.7 The ECO operates on a "no-fault" basis and employees' compensation is payable irrespective of the degree of fault of the employers and employees concerned. The ECO sets out the terms of compensation for work injuries and fatalities as well as prescribed occupational diseases as follows:

Introduction

- (a) **Temporary incapacity.** For temporary incapacity (Note 2 — up to 24 months and a further period of not more than 12 months subject to the approval of court), the employee is entitled to compensation which is calculated at the rate of four-fifths of the difference between his monthly earnings at the time of accident and his monthly earnings during the period of temporary incapacity;
- (b) **Permanent partial incapacity.** For permanent partial incapacity, the amount of compensation payable equals to: “amount of compensation due to permanent total capacity (see para. 1.7(c) below) × percentage of permanent loss of earning capacity”. Examples of percentages of permanent loss of earning capacity are shown in Table 2;

Table 2

Examples of percentages of permanent loss of earning capacity

Type of work injuries	Percentage
Loss of both feet	100%
Loss of leg at hip	80%
Loss of sight of one eye	50%
Loss of thumb — both phalanges	30%
Loss of entire nose	25%
Loss of ring finger — three phalanges	8%

Source: ECO

Note 2: *A period of temporary incapacity refers to a period of absence from duty certified to be necessary by a registered medical practitioner, a registered Chinese medicine practitioner, a registered dentist or an Employees' Compensation (Ordinary Assessment) Board (see para. 2.5).*

- (c) **Permanent total incapacity.** The amount of compensation payable for permanent total incapacity is shown in Table 3;

Table 3

Compensation payable for permanent total incapacity

Age of employee	Amount of compensation	
Under 40	96 months' earnings (Note 1)	Or minimum amount of compensation, whichever is higher (Note 2)
40 to under 56	72 months' earnings (Note 1)	
56 or above	48 months' earnings (Note 1)	

Source: ECO

Note 1: For an accident happened between 1 August 2010 and 20 July 2012, between 21 July 2012 and 4 March 2015, and on or after 5 March 2015, the monthly earning is capped at \$21,500, \$23,580 and \$26,070 respectively.

Note 2: For an accident happened between 1 August 2010 and 20 July 2012, between 21 July 2012 and 4 March 2015, and on or after 5 March 2015, the minimum amount is \$352,000, \$386,110 and \$426,880 respectively.

- (d) **Fatal cases.** The amount of compensation payable for fatal cases is shown in Table 4; and

Table 4
Compensation payable for fatal cases

Age of employee	Amount of compensation	
Under 40	84 months' earnings (Note 1)	Or minimum amount of compensation, whichever is higher (Note 2)
40 to under 56	60 months' earnings (Note 1)	
56 or above	36 months' earnings (Note 1)	

Source: ECO

Note 1: For an accident happened between 1 August 2010 and 20 July 2012, between 21 July 2012 and 4 March 2015, and on or after 5 March 2015, the monthly earning is capped at \$21,500, \$23,580 and \$26,070 respectively.

Note 2: For an accident happened between 1 August 2010 and 20 July 2012, between 21 July 2012 and 4 March 2015, and on or after 5 March 2015, the minimum amount is \$310,000, \$340,040 and \$375,950 respectively.

- (e) **Medical and funeral expenses.** Irrespective of the types of incapacity, an employer is liable to pay daily medical expenses of \$200 or \$280 for medical treatment received by an employee (Note 3). Where applicable, the employer is liable to pay the initial and maintenance costs of supplying and fitting the prosthesis or surgical appliance (Note 4). For fatal cases, an employer is liable to reimburse expenses of funeral and medical

Note 3: *The daily maximum amount of medical expenses where an employee is given medical treatment as an in-patient or other than as an in-patient is \$200. The daily maximum amount where an employee is given medical treatment both as an in-patient and other than as an in-patient is \$280.*

Note 4: *For accidents happened before 5 March 2015, the initial costs for supplying and fitting the prosthesis or surgical appliance and the costs of repairing/renewing the item during a period of ten years are capped at a maximum amount of \$33,460 and \$101,390 respectively. For accidents happened on or after 5 March 2015, such initial costs and repairing/renewing costs are capped at a maximum amount of \$36,430 and \$110,390 respectively.*

attendance up to a maximum amount of \$76,220 for an accident happened on or after 5 March 2015 (\$35,000 for an accident happened between 1 August 2010 and 20 July 2012, and \$70,000 for an accident happened between 21 July 2012 and 4 March 2015).

Role of the LD

1.8 The LD aims to enhance the protection of employees' rights and benefits in a way which is commensurate with the pace of Hong Kong's economic and social developments. To achieve this, the LD, among other things, administers the ECO.

1.9 ***Employees' Compensation Division.*** The Employees' Compensation Division (ECD) of the LD assists the injured employees (hereafter injured employees include employees suffering from prescribed occupational diseases), or injured employees' family members in cases of fatalities, to settle employees' compensation claims by handling the claims and assessing the compensation payable by employers (see Table 9 in para. 2.2). The ECD comprises the Headquarters, one Fatal Cases Office and nine Branch Offices (see Appendix A). The Fatal Cases Office, headed by a Labour Officer, is manned by a team of seven staff (including both Labour Officer grade staff and clerical grade staff). The Headquarters and the nine Branch Offices (led by six Labour Officers) are headed by a Senior Labour Officer. Each Branch Office is manned by a team of 9 to 11 staff.

1.10 Table 5 shows, for the period from 2009 to 2013, the number of employees' compensation claims (for work injuries, fatalities and prescribed occupational diseases) received and settled by the ECD. It also shows the amounts of compensation settled.

Introduction

Table 5

**Employees' compensation claims received and settled by ECD
(2009 to 2013)**

	2009	2010	2011	2012	2013
No. of claims received	55,799	58,791	56,996	56,763	55,168
No. of claims settled (Note)	42,520	41,467	41,647	41,916	39,955
Compensation (\$ million)	1,039	957	1,058	1,266	1,255

Source: LD records

Note: Claims settled in a year: (a) include claims received in the year and previous years; and (b) exclude claims settled by direct payment (see (a) in Table 9 in para. 2.2).

1.11 **District Offices (DOs) of the Labour Inspection Division (LID).** The DOs of the LID of the LD enforce the ECO by conducting inspections to workplaces to check employers' compliance with the compulsory insurance requirement under the ECO (see paras. 1.13 to 1.17).

Employees Compensation Assistance Fund

1.12 If an employee, or the eligible family member(s) in cases of fatalities, fails to receive from the employer employees' compensation under the ECO and/or common law damages for which the employer is liable after exhausting legal and financially viable means of recovery (e.g. the employer has not taken out employees' compensation insurance policy to cover his liabilities for the work injury of the injured/deceased employee concerned and has declared bankrupt or wound-up by court), the employee or the eligible family member(s) may apply for assistance payment (in relation to the unpaid compensation) and/or relief payment (in relation to the unpaid damages) from the Employees Compensation Assistance Fund (ECAF). Background of the ECAF is shown in Table 6.

Table 6

ECAF

Establishment	:	Established on 1 July 1991 under the Employees Compensation Assistance Ordinance (ECAO — Cap. 365)
Administration	:	<ul style="list-style-type: none"> • Administered by the Employees Compensation Assistance Fund Board (ECAFB), which comprises nine members: <ul style="list-style-type: none"> — the chairman — two members (who represent employers) — two members (who represent employees) — one member (who has expertise in the practice of accounting, investment or law) — one member (who has expertise in the practice of insurance) — the Commissioner for Labour or his representative — the Director of Legal Aid or his representative • The ECAFB has a Secretariat responsible for the day-to-day operation of the ECAF. The Secretariat's services are provided by the Occupational Safety and Health Council (Note 1) at a mutually agreed charge (\$1.6 million for 2013-14 comprising the salaries of a Secretary and an Executive Assistant, and office expenses). The ECAFB also hires two Claims Executives and an Administrative Assistant (at a total remuneration of some \$870,000 for 2013-14) to assist the Secretary

Table 6 (Cont'd)

Functions of ECAFB	:	<ul style="list-style-type: none"> • To hold the ECAF in trust and to administer it for the benefit of those eligible for payments under the ECAF • To consider applications for payment from the ECAF • To receive monies collected from insurers by the Employees' Compensation Insurance Levies Management Board (ECILMB — Note 2) • To regularly advise the ECILMB on the amounts required to meet known and anticipated claims against the ECAF 										
Number of assisted applicants	:	<ul style="list-style-type: none"> • 2,270 (1 July 1991 to 31 March 2014) • For the period from 2009-10 to 2013-14: <table border="1" style="margin-left: 40px; margin-bottom: 10px;"> <thead> <tr> <th>2009-10</th> <th>2010-11</th> <th>2011-12</th> <th>2012-13</th> <th>2013-14</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">57</td> <td style="text-align: center;">66</td> <td style="text-align: center;">55</td> <td style="text-align: center;">67</td> <td style="text-align: center;">72</td> </tr> </tbody> </table>	2009-10	2010-11	2011-12	2012-13	2013-14	57	66	55	67	72
2009-10	2010-11	2011-12	2012-13	2013-14								
57	66	55	67	72								
Payments to assisted applicants	:	<ul style="list-style-type: none"> • \$1,115 million (1 July 1991 to 31 March 2014) • For the period from 2009-10 to 2013-14: <table border="1" style="margin-left: 40px; margin-bottom: 10px;"> <thead> <tr> <th>2009-10 (\$ million)</th> <th>2010-11 (\$ million)</th> <th>2011-12 (\$ million)</th> <th>2012-13 (\$ million)</th> <th>2013-14 (\$ million)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">41.4</td> <td style="text-align: center;">45.3</td> <td style="text-align: center;">50.9</td> <td style="text-align: center;">47.1</td> <td style="text-align: center;">53.6</td> </tr> </tbody> </table>	2009-10 (\$ million)	2010-11 (\$ million)	2011-12 (\$ million)	2012-13 (\$ million)	2013-14 (\$ million)	41.4	45.3	50.9	47.1	53.6
2009-10 (\$ million)	2010-11 (\$ million)	2011-12 (\$ million)	2012-13 (\$ million)	2013-14 (\$ million)								
41.4	45.3	50.9	47.1	53.6								
Income (2013-14)	:	<ul style="list-style-type: none"> • \$201 million, including \$197 million (98%) received from the ECILMB which collects levies (currently 5.8%) on insurance premiums paid by employers 										

Table 6 (Cont'd)

Expenditure (2013-14)	:	\$70.3 million, including \$66.7 million (95%) for assistance payment in relation to unpaid compensation, relief payment in relation to unpaid damages, and legal costs
Accumulated operating surplus (as at 31 March 2014)	:	\$468 million

Source: ECAFB records

Note 1: *The Occupational Safety and Health Council is a statutory body established in August 1988. It is responsible for promoting safety and health at work and sustaining the workforce of Hong Kong.*

Note 2: *The ECILMB is a statutory body established in July 1990. It is responsible for collecting the Employees' Compensation Insurance Levy remitted by insurers and distributing the levies to three specified statutory bodies including the ECAFB.*

The District Offices of the LID

1.13 As mentioned in paragraph 1.4, it is the obligations of an employer to take out employees' compensation insurance to cover his liabilities both under the ECO and common law, and display a notice of insurance at the workplace. To ensure that employers fulfil these obligations under the ECO, the DOs of the LID of the LD enforce the ECO by conducting inspections to workplaces (Note 5).

Note 5: *The function of the DOs is to conduct inspections to workplaces. In 2013, the majority (77%) of the DOs' inspections was to check whether employers had fulfilled their obligations under the ECO. Other inspections conducted by the DOs are shown at Appendix A. The Appendix also shows the overall organisation and functions of the LID.*

Introduction

1.14 There are 12 DOs located throughout the territory. Each DO is headed by a Senior Labour Inspector, who oversees the work of five to six Labour Inspectors. As at 31 December 2014, the DOs had 58 Labour Inspectors in total.

1.15 Table 7 shows, for the period from 2010 to 2014, the number of inspections conducted by the DOs to enforce the ECO.

Table 7

**DOs' inspections to enforce ECO
(2010 to 2014)**

Year	Number of inspections
2010	80,204
2011	62,079
2012	69,174
2013	97,729
2014	86,803

Source: LD records

1.16 Employers found to have failed to fulfil their obligations under the ECO are liable to prosecution by the Prosecutions Division of the LD. Table 8 shows, for the period from 2010 to 2014, the number of prosecutions conducted by the Prosecutions Division against employers detected by the LID for failing to fulfil their obligations under the ECO. It also shows the number of convictions and the amounts of fines involved.

Table 8

**Statistics of prosecutions relating to non-compliance
with ECO detected by LID
(2010 to 2014)**

	2010	2011	2012	2013	2014
Number of prosecutions	1,392	741	776	1,013	927
Number of convictions	1,300	683	747	986	887
Total fine (\$ million)	2.6	1.3	1.5	2.1	1.9

Source: LD records

Recurrent expenditure of the ECD and the DOs

1.17 The work of the ECD and the DOs, which deals with matters concerning employees' compensation, forms part of the LD's programme for safeguarding the rights and benefits of employees (Note 6). For 2014-15, the estimated expenditure for the programme amounted to \$332.8 million.

Audit review

1.18 The Audit Commission (Audit) commenced a review in November 2014 of the work of the LD and the ECAFB in protecting employees in cases of sustaining work injuries, fatalities or suffering from prescribed occupational diseases. The audit focused on the following areas:

Note 6: *Other work of the LD for safeguarding the rights and benefits of employees include: (a) the work of the LID's Special Enforcement Teams (see Appendix A); (b) the assistance rendered by the LD's Wage Security Division (which assists employees on such matters as owed wages and severance payments); and (c) the work of the LD's Employment Claims Investigation Division (which conducts investigations into complicated cases involving offences under the Employment Ordinance (Cap. 57)).*

Introduction

- (a) processing of employees' compensation claims by the LD (PART 2);
- (b) administration of the ECAF (PART 3); and
- (c) ensuring employees are covered by employees' compensation insurance (PART 4).

General response from the Government and the ECAFB

1.19 The Commissioner for Labour agrees with the audit observations and accepts the recommendations. He has said that the LD attaches great importance to safeguarding the rights and benefits of employees who sustained work-related injuries or fatalities and will spare no efforts in making continuous improvements in processing employees' compensation claims as well as taking vigorous enforcement actions to ensure employees' protection by employees' compensation insurance and clamping down on law-defying employers. To this end, the LD will continue to keep up its efforts in identifying areas for improvement and implement concrete measures on various fronts where appropriate.

1.20 The ECAFB agrees with the audit recommendations. The Chairman, ECAFB has said that the ECAF serves as the safety net for the injured employees or family members of deceased employees who are unable to receive their entitlements of compensation and damages for work injuries from employers or insurers after exhausting legal and financially viable means of recovery. The ECAFB attaches great importance to ensuring its efficient administration and long-term sustainability. To this end, the ECAFB will continue to explore and implement concrete measures on various fronts.

Acknowledgement

1.21 Audit would like to acknowledge with gratitude the full cooperation of the staff of the LD and the ECAFB during the course of the audit review.

PART 2: PROCESSING OF EMPLOYEES' COMPENSATION CLAIMS BY THE LABOUR DEPARTMENT

2.1 This PART examines the work of the ECD in processing employees' compensation claims.

Settlement of employees' compensation claims

2.2 As mentioned in paragraph 1.5, in cases of work injuries or prescribed occupational diseases, employers must notify the ECD of the LD within 14 days. On receipt of the notification, the ECD takes steps to process the claims (see Figure 4). There are a number of ways an employees' compensation claim can be settled. Details of the ways of settlement are shown in Table 9.

Figure 4

Procedures for processing employees' compensation claims



Source: LD records

Processing of employees' compensation claims by the Labour Department

Table 9

Ways of settlement of employees' compensation claims

Temporary incapacity	
(a) Sick leave not more than 3 days and no permanent incapacity is resulted	<i>Direct payment.</i> The employer directly makes payment for injuries and prescribed occupational diseases involving only temporary incapacity (i.e. periodical payments) on the same days as wages that would have been payable to the employee during the period of the sick leave. Except for those cases where information provided is incomplete or irregularities are detected, the ECD's processing is not required.
(b) Sick leave exceeding 3 days but not more than 7 days and no permanent incapacity is resulted	<i>Direct settlement.</i> The employer directly agrees with the employee as to the amount of compensation payable under the ECO and makes such payment on the same days or before which wages would have been payable to the employee. The ECD vets the information provided to ensure that all required information (e.g. details of accident, employees' compensation insurance, earnings of the employee, direct settlement amount and injury) is proper. If there are disputes between the employer and the employee on the details of the direct settlement or on the existence of such settlement agreement or the employee may have permanent incapacity, the case would be handled in the same manner as those with sick leave exceeding 7 days (see (c) below).
(c) Sick leave exceeding 7 days	<i>Certificate of Compensation Assessment.</i> The ECD assesses the compensation payable under the ECO and the employee has to attend medical clearance at the LD's Occupational Medicine Unit (OMU — Note 1). Upon completion of medical clearance procedure, if the injury (or prescribed occupational disease) results in temporary incapacity only, the ECD issues to the employer and the employee a Certificate of Compensation Assessment stating the amount of the compensation payable. The employer has to settle the compensation

Processing of employees' compensation claims by the Labour Department

Table 9 (Cont'd)

	<p>as set out in the Certificate. The compensation paid by the employer is recoverable from his insurer under the policy. If, in the opinion of the OMU, the injury (or prescribed occupational disease) would likely result in permanent partial or total incapacity, the employee concerned will be referred to the Employees' Compensation (Ordinary Assessment) Board (ECOAB) for assessment (see (d) below).</p>
Permanent incapacity (partial or total)	
(d) Employees with permanent incapacity	<p>Medical assessment. If in the light of the available medical information, an injury (or prescribed occupational disease) would likely result in permanent incapacity, the employee will be referred by the OMU to the ECOAB (see para. 2.5 for more details). After the medical condition of an injured employee (or an employee suffered from an prescribed occupational disease) has stabilised, he will attend the ECOAB for an assessment of the period of absence from duty and the percentage of loss of earning capacity permanently caused by the injury (or prescribed occupational disease). When the assessment result is available, the ECOAB will issue a Certificate of Assessment. Based on the Certificate of Assessment, the ECD will issue a Certificate of Compensation Assessment to both the employer and employee stating the amount of compensation payable. The employer has to settle the compensation as set out in the Certificate. The compensation paid by the employer is recoverable from his insurer under the policy.</p>
Fatal cases	
(e) Deceased employees	<p>Determination by Commissioner for Labour. In accidents where the employer and all the parties to the claim have agreed, and the Commissioner for Labour considers that a claim is suitable for determination, the Commissioner may determine on</p>

Processing of employees' compensation claims by the Labour Department

Table 9 (Cont'd)

	<p>the amount of the compensation for death (Note 2) and/or funeral and medical expenses payable, and the persons to whom such compensation and/or payment shall be paid, and issue the relevant Certificate(s) to all the applicants and the employer. The employer has to settle the amount of compensation and/or payment as set out in the Certificate(s). The compensation paid by the employer is recoverable from his insurer under the policy.</p>
Court cases	
<p>(f) Cases not settled in the above ways (e.g. cases in dispute)</p>	<p>Determination by court. Except for cases which should be settled by direct payment (see (a) above), cases which cannot be settled in the above ways (see (b) to (e) above) shall be determined by the District Court. In particular, if there are disputes between the employer and the employee on the claims in respect of certain items (e.g. liability, employer-employee relationship, medical conditions and injury parts), an application to the court has to be made within 24 months from the date of the accident causing the injury, occupational disease or death. For appeals against the assessment result of the Commissioner for Labour or the ECOAB, an application has to be made within six months from the date of issue of the relevant Certificate.</p>

Source: LD records

Note 1: The OMU is under the Occupational Medicine Division (Clinical Services) of the LD. As at 31 December 2014, the OMU comprised 8 nursing staff and 21 clerical staff. The OMU interviews the injured employees and vets the medical certificates issued by doctors in respect of the work injuries or prescribed occupational diseases.

Note 2: The compensation for death shall be apportioned among the deceased employee's eligible family members in the manner as stipulated in the ECO.

Processing of employees' compensation claims by the Labour Department

2.3 Table 10 shows, for the period from 2009 to 2013, the number of employees' compensation claims received by the ECD.

Table 10

**Number of employees' compensation claims received by ECD
(2009 to 2013)**

	2009	2010	2011	2012	2013	Total
Claims not requiring ECD's processing						
Sick leave not more than 3 days (direct payment cases)	15,503	16,165	15,944	16,266	16,096	79,974
Sick leave exceeding 3 days but not more than 7 days (direct settlement cases)	10,946	11,694	10,956	10,584	9,900	54,080
Sub-total	26,449	27,859	26,900	26,850	25,996	134,054
Claims requiring ECD's processing						
Sick leave exceeding 3 days but not more than 7 days where employer or employee disputed over compensation payable	1,948	1,847	1,638	1,522	1,274	8,229
Sick leave exceeding 7 days and employee with permanent incapacity	27,218	28,888	28,263	28,198	27,694	140,261
Fatal cases	184	197	195	193	204	973
Sub-total	29,350	30,932	30,096	29,913	29,172	149,463
Total	55,799	58,791	56,996	56,763	55,168	283,517

Source: LD records

Time taken for processing employees' compensation claims

Need to monitor long outstanding employees' compensation claims

2.4 As at 30 September 2014, 107 (11%) of the 973 fatal cases (see Table 10) received by the ECD on or before 31 December 2013 were pending decisions of family members of deceased employees, employers' consents, court proceedings or legal aid application results, etc. For work injuries and prescribed occupational diseases, 7,470 (5%) of the 148,490 (149,463 – 973) (see Table 10) claims received by the ECD during the period from 2009 to 2013 were still not yet settled. An analysis of the 7,470 claims is shown in Table 11.

Processing of employees' compensation claims by the Labour Department

Table 11

Outstanding work injury and occupational disease claims (30 September 2014)

	Number of claims received (outstanding as at 30 September 2014)					Total	
	2009	2010	2011	2012	2013		
Pending completion of medical clearance (Note 1)	13	15	41	154	1,390	1,613	22%
Pending ECOAB's assessment and issue of Certificate of Assessment after the availability of assessment results	10	14	54	219	1,479	1,776	24%
Pending ECD's issue of Certificate of Compensation Assessment	0	0	3	18	164	185	2%
Under ECD's investigation of claims involving disputes	0	0	3	13	146	162	2%
Pending legal aid application/District Court's results (Note 2)	36	179	527	1,438	1,554	3,734	50%
Total	59	208	628	1,842	4,733	7,470	100%

Source: LD records

Note 1: Medical clearance cannot be completed until an employee attends the OMU and the required medical information is ready for the ECOAB.

Note 2: Claims pending legal aid application/District Court's results include those claims where there are disputes between the employers and the employees and where the employees had claimed common law damages in addition to employees' compensation against the employers.

Processing of employees' compensation claims by the Labour Department

Need to shorten waiting time for attending ECOAB

2.5 An ECOAB (Note 7) comprises two doctors from the Hospital Authority (HA) and a Labour Officer from the Branch Offices of the ECD. The ECOABs are located at 16 HA's hospitals. In general, the ECOABs conduct one session to two sessions per week (Monday to Friday). Each session lasts for three hours and around 30 to 50 injured employees are arranged to be assessed in the session depending on the resources of each HA hospital allocated to the ECOAB.

2.6 The majority of injured employees are treated by the Orthopaedics & Traumatology (O&T) Departments or the Accident & Emergency (A&E) Departments while a small number of injured employees are treated by the Psychiatry Departments or other specialties of the HA at the same time. As shown in Table 11, 24% of the outstanding injury claims was pending assessment by the ECOAB. Audit noted that as at 1 December 2014, the average waiting time for attending the ECOAB ranged from 6 to 17 weeks (see Table 12).

Note 7: *The ECOAB is formed under the ECO. Members of the Board are appointed by the Commissioner for Labour.*

Processing of employees' compensation claims by the Labour Department

Table 12
Waiting time for attending ECOAB
(1 December 2014)

District	Hospital	Waiting time (Week)		
		O&T	A&E	Psychiatry
Hong Kong	Pamela Youde Nethersole Eastern Hospital	16	10	N.A.
	Queen Mary Hospital	6	9	N.A.
	Ruttonjee and Tang Shiu Kin Hospital	12	13	N.A.
Kowloon	United Christian Hospital	7	6	N.A.
	Queen Elizabeth Hospital	10	14	N.A.
	Kwong Wah Hospital	8	7	N.A.
	Caritas Medical Centre	13	12	N.A.
	Tseung Kwan O Hospital	15	10	N.A.
New Territories	Tuen Mun Hospital	13	17	N.A.
	Princess Margaret Hospital	10	10	N.A.
	Yan Chai Hospital	13	14	N.A.
	Prince of Wales Hospital	11	13	N.A.
	Alice Ho Mui Ling Nethersole Hospital	13	13	N.A.
	North District Hospital	12	10	N.A.
	Castle Peak Hospital	N.A.	N.A.	14
	Kwai Chung Hospital	N.A.	N.A.	11

Source: LD records

2.7 In 1994, the LD introduced an Off-duty Doctor Scheme to hire additional HA doctors with the LD's funding to conduct extra assessments during their off-duty hours with a view to shortening the waiting time of the ECOABs in individual hospitals (Note 8). In the years from 2009 to 2013, on average,

Note 8: Under the Scheme, each HA doctor was paid \$2,100 (\$2,224 with effect from 1 February 2015) for each four-hour assessment session.

Processing of employees' compensation claims by the Labour Department

75 additional sessions with some 2,700 assessments were conducted under the Scheme annually. Nevertheless, according to the LD, the ECOAB's capacity (some 21,000 scheduled assessments a year on average) had not been able to cope with the continued influx of new cases.

Need to continue to shorten the time taken for processing claims

2.8 In December 2013, the LD commenced a review to identify measures to shorten the time of processing claims, especially the waiting time for assessment by the ECOABs (Note 9). The measures identified by the LD included:

- (a) ***Enhancing communication with the HA hospitals.*** Under the existing practice which has been established between the HA's hospitals and the LD, some of the Departments (e.g. the O&T Departments) inform the OMU to schedule the ECOAB appointments once the injured employees are found suitable for assessment by the ECOAB (an injured employee's medical condition has to be stable before he can attend the assessment). However, for employees treated by some other Departments (e.g. the A&E Departments), the OMU had to write many times to them to enquire about the suitability of the injured employees for assessment;
- (b) ***Minimising the number of referrals from the OMU to the ECOAB.*** If, in the light of available medical information, an injury (or prescribed occupational disease) would likely result in permanent incapacity, the OMU will refer the injured employee to the ECOAB for assessment. In the period from 2009 to 2013, 12% of the assessments conducted were found not resulted in permanent incapacity. Referrals from the OMU may be reduced if the attending doctors of the injured employees could indicate in their medical reports whether the employees are suffering from permanent incapacity; and
- (c) ***Conducting extra assessments.*** The options of hiring retired doctors and convening assessments outside normal office hours (e.g. in the evening or on Saturday mornings) could be explored to increase the ECOAB's capacity.

Note 9: *Up to 31 January 2015, the LD's review had not been completed.*

Processing of employees' compensation claims by the Labour Department

2.9 Audit welcomes the LD's measures to shorten the time taken for processing claims. Audit considers that the LD needs to implement these measures as soon as practicable and to monitor the effectiveness of these measures. Where necessary, the LD may also need to implement further measures to address the issue.

2.10 Regarding the utilisation of quotas of the ECOAB, Audit noted that in the period from January to September 2014, 1,164 (7%) of 16,555 injured employees did not attend the ECOAB appointments. The LD informed Audit in March 2015 that it had been regularly compiling statistics on no-show rates of individual hospitals and the rate of no-show cases had already been taken into account in determining the ECOAB's available appointment quotas. Therefore, it is not desirable to further increase the number of quotas. Given the fact that the ECOAB's capacity is limited and there has been a continued influx of new cases, Audit considers that the LD needs to continue to closely monitor the no-show rate and explore measures to better utilise the unused appointment quotas.

Audit recommendations

2.11 **Audit has *recommended* that the Commissioner for Labour should, taking into consideration the pertinent audit comments (see paras. 2.4 to 2.10):**

- (a) **expedite the processing of the outstanding employees' compensation claims; and**
- (b) **continue to monitor the time taken for processing employees' compensation claims and, where warranted, take appropriate measures to address the issue (e.g. make better use of unused appointment quotas if there is a surge in the no-show rate).**

Response from the Government

2.12 The Commissioner for Labour agrees with the audit recommendations. He has said that to further improve the processing of employees' compensation claims, the LD will continue to closely monitor the no-show rate and, in collaboration with the HA, to explore measures to better utilise the unused appointment quotas if there is a persistent surge in the no-show rate.

PART 3: ADMINISTRATION OF THE EMPLOYEES COMPENSATION ASSISTANCE FUND

3.1 This PART examines the administration of the ECAF. Audit has found that there is scope for improvement in the following areas:

- (a) processing time of ECAF applications (paras. 3.7 to 3.11);
- (b) measures to help streamline the operations (paras. 3.12 to 3.16);
- (c) procurement practice for selecting retained lawyers (paras. 3.17 and 3.18);
- (d) management of surplus funds (paras. 3.19 and 3.20); and
- (e) publicity work (paras. 3.21 to 3.23).

Framework of applying for payment from the ECAF

Eligibility of applying for payment from the ECAF

3.2 Under the ECAO, if an injured employee or the eligible family member(s) of a deceased employee is unable to recover from an employer, after exhausting legal and financially viable means of recovery (Note 10):

- (a) employees' compensation for which the employer is liable pursuant to a judgment or order of a court or a relevant certificate (e.g. a Certificate of Compensation Assessment) issued by the Commissioner for Labour under the ECO; and/or

Note 10: *In cases of financial difficulties, injured employees or eligible family members may apply for legal aid from the Legal Aid Department to pursue their claims against the employers at court.*

Administration of the Employees Compensation Assistance Fund

- (b) damages (Note 11) for which the employer is liable pursuant to a judgment or order of a court,

the injured employee or the eligible family member(s) may apply for assistance payment in relation to the unpaid employees' compensation and/or relief payment in relation to the unpaid damages from the ECAF. The primary liability to pay employees' compensation and damages for work injuries rests with the employers. The ECAF acts as a last resort for those injured employees and eligible family members who have established liability and quantum of claims against the employers but are unable to recover their entitlement from the employers.

3.3 Where necessary and appropriate (e.g. in cases where employment relationship is in serious dispute or suspicious, the quantum of the claim is high and the employer is unrepresented), the ECAFB may apply to the court to be joined as a party to the proceedings taken by the injured employee or the eligible family member(s) against the employer (Note 12). The ECAFB will not join in every set of proceedings as there is the risk of complicating and unnecessarily prolonging those proceedings and adding to the costs of litigation.

Coverage of ECAF

3.4 According to the ECAO, payment from the ECAF to assisted applicants covers the following items:

- (a) assistance payment in relation to unpaid employees' compensation adjudged to be payable by the employers to the injured employees or the eligible family members, and interest on the compensation;

Note 11: *In addition to the statutory employees' compensation, an injured employee or eligible family member(s) may seek common law damages for negligence or wrongful act of the employer through a court in a civil suit.*

Note 12: *A notification system has thus been set up under the ECAO to require a person who commences proceedings in respect of a claim for employees' compensation or damages, to give written notice to the ECAFB within a prescribed period to facilitate it to consider whether to join in the proceedings to defend claims for better protecting the interest of the ECAF.*

Administration of the Employees Compensation Assistance Fund

- (b) legal costs incurred by the injured employees or the eligible family members in legal proceedings claiming employees' compensation (e.g. engaging a lawyer to file a claim at the court and to enforce a court judgment) against the employers; and
- (c) relief payment in relation to unpaid damages adjudged to be payable by the employers to the injured employees or the eligible family members.

Payments are also made to the ECAFB's retained lawyers for their legal services to the ECAFB.

3.5 Table 13 shows the number of applicants assisted by the ECAFB in the period from 2009-10 to 2013-14. Table 14 shows for the same period the amount of assistance payments and relief payments made by the ECAFB to the applicants and the legal costs paid by the ECAFB.

Table 13

**Number of applicants assisted by the ECAFB
(2009-10 to 2013-14)**

Year	Applicants
2009-10	57
2010-11	66
2011-12	55
2012-13	67
2013-14	72

Source: ECAFB records

Administration of the Employees Compensation Assistance Fund

Table 14

**Assistance/relief payments and legal costs paid by the ECAFB
(2009-10 to 2013-14)**

	2009-10 (\$ million)	2010-11 (\$ million)	2011-12 (\$ million)	2012-13 (\$ million)	2013-14 (\$ million)
Payments					
Assistance payment in relation to unpaid employees' compensation	18.4	14.2	12.8	12.4	14.7
Relief payment in relation to unpaid damages	11.6	19.0	28.2	24.2	24.2
Total	30.0	33.2	41.0	36.6	38.9
Legal costs					
Applicants' legal costs relating to employees' compensation claims against their employers	11.4	12.1	9.9	10.5	14.7
Legal costs paid to the ECAFB's retained lawyers	7.9	7.5	9.1	11.8	13.1
Total	19.3	19.6	19.0	22.3	27.8

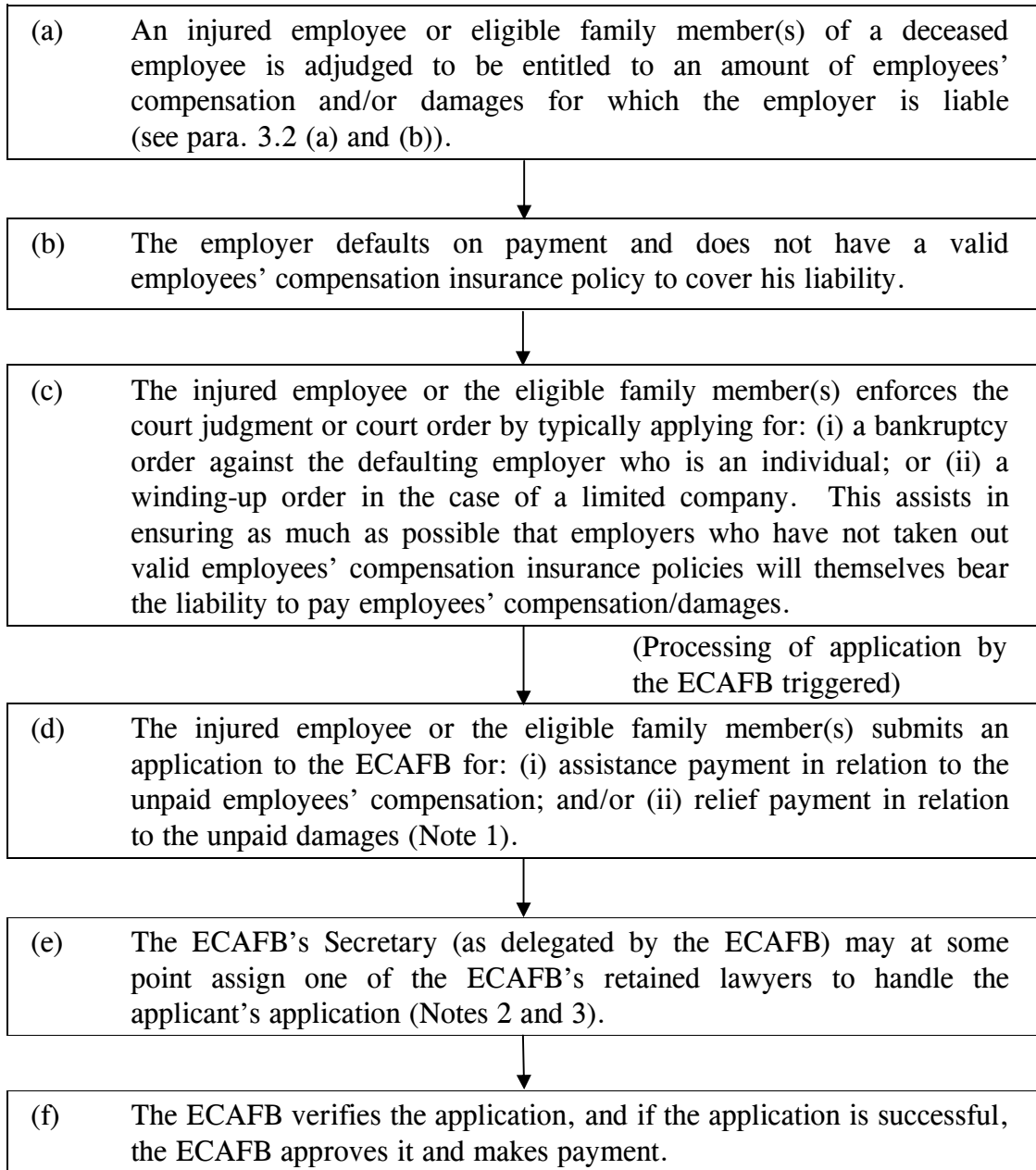
Source: ECAFB records

Procedures for processing ECAF applications

3.6 Figure 5 shows the procedures for processing applications for payment from the ECAF (ECAF applications).

Figure 5

Procedures for processing ECAF applications



Source: ECAF records

Note 1: An injured employee or eligible family member(s) needs to submit separate applications for assistance payment in relation to the unpaid employees' compensation and relief payment in relation to the unpaid damages.

Note 2: Depending on factors such as the amount and complexity of the case, the Secretary may assign a retained lawyer before or after the court judgment/order to handle the case.

Note 3: Procedure (e) is not applicable where the ECAF directly settles with the applicant (i.e. not involving any of the ECAF's retained lawyers).

Processing time of ECAF applications

3.7 Audit examined 20 cases assisted by the ECAFB. Assistance was paid out in the period from 1 April 2011 to 31 March 2014 and the payments amounted to a total of \$27.6 million. Audit noted that the average time taken in processing an application was 5.7 months (ranging from 1.3 to 19.6 months) for assistance payment in relation to unpaid employees' compensation and 5.1 months (ranging from 0.1 to 21.1 months) for relief payment in relation to unpaid damages (see Table 15).

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Table 15

**Processing time of applications for payment by the ECAFB
(1 April 2011 to 31 March 2014)**

Case	Employees' compensation (Months — Note 1)	Relief payment (Months — Note 1)
A	15.1	15.1
B	4.5	4.5
C	2.6	2.6
D	19.6	21.1
E	2.5	2.5
F	16.7	16.7
G	1.8	1.8
H	2.5	2.5
I	7.7	7.7
J	3.7	0.8
K	6.8	9.9
L	1.7	1.7
M	1.9	1.5
N	1.9	1.9
O	5.2	N.A. (Note 2)
P	7.1	0.7
Q	N.A. (Note 3)	0.4
R	1.7	1.0
S	3.6	3.8
T	1.3	0.1
Average	5.7	5.1

Source: ECAFB records

Note 1: The number of months taken for processing applications for payment from the ECAF is counted:

- (a) from the date of establishing the employer's liability and inability to pay (i.e. the date of application to the ECAFB, the date of court judgment/order, or the date of bankruptcy/winding-up order, whichever is the latest); and
- (b) to the date of first payment. Under the ECAO, relief payment in relation to unpaid damages exceeding \$1.5 million will be paid by an initial lump sum of \$1.5 million and followed by monthly instalments.

Note 2: The applicant did not apply for relief payment in relation to the unpaid damages.

Note 3: The applicant did not apply for assistance payment in relation to unpaid employees' compensation because his employer had paid for the compensation.

Administration of the Employees Compensation Assistance Fund

3.8 Audit's review of the above 20 cases indicated that there was room for improvement in the time taken for processing applications by the ECAFB in order to facilitate earlier payment to the injured employees.

3.9 Audit noted that in some instances, the time taken for injured employees to obtain payment could have been shortened. For example, in a case reviewed by Audit, the retained lawyer took about 15 months to review the case and advise the ECAFB on the approval of the application. Audit noted that the retained lawyer had spent time on requesting from the applicant's lawyer information which had already been provided to him.

Closer monitoring of the progress of cases by the ECAFB

3.10 Audit noted that the ECAFB did not have a specific mechanism in place for monitoring the case progress. The ECAFB did not require the Secretariat to report regularly the progress of all cases to the ECAFB. The Secretariat was only required to:

- (a) bring up cases with unusual nature (e.g. suspected fraudulent cases or cases involving illegal workers) for discussion in the meetings of the ECAFB; and
- (b) for each application, after all the required handling work had been completed, provide a detailed summary of the application together with the relevant legal advice and documents to the ECAFB for obtaining the ECAFB's approval (by way of circulation of papers) on the application.

3.11 To facilitate monitoring of the progress of applications, Audit considers that the ECAFB needs to establish a mechanism for periodic reporting of progress of applications by the Secretariat to the ECAFB. The mechanism would facilitate the ECAFB to instruct the Secretariat to carry out follow-up actions more expeditiously when warranted and assess the performance of the retained lawyers periodically.

Measures to help streamline the operations

Need to monitor legal costs payable from the ECAF

3.12 As can be seen from Table 14 in paragraph 3.5, the total legal costs paid by the ECAFB represented significant amounts in relation to the assistance/relief payments paid to the assisted applicants.

3.13 While recognising that the level of legal costs depends on a number of factors (including the complexity of individual cases) that may be beyond the control of the ECAFB, Audit notes that the following measures may help streamline the operations:

- (a) hiring of in-house legal staff to better allocate cases to retained lawyers and monitor case progress; and
- (b) more use of out-of-court settlement and mediation.

Hiring of in-house legal staff

3.14 At an ECAFB meeting held in June 2014, the ECAFB discussed the option of hiring in-house legal staff but had not reached a decision due to the fact that the ECAFB still had outstanding indebtedness incurred in earlier years (Note 13). Audit considers that while the hiring of in-house legal staff would not replace the need to engage retained lawyers, it may help the Secretary to the ECAFB to better allocate the cases to retained lawyers and help the ECAFB to monitor the progress of the cases more efficiently and effectively. As the outstanding debt was fully repaid on 1 April 2015, the ECAFB needs to consider the feasibility of hiring in-house legal staff.

Note 13: *In June 2000 and June 2002, the ECAFB obtained a bridging loan of \$60 million and \$220 million respectively from the Government to finance the ECAF's deficit caused by large payments awarded by the courts and the insolvency of three local insurance companies.*

More use of out-of-court settlement and mediation

3.15 Out-of-court settlement and mediation have the advantage of settling cases more quickly and could save legal costs (Note 14). In the 20 cases examined by Audit, applications for relief payment in relation to unpaid damages in six cases were settled out-of-court. The out-of-court settlement of these six cases was initiated by the ECAFB's retained lawyers.

3.16 In the period from 1 April 2011 to 31 March 2014:

- (a) of the 117 settled cases for assistance payment in relation to unpaid employees' compensation, 13 (11%) were settled out-of-court; and
- (b) of the 80 settled cases for relief payment in relation to unpaid damages, 19 (24%) were settled out-of-court and three (4%) were settled by mediation (Note 15).

Not all cases are suitable for out-of-court settlement or mediation (e.g. cases with vigorous contests on liability or there is information indicating that the employers are holding certain assets). The parties must themselves be willing to enter into any negotiated settlement or agreement. Notwithstanding this, given that out-of-court settlement and mediation have the advantage of settling cases more quickly, Audit considers that the ECAFB needs to make better use of these channels and where appropriate explore the possibility of settling the cases out-of-court or by mediation.

Procurement practice for selecting retained lawyers

3.17 At present, the ECAFB has engaged three legal firms as its retained lawyers. The Secretary to the ECAFB is responsible for the allocation of cases of ECAF applications to retained lawyers. The retained lawyers would assist the ECAFB to monitor the cases and provide legal advice when necessary. According

Note 14: *According to the Judiciary, parties can save time and money in not having to contest matters in court with an early settlement as litigation is a much longer process.*

Note 15: *The Mediation Ordinance (Cap. 620) came into effect in January 2013.*

Administration of the Employees Compensation Assistance Fund

to the Secretary, each of the three firms has provided one to two lawyers to specially handle the ECAF's cases and the firms' fees and charges are standardised.

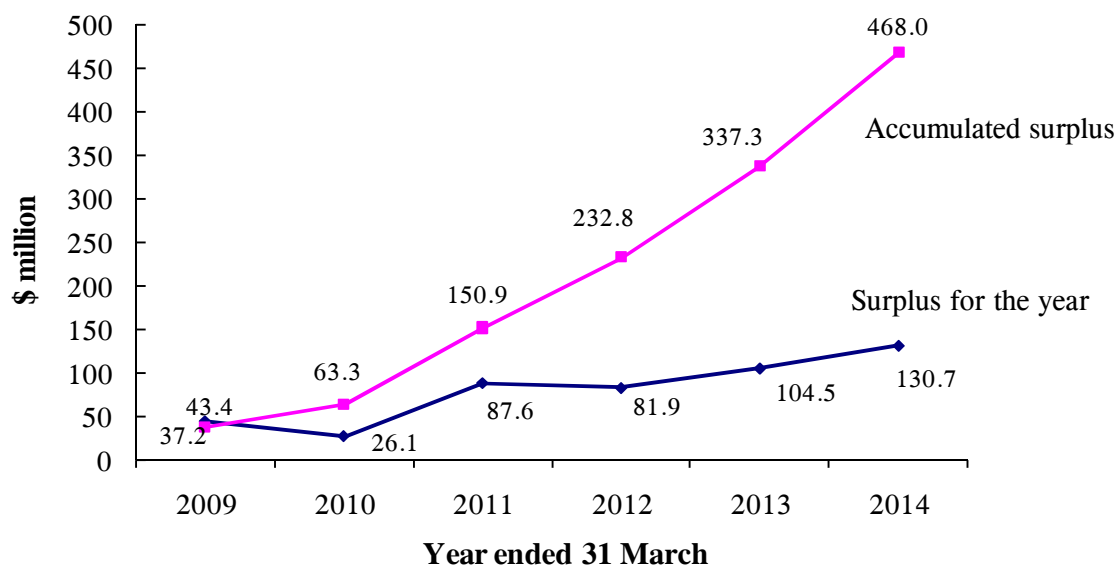
3.18 Given the fact that the three retained lawyers have been engaged for a long period of time (one engaged in 1991 and two in 1997), Audit considers that the ECAFB needs to review the procurement practice of the legal services and devise a suitable mechanism for selecting lawyers as retained lawyers (e.g. through open tendering).

Management of surplus funds

3.19 In recent years, the ECAF has been operating in surplus. Its accumulated surplus had increased significantly from \$37 million as at 31 March 2009 to \$468 million as at 31 March 2014 (see Figure 6).

Figure 6

Surplus funds of ECAF (2009 to 2014)



Source: ECAFB records

Administration of the Employees Compensation Assistance Fund

3.20 In view of the increasing operating surplus, Audit considers that the ECAFB needs to consider how the issue of increasing amount of accumulated surplus should be addressed and to make better use of the surplus already accumulated.

Publicity work

3.21 The ECAFB publicises the services it provides through:

- (a) the relevant webpage of the LD which includes:
 - (i) the functions and membership of the ECAFB; and
 - (ii) a Guide to the ECAO and Procedures for Applying for Payment from the ECAF (the Guide); and
- (b) the Guide available for collection by the public at:
 - (i) the Business Registration Office of the Inland Revenue Department;
 - (ii) the Companies Registry; and
 - (iii) the Branch Offices of the LD's ECD.

3.22 Audit considers that the ECAFB could do more to enhance the publicity of the ECAF. The ECAFB, for example, could enhance the information in the LD's website or establish the ECAF's own website to provide comprehensive information. Such information may include sections of frequently asked questions and cases of applications illustrating how the ECAF has assisted injured employees and eligible family members of deceased employees.

3.23 In the period from late December 2014 to early February 2015, Audit visited the Business Registration Office, the Companies Registry, and three Branch Offices of the LD's ECD. In all the visits, Audit found that the Guide was not available for collection by the public.

Audit recommendations

3.24 *Audit has recommended that the ECAFB should:*

- (a) **take measures to shorten the time taken for processing ECAF applications;**
- (b) **consider the feasibility of hiring in-house legal staff;**
- (c) **where appropriate, explore the possibility of settling cases out-of-court or by mediation;**
- (d) **devise a suitable mechanism for selecting lawyers as retained lawyers;**
- (e) **monitor the issue of increasing amount of accumulated surplus funds of the ECAF, and when necessary, take appropriate measures to address the issue;**
- (f) **consider establishing a website of the ECAF to provide comprehensive information on the ECAF or enhancing the information relating to the ECAF in the LD's website; and**
- (g) **take measures to ensure that copies of the Guide for collection by the public (e.g. on the display racks of Branch Offices of the LD's ECD) are replenished in a timely manner.**

Response from the ECAFB

3.25 The ECAFB agrees with the audit recommendations. The Chairman, ECAFB has said that:

- (a) the extent of the reduction in legal costs would depend on a number of factors beyond the control of the ECAFB, namely the complexity of individual cases, the court procedures necessary for injured employees to establish their employers' liability and inability to pay, fees charged by lawyers in Hong Kong in the coming years and the scale of costs adopted by the courts on taxation; and
- (b) given the difficulties and uncertainties which are beyond the ECAFB's control, whilst the ECAFB will try its best to monitor legal costs and avoid unnecessary spending, reducing costs in such a climate will prove a huge challenge.

PART 4: ENSURING EMPLOYEES ARE COVERED BY EMPLOYEES' COMPENSATION INSURANCE

4.1 This PART examines the LD's work in ensuring employees are covered by employees' compensation insurance. Audit has found that there is scope for improvement in the following areas:

- (a) inspection strategies (paras. 4.5 to 4.18);
- (b) monitoring of inspections (paras. 4.19 to 4.24);
- (c) integrity of the workplace database (paras. 4.25 to 4.33); and
- (d) performance information (paras. 4.34 to 4.39).

Background

4.2 Employers are liable to pay employees' compensation for cases in which employees sustained work injuries or died or suffered from a prescribed occupational disease specified in the ECO. Under the ECO, no employer shall employ any employee in any employment unless there is in force a policy of insurance to cover his liabilities under the ECO and common law. An insured employer is required to display, in a conspicuous place on each of his workplaces where any employee is employed, a notice of insurance. The Labour Inspectors of the DOs of the LID conduct three types of inspections to check the compliance with these requirements:

- (a) *Inspections arising from complaints and referrals.* Upon receipt of complaints from the public or referrals from other bureaux/departments or other divisions of the LD, Labour Inspectors will conduct inspections of the workplaces concerned;
- (b) *Campaign inspections.* DOs conduct inspections under one to four district-based enforcement campaigns each quarter targeting offence-prone trades/locations; and

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- (c) **Routine inspections.** Workplaces are selected from the LID's workplace database (see para. 4.25) for inspection on a routine basis. The Operation Manual issued by the LID stipulates that the selection should be based on an offence-prone approach. Under this approach, which has been in operation since 2006, trades that are more likely to have non-compliance are accorded with a higher priority while reputable organisations (such as consulates) are accorded with a lower priority.

4.3 In the years of 2013 and 2014, the number of routine inspections accounted for 95% of all inspections conducted (see Table 16).

Table 16

**Number of inspections conducted
(2013 and 2014)**

Type	2013		2014	
	Number	%	Number	%
Inspections arising from complaints and referrals	497	1	523	1
Campaign inspections	4,043	4	3,310	4
Routine inspections	93,189	95	82,970	95
Total	97,729	100	86,803	100

Source: Audit analysis of LD records

4.4 Audit visited 3 of the 12 DOs to examine their inspection documentation and records. Audit also accompanied the Labour Inspectors (see para. 4.14) in conducting 29 inspections. Audit noted that improvements could be made in a number of areas (see paras. 4.5 to 4.33).

Inspection strategies

Need to document the basis of selecting workplaces for inspection

4.5 The Operation Manual stipulates that Senior Labour Inspectors should identify offence-prone establishments/trades and black spots for targeted inspections. According to the Manual, the offence-prone establishments include those with previous offence records, new concerns and new arcades, arcades and shopping malls with frequent turnover of shops and companies, small and medium-sized establishments with relatively little resources to take care of personnel matters, establishments/trades with seasonal demand of manpower, and service contracts due to expire or complete. Furthermore, according to the LID, the risk level of the offence-prone workplaces is assessed by the offence detection rates. According to the Manual, the Senior Labour Inspectors take into account the district characteristics and other relevant factors (e.g. whether the establishments are offence-prone) in identifying a list of establishments for routine inspections from the database of the LID.

4.6 Routine inspections accounted for some 95% of the inspections conducted by the DOs (see Table 16 in para. 4.3). Audit noted that there was no documentation showing that the Senior Labour Inspectors in charge of the DOs had adopted the offence-prone approach in selecting workplaces for routine inspections. The Senior Labour Inspectors did not document the reasons why the selected workplaces were offence-prone (i.e. under which of the criteria listed in the Operation Manual were the selected workplaces considered as offence-prone). For example, it was not documented whether the workplace selected for inspection was located in shopping malls with frequent turnover of shops, or located in new arcade, or its trade had seasonal demand of manpower. There was also no documentation indicating that the inspections were conducted in accordance with the offence detection rates.

4.7 For the effective use of inspection resources and to ensure that the Senior Labour Inspectors comply with the offence-prone approach stipulated in the Operation Manual, Audit considers that the LD needs to take measures to improve the documentation of the basis of selecting workplaces for inspection.

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Many workplaces not inspected for over three years

4.8 It is not stipulated in the Operation Manual whether workplaces not inspected for a period of time should be accorded with priority for routine inspection. Nonetheless, in its response to an assignment report of May 2007 on the Labour Inspections Procedures of the LD issued by the Independent Commission Against Corruption, the LD stated that a workplace would be inspected once every two to three years. Audit, however, noted that up to 17 December 2014, 127,039 (37%) of the 344,172 workplaces in the LID's workplace database had not been inspected for more than three years (see Table 17).

Table 17

**Workplaces not inspected for over three years
(17 December 2014)**

	Number of workplaces
Over 3 years to 5 years	60,121
Over 5 years to 10 years	47,249
Over 10 years	19,669
Total	127,039

Source: Audit analysis of LD records

Audit considers that the LD needs to work out an appropriate strategy on inspection frequency. For instance, workplaces that have not been inspected for a certain number of years would be retrieved and assessed on their priority for routine inspection.

List of workplaces of group companies not updated

4.9 It is stipulated in the Operation Manual that for workplaces of a group company, the LID adopts a simplified inspection arrangement. After inspecting the group company's employees' compensation group insurance policy which covers all the employees of the group company's workplaces, the Labour Inspector will issue a "confirmation letter" to the group company specifying the workplaces covered

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under the group insurance policy. The group company is required to distribute a copy of the "confirmation letter" to its workplaces. During the inspection of the workplaces of a group company, the Labour Inspector will only check the "confirmation letter".

4.10 Audit noted that the LID maintained a list of group companies in the Operation Manual. However, the list had not been updated since 2002 and included only 13 group companies. In March 2015, the LD informed Audit that:

- (a) in the past ten years, electronic means of transmitting documents had been increasingly popular and was also widely recognised. The LD had accepted the submission of insurance policy by fax and email to provide flexibility to employers; and
- (b) with effect from 12 March 2015, the special inspection arrangement for group companies was discontinued and the Operation Manual had been updated to reflect the fact that the LD had accepted the submission of the insurance policies by fax and email.

Unable to conduct inspections to ensure foreign domestic helpers are covered by employees' compensation insurance

4.11 According to the Census and Statistics Department, in 2013, there were some 320,000 foreign domestic helpers in Hong Kong. Employers must take out employees' compensation insurance for their helpers in accordance with the ECO.

4.12 Inspections to domestic premises cannot be conducted to check whether the employers have taken out employees' compensation insurance for foreign domestic helpers because under the ECO, Labour Inspectors cannot enter domestic premises for inspections without a warrant issued by a magistrate. As foreign domestic helpers may not be familiar with their rights and benefits under the ECO, relying on them to lodge complaints may not a reliable means to detect non-compliance. In response to Audit's enquiry, the LD informed Audit in March 2015 that it had undertaken various promotional activities in conjunction with consulates targeting at foreign domestic helpers and their employers to enhance their understanding of relevant provisions of the ECO. Audit considers that the LD needs

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to take further measures to ensure that employers have taken out employees' compensation insurance for their helpers. Such measures may include, for example, stepping up publicity to remind the helpers of their rights and benefits and employers of their obligations under the ECO.

Need to improve measures to ensure proper display of notice of insurance

4.13 As mentioned in paragraph 4.2, the DOs conduct inspections to ensure that notices of employees' compensation insurance are displayed at conspicuous places at workplaces. The proper display of the notice of insurance would provide employees the assurance that employees' compensation insurance has been duly taken out by their employers.

4.14 In 6 (21%) of the 29 accompanied inspections (see para. 4.4), the employers were found to have failed to display the notice of insurance. Furthermore, Audit noted that in the period from 1 January 2011 to 30 September 2014, the LID had given 11,782 verbal warnings and 215 written warnings to employers found to have failed to display the notice. In the same period, the LID had not initiated any prosecutions for the offence.

4.15 According to the Operation Manual, when an employer is found to have failed to display the notice of insurance, the DOs should take one of following three enforcement actions against the employer:

- (a) giving a verbal warning for first-time offence;
- (b) giving a written warning for second-time offence; or
- (c) referring to the Prosecutions Division of the LD for initiating prosecution for subsequent offences.

In deciding the enforcement action to be taken, the DOs would only take into account offences of the same nature committed by an employer in the past three years.

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4.16 Audit noted that in the three-year period from 2011 to 2013, the DOs inspected a total of 196,586 workplaces. Out of these workplaces, only 2,416 (1.2%) workplaces had been inspected for three times or more. This implies that only the employers of these 2,416 workplaces would have the possibility of being prosecuted if the employers had already been given a verbal warning and a written warning. The employers of the remaining 194,170 (98.8%) workplaces would not be prosecuted even if they failed to display the notice of insurance throughout the three-year period. For effective enforcement of the display of notice of insurance by employers, Audit considers that the LD needs to review its existing practice of taking enforcement actions only on those employers who had been given warning for more than two times regarding the same offence within three years.

Audit recommendation

4.17 **Audit has recommended that the Commissioner for Labour should take measures to improve the existing inspection strategies taking into consideration the pertinent audit comments (see paras. 4.5 to 4.16).**

Response from the Government

4.18 The Commissioner for Labour agrees with the audit recommendation.

Monitoring of inspections

4.19 According to the Operation Manual, the Senior Labour Inspector of a DO is required to re-inspect on a monthly basis one of the workplaces inspected by each of the Labour Inspectors. Supervisory inspections are an effective means to ensure the consistency and quality of inspections conducted by Labour Inspectors. An example is shown below.

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1. In July 2013, a Labour Inspector of the Mongkok DO conducted an inspection at a workplace. In the inspection, the Labour Inspector had not taken steps (e.g. checking the Hong Kong Identity Card) to identify the employer and the employee at the workplace. He only spoke to a person who claimed to be a relative of the employer. The person said that the employer did not hire any employees.

2. In August 2013, the Senior Labour Inspector conducted a supervisory inspection. In the inspection, she found that the employer had failed to take out employees' compensation insurance for the employee for two consecutive years.

Source: LD records

4.20 The number and nature of inspections conducted each month were recorded in the activity records of the Senior Labour Inspectors. Audit, however, noted that in the period from 1 January 2013 to 31 December 2014, the Senior Labour Inspectors of the three DOs visited by Audit (see para. 4.4) had not conducted supervisory inspections as frequently as required by the Operation Manual (see Table 18).

Table 18

**Shortfall of supervisory inspections
(1 January 2013 to 31 December 2014)**

DO	Number of supervisory inspections		
	Required (a)	Conducted (b)	Shortfall (c) = (a) – (b)
Hong Kong East	136	113	23 (17%)
Mongkok	117	107	10 (8%)
New Territories East	124	116	8 (6%)
Total	377	336	41 (11%)

Source: Audit analysis of LD records

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4.21 In response to Audit's enquiry, the LID explained that the supervisory inspections were conducted less frequently than required due to unanticipated and urgent work commitments of the Senior Labour Inspectors concerned during the period. Out of the total number of supervisory inspections not conducted, four supervisory inspections in the Mongkok DO and five supervisory inspections in the New Territories East DO were not conducted because the Senior Labour Inspectors concerned were on leave or on sick leave during the period.

4.22 In view of the importance of supervisory inspections, the LD needs to ensure that supervisory inspections are conducted in accordance with the Operation Manual as far as possible. In case of genuine difficulties, the reasons for not conducting the required supervisory inspections should be documented and the omission of these inspections be approved by the Chief Labour Inspector of the LID.

Audit recommendations

- 4.23 **Audit has *recommended* that the Commissioner for Labour should:**
- (a) **take measures to ensure that supervisory inspections are conducted in accordance with the Operation Manual; and**
 - (b) **if supervisory inspections are not conducted due to genuine difficulties, ensure that the justifications are documented and the approval from the Chief Labour Inspector of the LID is obtained.**

Response from the Government

4.24 The Commissioner for Labour agrees with the audit recommendations.

Integrity of the workplace database

4.25 The LID maintains a workplace database for the Senior Labour Inspectors of the DOs to select workplaces for routine inspections. As at mid-December 2014,

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the database contained a total of 344,172 workplaces. The database is updated with information on workplaces obtained from the following sources:

- (a) complaints by the public and referrals from other divisions of the LD and other government bureaux/departments;
- (b) new workplaces identified during district-based enforcement campaigns (see para. 4.2(b)); and
- (c) new workplaces noticed by Labour Inspectors during the course of inspections of existing workplaces.

4.26 According to the LID, it is not its policy to maintain a complete database on establishments employing employees in Hong Kong and inspect them all. Nevertheless, it updates the workplace database from time to time so that the database could be used as one of the reference points in planning inspection work and identifying inspection targets. In fact, in the years of 2013 and 2014, 95% of the inspections conducted by the DOs were routine inspections to workplaces selected from the LID's database (see paras. 4.2(c) and 4.3).

4.27 In Audit's view, it is important for the LID to ensure that workplaces, particularly those offence-prone ones, are included in the workplace database as far as possible. The LID will then have a more comprehensive and reliable basis for planning inspection work. It will enable the DOs to ascertain more accurately the total population of potential targets for inspection in a district, thus minimising the omission of some offence-prone workplaces from inspection and the possible allegation of selective enforcement. Audit's examination indicated that there was room for improvement in this regard (see paras. 4.28 to 4.31).

Not all offence-prone workplaces were included in the database

4.28 ***New workplaces not included in the database.*** According to the Operation Manual, new concerns are offence-prone workplaces. Therefore, the Labour Inspectors have to keep a close watch on new workplaces in their course of inspections. The LID's workplace database will be updated once new workplaces are noted.

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4.29 On 22 January 2015, Audit conducted a survey of workplaces on Russell Street in Causeway Bay. Audit visited 39 workplaces on the street (15 on the ground floor and 24 upstairs) to ascertain whether there were any new workplaces operating but unnoticed by the Labour Inspectors of the DOs. Audit found that 9 (23%) of the 39 workplaces were not included in the database and as a result, had not been inspected since they commenced business. Audit's business registration search on 27 January 2015 revealed that eight of the nine workplaces had been in operation on Russell Street but had not been detected by the Labour Inspectors for some time (from more than one year to 14 years — see Table 19). In addition to the fact that these eight workplaces were new concerns, they may also be small and medium-sized establishments with relatively little resources to take care of personnel matters (see para. 4.5).

Table 19

**Establishments operated on Russell Street not detected by Labour Inspectors
(January 2015)**

Business nature	Location	Business commencement date	Period in operation
Beauty parlour	Upstairs	Dec 2010	4 years and 1 month
Beauty parlour	Upstairs	May 2010	4 years and 8 months
Beauty parlour	Upstairs	Aug 2013	1 year and 5 months
Dental service centre	Upstairs	Sep 2000	14 years and 4 months
Hair salon	Upstairs	Oct 2007	7 years and 3 months
Photo shop	Upstairs	Jul 2014	7 months
Retail shop (Chinese dried seafood)	Upstairs	Nov 2000	14 years and 2 months
Retail shop (cosmetics and skin care)	Upstairs	Oct 2013	1 year and 3 months
Retail shop (watches)	Ground floor	Jun 2011	3 years and 7 months

Source: Audit's street survey and business registration search conducted in January 2015

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Need to make use of the workplace database maintained by another division of LD

4.30 The Occupational Safety Operations Division (OSOD) of the LD receives notifications of workplaces of industrial undertakings (Note 16):

- (a) under the Factories and Industrial Undertakings Ordinance (Cap. 59), a person having the management or control of a notifiable workplace (including a factory or an industrial establishment as specified in the law, but excluding construction site) is required to notify the LD before commencing operation; and
- (b) under the Construction Sites (Safety) Regulations (Cap. 59I), a contractor undertaking construction works lasting for a specific period of time or employing a workforce of specific size should notify the LD within seven days after commencement of the work.

Based on the notifications and other sources of information, the OSOD maintains a workplace database for conducting inspections to workplaces to ensure that employers comply with the safety and health standards stipulated under the Occupational Safety and Health Ordinance (Cap. 509) and the Factories and Industrial Undertakings Ordinance.

4.31 Using the workplaces in the Tai Po Industrial Estate as an example, Audit compared the workplace database of the OSOD with that of the LID. Audit found that, as at 30 September 2014, 278 (79%) of 353 workplaces in the OSOD's database were missing in that of the LID. Audit considers that the LID needs to make use of the OSOD's workplace database to update its own database.

Note 16: *Industrial undertakings refer to workplaces such as factories, construction sites, catering establishments, cargo and container handling undertakings, and repair workshops.*

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Audit recommendation

4.32 Audit has *recommended* that the Commissioner for Labour should take measures to enhance the integrity of the workplace database taking into account the pertinent audit comments (see paras. 4.25 to 4.31).

Response from the Government

4.33 The Commissioner for Labour agrees with the audit recommendation.

Performance information

4.34 The LD reported in its Controlling Officer's Report (COR) a key performance indicator known as "Inspections to workplaces" conducted by the LID (see Table 20).

Table 20

**Key performance indicator: Inspections to workplaces
(2009 to 2013)**

	2009	2010	2011	2012	2013	Total
Target	120,000	120,000	120,000	130,000	130,000	620,000
Actual	139,718	140,267	138,395	143,680	151,912	713,972

Source: LD CORs for the period from 2010-11 to 2014-15

4.35 The performance indicator "Inspections to workplaces" refers to inspections conducted by both the DOs and the Special Enforcement Teams (see Appendix A) of the LID. For the period from 2009 to 2013, of the 713,972 inspections (see Table 20), 393,203 (55%) were conducted by the DOs for enforcing the ECO (see Table 21).

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Table 21

**Inspections conducted by DOs for enforcing ECO
(2009 to 2013)**

	2009	2010	2011	2012	2013	Total
Number of inspections	84,017	80,204	62,079	69,174	97,729	393,203

Source: LD records

4.36 Audit analysis of the LID's inspection statistics revealed that the figures reported in the CORs included inspections where the workplaces were removed, locked or vacant and therefore no enforcement work (i.e. ensuring that employers have taken out employees' compensation insurance) had been carried out. In the years from 2009 to 2013, the figures reported in the CORs included 163,519 such inspections (representing 41.6% of the 393,203 inspections — see Table 22).

Table 22

**Number of DO's inspection visits to workplaces
(2009 to 2013)**

	2009	2010	2011	2012	2013	Total
<i>Inspections with ECO enforcement work carried out</i>	49,661	45,584	36,464	40,033	57,942	229,684 (58.4%)
<i>Inspections without ECO enforcement work carried out</i>						
Workplace removed	19,088	17,542	12,983	14,487	20,220	84,320 (21.5%)
Workplace locked	15,077	16,855	12,492	14,508	19,441	78,373 (19.9%)
Workplace vacant	191	223	140	146	126	826 (0.2%)
Sub-total	34,356	34,620	25,615	29,141	39,787	163,519 (41.6%)
Total	84,017	80,204	62,079	69,174	97,729	393,203 (100.0%)

Source: LD records

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4.37 Furthermore, Audit noted that the number of inspections provided by the LD to the Legislative Council (LegCo) also included inspections where the workplaces were visited but no enforcement work had been carried out because they were removed, locked or vacant:

- (a) in May 2013, in its briefing to the LegCo Panel on Manpower on the LD's enforcement action for protecting employees' rights and benefits, the LD reported that the DOs conducted some 69,000 inspections in 2012 (see Table 22 in para. 4.36); and
- (b) in July 2013, in response to a LegCo Member's question, the LD reported that in 2010 and 2011, the DOs conducted some 80,000 and 62,000 inspections respectively (see Table 22 in para. 4.36) to check employers' compliance with the compulsory insurance requirement under the ECO.

Given a high percentage of the inspections were on workplaces which were removed, locked or vacant, Audit considers that such inspections need to be excluded or separately reported in the COR.

Audit recommendations

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

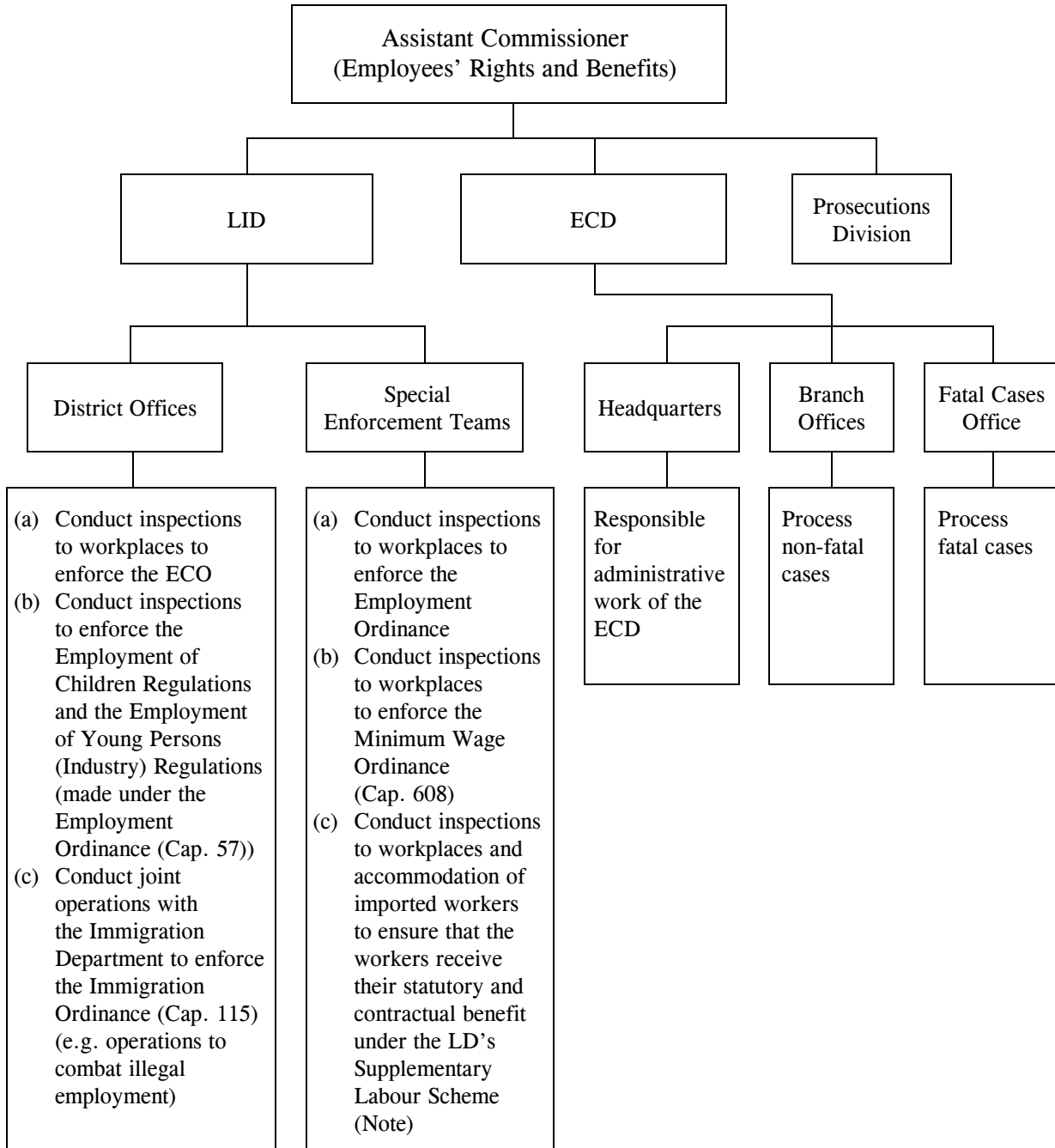
- (a) **review the performance indicators of the LID so that inspections where no enforcement work is carried out are excluded or separately reported in the COR; and**
- (b) **take action to improve the performance information provided to LegCo in future.**

Response from the Government

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

- (a) identifying removed, locked or vacant establishments without enforcement work is also a form of inspection as it is the Labour Inspectors' duty to report on new establishments detected during inspections and update the database for removed, locked and vacant workplaces;
- (b) the LD will add a remark in the performance indicators to show the number of inspections to workplaces which are found locked, removed or vacant; and
- (c) the LD will improve the performance information provided to LegCo in future by showing the yearly total of the number of inspections to the workplaces with a remark indicating the number of inspections to the workplaces which are found locked, removed or vacant.

Organisation and functions of the LID and the ECD (extract)
(March 2015)



Source: LD records

Note: It is a labour importation scheme which allows employers with genuine difficulties in finding suitable local staff at technician level or below to import workers to alleviate the manpower shortages.

Acronyms and abbreviations

Audit	Audit Commission
A&E	Accident & Emergency
COR	Controlling Officer's Report
DOs	District Offices
ECAF	Employees Compensation Assistance Fund
ECAFB	Employees Compensation Assistance Fund Board
ECAO	Employees Compensation Assistance Ordinance
ECD	Employees' Compensation Division
ECILMB	Employees' Compensation Insurance Levies Management Board
ECO	Employees' Compensation Ordinance
ECOAB	Employees' Compensation (Ordinary Assessment) Board
HA	Hospital Authority
LD	Labour Department
LegCo	Legislative Council
LID	Labour Inspection Division
OMU	Occupational Medicine Unit
OSOD	Occupational Safety Operations Division
O&T	Orthopaedics & Traumatology