

CHAPTER 6

**Labour and Welfare Bureau
Labour Department**

**Safeguarding employees' rights and benefits
under labour laws**

**Audit Commission
Hong Kong
30 November 2021**

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. 77 of the Director of Audit contains 8 Chapters which are available on our website at <https://www.aud.gov.hk>

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SAFEGUARDING EMPLOYEES' RIGHTS AND BENEFITS UNDER LABOUR LAWS

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SAFEGUARDING EMPLOYEES' RIGHTS AND BENEFITS UNDER LABOUR LAWS

Executive Summary

1. "Employees' rights and benefits" is one of the programme areas of the Labour Department (LD). Its aim is to safeguard the rights and benefits of employees under labour laws. LD achieves the aim by: (a) administering the Protection of Wages on Insolvency Fund (PWIF), which was established under the Protection of Wages on Insolvency Ordinance (Cap. 380) to provide timely relief in the form of ex gratia payment to employees affected by their insolvent employers; (b) conducting inspections to workplaces and taking enforcement actions against breaches of the provisions of labour laws; (c) processing employees' compensation claims; and (d) organising publicity activities to assist employers and employees in understanding their respective rights and obligations.

2. Labour laws that safeguard the rights and benefits of employees include the Employment Ordinance (Cap. 57), the Employment of Children Regulations (Cap. 57B), the Employment of Young Persons (Industry) Regulations (Cap. 57C), Part IV of the Employees' Compensation Ordinance (Cap. 282), Part IVB of the Immigration Ordinance (Cap. 115), the Minimum Wage Ordinance (Cap. 608) and the Protection of Wages on Insolvency Ordinance. In the period from 2016-17 to 2020-21, the expenditure on the programme area "Employees' rights and benefits" increased by 31 % from \$384 million to \$504 million. The Audit Commission (Audit) has recently conducted a review of LD's work in safeguarding employees' rights and benefits under labour laws.

Administration of the Protection of Wages on Insolvency Fund

3. *Need to speed up processing of applications.* The Wage Security Division (WSD) of LD is responsible for processing applications for ex gratia payments for PWIF. LD sets a performance target on processing of PWIF applications that payment would be effected within 10 weeks upon receipt of all relevant information and documents required for processing the applications (paras. 2.2 and 2.4). Audit noted that:

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- (a) ***Long time elapsed from submission of applications to effecting of ex gratia payments.*** Audit analysed the time elapsed from the dates of receipt of applications by WSD up to the dates payment was effected for applications approved in the period from 1 January 2018 to 30 June 2021 and found that the time elapsed for some applications was long:
- (i) the percentage of applications with time elapsed of more than 1 year increased from 5% (83 of 1,690) in 2018 to 21% (325 of 1,604) in the first six months of 2021; and
 - (ii) the average time elapsed for applications approved in each year ranged from 6.5 months to 7.7 months (para. 2.5); and
- (b) ***Need to take timely actions to collect required information and documents.*** Audit examination of 30 applications approved in the period from 2018 to 2020 found that on some occasions, LD staff could have taken earlier actions to avoid unnecessary delays in processing the applications. For example, in one application, LD staff did not contact the applicant to chase up the missing documents until 10.8 months after receipt of the application (para. 2.7).
4. ***Need to improve spot checks on approved cases.*** LD selected 75 cases with applications approved in the period from 2018 to 2020 for spot checks. The 75 cases comprised 63 cases and 12 cases for spot checks by the Senior Labour Officer (SLO) and the Assistant Commissioner respectively. Audit found that:
- (a) of the 63 selected cases, 13 (21%) cases were checked in the period from more than 1 month to 2 months after being selected; and 6 (10%) cases were checked in the period from more than 2 months to 3 months after being selected;
 - (b) of the 12 selected cases, 1 (8%) case and 6 (50%) cases were checked 1.7 month and in the period from 16 months to 30 months after being selected respectively. The spot checks on 5 (42%) cases (5 to 35 months after being selected) were still outstanding as at 30 June 2021; and
 - (c) LD had not promulgated guidelines on the procedures and basis for selection of approved cases for spot checks (paras. 2.10 and 2.11).

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5. ***Need to conduct random inspection on reconsideration cases.*** Applicants who are not satisfied with the outcome of their PWIF applications may request LD to reconsider their applications. Since 2006, a list of cases reconsidered and approved by Labour Officers (LOs) has been compiled every month for SLO's random inspection to ensure consistent and fair practice. However, LD had not selected any cases from the lists for SLO's inspection (para. 2.12).

6. ***Need to improve customer opinion surveys.*** Audit analysed the response rates of the three customer opinion surveys conducted in the period from 2015 to 2020 to collect feedback from PWIF applicants. Audit found that: (a) the survey periods ranged from 4 to 7 months; (b) about 800 applicants were surveyed in each survey; and (c) the response rates of the surveys were on the low side (averaging 15%). There was room for improving the surveys so as to cover more applicants and increase the number of respondents (paras. 2.15 and 2.16).

7. ***Need to give timely notice in the Gazette.*** It is stipulated in LD's guidelines that the Gazette notice should be issued as soon as possible after the cheques for discretionary ex gratia payments have been cashed. In the period from 1 January 2018 to 31 March 2021, there were 996 discretionary ex gratia payment cases with first ex gratia payment cheques cashed. Audit noted that of the 996 cases: (a) up to 30 June 2021, no Gazette notices were given in 19 (2%) cases. The time elapsed since the cashing of the first cheque ranged from 96 to 573 days, averaging 218 days; and (b) in the remaining 977 (98%) cases, the average time taken to give notice in the Gazette was 85 days after the cheques were cashed. Moreover, in 230 (23%) of the 996 cases, Gazette notices were given more than 90 days after the cheques were cashed (paras. 2.20 and 2.21).

8. ***Need to improve the enforcement of subrogation rights against employers.*** Where an ex gratia payment has been made to an applicant in respect of wages in arrears, wages in lieu of notice, severance payment, pay for untaken annual leave and/or pay for untaken statutory holidays, the applicant's rights and remedies to the extent of the amount of the ex gratia payment shall be transferred to and vested in PWIF Board (i.e. subrogation rights). Audit noted that for cases without the issue of a winding-up or bankruptcy order against the employer and no liquidator/provisional liquidator was involved, no proof of debt could be filed. Audit further noted that LD did not enforce the subrogation rights against the employers concerned direct, for example, through issuing demand letters to the employers (paras. 2.23 to 2.25).

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9. *Review of rate of levy on business registration certificates (BRCs) and ceilings of payment items of PWIF.* Audit noted the following issues:

- (a) *Review of rate of levy on BRCs.* In 2008, PWIF Board decided that the rate of levy on BRCs would be reviewed whenever the accumulated surplus of PWIF exceeded \$1,200 million by 20% or more for 4 consecutive quarters. Since 31 March 2009, the accumulated surplus of PWIF had all along exceeded \$1,200 million by 20% or more. As at 31 March 2021, the accumulated surplus increased to \$6,298 million, exceeding \$1,200 million by 425%. The rate of levy on BRCs was last revised in July 2013 from \$450 to \$250 per annum (paras. 2.29 and 2.30); and
- (b) *Review of ceilings of payment items of PWIF.* According to a paper submitted by LD to PWIF Board in October 2013, major considerations taken into account by PWIF Board in its previous reviews of the ceilings of payment items of PWIF were: (i) change in wage level; (ii) percentage of applications with approved amount meeting the amount applied for in full; and (iii) the impact on PWIF's financial position. The current ceilings of respective payment items of PWIF had been in effect since a long time ago in the period from 1996 to 2012. Subsequently, the considerations pertinent to the ceilings of payment items of PWIF had changed significantly. For example, the current ceiling of \$36,000 for the ex gratia payment on arrears of wages was set in 1996, using the median monthly earning of \$9,000 in the fourth quarter of 1995 and the first quarter of 1996 as reference. The median monthly earning increased by 100% to \$18,000 in the second quarter of 2021 (paras. 2.32 and 2.33).

LD saw the need to review BRC levy rate and ceilings of payment items of PWIF. However, the review was held up due to various reasons. At its meeting held in July 2021, PWIF Board decided to resume the review of the coverage of ex gratia payment under PWIF and BRC levy rate (para. 2.34).

Enforcement work

10. *Room for improvement in conducting inspections.* Labour Inspectors (LIs) conduct inspections to workplaces to ensure employers' compliance with the labour laws and combat illegal employment. During the outbreak of coronavirus disease (COVID-19) in 2020, there was a loss of more than 30% of working days. Routine inspections to workplaces were either suspended or conducted on a limited

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scale to avoid spreading the disease. Audit noted that in 2020, LD only conducted 104,138 inspections (i.e. 26% below LD's performance target of 140,000 a year). The suspension of inspection and reduction in the number of workplace inspections might inevitably compromise the overall effectiveness of LD's workplace inspections for the protection of employees' rights and benefits (paras. 3.2 to 3.5).

11. ***Need to improve handling of public complaints.*** In the period from 2016-17 to 2020-21, LD reported in the Controlling Officer's Reports that it met the performance target of "Starting investigation of complaints by LI within 1 week upon receipt". Audit examined 30 of the 698 complaints received by LD's Labour Inspection Division (LID) in 2020 and found that in 3 (10%) of the 30 complaints, LIs did not start investigation within 1 week upon receipt by LD. According to LD, the target was meant to refer to the time elapsed between the dates of LIs' investigation and the dates LIs received the complaints (instead of the dates LD received the complaints). There is a need for LD to consider revising the wording of the target (paras. 3.6 to 3.8).

12. ***Need to enhance the workplace database.*** LID maintains a workplace database from which workplaces are selected for routine inspections. As at 31 December 2020, the number of workplaces included in the workplace database was 296,357. Audit checked the information of 78 companies with LID's database. Audit found that 33 (42%) of the 78 companies were not included in LID's workplace database and therefore, would not be covered in the routine inspections by LD (paras. 3.10 and 3.11).

13. ***Need to promulgate guidelines on the selection of government contractors for inspection.*** According to the government service contract information kept by LD, in the period from 2016 to 2020, 60 bureaux/departments (B/Ds) signed about 3,000 contracts with 244 government contractors employing non-skilled workers. Audit noted that LD did not conduct inspections to the workplaces of the government contractors engaged by 5 of the 60 B/Ds, involving 7 contractors and 9 contracts. According to LD, workplaces of government contractors are selected for inspection based on broad guidelines for selecting offence-prone contractors and workplaces. In Audit's view, guidelines detailing the selection criteria will greatly facilitate the efficient selection of workplaces for inspection (paras. 3.14 and 3.15).

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14. ***Need to enhance the comprehensiveness of information on workplace of government contractors.*** According to LD, before launching inspection campaigns targeting contractors of specific B/D(s), it would send requests to B/D(s) concerned to collect information on contracts with government outsourcing contractors employing non-skilled workers. LD sent 285 requests to 61 B/Ds to collect information on contracts starting in the period from 2016 to 2020. Audit noted that:

- (a) no reply was received for 31 requests, involving 23 B/Ds;
- (b) 15 contracts engaged by 5 of the 20 B/Ds examined by Audit were not reported to LD. The total contract value amounted to \$141 million, ranging from \$2.5 million to \$37.3 million. As all these 15 contracts not reported to LD were cleansing services and facility management services contracts, non-skilled workers were very likely involved; and
- (c) 2 B/Ds, other than the 61 B/Ds, had 2 cleansing services and facility management services contracts. The contracts might have employed non-skilled workers (paras. 3.13, 3.16 and 3.17).

15. ***No documentary evidence showing that construction sites fulfilling the selection criteria were given priority.*** LID receives monthly and ad hoc intelligence on suspected cases of non-payment or late payment of wages involving construction contractors of government departments. According to LID's operation manual, priority should be given to construction sites according to the specified selection criteria. In the period from January 2016 to May 2021, there were 3,162 suspected cases of non-payment or late payment of wages referred to LD. Audit found that:

- (a) there was no documentary evidence showing that the cases referred to LD had been evaluated to identify construction sites fulfilling the selection criteria or LD had given priority to construction sites fulfilling the selection criteria;
- (b) 1,235 (39%) of the 3,162 cases fulfilled the selection criteria of involving late payment of wages for two or more consecutive wage periods. However, no inspection had been conducted in 514 (42%) of the 1,235 cases; and

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- (c) 516 (16%) of the 3,162 cases fulfilled the selection criteria of involving contractors with blatant non-compliance. However, LD had not conducted inspection in 112 (22%) of the 516 cases (paras. 3.19 to 3.21).

16. *Need to conduct timely inspections to construction sites.* In the period from January 2016 to May 2021, 1,045 inspections were conducted on construction sites. For 201 (19%) of the 1,045 inspections, at the time of the inspection, the construction works had already been completed and no construction workers were present (para. 3.23).

17. *Need to continue to closely monitor case processing and seek legal advice expeditiously.* In the period from 2018 to 2020, the Prosecutions Division (PD) sought the advice of the Department of Justice (DoJ) for 452 cases. Audit found that in 37 (8%) of the 452 cases, PD sought DoJ's advice more than 180 days after receiving the cases (para. 3.29).

Other issues

18. *Need to explore ways to shorten waiting time for medical assessment relating to employees' compensation claims.* Audit found that:

- (a) the average waiting time for the Employees' Compensation (Ordinary Assessment) Board (OAB) assessments conducted in 16 hospitals of the Hospital Authority was about 10 weeks for the period from 2016 to 2018. The average waiting time decreased to 8.7 weeks in 2019 but increased to 12.6 weeks in 2020. In 2019, the average waiting time at individual hospitals ranged from 6.5 to 11.5 weeks. In 2020, the average waiting time at individual hospitals increased, ranging from 10.4 to 18 weeks;
- (b) in the period from 2016 to 2020, the average no-show rates of OAB assessments ranged from 4.4% to 6.7%. The no-show rates at individual hospitals varied significantly. For example, in 2020, the no-show rate ranged from 1.6% to 9.6%; and

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- (c) in 2020, 3,910 assessments were conducted without the need for the employees to be present at the hospitals, comprising 3,658 by examining employees' medical records and 252 through video conferencing. However, not all the 16 hospitals had made use of these methods to shorten the waiting time for OAB assessments (paras. 4.3 to 4.6).

19. ***Need to enhance publicity on productivity assessment.*** Employees with disabilities, whose productivity may be impaired by their disabilities, are given the right to undergo a productivity assessment and be remunerated at a rate commensurate with their productivity. Audit found that attendance at the seminar on productivity assessment organised by LD each year decreased from 97 participants in 2016 to 58 participants in 2019. In 2020, no seminar was organised due to COVID-19 epidemic. Moreover, conducting more publicity through suitable electronic means (e.g. mobile apps or websites) might help reach more people in need of the productivity assessment provided by LD (paras. 4.11 and 4.14).

20. ***Need to step up efforts in reminding employees of their rights and benefits in light of COVID-19 epidemic.*** Audit noted that COVID-19 epidemic had impact on some of the LD's publicity work especially physical activities involving gathering of people. For example, in 2020-21, planned physical exhibitions at some districts were first postponed and then cancelled because of the epidemic situation and social distancing measures implemented by the Government. LD launched a pilot online exhibition on its website for two days in March 2021. The response to the pilot online exhibition was lukewarm. The total number of page views was only 163 (para. 4.21).

21. ***Need to improve publicity work for foreign domestic helpers.*** According to LD, as foreign domestic helpers are relatively vulnerable persons, it is important to ensure that they understand their rights and benefits under the labour laws and are aware of the channels for seeking assistance. Audit found that of the 90 publicity materials shown on LD's portal on foreign domestic helpers, 36 (40%) publicity materials were available only in one (i.e. English) or two (i.e. Chinese and English) languages (paras. 4.24(c), 4.25 and 4.26).

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Audit recommendations

22. 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:

Administration of the Protection of Wages on Insolvency Fund

- (a) endeavour to shorten the time taken to collect all the required information and documents for processing PWIF applications (para. 2.17(b));
- (b) explore the feasibility of shortening the performance target of effecting ex gratia payments within 10 weeks upon receipt of all the required information and documents (para. 2.17(c));
- (c) ensure that spot checks on approved PWIF applications are conducted in a timely manner (para. 2.17(d));
- (d) promulgate guidelines on procedures and basis for the selection of approved cases for spot checks (para. 2.17(e));
- (e) select cases reconsidered and approved by LOs for SLO's inspection to ensure that consistent and fair practice is adopted in approving PWIF applications (para. 2.17(f));
- (f) improve the response rates of customer opinion surveys for PWIF applicants and consider extending the period covered by each customer opinion survey so as to cover more applicants (para. 2.17(g) and (h));
- (g) ensure that Gazette notices are given as soon as possible after discretionary ex gratia payment cheques are cashed (para. 2.27(a));
- (h) critically review the practice of not enforcing PWIF Board's subrogation rights against employers direct for discretionary ex gratia payment cases in which no proof of debt could be filed (para. 2.27(c));

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- (i) **step up support to PWIF Board with a view to completing the review of BRC levy rate and ceilings of payment items of PWIF, and introducing the proposed amendments to the Protection of Wages on Insolvency Ordinance within 2022 (para. 2.36(b));**

Enforcement work

- (j) **explore the use of innovative measures in conducting workplace inspections that can better meet the social distancing requirement (para. 3.25(b));**
- (k) **endeavour to start LIs' investigation of complaints as soon as possible and consider revising the wording of the relevant performance target reported in the Controlling Officer's Report to avoid complainants' misunderstanding (para. 3.25(c) and (d));**
- (l) **enhance the comprehensiveness of the workplace database to facilitate inspection planning (para. 3.25(e));**
- (m) **promulgate guidelines on selection of workplaces of government contractors for inspection (para. 3.25(f));**
- (n) **enhance the comprehensiveness of the information on workplace of government contractors employing non-skilled workers to facilitate inspection planning (para. 3.25(g));**
- (o) **ensure that construction sites fulfilling the selection criteria laid down in LID's operation manual are duly considered and given priority in the selection of workplaces for inspection (para. 3.25(h));**
- (p) **ensure that inspections to construction sites are conducted before completion of construction works (para. 3.25(i));**
- (q) **continue to closely monitor the processing of cases for prosecution and seek DoJ's advice expeditiously with a view to ensuring that prosecution actions may be taken before bar dates (para. 3.32);**

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Other issues

- (r) **in collaboration with the Hospital Authority, endeavour to shorten the waiting time for OAB assessments, for example by making wider use of innovative measures as appropriate (para. 4.8(a));**
- (s) **consider exploring further means to address the problem of absences at OAB by employees without good reasons (para. 4.8(b));**
- (t) **step up the publicity work on productivity assessment conducted for employees with disabilities (para. 4.16(b));**
- (u) **step up efforts in the publicity work on employees' rights and benefits under COVID-19 epidemic (para. 4.28(a)); and**
- (v) **endeavour to provide the publicity materials for foreign domestic helpers in as many languages as possible (para. 4.28(c)).**

Response from the Government

23. The Commissioner for Labour agrees with the audit recommendations.

PART 1: INTRODUCTION

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

Background

1.2 “Employees’ rights and benefits” is one of the programme areas of the Labour Department (LD). Its aim is to safeguard the rights and benefits of employees under labour laws. LD achieves the aim by:

- (a) administering the Protection of Wages on Insolvency Fund (PWIF — see para. 1.6), which was established under the Protection of Wages on Insolvency Ordinance (Cap. 380) to provide timely relief in the form of ex gratia payment to employees affected by their insolvent employers (Note 1);
- (b) conducting inspections to workplaces and taking enforcement actions against breaches of the provisions of labour laws;
- (c) processing employees’ compensation claims; and
- (d) organising publicity activities to assist employers and employees in understanding their respective rights and obligations.

Note 1: *The Ordinance provides for the establishment of a board to administer PWIF. As at 31 July 2021, PWIF Board consisted of a chairman and 9 members. Of the 9 members, 3 represented employers, 3 represented employees and 3 were public officers (an Assistant Commissioner for Labour, an Assistant Principal Legal Aid Counsel and an Assistant Principal Solicitor of the Official Receiver’s Office). The chairman and non-official members were appointed by the Chief Executive of the Hong Kong Special Administrative Region. PWIF is mainly financed by an annual levy on each business registration certificate. As at 30 June 2021, the rate of levy on a business registration certificate was \$250 per annum.*

Introduction

1.3 Labour laws that safeguard the rights and benefits of employees include:

- (a) ***Employment Ordinance (Cap. 57)***. The Ordinance covers a comprehensive range of employment rights and benefits for employees including wage protection, rest days, statutory holidays, annual leave with pay, maternity leave, paternity leave and sickness allowance, etc. It also requires employers to keep and maintain records as stipulated in the Ordinance;
- (b) ***Employment of Children Regulations (Cap. 57B)***. The Regulations govern the employment of children in all economic sectors;
- (c) ***Employment of Young Persons (Industry) Regulations (Cap. 57C)***. The Regulations govern the employment of young persons in the industrial sector;
- (d) ***Part IV of the Employees' Compensation Ordinance (Cap. 282)***. The Part provides for compulsory insurance against employers' liabilities in relation to compensation for work injuries of employees (see Photograph 1 for LD's promotional leaflet);
- (e) ***Part IVB of the Immigration Ordinance (Cap. 115)***. The Part prohibits the employment of illegal immigrants in Hong Kong;
- (f) ***Minimum Wage Ordinance (Cap. 608)***. The Ordinance stipulates that employees should be paid no less than the Statutory Minimum Wage (SMW) (see Photograph 2 for LD's promotional leaflet); and
- (g) ***Protection of Wages on Insolvency Ordinance (Cap. 380)***. The Ordinance empowers the Commissioner for Labour (the Commissioner) to make ex gratia payments from PWIF to employees whose employers have become insolvent.

Photograph 1

Promotional leaflet on employees' compensation insurance under the Employees' Compensation Ordinance



Source: LD records

Photograph 2

Promotional leaflet on SMW under the Minimum Wage Ordinance



Source: LD records

Introduction

Organisation structure

1.4 Various divisions of the Labour Administration Branch of LD are responsible for duties relating to safeguarding employees' rights and benefits under labour laws. An extract of the organisation chart of LD as at 30 September 2021 is shown at Appendix A.

Expenditure on the programme area

1.5 In the period from 2016-17 to 2020-21, the expenditure on the programme area "Employees' rights and benefits" increased by 31% from \$384 million to \$504 million (see Table 1).

Table 1

**LD's expenditure on
safeguarding employees' rights and benefits under labour laws
(2016-17 and 2020-21)**

Division	2016-17	2020-21	Percentage increase/(decrease)
	(a)	(b)	(c) = $\frac{(b) - (a)}{(a)} \times 100\%$
	(\$ million)		(%)
<i>Administration of PWIF</i>			
Wage Security Division (WSD)	24	23	(4)
<i>Enforcement work</i>			
Employment Claims Investigation Division	2	2	0
Labour Inspection Division (LID)	153	182	19 (Note 1)
Prosecutions Division (PD)	1	3	200 (Note 2)
<i>Safeguarding rights and benefits of specific groups of employees</i>			
Employees' Compensation Division	71	101	42 (Note 3)
Foreign Domestic Helpers Division (Note 4)	—	21	N/A
Preparatory Office for Reimbursement of Maternity Leave Pay (Note 4)	—	19	N/A
Statutory Minimum Wage Division	26	25	(4)
<i>Departmental and branch support services (e.g. central administrative overheads and training)</i>			
Various divisions	107	128	20
Overall	384	504	31

Source: Audit analysis of LD records

Note 1: The increase was mainly due to the creation of new posts of 2 Labour Officer (LO) grade staff, 17 Labour Inspector (LI) grade staff and 2 clerical officer grade staff in 2017 and 2018. The posts were created for duties related to safeguarding employment rights and benefits of imported workers and workers in government outsourced service contracts.

Note 2: The increase was due to the rental cost of new office for some existing staff relocated from government premises and staff of newly created posts.

Note 3: The increase was mainly due to the creation of new posts of 25 LO grade staff in 2018 and 2019. The posts were created for duties related to strengthening the processing of employees' compensation claims.

Note 4: The Foreign Domestic Helpers Division (replacing the Foreign Domestic Helpers Team which was set up in April 2017) and the Preparatory Office for Reimbursement of Maternity Leave Pay (renamed the Reimbursement of Maternity Leave Pay Division in April 2021) were set up in September 2020 and April 2020 respectively.

Efforts in protecting employees' rights and benefits under labour laws

1.6 *Administration of PWIF.* According to the Protection of Wages on Insolvency Ordinance, employees who are owed wages, pay for untaken annual leave and untaken statutory holidays, wages in lieu of notice and/or severance payments by insolvent employers may apply for ex gratia payments from PWIF. The application has to be made within a period of six months from the applicant's last day of service or date of termination, as appropriate. The Ordinance empowers the Commissioner to make ex gratia payments from PWIF to these employees. WSD provides support to PWIF Board for the administration of PWIF, and processes applications for ex gratia payments. In 2020, 3,025 applications were received, 2,753 applications were processed, and ex gratia payments of \$79 million were made. Table 2 shows the numbers of PWIF applications and the amounts of ex gratia payments in the period from 2016 to 2020. As at 31 March 2021, the total amount of accumulated surplus of PWIF was \$6.3 billion.

Table 2
Number of PWIF applications and amount of ex gratia payments
(2016 to 2020)

	2016	2017	2018	2019	2020
<i>Number of PWIF applications (Note 1)</i>					
Brought forward (a)	1,073	1,523	990	1,375	1,690
Received (Note 2) (b)	3,355	2,347	2,286	3,180	3,025
Processed (c)	2,905	2,880	1,901 (Note 3)	2,865	2,753
Carried forward (d) = (a) + (b) – (c)	1,523	990	1,375	1,690	1,962
<i>Amount of ex gratia payments (\$ million)</i>	80	80	51	83	79

Source: Audit analysis of LD records

Note 1: The number of applications excluded claims on shortfall in the ex gratia payments on severance payments arising from the revised method of calculation of ex gratia payments on severance payments ruled by the Court of Final Appeal in May 2016. Statistics on shortfall claims were separately kept in view of their different nature.

Note 2: The number of applications received included new applications and applications submitted for reconsideration. An applicant disagreeing with the decision of the Commissioner may submit an application to request WSD to reconsider the application.

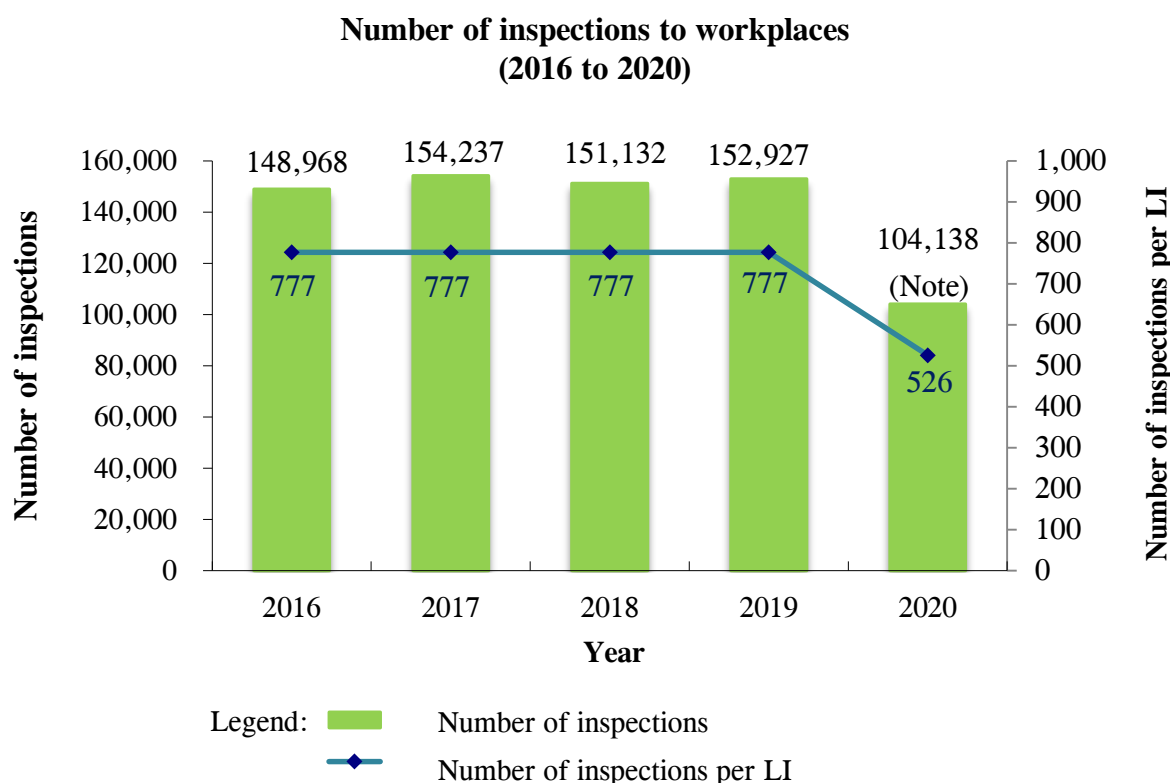
Note 3: The decrease in the number of applications processed was due to the small number of outstanding applications brought forward from 2017 and the fact that the majority of applications related to two large-scale insolvency cases were received in the second half of 2018 and the processing of these applications was completed in 2019.

Remarks: In the period from January to June 2021, 1,773 PWIF applications were received, 1,777 applications were processed, and ex gratia payments of \$54 million were made.

Introduction

1.7 **Enforcement work.** LID conducts inspections to workplaces to check employers' compliance with labour laws (see para. 1.3) and combat illegal employment. The inspections are conducted by 12 District Offices (DOs) and 24 Special Enforcement Teams (SETs) under LID. LIs of DOs and SETs conduct different types of inspections for different purposes (see Appendix B). LIs of DOs conduct regular comprehensive inspections to workplaces, while LIs of SETs conduct inspections to check compliance with the Employment Ordinance by employers and to investigate complaints. If LIs note suspected offences during inspections, they would initiate pertinent enforcement action according to the nature of the offences. The enforcement actions comprise issuing verbal warnings or written warnings, or taking prosecution action. For cases recommended for prosecution, LID is responsible for gathering evidence through inspections and investigation before passing the cases to PD. Figure 1 analyses the number of inspections to workplaces conducted in the period from 2016 to 2020.

Figure 1



Source: LD records

Note: The number of inspections in 2020 was lower than that in 2019 owing to the special work arrangements for government employees in the light of the outbreak of coronavirus disease (COVID-19).

1.8 *Safeguarding rights and benefits of specific groups of employees.* Work of LD in safeguarding rights and benefits of specific groups of employees is as follows:

- (a) *Employees' compensation for injured employees.* The Employees' Compensation Ordinance covers injuries or deaths caused by accidents arising from and in the course of employment, or by prescribed occupational diseases. An employer must have a valid employees' compensation insurance policy to cover liabilities under the law. The Employees' Compensation Division processes the cases for employees' compensation claims. In 2020, 38,756 cases for employees' compensation claims were received, which comprised 226 fatal cases and 38,530 non-fatal cases. In the same year, the number of cases settled was 37,388 and the amount of employees' compensation involved was \$1.3 billion;
- (b) *Foreign domestic helpers.* Foreign domestic helpers are entitled to the same benefits and protection under the Employment Ordinance. The Foreign Domestic Helpers Division ensures effective coordination and implementation of measures to enhance protection of foreign domestic helpers and provides support to them and their employers. Its responsibilities include enhancing promotion and education work and organising briefing sessions for foreign domestic helpers and their employers. As at the end of 2020, the number of foreign domestic helpers in Hong Kong was about 374,000;
- (c) *Reimbursement of maternity leave pay to employers of pregnant employees.* The statutory maternity leave for employees under the Employment Ordinance has been extended from 10 weeks to 14 weeks with effect from 11 December 2020. For the maternity leave pay of the 11th to 14th weeks' maternity leave that is required to be paid and has been paid to the employees under the Employment Ordinance, employers may submit applications to LD for reimbursement of maternity leave pay, subject to a cap of \$80,000 per employee. The Reimbursement of Maternity Leave Pay Division of LD oversees the policy and operation of the Reimbursement of Maternity Leave Pay Scheme, monitors and offers guidance to the appointed processing agent on the administration of the Scheme, and arranges reimbursement of maternity leave pay to employers; and

Introduction

- (d) *Setting minimum wage for grassroots employees.* SMW under the Minimum Wage Ordinance provides a wage floor to protect grassroots employees and has come into force since 1 May 2011. With effect from 1 May 2019, SMW rate has been \$37.5 per hour. The Statutory Minimum Wage Division provides secretariat support to the Minimum Wage Commission (Note 2).

Audit review

1.9 In March 2021, Audit Commission (Audit) commenced a review of LD's work in safeguarding employees' rights and benefits under labour laws. The audit review has focused on the following areas:

- (a) administration of PWIF (PART 2);
- (b) enforcement work (PART 3); and
- (c) other issues (PART 4).

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

General response from the Government

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

- (a) attaching great importance to safeguarding the statutory rights and benefits of employees, LD spares no efforts in making continuous improvements in administering PWIF and processing the applications, conducting workplace inspections and taking actions against breaches of labour laws, processing employees' compensation claims and organising publicity activities for

Note 2: *The Minimum Wage Commission, comprising the chairperson and not more than 12 members, reports to the Chief Executive in Council its recommendation about SMW rate at least once in every two years.*

employers and employees on their respective rights and obligations under labour laws; and

- (b) LD will keep up its efforts in identifying areas for improvement and implementing appropriate measures on various fronts.

Acknowledgement

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

PART 2: ADMINISTRATION OF THE PROTECTION OF WAGES ON INSOLVENCY FUND

2.1 This PART examines LD's administration of PWIF, focusing on the following areas:

- (a) processing of applications (paras. 2.3 to 2.18);
- (b) payments made at the discretion of the Commissioner (paras. 2.19 to 2.28);
and
- (c) review of rate of levy on business registration certificates (BRCs) and ceilings of payment items of PWIF (paras. 2.29 to 2.37).

Background

2.2 The Protection of Wages on Insolvency Ordinance provides for the establishment of a board to administer PWIF and empowers the Commissioner to make ex gratia payments from PWIF to employees whose employers have become insolvent. The Board has the following statutory functions:

- (a) to administer PWIF;
- (b) to make recommendations to the Chief Executive with respect to the rate of levy on BRCs (see Note 1 to para. 1.2(a)); and
- (c) to review applications upon request from applicants aggrieved by any decision of the Commissioner in respect of applications for ex gratia payments from PWIF.

WSD of LD is responsible for processing applications for ex gratia payments from PWIF (see para. 1.6).

Processing of applications

2.3 Employees of insolvent employers may apply for ex gratia payments from PWIF in respect of wages in arrears, pay for untaken annual leave, pay for untaken statutory holidays, wages in lieu of notice and/or severance payments owed by their employers (see para. 1.6). The presentation of a winding-up/bankruptcy petition against an insolvent employer is a pre-requisite for granting ex gratia payment from PWIF in general. Upon receipt of applications for ex gratia payments, LD will refer representative(s) of the applicants to the Legal Aid Department for legal aid for filing a winding-up/bankruptcy petition against their insolvent employer. Within one month after submission of an application, the applicant is required to produce documents such as the employment contract, wage receipts and attendance records, etc. to support his application.

Need to speed up processing of applications

2.4 LD sets a performance target on processing of PWIF applications that payment would be effected to qualified applicants within 10 weeks upon receipt of all relevant information and documents required for processing the applications. As reported in its Controlling Officer's Reports, LD had been able to meet the performance target since 2003. Audit examined the time elapsed from the receipt of all relevant information and documents to effecting ex gratia payments to the applicants in the period from 2018 to 2020 and found that the average time elapsed in each year was 2 weeks.

2.5 ***Long time elapsed from submission of applications to effecting of ex gratia payments.*** Although LD effects payments within 10 weeks from the date of receipt of all the relevant information and documents, the public is concerned about the time elapsed from the date of application to the date payment was effected. Some Legislative Council (LegCo) Members had expressed concerns about the long time elapsed before ex gratia payments were effected to the applicants. Audit analysed the time elapsed from the dates of receipt of applications by WSD up to the dates payment was effected for applications approved in the period from 1 January 2018 to 30 June 2021 and found that the time elapsed for some applications was long:

Administration of the Protection of Wages on Insolvency Fund

- (a) the percentage of applications with time elapsed of more than 1 year increased from 5% (83 of 1,690) in 2018 to 9% (208 of 2,435) in 2020. For applications approved in the first six months of 2021, the percentage further increased to 21% (325 of 1,604); and
- (b) the average time elapsed for applications approved in each year from 2018 to 2020 ranged from 6.5 months to 7.2 months. The average time elapsed increased from 6.5 months in 2020 to 7.7 months in the first six months in 2021 (see Table 3).

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Table 3

**Time elapsed before effecting ex gratia payments
(2018 to 2021 (up to June))**

Time elapsed (Note) (Year)	Number of approved applications			
	2018	2019	2020	2021 (up to June)
≤ 0.5	885 (52%)	1,244 (49%)	1,177 (48%)	744 (46%)
> 0.5 to ≤ 1	722 (43%)	1,046 (41%)	1,050 (43%)	535 (33%)
> 1 to ≤ 2	79 (4%)	231 (9%)	204 (8%)	322 (20%)
> 2	4 (1%)	13 (1%)	4 (1%)	3 (1%)
		83 (5%)	208 (9%)	325 (21%)
Total	1,690 (100%)	2,534 (100%)	2,435 (100%)	1,604 (100%)
Average time elapsed (Month)	6.7	7.2	6.5	7.7

Source: Audit analysis of LD records

Note: Time elapsed referred to the period from WSD's receipt of the application to LD's issuance of the first cheque of approved ex gratia payment to the applicant.

Remarks:

- (a) *Claims on shortfall in ex gratia payments on severance payments were excluded from this analysis (see Note 1 to Table 2 in para. 1.6).*
- (b) *According to LD, the increase in the percentage of applications with time elapsed of more than 1 year and the average time elapsed in the first half of 2021 was due to the fact that during the period, WSD stepped up its efforts in clearing cases which had already been outstanding for some time. This increased the time elapsed for cases approved.*

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2.6 *Need to address applicants' concern on processing time.* Since 2004, LD has conducted customer opinion surveys regularly (at intervals of about two years) to collect feedback from applicants. During the survey period, LD sends questionnaires to applicants together with the payment cheques and notices of payment. Audit analysed the results of the three surveys conducted in the period from 2015 to 2020 (see para. 2.15 for details of the surveys). Audit found that an average of 24 (19%) respondents in each survey considered that the time elapsed from the date of their submission of all the required information and documents to the date of effecting the ex gratia payment was unreasonable.

2.7 *Need to take timely actions to collect required information and documents.* In processing the applications, LD needs to request the applicants (see para. 2.3) and some other parties (e.g. employers, liquidators, trustees of Mandatory Provident Fund (MPF) schemes) to provide information and documents relating to the applications. In case there are discrepancies in the information received, LD needs to clarify the information. Audit examined 30 applications approved in the period from 2018 to 2020. For all the 30 applications, payments were effected within 10 weeks upon receipt of all the required information and documents. However, on average, the payments were effected 64 weeks (ranging from 28 weeks to 104 weeks) after the applications were received. Audit found that there was room for LD to expedite the collection of the necessary information and documents. On some occasions, LD staff could have taken earlier actions to avoid unnecessary delays in processing the applications. The following are examples relating to five applications:

- (a) in one application, actions to clarify the information provided by the MPF trustee were not taken until 9.8 months after receipt of the information;
- (b) in two applications, LD staff did not contact the respective applicants to chase up the missing documents until 6.4 months and 10.8 months respectively (see Case 1 for details) after receipt of the applications;
- (c) in one application, LD staff did not contact the applicant to clarify the discrepancies between the information in the application form and that in the relevant documents provided by the applicant until 11.7 months after the discrepancies arose; and
- (d) in one application, LD staff did not contact the applicant to clarify the discrepancies between the information provided by the applicant and by the employer until 10.8 months after the discrepancies arose.

Case 1

**Room for expediting collection of necessary information
and documents from an applicant**

1. In March 2018, a sum of about \$7,000 was awarded by the Minor Employment Claims Adjudication Board (MECAB) to a claimant against his employer for arrears of wages. The employer failed to pay the awarded sum to the claimant. Subsequently, WSD received a PWIF application from the claimant in early May 2018. In May and June 2018, LD staff invited the employer to attend interviews but the employer did not show up. In late October 2018, LD staff contacted the employer by phone, but the employer denied that he was the employer of the applicant. LD staff advised the employer to contact MECAB to make an application for setting aside the award and keep LD informed of the progress.

2. In late March 2019, LD staff contacted the employer and found that he had not made an application for setting aside MECAB award. LD staff then requested the applicant to provide the proof on his employer-employee relationship with the employer. On the same day, the applicant provided the required documents. In mid-June 2019, LD approved the ex gratia payment to the applicant.

Audit comments

3. In May and June 2018, the employer did not show up for the interviews with LD. Four months elapsed before LD contacted the employer by phone in late October 2018 and found that the employer denied to be the employer of the applicant. Another five months elapsed before LD staff requested the applicant to provide the required proof to support his application in late March 2019.

4. In Audit's view, LD could have collected the required information and documents in a more timely manner.

Source: Audit analysis of LD records

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2.8 Audit considers that LD needs to:

- (a) monitor the time elapsed from the receipt of PWIF application to the completion of collecting all the required information and documents;
- (b) endeavour to shorten the time taken to collect all the required information and documents, for example, by identifying the missing information or documents and requesting them from the applicants and parties concerned in a timely manner; and
- (c) explore the feasibility of shortening the performance target of effecting payments within 10 weeks upon receipt of all the required information and documents.

Need to improve spot checks on approved cases

2.9 LD conducts spot checks on cases with applications approved (Note 3). For every quarter (or a shorter period if LD considers necessary), a minimum of 3% of approved cases will be selected for spot checks:

- (a) cases approved by LOs will be checked by a Senior Labour Officer (SLO); and
- (b) cases approved by SLO will be checked by an Assistant Commissioner.

2.10 LD selected 75 cases with applications approved in the period from 2018 to 2020 for spot checks. The 75 cases comprised 63 cases and 12 cases for spot checks by SLO and the Assistant Commissioner respectively. In July 2021, Audit examined the time taken by SLO and the Assistant Commissioner to conduct spot checks and found the following:

Note 3: *Each suspected insolvency case involves an employer and one or more related PWIF applications. Each employee of the insolvent employer can submit an application for the ex gratia payment from PWIF.*

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- (a) ***Spot checks by SLO.*** Of the 63 selected cases, 44 (70%) were checked within 1 month. For the remaining 19 (30%) cases:
 - (i) 13 (68%) were checked in the period from more than 1 month to 2 months after being selected; and
 - (ii) 6 (32%) were checked in the period from more than 2 months to 3 months after being selected; and

- (b) ***Spot checks by Assistant Commissioner.*** Of the 12 selected cases, none was checked within 1 month:
 - (i) 1 (8%) case was checked 1.7 month after being selected;
 - (ii) 6 (50%) cases were checked in the period from 16 months to 30 months after being selected; and
 - (iii) the spot checks on 5 (42%) cases (5 to 35 months after being selected) were still outstanding as at 30 June 2021.

According to LD, the 5 outstanding cases had been checked by the end of August 2021.

2.11 Audit also noted that LD had not promulgated guidelines on the procedures and basis for selection of approved cases for spot checks. Audit considers that LD needs to take measures to ensure that spot checks on approved PWIF applications are conducted in a timely manner. LD also needs to promulgate guidelines on procedures and basis for the selection of cases for spot checks.

Need to conduct random inspection on reconsideration cases

2.12 Applicants who are not satisfied with the outcome of their PWIF applications may request LD to reconsider their applications. In an assignment report on the administration of PWIF completed in July 2005, the Independent Commission Against Corruption recommended that a list of cases reconsidered and approved by LOs should be compiled for SLO to conduct random inspection to ensure consistent and fair practice. LD agreed with the recommendation. From 2006 onwards, a list

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of cases reconsidered and approved by LOs has been compiled every month. However, LD had not selected any cases from the lists for SLO's inspection. Upon enquiry, LD informed Audit in July 2021 that reconsideration cases were included in the pool of all cases with applications approved, hence they had an equal chance of being selected for spot checks (see para. 2.9(a)) just like other cases. Audit noted that in the period from 2018 to 2020, of the 16 cases reconsidered and approved by LOs and included in the pool, none was selected for spot checks by SLO.

2.13 Audit considers that LD needs to select cases from the list of cases reconsidered and approved by LOs for SLO's inspection to ensure that consistent and fair practice is adopted in approving PWIF applications.

Need to improve customer opinion surveys

2.14 LD conducts customer opinion surveys regularly (at intervals of about two years) to collect feedback from the applicants of PWIF (see para. 2.6). The applicants are requested to return the completed questionnaires to LD by post or by fax.

2.15 Audit analysed the response rates of the three customer opinion surveys conducted in the period from 2015 to 2020 (see Table 4). Audit found that:

- (a) the survey periods covered ranged from 4 months to 7 months;
- (b) about 800 applicants were surveyed in each survey; and
- (c) the response rates of the surveys were on the low side (ranging from 14% to 16%, averaging 15%).

Table 4

**Response rates of customer opinion surveys
(2015 to 2020)**

	Period covered		
	Nov 2015 to Feb 2016	Dec 2017 to Jun 2018	Dec 2019 to Jun 2020
Survey period (Month)	4	7	7
No. of questionnaires sent	848	802	804
No. of respondents	116 (14%)	130 (16%)	123 (15%)

Source: Audit analysis of LD records

2.16 Audit considers that the respondents' feedback to LD can help LD improve its quality of services. LD needs to explore ways to improve the response rate of customer opinion surveys. LD also needs to consider extending the period covered by each survey so as to cover more applicants and increase the number of respondents.

Audit recommendations

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

- (a) **monitor the time elapsed from the receipt of PWIF application to the completion of collecting all the required information and documents;**
- (b) **endeavour to shorten the time taken to collect all the required information and documents for processing PWIF applications;**
- (c) **explore the feasibility of shortening the performance target of effecting ex gratia payments within 10 weeks upon receipt of all the required information and documents;**

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- (d) **take measures to ensure that spot checks on approved PWIF applications are conducted in a timely manner;**
- (e) **promulgate guidelines on procedures and basis for the selection of approved cases for spot checks;**
- (f) **select cases from the list of cases reconsidered and approved by LOs for SLO's inspection to ensure that consistent and fair practice is adopted in approving PWIF applications;**
- (g) **explore ways to improve the response rates of customer opinion surveys for PWIF applicants; and**
- (h) **consider extending the period covered by each customer opinion survey for PWIF applicants so as to cover more applicants and increase the number of respondents.**

Response from the Government

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

- (a) in some situations, the processing time of PWIF applications is beyond LD's control. For instance, it may take quite some time in some cases to present the winding-up/bankruptcy petitions against the insolvent employers. In some other cases where a considerable number of applicants and/or complicated issues are involved, the liquidators and trustees of MPF schemes will need more time to compile the required information and records. Time span would be further lengthened if there is suspected criminal offence involved in a case;
- (b) LD has stepped up efforts in clearing outstanding applications on hand and will continue to monitor the progress of application processing. In the first nine months of 2021, a total of 2,784 applications were approved showing a significant increase of 58.3% over the corresponding period in 2020;

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- (c) LD will strive to monitor closely the time required for processing PWIF applications. An internal working group has been set up to review the processing of PWIF applications with a view to enhancing, streamlining and rationalising the work procedures and workflow, and strengthen the mechanism of case monitoring to ensure that cases are processed properly and in a timely manner;
- (d) LD will review positively the performance target of effecting payments within 10 weeks upon receipt of all the required information and documents and revise the target in the first quarter of 2022;
- (e) LD has been selecting cases for spot checks among all case officers with a mix of different case sizes and LD completed the spot checks for the third quarter of 2021 in October 2021. LD will devise written guidelines on procedures and basis for selection of cases for spot checks, and ensure that cases are selected according to the guidelines and spot checks are conducted in a timely manner;
- (f) starting from the second quarter of 2021, measure has been taken to separately select cases seeking reconsideration and then approved by LOs for SLO's random inspection to ensure consistent and fair practice; and
- (g) LD will endeavour to explore ways to improve the response rates of customer opinion surveys for PWIF applicants and to cover more applicants in the surveys and increase the number of respondents.

Payments made at the discretion of the Commissioner for Labour

Need to give timely notice in the Gazette

2.19 According to the Protection of Wages on Insolvency Ordinance:

- (a) where a bankruptcy or winding-up petition has not been presented against an employer, the Commissioner may exercise his discretion to make an ex gratia payment under certain circumstances (Note 4); and
- (b) the Commissioner shall give notice in the Gazette stating that, in his opinion, sufficient evidence exists to support the presentation of a petition, or that payment has been made and the reasons therefor.

2.20 According to LD:

- (a) giving notice of discretionary ex gratia payments in the Gazette is a measure to deter employers from evading their responsibility to pay wages and termination payments due and relying on PWIF to make ex gratia payments of the sums owed to their employees; and
- (b) it would also be useful as a means of serving notice on all those who are concerned with the business of such employers.

To ensure that the effect of the Gazette notice is not undermined, it is stipulated in LD's guidelines that the Gazette notice should be issued as soon as possible after the cheques for ex gratia payments have been cashed (i.e. presented to banks).

Note 4: *The Commissioner may exercise discretion to make an ex gratia payment in circumstances where:*

- (a) *the employer employs less than 20 employees and sufficient evidence exists to support the presentation of a winding-up or bankruptcy petition while it is unreasonable or uneconomic to present a petition in that case; or*
- (b) *employees cannot present a bankruptcy petition against their employer as the aggregate amount of wages and other benefits owed to them is below \$10,000.*

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2.21 In the period from 1 January 2018 to 31 March 2021, there were 996 discretionary ex gratia payment cases with first ex gratia payment cheques cashed. Audit examined the 996 cases and noted cases with Gazette notices not given in a timely manner. Of the 996 cases (see Table 5):

- (a) up to 30 June 2021, no Gazette notices were given in 19 (2%) cases. The time elapsed since the cashing of the first cheque ranged from 96 to 573 days, averaging 218 days; and
- (b) in the remaining 977 (98%) cases, the average time taken to give notice in the Gazette was 85 days after the cheques were cashed. In 230 (23%) of the 996 cases, Gazette notices were given more than 90 days after the cheques were cashed.

Table 5

**Time taken to give Gazette notices in cases
with discretionary ex gratia payment cheques cashed
(2018 to 2021 (up to 31 March))**

Time taken to give Gazette notices (Note 1) (Day)	Number of cases	
≤ 90	747	(75%)
> 90 to ≤ 180	173	(17%)
> 180 to ≤ 365	49	(5%)
> 365	8	(1%)
Subtotal	977	(98%)
No Gazette notice given up to 30 June 2021 (Note 2)	19	(2%)
Total	996	(100%)

Source: Audit analysis of LD records

Note 1: In each case, more than one cheque might have been issued. Time taken to give Gazette notices referred to the time period starting from the date when the first cheque of the case was cashed.

Note 2: Up to 30 June 2021, the time elapsed since the cashing of the first cheque ranged from 96 to 573 days, averaging 218 days.

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2.22 Audit considers that LD needs to take measures to ensure that Gazette notices are given as soon as possible in accordance with LD's guidelines after discretionary ex gratia payment cheques are cashed by PWIF applicants. LD also needs to consider setting a target on the time taken to give Gazette notices.

Need to improve the enforcement of subrogation rights against employers

2.23 According to the Protection of Wages on Insolvency Ordinance:

- (a) where an ex gratia payment has been made to an applicant in respect of wages in arrears, wages in lieu of notice, severance payment, pay for untaken annual leave and/or pay for untaken statutory holidays, the applicant's rights and remedies to the extent of the amount of the ex gratia payment shall be transferred to and vested in PWIF Board (i.e. subrogation rights); and
- (b) PWIF Board may take such steps as it considers necessary to enforce those rights and remedies.

2.24 Audit noted the following LD actions in enforcing the subrogation rights:

- (a) ***Cases where the Official Receiver or a liquidator/provisional liquidator is involved.*** For cases with the issue of a winding-up or bankruptcy order against the employer and/or a liquidator/provisional liquidator was involved, LD filed a proof of debt for each employer to recover the ex gratia payment made to applicants (Note 5); and
- (b) ***Cases where neither the Official Receiver nor a liquidator/provisional liquidator is involved.*** For cases without the issue of a winding-up or bankruptcy order against the employer and no liquidator/provisional liquidator was involved, no proof of debt could be filed (Note 6). LD wrote

Note 5: *In 2020, the number of PWIF applications for which proof of debt could be filed was 1,279 involving ex gratia payments of \$39.8 million.*

Note 6: *In 2020, the number of PWIF applications for which no proof of debt could be filed was 1,149 involving ex gratia payments of \$38.7 million.*

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to the Magistrates' Court, the Labour Tribunal or MECAB, where appropriate, to make claims on payments received by them from employers, if any, in order to recover ex gratia payments made to applicants.

2.25 Audit further noted that for cases where no proof of debt could be filed (see para. 2.24(b)), LD enforced PWIF Board's subrogation rights against payments received by the Magistrates' Court, the Labour Tribunal or MECAB from employers, if any. However, LD did not enforce the subrogation rights against the employers concerned direct, for example, through issuing demand letters to the employers. LD informed Audit in July 2021 that:

- (a) it was not a practice for LD to issue demand letters to employers concerned because in most insolvent cases, LD would not be able to contact the employers and the letters sent to the employers would often be returned undelivered; and
- (b) according to experience, the chances for LD to recover the payments made from the insolvent employers direct were slim.

2.26 Audit considers that LD needs to explore all possible ways to recover payments from the insolvent employers as far as possible. There is a need for LD to critically review the practice of not enforcing PWIF Board's subrogation rights against employers direct for discretionary ex gratia payment cases in which no proof of debt can be filed.

Audit recommendations

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

- (a) **take measures to ensure that Gazette notices are given as soon as possible in accordance with LD's guidelines after discretionary ex gratia payment cheques are cashed by the PWIF applicants;**
- (b) **consider setting a target on the time taken to give Gazette notices on discretionary ex gratia payments; and**

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- (c) **critically review the practice of not enforcing PWIF Board's subrogation rights against employers direct for discretionary ex gratia payment cases in which no proof of debt could be filed.**

Response from the Government

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

- (a) Gazette notices for all the outstanding cases had been published by October 2021. LD has refined the guidelines on the issuance of Gazette notices and will publish the Gazette notices within 90 days, where appropriate, after the cheques for ex gratia payment have been cashed;
- (b) LD will develop a bring-up system to ensure that Gazette notices would be issued in a timely manner in accordance with the guidelines; and
- (c) measure has been taken to issue demand letters to employers for cases approved in 2021 onwards with an attempt to recover ex gratia payments granted to their ex-employees where the Commissioner for Labour has made payment from PWIF at his discretion and no proof of debt could be filed.

Review of rate of levy on business registration certificates and ceilings of payment items of the Protection of Wages on Insolvency Fund

2.29 *Review of rate of levy on BRCs.* The main source of PWIF income is the levies on BRCs. One of the statutory functions of PWIF Board is to make recommendations to the Chief Executive with respect to the rate of levy on BRCs (see para. 2.2(b)). In 2008, PWIF Board decided that the rate of levy on BRCs would be reviewed whenever the accumulated surplus of PWIF fell below \$800 million by 20% or more or exceeded \$1,200 million by 20% or more for 4 consecutive quarters.

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2.30 Audit noted that:

- (a) as at 31 March 2009, soon after the Board's decision in 2008, the accumulated surplus of PWIF was \$1,546 million, exceeding \$1,200 million by 29%. Since then the surplus had all along exceeded \$1,200 million by 20% or more. Over the years, the accumulated surplus had been increasing. As at 31 March 2021, the accumulated surplus increased to \$6,298 million, exceeding \$1,200 million by 425%; and
- (b) the rate of levy on BRCs was last revised in July 2013 from \$450 to \$250 per annum.

2.31 ***Review of ceilings of payment items of PWIF.*** Ex gratia payments from PWIF cover arrears of wages, wages in lieu of notice, severance payment and pay for untaken annual leave and untaken statutory holidays. The Protection of Wages on Insolvency Ordinance sets a ceiling for each payment item of PWIF (see Table 6).

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Table 6
Ceilings of payment items of PWIF
(30 June 2021)

Nature	Effective date of current ceiling (Note 1)	Ceiling (\$)	Calculation of ex gratia payments
Arrears of wages	February 1996	36,000	<ul style="list-style-type: none"> • wages of an employee for services rendered to his employer during the 4 months prior to the last day of service • wages include remuneration and earnings and items that could be deemed to be wages, namely, holiday pay, annual leave pay, end of year payment, maternity leave pay, paternity leave pay and sickness allowance
Wages in lieu of notice	February 1996	22,500	<ul style="list-style-type: none"> • 1 month's wages
Severance payment	February 1999	220,000 (Note 2)	<ul style="list-style-type: none"> • \$50,000 plus 50% of employee's entitlement under the Employment Ordinance in excess of \$50,000
Pay for untaken annual leave and untaken statutory holidays (Note 3)	June 2012	10,500	<ul style="list-style-type: none"> • pay for untaken annual leave under the Employment Ordinance earned by an employee for a period not exceeding his last two leave years • pay for untaken statutory holidays to which the employee is entitled within 4 months before his last day of service
Overall ceiling		289,000 (Note 4)	

Source: Audit analysis of LD records

Note 1: The details of settings and revisions of the ceilings of ex gratia payments are as follows:

(a) arrears of wages:

- set at \$8,000 (wages for four months) in April 1985
- revised to \$18,000 (wages for four months) in February 1993

(b) wages in lieu of notice:

- set at \$2,000 (wages in lieu of notice for 7 days) in July 1987
- revised to \$6,000 (wages in lieu of notice for 1 month) in February 1993

(c) severance payment:

- set at \$4,000 in July 1989
- revised to \$8,000 plus 50% of any entitlement in excess of \$8,000 in June 1991
- revised to \$24,000 plus 50% of any entitlement in excess of \$24,000 in July 1995
- revised to \$36,000 plus 50% of any entitlement in excess of \$36,000 in February 1996

Note 2: The Protection of Wages on Insolvency Ordinance did not set a ceiling for the ex gratia payment on severance payment. As at 30 June 2021, the maximum amount of severance payment as stipulated under the Employment Ordinance was \$390,000. Accordingly, the maximum amount of ex gratia payment for severance payment was \$220,000 (i.e. \$50,000 + (\$390,000 - \$50,000) × 50%).

Note 3: In 2012, an amendment was made to the Protection of Wages on Insolvency Ordinance to extend the scope of PWIF to cover pay for untaken annual leave and pay for untaken statutory holidays.

Note 4: This is the maximum amount of ex gratia payment payable to an applicant.

Administration of the Protection of Wages on Insolvency Fund

2.32 According to a paper submitted by LD to PWIF Board in October 2013, major considerations taken into account by the Board in its previous reviews of the ceilings of payment items of PWIF were:

- (a) change in wage level;
- (b) percentage of applications with approved amount meeting the amount applied for in full; and
- (c) the impact on PWIF's financial position (Note 7).

At its recent meeting held on 7 July 2021, PWIF Board considered it appropriate to assess the coverage of payment items of PWIF by making reference to the percentage of applications with amounts applied for being within the respective payment ceilings. According to LD, the amount of ex gratia payment approved to an applicant, apart from the ceilings of respective payment items of PWIF, hinged on proof submitted by the applicant subject to verification. Accordingly, in assessing the adequacy of the ceilings of payment items of PWIF, it was more appropriate to take into account the amount of payment items an applicant applied for being within the ceiling or not.

2.33 Audit noted that the current ceilings of respective payment items of PWIF had been in effect since a long time ago (i.e. in the period from 1996 to 2012 — see Table 6 in para. 2.31). Subsequently, the major considerations stated by LD (see para. 2.32) had changed significantly:

- (a) ***Changes in wage level.*** The current ceiling of \$36,000 for the ex gratia payment on arrears of wages was set in 1996, using the median monthly earning of \$9,000 in the fourth quarter of 1995 and the first quarter of 1996 as reference. The median monthly earning increased by 100% to \$18,000 in the second quarter of 2021;

Note 7: *Since the establishment of PWIF in 1985, the scope and the ceilings of payment items have been revised eight times. The initial scope of the ex gratia payment only covered arrears of wages with a ceiling of \$8,000 (see Note 1 to Table 6 in para. 2.31).*

Administration of the Protection of Wages on Insolvency Fund

- (b) *Percentage of applications with amounts applied for being within the ceilings of respective payment items of PWIF.* Audit found that the percentage of applications with the amounts applied for being within the ceilings of the respective payment items of PWIF decreased from 2017-18 to 2019-20:
- (i) for arrears of wages, decreasing from 75 % to 73 %;
 - (ii) for wages in lieu of notice, decreasing from 85 % to 77 %;
 - (iii) for severance payment, decreasing from 56 % to 52 %; and
 - (iv) for pay for untaken annual leave and untaken statutory holidays, decreasing from 77 % to 71 % (see Table 7); and

Table 7

Percentage of applications with amounts applied for being within ceilings of respective payment items of PWIF (2017-18 to 2019-20)

Nature	Percentage of applications with amounts applied for being within ceilings of respective payment items		
	2017-18	2018-19	2019-20
Arrears of wages	75 %	65 %	73 %
Wages in lieu of notice	85 %	65 %	77 %
Severance payment	56 %	32 %	52 %
Pay for untaken annual leave and untaken statutory holidays	77 %	70 %	71 %

Source: Audit analysis of LD records

Administration of the Protection of Wages on Insolvency Fund

- (c) ***PWIF's financial position.*** As at 31 March 2021, the accumulated surplus of PWIF was \$6,298 million. The average annual expenditure in the period from 2016-17 to 2020-21 was \$95 million. On this basis, the amount of accumulated surplus of PWIF would likely be sufficient to cover the PWIF expenditure for many years to come.

2.34 ***Recent developments.*** Subsequent to the extension of the coverage of PWIF in 2012 (see Table 6 in para. 2.31), LD saw the need to review BRC levy rate and ceilings of payment items of PWIF. However, the review was held up due to various reasons. In August 2021, LD informed LegCo Panel on Manpower of the developments in recent years:

- (a) **2013.** PWIF Board kick-started a review of the coverage of PWIF in the second half of 2013 again and agreed to review the BRC levy rate as well in the following year. However, a case of judicial review concerning the method of calculation of ex gratia payment on severance payment had yet to complete at that time. PWIF Board considered it necessary to await the ruling of the case so as to ascertain its impact on the amount of ex gratia payment on severance payment payable by PWIF and its financial position;
- (b) **2016.** The Court of Final Appeal handed down judgement on the case in May 2016;
- (c) **2017.** PWIF Board resumed the review of BRC levy rate and ceilings of ex gratia payment in December 2017. PWIF Board noted that the Government proposed to abolish the “offsetting” of severance payment/long service payment with employers’ mandatory contributions under MPF System (abolition arrangements). The Board came to a view that further discussion of the review of BRC levy rate and ceilings of payment items of PWIF should resume when there was concrete progress on the abolition arrangements; and
- (d) **2021.** PWIF Board was briefed on the latest development of the abolition arrangements at its meeting on 7 July 2021. Having considered that the details of the proposed abolition arrangements (see para. (c)) had nearly been thrashed out, PWIF Board decided to resume the review of the coverage of ex gratia payment under PWIF and BRC levy rate at the meeting, and would continue the deliberation on the review at its next meeting to be held in the fourth quarter of 2021.

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LD also informed the Panel that upon completion of the review by PWIF Board, it would consult the Labour Advisory Board on the outcome of the review and report to the Panel within the first half of 2022 with a view to introducing the proposed amendments to the Protection of Wages on Insolvency Ordinance into LegCo within 2022.

2.35 Audit noted that the review of BRC levy rate and ceilings of payment items of PWIF had long been held up. In Audit's view, given the significant changes in the major considerations for the ceilings of ex gratia payment (see paras. 2.31 to 2.33), there is a need to complete the review and, where appropriate, revise the rate and ceilings as soon as possible. Audit considers that LD needs to continue to monitor closely the progress of the review of BRC levy rate and ceilings of payment items of PWIF by PWIF Board, and step up support to PWIF Board with a view to completing the review of BRC levy rate and ceilings of payment items of PWIF and introducing the proposed amendments to the Protection of Wages on Insolvency Ordinance within 2022.

Audit recommendations

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

- (a) **continue to monitor closely the progress of the review of BRC levy rate and ceilings of payment items of PWIF by PWIF Board; and**
- (b) **step up support to PWIF Board with a view to completing the review of BRC levy rate and ceilings of payment items of PWIF, and introducing the proposed amendments to the Protection of Wages on Insolvency Ordinance within 2022.**

Response from the Government

2.37 The Commissioner for Labour agrees with the audit recommendations. He has said that LD will monitor closely the progress of the review of BRC levy rate and ceilings of payment items of PWIF by PWIF Board, and provide the necessary support on the review to PWIF Board to facilitate its deliberation with a view to introducing the proposed amendments to the Protection of Wages on Insolvency Ordinance into LegCo within 2022.

PART 3: ENFORCEMENT WORK

3.1 This PART examines LD's enforcement work, focusing on the following areas:

- (a) workplace inspections (paras. 3.2 to 3.26); and
- (b) prosecution action (paras. 3.27 to 3.34).

Workplace inspections

3.2 LIs conduct inspections to workplaces to ensure employers' compliance with the labour laws and combat illegal employment. The inspections are conducted by 12 DOs and 24 SETs of LID. DOs and SETs conduct different types of inspections for various purposes (see Appendix B). As at 31 March 2021, LID had 298 staff, comprising 8 LO grade staff, 237 LI grade staff and 53 clerical grade staff.

Room for improvement in conducting inspections

3.3 In 2017, LD revised the performance target on the number of workplace inspections from 130,000 a year to 140,000 a year. Audit examined the number of inspections conducted by LD in the period from 2016 to 2020. Audit noted that (see Table 8):

- (a) in the period from 2016 to 2019, the annual number of inspections exceeded the target by 11,132 (8%) to 18,968 (15%); and
- (b) in 2020, LD only conducted 104,138 inspections (i.e. 26% below the target).

Table 8**Number of inspections conducted
(2016 to 2020)**

	2016	2017	2018	2019	2020
Number of inspections conducted (a)	148,968	154,237	151,132	152,927	104,138
Target number of inspections (b)	130,000	140,000	140,000	140,000	140,000
Over-achievement / (under-achievement) (c) = (a) – (b)	18,968	14,237	11,132	12,927	(35,862)
Percentage (d) = (c) ÷ (b) × 100%	15%	10%	8%	9%	(26%)

Source: Audit analysis of LD records

Remarks: The drastic decrease in the number of inspections in 2020 was due to the special work arrangements for government employees in the light of COVID-19 epidemic.

3.4 Upon enquiry, LD informed Audit in June and July 2021 that:

- (a) LD staff were arranged to work-from-home or work under flexible working hours in a number of periods in 2020 (from January to April, July to September and December) in the light of COVID-19 epidemic. As a result, there was a loss of more than 30% of working days in 2020; and
- (b) during these periods, routine inspections were either suspended or conducted on a limited scale to avoid spreading the disease. To minimise the impact on inspections, higher priority was accorded to:
 - (i) inspections relating to complaints;
 - (ii) inspections relating to urgent enforcement work cases, such as those with imminent bar dates; and
 - (iii) cases requested by other divisions for meeting deadlines.

3.5 The suspension of inspection and reduction in the number of workplace inspections might inevitably compromise the overall effectiveness of LD's workplace inspections for the protection of employees' rights and benefits. Audit considers that LD needs to consider drawing up a contingency plan on managing inspections with a view to ensuring that the effectiveness of inspections in safeguarding employees' rights and benefits will not be unduly impaired. LD also needs to explore the use of innovative measures in conducting workplace inspections that can better meet the social distancing requirement.

Need to improve handling of public complaints

3.6 Complaints on non-compliance with labour laws are investigated by LIs, usually involving inspections to the workplaces. In the period from 2016-17 to 2020-21, LD reported in the Controlling Officer's Reports that it met the performance target of "Starting investigation of complaints by LI within 1 week upon receipt".

3.7 In 2020, LID received 698 complaints. Audit examined 30 of the 698 complaints and found that for all the 30 complaints, LIs started investigation within 1 week upon receipt by them (i.e. LIs). However, counting from the dates of receipt by LD, in 3 (10%) of the 30 complaints, LIs did not start investigation within 1 week upon receipt (see Table 9). These 3 complaints were referred to LID by other divisions of LD. The time elapsed of the 30 complaints from receipt by LD to LI's investigation ranged from 1 day to 26 days.

Table 9

Time elapsed between the dates of receipt of complaints by LD and the dates LIs started investigation (2020)

Time elapsed (Days)	Complaint	
	No.	Percentage
1	17	57%
2 to 7	10	33%
8 to 10	2	7%
More than 10	1	3%
	3	10%
Total	30	100%

Source: Audit analysis of LD records

3.8 Upon Audit’s enquiry, LD informed Audit in September 2021 that the performance target reported in the Controlling Officer’s Reports was meant to refer to the time elapsed between the dates of LIs’ investigation and the dates LIs received the complaints (instead of the dates LD received the complaints).

3.9 In Audit’s view, the complainants are more concerned about the time elapsed between the dates of LI’s investigation and the dates LD received the complaints rather than the dates LIs received the complaints. Audit considers that LD needs to:

- (a) endeavour to start LIs’ investigation of complaints as soon as possible upon receipt of the complaints by LD; and
- (b) consider revising the wording of the performance target reported in the Controlling Officer’s Report to avoid complainants’ misunderstanding the target as “Starting investigation of complaints by LI within 1 week upon receipt by LD”.

Need to enhance the workplace database

3.10 LID maintains a workplace database from which workplaces are selected for routine inspections. As at 31 December 2020, the number of workplaces included in the workplace database was 296,357. The database is updated with information on workplaces obtained from various sources, e.g. workplaces identified during enforcement campaigns, public complaints, and information from shopping malls' websites. According to LD:

- (a) to better safeguard the employees' statutory rights and benefits and focus its enforcement efforts, LID has adopted a risk-based approach when formulating inspection strategy. When selecting target workplaces for inspection, LD focuses on those which are more prone to offence, i.e. cases with previous offence/irregularities records, new establishments identified during territory-wide and district-based campaigns, workplaces with frequent turnover, etc. This explains why LD does not maintain a complete database with all workplaces in Hong Kong; and
- (b) LID takes measures to ensure that workplaces, particularly those offence-prone ones, are included in the workplace database as far as possible.

3.11 Under the Employment Support Scheme (ESS) of the Anti-epidemic Fund (AEF) (Note 8), employers who had been participating in the MPF schemes were eligible to apply for wage subsidies of employees. To examine the completeness of LID's workplace database, Audit selected 78 companies (Note 9) which had successfully applied for ESS and checked them with the information in LID's database. Audit found that 33 (42%) of the 78 companies were not included in LID's workplace database and therefore, would not be covered in the routine inspections by LD.

Note 8: *The relief measures under AEF related to employment included ESS. ESS provided wage subsidies to eligible employers who undertook not to make workers redundant during the subsidy period and to spend 100% of the subsidy on paying wages for the employees.*

Note 9: *Audit classified the companies into 26 groups based on the first alphabetical letter of their company names. Three companies were selected from each group. Accordingly, Audit examined 78 companies.*

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3.12 Audit considers that LD needs to enhance the comprehensiveness of the workplace database to facilitate inspection planning.

Room for improvement in inspections to workplaces of government outsourcing contractors employing non-skilled workers

3.13 LD conducts inspections to the workplaces of government outsourcing contractors employing non-skilled workers (e.g. cleaners and property attendants) (see Appendix B). LD makes use of the government service contract information kept in LD's database for selection of workplaces of government outsourcing contractors for inspections.

3.14 ***Need to promulgate guidelines on the selection of government contractors for inspection.*** According to the government service contract information kept by LD, in the period from 2016 to 2020, 60 bureaux/departments (B/Ds) signed a total of about 3,000 contracts with 244 government contractors employing non-skilled workers. Audit noted that LD's inspections had covered only 1,609 workplaces of 147 of the 244 contractors engaged by 55 of the 60 B/Ds (see Table 10). During the period, LD did not conduct inspections to the workplaces of the government contractors engaged by the remaining 5 B/Ds, involving 7 contractors and 9 contracts.

Table 10

**Inspections to workplaces of government contractors
(2016 to 2020)**

	Coverage of inspections conducted					
	2016	2017	2018	2019	2020	Overall
No. of B/Ds	37	43	18	48	17	55
No. of contractors	87	94	70	105	75	147
No. of contracts	258	340	230	361	221	1,017
No. of workplaces	473	483	401	532	399	1,609
No. of inspections	684	688	662	823	649	3,506

Source: Audit analysis of LD records

3.15 According to LD, in practice, workplaces of government contractors are selected for inspection based on broad guidelines by making reference to previous inspection findings, referrals and complaints on breaches received and other relevant considerations for selecting offence-prone contractors and workplaces. In Audit's view, promulgating guidelines detailing the selection criteria will greatly facilitate the efficient selection of workplaces for inspection. Audit considers that LD needs to promulgate guidelines on selection of workplaces of government contractors for inspection.

3.16 ***Need to enhance the comprehensiveness of information on workplace of government contractors.*** According to LD, before launching inspection campaigns targeting contractors of specific B/D(s), it would formulate an inspection plan by sending requests to B/D(s) concerned to collect information on contracts with government contractors. Audit noted that LD sent 285 requests to the 61 B/Ds to collect information on contracts starting in the period from 2016 to 2020. Among the 285 requests, no reply was received for 31 requests, involving 23 B/Ds. Audit noted that the Government Logistics Department published contract award notices on its website, showing the details of the contracts, names of contractors, contract values and the procuring B/Ds. Audit checked the contract information of 20 B/Ds received by LD in the annual exercise against information shown on the website of the

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Government Logistics Department and found that 15 contracts engaged by 5 of the 20 B/Ds were not reported to LD in the annual exercise. The total contract value amounted to \$141 million, with the value of each contract ranging from \$2.5 million to \$37.3 million. As all these 15 contracts not reported to LD were cleansing services and facility management services contracts, non-skilled workers were very likely involved.

3.17 Furthermore, according to the contract information on the website of the Government Logistics Department, 2 B/Ds, other than the 61 B/Ds covered by LD's annual exercises (see para. 3.16), engaged government contractors in 2 cleansing services and facility management services contracts. The contracts might have employed non-skilled workers. The total contract value amounted to \$39 million. As these 2 B/Ds were not covered by LD's annual exercises, LD had no information on these 2 contracts.

3.18 Audit considers that LD needs to enhance the comprehensiveness of its information on workplace of government contractors employing non-skilled workers to facilitate inspection planning.

Room for improvement in inspections to construction sites

3.19 LD conducts inspections to construction sites to protect the rights and benefits of construction workers (see Appendix B). Under the established referral mechanism, LID receives monthly and ad hoc intelligence on suspected cases of non-payment or late payment of wages involving construction contractors of government departments. LID selects construction sites for inspection based on the information provided by the departments. According to LID's operation manual, priority should be given to construction sites according to the following criteria:

- (a) priority will be given to construction sites involved in more serious late payment cases (e.g. cases involving late payment of wages for more than 15 days, late payment of wages involving 2 or more consecutive wage periods, and/or the late payment situation is deteriorating over the recent wage periods):
 - (i) the number of contractors involved in late payment of wages in the construction site will be taken into account; and

- (ii) the number of employees involved in late payment of wages will be taken into account;
- (b) priority will be given to construction sites of contractors with blatant non-compliance, i.e. contractors persistently involved in late payment of wages in different construction sites; and
- (c) the scheduled project completion date will be taken into account.

3.20 ***No documentary evidence showing that construction sites fulfilling the selection criteria were given priority.*** In the period from January 2016 to May 2021, there were 3,162 suspected cases of non-payment or late payment of wages referred to LD. Audit noted that LD had in place a mechanism under which targeted contractors and sites should be given priority for inspection with reference to the selection criteria in LID's operation manual. However, there was no documentary evidence showing that:

- (a) the 3,162 cases had been evaluated to identify construction sites fulfilling the selection criteria promulgated in LID's operation manual; and
- (b) LD had given priority to construction sites fulfilling the selection criteria.

3.21 ***Some construction sites fulfilling the selection criteria not inspected.*** Audit examined the information on the 3,162 cases referred to LD in the period from January 2016 to May 2021 (see para. 3.20) and noted that LD had not conducted inspections on some construction sites fulfilling one or more of the selection criteria stipulated in LID's operation manual:

- (a) ***Cases of more serious late payment of wages.*** Of the 3,162 cases, Audit identified 1,235 (39%) cases involving late payment of wages for two or more consecutive wage periods (see para. 3.19(a)). However, no inspection had been conducted in 514 (42%) of the 1,235 cases (see Table 11); and

Table 11

**Cases involving late payment of wages
for 2 or more consecutive wage periods
(January 2016 to May 2021)**

Number of consecutive wage periods with late payment of wages	Number of cases		
	Inspected by LD (a)	Not inspected by LD (b)	Total (c) = (a) + (b)
2	252	284	536
3 to 5	252	191	443
6 to 10	167	39	206
11 to 14	50	—	50
Total	721 (58%)	514 (42%)	1,235 (100%)

Source: Audit analysis of LD records

- (b) **Cases involving contractors with blatant non-compliance.** Of the 3,162 cases, Audit identified 516 (16%) cases involving contractors with blatant non-compliance, i.e. contractors persistently involved in late payment of wages in different construction sites (see para. 3.19(b)). However, LD had not conducted inspection in 112 (22%) of the 516 cases (see Table 12).

Table 12

**Cases involving contractors with blatant non-compliance
(January 2016 to May 2021)**

Number of construction sites of the contractors	Number of cases involving contractors with blatant non-compliance		
	Inspected by LD (a)	Not inspected by LD (b)	Total (c) = (a) + (b)
2	220	84	304
3 to 4	126	28	154
5 to 7	58	–	58
Total	404 (78%)	112 (22%)	516 (100%)

Source: Audit analysis of LD records

3.22 Audit considers that LD needs to ensure that construction sites fulfilling the selection criteria laid down in LID’s operation manual are duly considered and given priority in the selection of workplaces for inspection.

3.23 *Need to conduct timely inspections to construction sites.* In the period from January 2016 to May 2021, 1,045 inspections were conducted on construction sites to protect the rights and benefits of construction workers. Audit found that for 201 (19%) of the 1,045 inspections, at the time of the inspection, the construction works had already been completed and no construction workers were present. Under such circumstances, LD staff could not conduct the required inspection work, for example checking the payments payable to the construction workers in the construction sites. This rendered the inspection less effective in protecting the rights and benefits of the construction workers. In response to Audit’s enquiry, LD informed Audit in October 2021 that:

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- (a) many suspected cases with non-payment or late payment of wages were referred to LD two to three months after the occurrence and hence at the time of LD's inspection, the construction works might have already been completed; and
- (b) LD had been taking actions to urge other departments to speed up the referral of suspected cases with non-payment or late payment of wages to LD.

3.24 Audit considers that LD needs to take measures to ensure that inspections to construction sites are conducted before completion of construction works, including exploring effective measures to speed up the referral process of cases to LD.

Audit recommendations

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

- (a) **consider drawing up a contingency plan on managing inspections with a view to ensuring that the effectiveness of inspections in safeguarding employees' rights and benefits will not be unduly impaired;**
- (b) **explore the use of innovative measures in conducting workplace inspections that can better meet the social distancing requirement;**
- (c) **endeavour to start LIs' investigation of complaints as soon as possible upon receipt of the complaints by LD;**
- (d) **consider revising the wording of the performance target reported in the Controlling Officer's Report to avoid complainants' misunderstanding the target as "Starting investigation of complaints by LI within 1 week upon receipt by LD";**
- (e) **enhance the comprehensiveness of the workplace database to facilitate inspection planning;**

- (f) **promulgate guidelines on selection of workplaces of government contractors for inspection;**
- (g) **enhance the comprehensiveness of the information on workplace of government contractors employing non-skilled workers to facilitate inspection planning;**
- (h) **ensure that construction sites fulfilling the selection criteria laid down in LID's operation manual are duly considered and given priority in the selection of workplaces for inspection; and**
- (i) **take measures to ensure that inspections to construction sites are conducted before completion of construction works, including exploring effective measures to speed up the referral process of cases to LD.**

Response from the Government

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

- (a) to minimise the impact of COVID-19 on the enforcement work, contingency measures including launching ad hoc campaigns, rescheduling territory-wide campaigns, setting a higher target number of inspections for the campaigns, etc. during months of normal operations were implemented. Upon resumption of normal operations, inspectors had also tried hard to catch up the inspections. It should be noted that more than 30% working day loss was recorded in 2020 while the number of inspections conducted fell short of the target by 26% only;
- (b) LD noted the impact of special work arrangements of government employees on the conduct of inspections. Depending on the severity of the pandemic and the prevailing social distancing policy, LD will continue to adopt contingency measures during the outbreak of the pandemic to minimise its impact on the enforcement work of LD. With due regard to the specific nature of on-site and surprise inspection which is essential for effective enforcement and collection of admissible evidence, LD will explore the use of innovative measures that can perform part of the

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inspection functions as contingency to facilitate subsequent inspection planning in case workplace inspections have to be avoided for strict adherence to the social distancing requirement;

- (c) while all complaints received by LID have been handled in a timely manner in accordance with the pledge set in the Controlling Officer's Report, LD will strive to start LIs' investigation of complaints as soon as possible upon receipt of the complaints by other divisions of LD;
- (d) the performance target in the Controlling Officer's Report is meant to measure the time taken by LIs to start investigation upon receipt of complaints by LID. That said, the performance target reported in the Controlling Officer's Report will be refined as appropriate for the sake of clarity and avoidance of misunderstanding;
- (e) LD has been sparing no effort in maintaining a more comprehensive and updated database of workplaces in Hong Kong to facilitate inspection planning. Every year, it launches territory-wide and district-based campaigns to identify new establishments and to update the database. That said, LD will continue to explore feasible measures to further enrich the database;
- (f) as stated in the operation manual, LD has made reference to previous inspection findings, referrals/complaints on breaches received and other relevant considerations to identify offence-prone contractors and work out the inspection campaigns. That said, LD will put in place written guidelines on selecting the workplaces of government contractors for inspection;
- (g) LD has established inspection strategy in targeting offence/complaint prone government contractors and has been making efforts in maintaining a comprehensive database of contracts with government contractors through sending annual requests to B/Ds concerned to collect the relevant information. That said, LD would explore ways and other sources to enrich its database to facilitate inspection planning;
- (h) under the current selection mechanism, a list of targeted contractors and sites selected with priority for inspection with reference to the selection criteria will be submitted to supervisors for endorsement. That said, LD will further enhance the selection mechanism to ensure that all construction

sites fulfilling the selection criteria are duly considered and given priority in the selection process; and

- (i) LD will explore ways to ensure that inspections are conducted before completion of construction works and to speed up the referral process of cases to LD from other government departments.

Prosecution action

3.27 Several divisions of LD (e.g. LID) are responsible for conducting investigation on cases with suspected offences and referring the cases to PD for consideration of taking prosecution actions. According to PD’s operations manual, cases referred from other divisions should be processed as expeditiously as possible. In the period from 2016 to 2019, the number of summonses heard and summonses convicted increased from 1,697 to 2,754 and from 1,344 to 2,464 respectively. The amount of fines increased from \$5.4 million to \$9 million. The figures for 2020 were lower than those in 2019 owing to special work arrangements for government employees and the adjournment of hearings during the period from late January 2020 to late April 2020 of the courts in the light of COVID-19 epidemic (see Table 13).

Table 13

**Prosecutions taken by PD
(2016 to 2020)**

	2016	2017	2018	2019	2020
No. of summonses heard	1,697	2,122	2,288	2,754	2,360
No. of summonses convicted	1,344	1,920	1,946	2,464	2,064
Amount of fines (\$ million)	5.4	6.9	8.4	9.0	6.3

Source: Audit analysis of LD records

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Need to continue to closely monitor case processing and seek legal advice expeditiously

3.28 PD is responsible for conducting assessment on cases referred from investigation divisions and initiating prosecution if there is sufficient evidence for a reasonable prospect of conviction. For contentious cases with doubtful evidence or legal arguments, PD seeks advice from the Department of Justice (DoJ).

3.29 In the period from 2018 to 2020, PD sought DoJ's advice for 452 cases. Audit examined the time elapsed between the dates PD received the cases and the dates PD sought DoJ's legal advice and found that in 37 (8%) of the 452 cases, PD sought DoJ's advice more than 180 days after receiving the cases (see Table 14). For the 37 cases, the time elapsed before LD sought DoJ's legal advice ranged from 182 days to 581 days.

Table 14

**Time elapsed between PD receiving a case and seeking DoJ's legal advice
(2018 to 2020)**

Time elapsed (Day)	2018	2019	2020	Total
	(No. of cases)			
≤ 45	80	107	99	286 (63%)
> 45 to ≤ 90	23	34	19	76 (17%)
> 90 to ≤ 180	11	30	12	53 (12%)
> 180	15	8	14	37 (8%)
Total	129	179	144	452 (100%)

Source: Audit analysis of LD records

- 3.30 In response to Audit’s enquiry, LD informed Audit in October 2021 that:
- (a) prior to bringing a case to DoJ for advice, PD was duty bound to lay solid groundwork to assist DoJ to reach a just and appropriate decision as to prosecute a defendant or not; and
 - (b) cases requiring DoJ’s advice were complicated in nature and the groundwork involved was intellectually demanding and time consuming, which included digesting and analysing all gathered evidence, assessing the sufficiency of evidence against relevant legal provisions, court judgements and past DoJ’s advices, and inviting the investigation division to verify doubtful evidence or collect more evidence from various parties, such as the prosecution witnesses, defendants, financial institutions and law enforcement authorities, etc. The time of reply from different parties varies from weeks to months which was beyond the control of PD.

3.31 Audit considers that LD needs to continue to closely monitor the processing of cases for prosecution and seek DoJ’s advice expeditiously with a view to ensuring that prosecution actions may be taken before bar dates (Note 10).

Audit recommendation

3.32 **Audit has recommended that the Commissioner for Labour should continue to closely monitor the processing of cases for prosecution and seek DoJ’s advice expeditiously with a view to ensuring that prosecution actions may be taken before bar dates.**

Note 10: *Section 26 of the Magistrates Ordinance (Cap. 227) stipulates that, in any case of an offence, other than an indictable one, where no time is limited by any enactment for making any complaint or laying any information in respect of such offence, such complaint shall be made or such information laid within six months from the time when the matter of such complaint or information respectively arose. In other words, unless it is an indictable offence or otherwise specified in the offence provision, summonses must be laid within the bar date of six months after the date of offence.*

Response from the Government

3.33 The Commissioner for Labour agrees with the audit recommendation. He has said that:

- (a) LD has in place measures to closely monitor case progress, including bringing up all outstanding cases on a monthly basis for taking necessary actions, and arranging staff re-deployment and case re-assignment to expedite case processing and, where necessary, seek DoJ's advice without undue delay and before bar dates; and
- (b) LD will continue to closely monitor the processing of cases for prosecution and seek DoJ's advice expeditiously, as well as review regularly the effectiveness of the existing monitoring measures with a view to ensuring that prosecution actions may be taken before bar dates.

3.34 The Secretary for Justice has said that the Department of Justice shares Audit's view in paragraph 3.31.

PART 4: OTHER ISSUES

4.1 This PART examines other issues related to LD's work in safeguarding employees' rights and benefits under labour laws, focusing on the following areas:

- (a) handling of employees' compensation claims (paras. 4.2 to 4.10);
- (b) productivity assessment (paras. 4.11 to 4.17); and
- (c) publicity work on employees' rights and benefits (paras. 4.18 to 4.29).

Handling of employees' compensation claims

Need to explore ways to shorten waiting time for medical assessment relating to employees' compensation claims

4.2 In 2020, the number of employees' compensation claims reported to LD was 38,756. The number of settled compensation claims and the amount of compensation involved were 37,388 and \$1.3 billion respectively. As at 31 December 2020, there were 14,805 employees' compensation claims under processing including many claims awaiting medical clearance and assessments. Of these 14,805 claims, 3,152 (21%) claims had been received at least one year ago (see Table 15). According to LD, other than the waiting time for medical clearance, reasons leading to long outstanding period included the employees' long sick leave periods due to work injuries and waiting time for court hearings (Note 11).

Note 11: *LD did not have a detailed breakdown of employees' compensation claims under processing analysed according to processing status.*

Table 15

**Ageing analysis of employees' compensation claims under processing
(31 December 2020)**

Outstanding period (Year)	No. of cases
< 1	11,653
1 to < 2	2,733
2 to < 3	322
3 to < 5	74
5 to < 10 (Note)	23
Total	14,805

Source: Audit analysis of LD records

Note: The longest processing period was about 9 years. The employee of the case concerned had a work injury in 2011. He repeatedly failed to respond to LD during the processing of his claim. The case was thus closed in 2015. In December 2019, the case was reopened on the employee's request and was under processing as at 31 December 2020.

4.3 **Shortening waiting time for the Employees' Compensation (Ordinary Assessment) Board (OAB) assessments.** For injury involving temporary incapacity for a period of not more than 7 days, the employer can agree with the employee as to the compensation payable under the Employees' Compensation Ordinance. If the injury will likely result in permanent incapacity (either total or partial), the employees will be referred to OAB (Note 12) for assessment after they have recovered or their medical conditions have stabilised. The assessments are conducted by the relevant specialty departments (mainly the Orthopaedics and Traumatology Department and the Accident and Emergency Department) in 16 hospitals of the Hospital Authority.

Note 12: *According to the Employees' Compensation Ordinance, OAB comprising 3 members (2 persons each of whom shall be a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist, and 1 LO) is responsible for assessing the period of absence from duty necessary and the percentage of permanent loss of earning capacity caused by the injury in accordance with the Ordinance.*

4.4 Audit examined the waiting time for OAB assessments arranged in the period from 2016 to 2020 and found that the average waiting time for OAB assessments each year was about 10 weeks for the period from 2016 to 2018. The average waiting time decreased to 8.7 weeks in 2019, but increased to 12.6 weeks in 2020 (see Table 16). In 2019, the average waiting time at individual hospitals ranged from 6.5 to 11.5 weeks. In 2020, the average waiting time at individual hospitals increased, ranging from 10.4 to 18 weeks.

Table 16

**Average waiting time for OAB assessments
(2016 to 2020)**

	2016	2017	2018	2019	2020
No. of assessments arranged	24,455	23,075	24,433	24,277	15,420
Average waiting time (Week — Note)	9.9	10.7	10.8	8.7	12.6

Source: Audit analysis of LD records

Note: The waiting time refers to the period from the date of arranging an OAB assessment to the date of conducting the assessment. The figures were the average waiting time for OAB assessments conducted by the Orthopaedics and Traumatology Department, the Accident and Emergency Department, and the Psychiatry Department. The assessments by other specialty departments were arranged according to actual needs and LD did not keep the relevant information.

4.5 **Reducing no-show cases.** Audit examined the no-show rates of OAB assessments in the period from 2016 to 2020 and found that the average no-show rates ranged from 4.4% to 6.7% (see Table 17). The no-show rates at individual hospitals varied significantly. For example, in 2020, the no-show rate ranged from 1.6% to 9.6%.

Table 17

**No-show rates of OAB assessments
(2016 to 2020)**

	2016	2017	2018	2019	2020
No. of assessments arranged (a)	24,455	23,075	24,433	24,277	15,420
No. of assessments conducted (b)	22,995	21,529	22,799	22,994	14,740
No-show cases (c) = (a) – (b)	1,460	1,546	1,634	1,283	680
No-show rate (d) = (c) ÷ (a) × 100%	6.0%	6.7%	6.7%	5.3%	4.4%

Source: Audit analysis of LD records

4.6 In July and August 2021, LD informed Audit that:

- (a) longer average waiting time for OAB assessments in 2020 was due to COVID 19 epidemic. The Hospital Authority suspended, rescheduled or adjusted OAB assessments for 2020 as it had concerns on the health risk posed to employees and had to adjust non-emergency and non-essential services of public hospitals in order to focus manpower and resources in light of the challenge of the epidemic;
- (b) to avoid unduly prolonging waiting time, LD had been working with the Hospital Authority to explore other alternatives (e.g. OAB assessments conducted by examining employees’ medical records without the presence of the employees, assessments conducted outside the premises of the Hospital Authority during the time of epidemic, etc.); and
- (c) as a measure to tackle the problem of repeated absences at OAB, if an employee failed to attend OAB assessment more than once without good reasons, OAB would conduct the assessment based on available medical records. This measure had been implemented for OAB assessments convened on or after 15 June 2019 on a trial run basis and in full swing at all the 16 hospitals since the fourth quarter of 2019.

Audit noted that in 2020, 3,910 assessments were conducted without the need for the employees to be present at the hospitals, comprising 3,658 by examining employees' medical records and 252 through video conferencing. However, not all the 16 hospitals had made use of these methods to shorten the waiting time for OAB assessments. Two of the 16 hospitals had not conducted OAB assessments by examining employees' medical records without the presence of the employees in 2020, while 12 hospitals had not conducted OAB assessments through video conferencing.

4.7 In Audit's view, injuries disrupted employees' daily lives and might cause financial difficulties for the injured employees. It is important to shorten the time for processing the employees' compensation claims and pay compensation for permanent incapacity to the employees as soon as possible so as to help relieve their financial difficulties. Audit considers that LD, in collaboration with the Hospital Authority, needs to endeavour to shorten the waiting time for OAB assessments, for example by making wider use of innovative measures as appropriate, including video conferencing for conducting OAB assessments. LD also needs to monitor the no-show rate and consider exploring further means to address the problem of absences at OAB by employees without good reasons.

Audit recommendations

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

- (a) **in collaboration with the Hospital Authority, endeavour to shorten the waiting time for OAB assessments, for example by making wider use of innovative measures as appropriate; and**
- (b) **monitor the no-show rate and consider exploring further means to address the problem of absences at OAB by employees without good reasons.**

Response from the Government

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

Other issues

- (a) LD will continue to work in collaboration with the Hospital Authority to explore ways to shorten the waiting time for OAB assessments, including the use of innovative measures like video-conferencing having regard to practicability and resource implications; and
- (b) LD will monitor the no-show rate and continue its effort in deterring absences at OAB assessments by employees without good reasons.

4.10 The Chief Executive, Hospital Authority agrees with the audit recommendation in paragraph 4.8(a). He has said that:

- (a) the Hospital Authority has been working closely with LD in conducting OAB assessments including during the challenging time under the limitations of COVID-19 epidemic; and
- (b) the Hospital Authority will continue to support LD in regard to the improvement measures ahead as appropriate.

Productivity assessment

4.11 SMW applies to both able-bodied employees and employees with disabilities. Under the Minimum Wage Ordinance, employees with disabilities, whose productivity may be impaired by their disabilities, are given the right to undergo a productivity assessment and be remunerated at a rate commensurate with their productivity.

Need to enhance publicity on productivity assessment

4.12 Audit examined the number of productivity assessments conducted in the period from the implementation of SMW in May 2011 to 2020. Audit found that the number of productivity assessments conducted decreased from 170 in 2011 to 11 in 2020 (see Table 18).

Table 18

**Number of productivity assessments conducted
(2011 to 2020)**

	2011 (May to Dec)	2012	2013	2014	2015	2016	2017	2018	2019	2020
No. of assessments	170	110	69	74	81	45	42	31	35	11

Source: Audit analysis of LD records

4.13 The Statutory Minimum Wage Division conducts publicity work on the productivity assessment. The publicity work includes:

- (a) organising a seminar each year for employees with disabilities and their family members, employers and representatives from rehabilitation organisations;
- (b) displaying posters in public hospitals; and
- (c) putting advertisements on public transport.

The amount of expenditure on publicity work in 2020-21 was about \$1 million.

4.14 Audit examined the publicity work conducted by the Statutory Minimum Wage Division on productivity assessment and found that:

- (a) attendance at the seminar organised each year was not high and decreased from 97 participants in 2016 to 58 participants in 2019. In 2020, no seminar was organised due to COVID-19 epidemic (see Table 19); and

Table 19

**Attendances to seminars on productivity assessment
(2016 to 2019)**

	2016	2017	2018	2019
Attendance	97	70	117	58

Source: Audit analysis of LD records

Remarks: No seminar was organised in 2020.

- (b) LD placed advertisements on government poster sites, hospitals, mobile apps, public transport, the television and the radio, etc. However, during the epidemic, many people might often stay home. Conducting more publicity through suitable electronic means (e.g. mobile apps or websites) might help reach more people in need of the productivity assessment provided by LD.

4.15 Audit considers that LD needs to continue to monitor the number of productivity assessments conducted for employees with disabilities and step up the publicity work on productivity assessment, including conducting more publicity through suitable electronic means.

Audit recommendations

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

- (a) **continue to monitor the number of productivity assessments conducted for employees with disabilities; and**
- (b) **step up the publicity work on productivity assessment.**

Response from the Government

4.17 The Commissioner for Labour agrees with the audit recommendations.

Publicity work on employees' rights and benefits

4.18 To promote public understanding of the labour laws on employees' rights and benefits, LD carried out publicity work through various channels, which included broadcasting Announcements in the Public Interest on television and radio, displaying promotional posters, placing advertisements in various media (e.g. newspapers and public transport network) and organising physical exhibitions.

Need to step up efforts in reminding employees of their rights and benefits in light of COVID-19 epidemic

4.19 COVID-19 outbreak seriously impacted the Hong Kong economy. This might have given rise to a number of negative implications on employees' rights and benefits, for example employees requested to take unpaid leave without their prior consent and a unilateral reduction in wages without employees' consent. LD had received enquiries/complaints from employees or trade unions about suspected infringement of employees' statutory/contractual rights and benefits which might have been affected during COVID-19 epidemic. At a meeting of LegCo Panel on Manpower held in April 2020, the Panel urged LD to enhance the protection of labour rights and benefits under the epidemic and step up publicity in this regard.

4.20 To address the issues relating to employees' rights and benefits arising from the epidemic, LD issued a document entitled "Obligations and rights of employers and employees under the Employment Ordinance relating to the COVID-19" and uploaded it on LD's website since February 2020 for public reference. The document served as a supplement to LD's established means in explaining the Employment Ordinance provisions to employers, employees and the general public. LD also disseminated the updated guidelines on handling wage reductions and retrenchment and uploaded them on LD's website to remind employers and employees of their obligations as well as rights and benefits under the Employment Ordinance in May 2020.

Other issues

4.21 Audit noted that:

- (a) COVID-19 epidemic had impact on some of the LD's publicity work especially physical activities involving gathering of people. For example, in 2019-20, LD organised 5 physical exhibitions on the provisions of the Employment Ordinance. The number of participants of the exhibitions was about 8,600. In 2020-21, planned physical exhibitions at some districts were first postponed and then cancelled because of the epidemic situation and social distancing measures implemented by the Government; and
- (b) LD launched a pilot online exhibition on the Employment Ordinance as a "What's New" item on its website for two days in March 2021. The response to the pilot online exhibition was lukewarm. The total number of page views was only 163 (Note 13).

4.22 Audit considers that LD needs to:

- (a) step up efforts in the publicity work on employees' rights and benefits under the epidemic, for example, by exploring more suitable channels to disseminate the publications and promotional messages; and
- (b) continue to keep in view the developments of the epidemic with a view to resuming physical exhibitions with suitable social distancing measures when circumstances permit.

Need to improve publicity work for foreign domestic helpers

4.23 The Foreign Domestic Helpers Division of LD conducts publicity work for foreign domestic helpers and their employers to raise their awareness on their employment rights and obligations. As at 31 December 2020, there were 373,884 foreign domestic helpers of diverse nationalities working in Hong Kong (see Table 20).

Note 13: *The number of page views for Traditional Chinese, English and Simplified Chinese versions of the online exhibition were 88, 40 and 35 respectively. For comparison, LD held 5 physical exhibitions on the Employment Ordinance in 2019-20, and the average number of participants per exhibition was about 1,700.*

Table 20

**Nationalities of foreign domestic helpers
(31 December 2020)**

Nationality	No.	Percentage (%)
Philippines	207,402	55.5
Indonesia	157,802	42.2
India	4,406	1.2
Thailand	2,024	0.5
Others (e.g. Bangladesh, Malaysia, Myanmar, Nepal, Pakistan and Sri Lanka)	2,250	0.6
Total	373,884	100.0

Source: Audit analysis of LD records

4.24 In 2020-21, the expenditure on the publicity work conducted by the Foreign Domestic Helpers Division was \$5 million. The publicity work included:

- (a) organising briefing sessions and staging information kiosks;
- (b) screening publicity videos and distributing information packs to the foreign domestic helpers at popular gathering places of foreign domestic helpers (e.g. the Chater Garden in Central District and the Victoria Park in Causeway Bay) during rest days; and
- (c) providing information on LD's dedicated portal on employment of foreign domestic helpers in Hong Kong in different languages to facilitate them to understand their rights and benefits.

4.25 According to LD:

- (a) as foreign domestic helpers are relatively vulnerable persons, it is important to ensure that they understand their rights and benefits under the labour laws and are aware of the channels for seeking assistance; and

Other issues

- (b) to this end, LD releases publicity materials for foreign domestic helpers in 12 different languages (Note 14) as far as possible.

4.26 Audit examination of publicity work conducted by the Foreign Domestic Helpers Division in the period from 2017-18 to 2021-22 (up to August 2021) found that there was room for improvement in the information shown on LD's portal. Of the 90 publicity materials shown on the portal, 36 (40%) publicity materials were available only in one (i.e. English) or two (i.e. Chinese and English) languages (see Table 21).

Table 21

**Publicity materials on LD portal for foreign domestic helpers
(August 2021)**

Number of language versions available	Number of publicity materials
1	1
2	35
3	1
4	10
5 to 11	8
12	35
Total	90

Source: *Audit analysis of LD records*

4.27 Audit considers that LD needs to endeavour to provide the publicity materials for foreign domestic helpers in as many languages as possible to facilitate foreign domestic helpers of different nationalities to understand their rights and benefits.

Note 14: *The languages are Chinese, English, Bahasa Indonesia, Bengali, Khmer, Hindi, Myanmar, Nepali, Sinhala, Tagalog, Thai and Urdu.*

Audit recommendations

- 4.28 **Audit has recommended that the Commissioner for Labour should:**
- (a) **step up efforts in the publicity work on employees’ rights and benefits under COVID-19 epidemic, for example, by exploring more suitable channels to publicise the publications and promotional messages;**
 - (b) **continue to keep in view the developments of the epidemic with a view to resuming physical exhibitions with suitable social distancing measures when circumstances permit; and**
 - (c) **endeavour to provide the publicity materials for foreign domestic helpers in as many languages as possible to facilitate foreign domestic helpers of different nationalities to understand their rights and benefits.**

Response from the Government

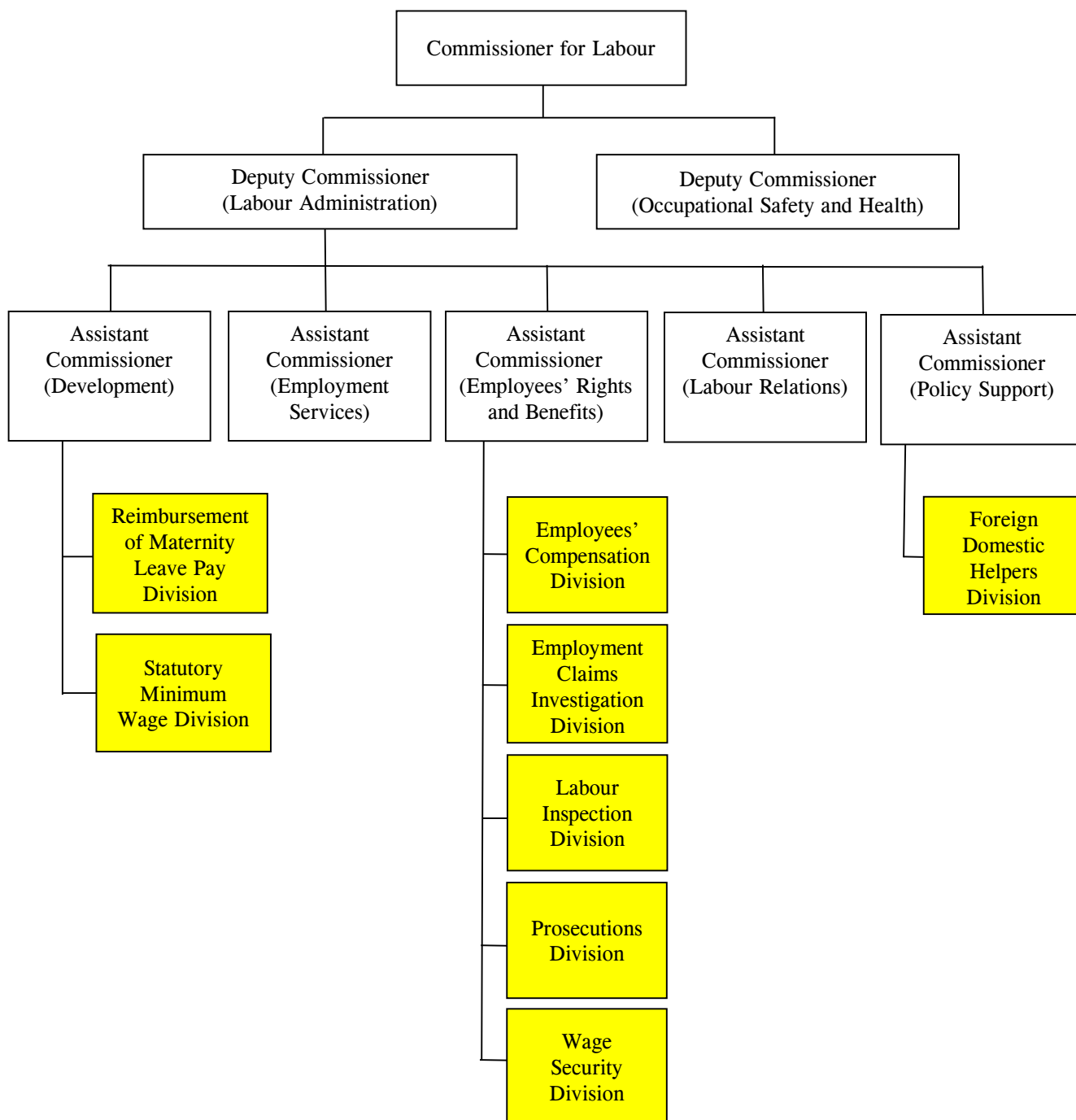
4.29 The Commissioner for Labour agrees with the audit recommendations. He has said that:

- (a) LD has strengthened the relevant publicity work on employees’ rights and benefits by extending the dissemination of the publications and promotional messages to the stakeholders, and will continue to endeavour to explore more suitable channels for promotion;
- (b) LD organised a physical exhibition in August 2021, and will continue to keep close watch of the local pandemic situation with a view to resuming full-scale organisation of physical exhibitions when circumstances permit; and
- (c) the production of publicity materials in more language versions for foreign domestic helpers is underway. Key and essential publicity publications, including “Practical Guide for Employment of Foreign Domestic Helpers”, “Important Advice from the HKSAR Government”, “Carefully Select your Employment Agencies”, “Foreign Domestic Helpers — Rights and Protection under the Employment Ordinance”, sample Standard

Other issues

Employment Contract, etc., are provided in all 12 languages. For the other publicity materials such as promotional leaflets and videos, a majority of them are available in at least Tagalog, Bahasa Indonesia and Thai for foreign domestic helpers from the Philippines, Indonesia and Thailand, who comprise 98% of the foreign domestic helper population in Hong Kong.

**Labour Department:
Organisation chart (extract)
(30 September 2021)**



Legend: Divisions with responsibilities relating to safeguarding employees' rights and benefits under labour laws

Source: LD records

Types of inspections conducted by the District Offices and the Special Enforcement Teams

Inspection teams	Number of inspection teams	Inspections covered
DOs	12 teams	<ul style="list-style-type: none"> – Checking employees' compensation insurance policies, the display of a notice of insurance in workplaces, employees' proof of identity and records of employees – Checking documents for employees less than 15 years of age to indicate employment relationship, e.g. payment slips, and written parental consent to the employment – Checking documents for employees of 15 to 17 years of age in industry, and the display of a notice in workplaces fixing the period of employment and rest days of the employees – Investigating complaints – Distributing information on the Minimum Wage Ordinance – Referring suspected wage offences under the Employment Ordinance to SETs
SETs		
SET (Construction Sites)	1 team	<ul style="list-style-type: none"> – Conducting inspections to workplaces with construction workers employed by contractors in the construction industry – Checking all payments within 3 months prior to the date of inspection payable to at least 6 employees per contractor in a workplace – Collecting detailed information concerning the wage payment of the construction workers – Investigating cases referred from other LD divisions and government departments – Investigating complaints
SET (Government Contractors)	1 team	<ul style="list-style-type: none"> – Conducting inspections to workplaces with non-skilled workers employed by government outsourcing contractors – Checking all payments within 3 months prior to the date of inspection payable to at least 6 employees in a workplace – Collecting detailed information concerning the workers' employment conditions – Investigating cases referred from other LD divisions and other procuring departments – Investigating complaints
SET (Imported Workers)	7 teams	<ul style="list-style-type: none"> – Conducting pre-entry and post-entry inspections for imported workers – Checking application particulars and the degree of compliance with requirements/conditions of the Supplementary Labour Scheme (Note) – Checking compliance with the terms and conditions specified in the scheme and the employment contract – Investigating complaints
SET (Local Workers)	15 teams	<ul style="list-style-type: none"> – Checking all payments within 3 months prior to the date of inspection payable to at least 6 employees in a workplace – Investigating cases referred from other LD divisions – Investigating complaints – Investigating cases where employers have defaulted payment of the awards of the Labour Tribunal and the Minor Employment Claims Adjudication Board

Source: LD records

Note: *The Supplementary Labour Scheme 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. Employers, irrespective of their industry, may apply for imported workers under the scheme.*

Acronyms and abbreviations

AEF	Anti-epidemic Fund
Audit	Audit Commission
B/Ds	Bureaux/departments
BRCs	Business registration certificates
Commissioner	Commissioner for Labour
DoJ	Department of Justice
DOs	District Offices
ESS	Employment Support Scheme
LD	Labour Department
LegCo	Legislative Council
LI	Labour Inspector
LID	Labour Inspection Division
LO	Labour Officer
MECAB	Minor Employment Claims Adjudication Board
MPF	Mandatory Provident Fund
OAB	Employees' Compensation (Ordinary Assessment) Board
PD	Prosecutions Division
PWIF	Protection of Wages on Insolvency Fund
SETs	Special Enforcement Teams
SLO	Senior Labour Officer
SMW	Statutory Minimum Wage
WSD	Wage Security Division