



**COMMISSIONER FOR LABOUR**

勞工處處長 箋札

Your reference 來函編號： CB4/PAC/R64

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1 June 2015

Mr Anthony Chu  
Clerk to Public Accounts Committee  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road, Central  
Hong Kong  
(fax no.:2543 9197)

Dear Mr Chu,

**Public Accounts Committee**  
**Consideration of Chapter 6 of the Director of Audit's Report No. 64**  
**Employees' Compensation for injuries and fatalities**

Thank you for your letter dated 8 May 2015 on the above subject.

We provide at Annex Labour Department's response (in both English and Chinese) to the questions raised for the Public Accounts Committee's consideration. A softcopy of the response will be sent to you separately.

Yours sincerely,  
  
(Donald Tong)  
Commissioner for Labour

Encl.

- c.c. Secretary for Labour and Welfare (fax only: 2537 3539)  
Chairperson, Employees Compensation Assistance Fund Board  
(fax only: 2151 7451)  
Secretary for Financial Services and the Treasury  
(fax only: 2147 5239)  
Director of Audit (fax only: 2583 9063)

**Reply**

**LegCo Public Accounts Committee  
Chapter 6 of the Director of Audit's Report No. 64  
Employees' compensation for injuries and fatalities  
Questions asked and Information requested**

**Part 1**

Referring to paragraphs 1.4 and 1.5 on page 4  
Response to Question 1

The purpose of the Employees' Compensation Ordinance (ECO) is to protect employees who sustain an injury or die as a result of an accident arising out of and in the course of employment, or suffer a prescribed occupational disease. Section 15 of the ECO stipulates that an employer must notify the Commissioner for Labour of any accident or prescribed occupational disease in the prescribed form within a specified period. The notice period for fatal cases is seven days while that for non-fatal cases is 14 days. Any employer who, without reasonable excuse, fails to give notice of an accident to the Commissioner for Labour commits an offence and is liable to a maximum fine of HK\$50,000.

2. Section 40 of the ECO stipulates that no employer shall employ any employee in any employment unless there is in force a policy of insurance to cover their liabilities both under the ECO and at common law. Any employer who fails to secure an insurance cover commits an offence and is liable to a maximum fine of HK\$100,000 and imprisonment for two years.

3. Section 41 of the ECO also stipulates that an employer is required to display on each of his premises where any employee is employed, a notice in both English and Chinese, showing the employer's name, the insurer's name, the policy number, the date of issue, commencement and expiry of the policy, the number of employees insured and the amount of liability under the policy. An employer who, without reasonable excuse, contravenes such provision commits an offence and is liable to a maximum fine of HK\$10,000.

4. Labour inspectors of the Labour Department (LD) proactively conduct inspections to workplaces of various trades and carry out targeted enforcement actions to check employers' compliance with the requirements of compulsory employees' compensation insurance and displaying a notice of employees' compensation insurance in a workplace as required under the ECO. Employees suspected their employers of having breached the ECO provision can lodge complaints with LD (Telephone hotline: 2815 2200). LD will follow up all

complaints promptly and spare no effort in securing evidence for taking out prosecution against law-defying employers.

5. From 2010 to 2014, breakdowns of the number of complaints, investigation, prosecution and conviction for failing to comply with the above requirements under the ECO are provided as follows:

(a) Suspected failure to notify the Commissioner for Labour of any accident or prescribed occupational disease in prescribed form within specified period (i.e. section 15 of the ECO)

6. An injured employee should, irrespective of the seriousness of the injury, give the employer notice of the accident as soon as possible. Notice may be given orally or in writing. The employer is presumed to have had notice of an accident if the employee dies on the employer’s premises. LD has published leaflets reminding employees to notify their employers immediately after the work accident and the important points to note. If an injured employee notices or suspects that his/her employer has not reported his/her work injury to the Commissioner for Labour, he/she may contact the Employees’ Compensation Division (ECD) of LD to check whether his/her employer has done so. Upon receipt of the notification of suspected non-reporting of the accident, LD will ask the employer in writing to report the work injury. After receiving the advice from LD, the employer will usually submit the notification of the accident unless there are severe disputes on whether work injury falls within the ambit of the ECO.

7. LD does not keep separate statistics on the number of complaints and investigation regarding suspected failure to report work accident. The prosecution figures on the contravention of section 15 of the ECO are provided below:

	2010	2011	2012	2013	2014
Number of summonses heard	7	9	4	2	1
Number of summonses convicted	5	6	2	2	0
Total fines (\$)	11,000	16,500	7,900	6,700	0

(b) Suspected failure to take out employees' compensation insurance (i.e. section 40 of the ECO)

	2010	2011	2012	2013	2014
Number of complaints received	323	261	259	268	272
Number of investigations for cases detected during workplace inspections and arising from complaints received	1 140	766	885	1 285	1 016
Number of summonses heard	1 373	751	797	1 024	936
Number of summonses convicted	1 294	695	765	999	895
Total fines (\$)	2,629,800	1,417,900	1,521,800	2,131,050	1,931,750

(c) Suspected failure to display a notice of employees' compensation insurance in a workplace (i.e. section 41 of ECO)

	2010	2011	2012	2013	2014
Number of complaints received	5	8	2	8	2
Number of investigations for cases detected during workplace inspections and arising from the complaints received	4 008	2 893	2 648	3 932	3 363
Number of summonses heard ( <i>Note</i> )	2	0	0	0	0
Number of summonses convicted	2	0	0	0	0
Total fines (\$)	1,000	-	-	-	-

*Note:*

*According to the prosecution guidelines in the Operation Manual of the Labour Inspection Division, failure to display a notice of employees' compensation insurance is a minor offence. LD will normally give verbal or written warning at first. Prosecution will be taken out for subsequent offence(s) committed by the employer.*

8. The enforcement of the ECO, including handling complaints, conducting investigation and taking out prosecution against offending cases, is one of LD's various enforcement tasks. The 66 concerned staff of LD<sup>1</sup> are also responsible for the enforcement of other labour laws, as well as the investigation and prosecution of other offences under the ECO. The manpower and expenditure involved in handling complaints, investigation and prosecution of the above three offences cannot therefore be separately accounted for.

### Response to Question 2

9. LD has all along been proactively protecting the statutory rights and benefits of employees and adopted a multi-pronged approach, including law enforcement, publicity and education, to remind employers to comply with the ECO.

10. LD actively deploys various promotional means to remind employers to report work injuries and take out employees' compensation insurance according to the law. Such measures include Announcements of Public Interest on television, radio and public transport, distribution of leaflets and display of posters via various channels, explanation of law with focuses on the statutory requirements and consequences of violation of law in major newspapers and LD's website, as well as organization of seminars and promotional activities, etc.

11. Apart from publicity and public education, LD also carries out rigorous enforcement. From 2010 to 2014, labour inspectors of LD carried out 395 989 inspections<sup>2</sup> to workplaces of various trades to check employers' compliance with various labour laws, including the ECO. Should an employer be suspected to have breached the ECO and sufficient evidence is secured, including the consent of employees to serve as prosecution witnesses to substantiate the employer's breach, LD will spare no effort in taking out prosecution. In respect of the offence on failure to take out employees' compensation insurance, the Court has imposed immediate imprisonment, suspended sentence of imprisonment or community service order on convicted employers. The penalties imposed on employers infringing employees' rights and benefits will definitely carry effective deterrent effect. LD will also regularly review the enforcement strategies and seek legal advice to appeal or review the Court decision on individual cases with an exceptionally light penalty.

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<sup>1</sup> As at 31.12.2014, the 66 staff includes 1 Labour Officer and 3 Assistant Labour Officers I/II of the Employees' Compensation Division, 1 Labour Officer and 3 Assistant Labour Officers I of the Prosecutions Division, and 58 Labour Inspectors I/II of the Labour Inspection Division.

<sup>2</sup> There were 82 974 workplaces found removed, 83 190 workplaces found locked and 1 091 workplaces found vacant during inspections.

Referring to Table 1 on page 5

Response to Question 3 (provided by the Office of the Commissioner of Insurance)

12. Insurance is a risk assessment industry. Insurance companies determine premium levels as well as policy terms and conditions having regard to the risks being underwritten, and factors such as accident rates, historical and projected quantum of claims, occupational safety records of the concerned company, and actuarial reviews.

13. Premiums charged by insurance companies therefore consist of historical and known factors (e.g. claims record of the concerned company, claims statistics of the insured risks) as well as future and unknown factors (e.g. probability of claims occurrence, projected claims quantum). “Net employees’ compensation claims incurred” and “commissions and expenses” are, however, only based on historical and known items. Given the different basis of their components, the trend of increase in “gross premiums”, “net employees’ compensation claims incurred” and “commissions and other expenses” may not be comparable.

14. According to the insurance industry, it has been suffering persistent underwriting losses for employees’ compensation insurance business over the past two decades. Underwriting losses for 2010 to 2013 were HK\$324m, HK\$260m, HK\$649m, and HK\$377m respectively. Insurance companies in employees’ compensation insurance business would therefore need to raise the premiums to a more sustainable level. The persistent underwriting losses are mainly attributable to increasing insurance claims, escalating Court awards, under-reporting of the number of employees/amount of payroll, and mis-reporting of the work nature of employees when employers take out employees’ compensation policies, prolonged sick leave and rehabilitation, increasing legal fees, and additional payouts incurred by unethical practices of recovery agents.

15. Developments in recent years have also led to increase in premiums, including:

- (a) a court judgment in early 2013 regarding the discount rate to be adopted in personal injury cases, which led to a substantial increase in the projected quantum of claims; and
- (b) rectification measures adopted by the insurance industry in 2011 and 2012 to tackle under-reporting of the number of employees/amount of payroll and mis-reporting of the work nature of employees by employers when they take out employees’ compensation policies (e.g. evidence of payroll through Mandatory Provident Fund or other records, site inspections, etc.).

Referring to paragraph 1.7 on page 5  
Response to Question 4

16. As indicated in Table 5 of paragraph 1.10 on page 10, the number of employees' compensation claims settled (claims arising from injury, fatal and prescribed occupational disease cases) from 2010 to 2013 is shown below:

	2010	2011	2012	2013
No. of claims settled (Note)	41 467	41 647	41 916	39 955

Note:

Claims settled include claims received in the year and previous years, but exclude claims settled by direct payment.

17. Relevant breakdowns of the number of employees' compensation claims settled from 2010 to 2013 are listed below:

(a) Breakdown by days of temporary incapacity

No. of days (Note)	2010	2011	2012	2013
360 to less than 720	1 058	1 198	1 573	1 381
720	0	1	0	0
above 720	6	5	5	6

Note:

Statistics for temporary incapacity is all along presented by number of days.

(b) Breakdown by percentage of loss of earning capacity

% of loss of earning capacity	2010			2011			2012			2013		
	Below age 40	Age 40 to below 56	Age 56 or above	Below age 40	Age 40 to below 56	Age 56 or above	Below age 40	Age 40 to below 56	Age 56 or above	Below age 40	Age 40 to below 56	Age 56 or above
0%	441	540	130	457	575	155	430	611	169	493	559	190
Above 0% to 5%	4 301	6 185	1 841	4 289	6 540	2 045	4 334	6 620	2 318	4 048	6 389	2 646
Above 5% to 10%	188	357	99	207	333	121	234	365	133	190	345	164
Above 10% to 20%	58	102	36	66	103	44	81	130	51	54	122	41
Above 20% to 50%	24	63	8	31	68	16	44	71	31	23	42	25
Above 50% to 80%	7	19	1	4	15	4	8	14	4	4	10	3
Above 80% to below 100%	1	5	0	1	1	1	1	1	1	1	2	1
100%	2	5	3	2	3	1	5	5	3	0	2	1

### Breakdowns for fatal cases settled in the year with compensation payable

18. From 2010 to 2013, the number of fatal cases settled with compensation payable was 59, 61, 50 and 52 respectively. Relevant figures are shown below:

#### Breakdown by age group

Age Group	2010	2011	2012	2013
Below 40	15	17	12	19
40 to below 56	28	33	26	25
56 or above	16	11	12	8
<b>Total</b>	<b>59</b>	<b>61</b>	<b>50</b>	<b>52</b>

#### Breakdown by industry

Industry	2010	2011	2012	2013
Public Administration, Social and Personal Services	4	5	4	0
Finance and Insurance, Real Estate, Professional and Business Services	3	12	9	9
Food and Beverage Services	3	1	2	0
Import/Export, Wholesale and Retail Trades, Accommodation Services	3	6	5	2
Transportation, Storage, Postal and Courier Services, Information and Communications	11	13	7	10
Construction	24	13	19	14
Manufacturing	5	3	2	7
Others	6	8	2	10
<b>Total</b>	<b>59</b>	<b>61</b>	<b>50</b>	<b>52</b>

#### Breakdown by income

Income	2010	2011	2012	2013
Less than \$10,000	17	15	14	18
\$10,000 to less than \$20,000	30	31	20	22
\$20,000 to less than \$30,000	10	12	9	7
\$30,000 or above	2	3	7	5
<b>Total</b>	<b>59</b>	<b>61</b>	<b>50</b>	<b>52</b>



## Response to Question 5

19. The ECO stipulates that a period of absence from duty (sick leave period) certified to be necessary by a registered medical practitioner shall be deemed to be a period of total temporary incapacity. An employer shall pay the employee periodical payments at the rate of four-fifths of the difference between the employee's monthly earnings at the time of the accident and his/her monthly earnings during the period of temporary capacity. The issue of sick leave certificates by registered medical practitioners is based on the extent of injury and clinical condition of injured employees individually and medical assessment in accordance with their professional judgment.

20. Given the diversity in the happening of work accident, the seriousness of injured employees, the involvement of different specialties during treatment and the recovery progress, the period of absence from duty necessary as a result of the injury, the percentage of the loss of permanent earning capacity caused by the injury of each employees' compensation claim is unlikely to be the same. They should neither be generalized nor comparable. In addition, such generalization or comparison is unfair to injured employees. Therefore, except for some individual problematic or dispute claims, it is not preferable for the Government to proactively impose special monitoring of claims with exceptionally long sick leave period or remarkably high extent of injury. Overall speaking, according to Figure 1 on page 2, from 2010 to 2013, the number of reported employees' compensation claims dropped slightly and continuously at a rate of 9%.

21. LD attaches great importance to the rights and benefits as well as occupational safety of employees, and has, through various strategies including law enforcement, publicity and education, reminded employers to comply with relevant provisions of the ECO and the Occupational Safety and Health Ordinance so as to safeguard the occupational safety and health of working population and prevent the happening of accidents at source.

22. If injured employees or family members of deceased employees suspect that the employer has not notified the Commissioner for Labour of the accident, they may inform the LD direct. ECD of LD would, upon receipt of the notification of suspected non-reporting of the accident, actively follow up and ask the employer in writing to report the work accident according to the ECO. LD has also published leaflets reminding employees of actions to be taken after work accident and the important points to note. This would facilitate the employees to notify the employers of the injury as soon as possible so as to assist the employers to notify the Commissioner for Labour according to the ECO. Should there be sufficient evidence against the employer for deliberate contravention of the ECO, LD shall take out prosecution against the law-defying employer.

23. If an employee is required to report duty during his/her sick leave period, he/she may notify ECD which will contact the employer to discuss the case and render appropriate assistance to the employee.

Referring to Table 5 on page 10 (page 9 in Chinese version)

Response to Question 6

24. In response to the social changes and rapid pace of economic development of Hong Kong and the practical situation, LD will from time to time review the labour laws to ensure that they could cater for the needs of both employers and employees and provide timely protection to employees. Since 1982, the compensation levels under the ECO have been reviewed by LD every two years to keep abreast of the wage and price movements as well as changes in other relevant factors. In the past few years, LD has also reviewed many other scopes of compensation items with a view to enhancing the protection of the rights and benefits as well as welfare of injured employees.

25. In 2014, the number of employees' compensation cases settled was 39 800 and the total amount of compensation payable was HK\$1,474m. Following the increase of compensation levels under the ECO, from 2009 to 2014, the average amount of compensation payable per settled case also increased.

Referring to page 12 (page 11 in Chinese version)

Response to Question 7 (cleared with the Employees Compensation Assistance Fund Board)

26. The Employees' Compensation Insurance Levies Management Board is established under the Employees' Compensation Insurance Levies Ordinance. It is responsible for the collection of the levy remitted by insurers and the distribution of its net resources after deducting essential expenditures to the specified bodies including the Employees Compensation Assistance Fund Board (hereinafter "the Board"). The current levy rate as specified under the Employees' Compensation Insurance Levies Ordinance is 5.8%; including 3.1% for the Board. As at 31 March 2014, the Board had an accumulated surplus of HK\$468m.

27. The Employees Compensation Assistance Scheme (hereinafter "the Scheme") was set up in 1991 under the Employees Compensation Assistance Ordinance to provide an effective safety net for injured employees and family members of deceased employees. The Scheme provides assistance payment to injured employees or family members of deceased employees who are unable to receive their entitlements of compensation and damages for work injuries from employers or insurers after exhausting all legal and financially viable means of recovery. The object of the Scheme as well as the present arrangement aim at providing statutory compensation and/or damages to injured employees or family members of deceased employees involved in difficult work injuries and fatal cases.

The Scheme represents the consensus reached after prolonged discussions and negotiations in the community. It has aptly balanced the interests of injured employees and employers. It also ensures the long-term sustainability of the fund.

28. At present, many charitable organizations and charitable funds provide immediate assistance to distressed injured employees and family members of deceased employees to tide over their financial difficulties. The Social Welfare Department also provides various services and support to those in need. Taking the object of the Scheme into consideration, the Board has no intention to spare funding for such assistance.

29. Besides, the current employees' compensation insurance system mandates employers to take out employees' compensation insurance in the market. This is to ensure that the employer is capable of paying compensation as stipulated under the ECO and at common law. As the premium levels are determined through the free market, it is inadvisable for the Board to use its surplus to lower the premium levels of high-risk industries.

## **Part 2**

Referring to Table 9 on page 21 (page 19 in Chinese version)

Response to Question 8

30. If there are disputes between employers and employees on the employees' compensation claims (including whether an accident has taken place, whether the injury parts are related to the accident reported, the liability issue, the monthly earnings and employer-employee relationship, etc.), LD will explain to both parties relevant provisions of the ECO and ask the employers to submit information including the reasons for suspicion for consideration. If necessary, LD will also ask both parties to submit further information. Depending on individual cases, LD may, with the consent of employees, request information from relevant departments and organizations (e.g. medical reports, investigation reports from the Police, etc.). LD will, from the medical point of view and according to the ECO, investigate the likelihood of the cases being work-related injuries and give its views to both parties. If the disputes cannot be resolved with the assistance of LD, depending on the wishes of the injured employees, LD could refer the case to the Legal Aid Department for application for legal assistance with a view to submitting the case to the Court for judgment. Employees may also approach the Court for assistance direct regarding their employees' compensation claims.

31. Apart from items in dispute, if the employees' compensation claims involve sick leave period for over two years but have not yet been settled and/or claims for common law damages, these cases shall be determined by the Court.

32. The number of claims settled at Court between 2009 and 2013 is shown below:

	2009	2010	2011	2012	2013
Claims settled at Court	1 502	1 136	1 539	2 464	1 736

LD does not have statistics on the breakdown of the claims settled at Court and their final results.

Referring to paragraph 2.4 on page 23 (page 21 in Chinese version)

Response to Question 9

33. From 2009 to 2013, LD received 973 reported fatal cases. As at 30 September 2014, 864 of the 973 fatal cases were not handled by the Court, accounting for 89% of the total number of reported fatal cases.

34. Seventeen of the 109 cases handled by the Court were due to the disagreement on claims by employers or insurers, leading to Court proceedings. LD does not keep statistics on the breakdown of the claims settled at Court and their final results. The required information is provided below:

Reported in	Cases not handled by the Court ( <i>Note</i> ) (a)	Cases handled by the Court (b)	Total number of reported fatal cases (i.e.(a) + (b))
2009	163 (88.6%)	21 (5)	184
2010	176 (89.3%)	21 (4)	197
2011	165 (84.6%)	30 (1)	195
2012	169 (87.6%)	24 (4)	193
2013	191 (93.6%)	13 (3)	204
<b>Total</b>	<b>864 (88.8%)</b>	<b>109 (17)</b>	<b>973</b>

*Note:*

1. Cases not handled by the Court include (i) fatal compensation already determined by the Commissioner for Labour; (ii) cases confirmed to be non-employees' compensation cases; (iii) cases being put aside for other reasons; and (iv) cases still being processed.
2. Figures in brackets under item (a) denote the percentage of cases not handled by the Court out of the total number of reported fatal cases.
3. Figures in brackets under item (b) denote number of cases handled by the Court because the employers or insurers disagreed with the claims.

35. Section 6B of the ECO stipulates that family members of deceased employees shall make applications for determination of compensation for death within six months from the date of death of the employee and that the Commissioner for Labour may extend the period of application if he thinks fit. In

any case, the “Certificate of Compensation Assessment For Fatal Case” issued by the Commissioner for Labour shall not be issued earlier than six months from the date of death of the employee so that all eligible family members under the ECO would have sufficient time to make applications.

36. As at 30 September 2014, there were 147 fatal cases with compensation determined by the Commissioner for Labour. Details are as follows:

Reported in	Fatal Cases determined by the Commissioner for Labour	Number of days required from date of death to the date of issue of “Certificate of Compensation Assessment for Fatal Case” issued by the Commissioner for Labour		
		Maximum	Minimum	Average
2009	32	455	181	227
2010	26	672	181	310
2011	36	571	182	263
2012	33	657	183	319
2013	20	472	186	249
<b>Total</b>	<b>147</b>			

*Note:*

1. Generally speaking, it may take the Commissioner for Labour longer time to receive the required information and documents of fatal cases to determine the compensation amount owing to the following reasons :
  - i. family members of the deceased employees are residing overseas and delay in submitting authenticated and endorsed documents;
  - ii. family members/employers dispute on the earnings to be used in calculating the compensation for death and further verification is required;
  - iii. dispute on familial relationships; or
  - iv. employers cast doubt on the compensation liabilities and further investigation is needed.
2. LD does not record the time required to receive compensation for death in fatal cases, yet the information in relation to the time needed to issue the “Certificate of Compensation Assessment for Fatal Case” is provided in the above table. Under Section 6D(1) and Section 24 of the ECO, employers/principal contractors shall pay the compensation not earlier than 42 days but not later than 49 days after the date of issue of the Certificate of Compensation Assessment for Fatal Case.

Referring to paragraph 2.6 on page 25 (page 23 in Chinese version)

Response to Question 10

37. According to Table 11 on page 24 (page 22 in Chinese version), as at 30 September 2014, of the number of claims received from 2009 to 2013 but have not yet been settled (7 470 claims), the number of claims pending the assessment of Employees’ Compensation (Ordinary Assessment) Boards (ECOAB) and issue of Certificate of Assessment after the availability of assessment results was 1 776, representing 24% of the unsettled claims. Of these, there were 471 claims involving injured employees receiving treatment from the Psychiatry Departments or other specialties of the Hospital Authority (HA) and at the same time receiving

treatment from the Orthopaedics & Traumatology (O&T) Department or the Accident & Emergency (A&E) Department. Details are provided below:

	Year which the claims were received					Total
	2009	2010	2011	2012	2013	
Pending ECOAB's assessment and issue of Certificate of Assessment after the availability of assessment results	10	14	54	219	1 479	1 776
In addition to receiving treatment from the O&T Department or A&E Department, also received treatment from the Psychiatry Departments or other specialties of the HA at the same time	4 (40%)	4 (29%)	21 (39%)	69 (32%)	373 (25%)	471 (27%)

*Note:*

*The % in brackets denote the % corresponding to the number of claims pending ECOAB's assessment and issue of Certificate of Assessment after the availability of assessment results.*

38. Overall speaking, as at 1 October 2014, the average waiting time for attending ECOAB ranged from 7 to 18 weeks.

Referring to paragraph 2.8(b) on page 27 (page 25 in Chinese version)  
Response to Question 11

39. According to the existing mechanism, when the Occupational Medicine Unit (OMU) of LD follows up an employees' compensation case to decide whether to refer it to ECOAB for assessment, OMU will request the treating doctor(s) of the injured employees to provide medical reports revealing their initial views on injured employee's injury, recovery situation, suitability for medical assessment, whether there is a loss of earning capacity and, if in the affirmative, the percentage involved. Such medical reports will be submitted to ECOAB for reference.

40. In conducting assessment, ECOAB will normally interview the injured employee and go through all related information, including documents submitted by the employer and the injured employee, the injury process, medical records in the hospital and relevant medical reports. ECOAB will then, according to the actual medical condition of the injured employee and the recovery progress, as well as the provisions of the ECO, assess the percentage of the loss of permanent earning capacity caused by the injury and the period of absence from duty necessary as a result of the injury so as to facilitate the assessment of the compensation amount.

41. Every assessment made by ECOAB is an independent medical and professional judgement. The view of the treating doctor(s) on the percentage of loss of earning capacity in the medical report is for the reference of ECOAB only. From 2009 to 2013, 12% of the assessments conducted by ECOAB were found to have not resulted in permanent incapacity.

### **Part 3**

Referring to paragraph 3.17 on page 38 (page 36 in Chinese version)  
Response to Question 12 (cleared with the Employees Compensation Assistance Fund Board)

42. At present, three legal firms, namely the Gallant Y. T. Ho & Co., P. C. Woo & Co. and Cheng, Yeung & Co., provide legal services to the Board. In addition to providing legal services to the Board, these three firms also serve other clients, including employers/insurers. According to the Board's records, the solicitors appointed by employers/insurers in the 194 assisted applications in the past three years do not involve the three legal firms mentioned above.

43. The Hong Kong Solicitors' Guide to Professional Conduct sets out the rules and principles of professional conduct for practising solicitors. Chapter 9 of the Guide highlights the issues on conflict of interest between clients and specifies that a solicitor has both an ethical and legal duty to avoid conflict. A solicitor or firm of solicitors must not accept instructions to act for two or more clients where there is a conflict or a significant risk of conflict between the interests of those clients.

44. The Board would continue to pay attention to the issue on conflict of interest when reviewing the procurement practice for selecting retained lawyers in accordance with the recommendations made in Chapter 6 of the Report No. 64 of the Director of Audit.

### **Part 4**

On inspection  
Response to Question 13

45. Referring to paragraph 4.2 on page 43 (page 40 in Chinese version) of the Audit Report, labour inspectors of LD will conduct three types of inspections, i.e. inspections arising from complaints and referrals, campaign inspections, and routine inspections to check employers' compliance with the requirements of the ECO.

46. Regarding routine inspections, LD will conduct inspections to workplaces of various trades. When selecting workplaces, LD will consider all factors (the degree of offence-proneness in workplace of the same kind in particular) in adjusting the frequency of inspections to different kinds of workplaces. In addition, LD will accord priority to particularly deserving cases (e.g. complaint cases and referrals on suspected breaches received), and handle them promptly irrespective of the past inspection records of the type of the workplaces that is related to or the workplaces in question. This enforcement mode is target-oriented and considered as a cost-effective means having regard to the existing manpower and resources. Against this background, some workplaces, mainly those with a relatively low degree of offence-proneness, have not been inspected for more than three years.

47. Having regard to Audit's recommendation, when LD decides on the priority of workplace inspections, it will, apart from continuing to accord priority to complaints/referrals on suspected breaches received and offence-prone workplaces, also map out appropriate inspection strategy and systematically retrieve locations and information of workplaces that have not been inspected for a certain number of years.

#### Response to Question 14

48. In the early 80s, LD allowed group companies with branches operating across the territory to produce for inspection, upon demand of labour inspectors visiting their branches, a specified document issued by LD. This document could be deployed to replace the production of the original employees' compensation insurance policy covering all branches which was kept in the headquarters of the group companies. At that time, not many establishments fell within the definition of group companies.

49. Since the past decade, electronic means of transmitting documents has become increasingly popular and is also widely recognised. In keeping pace with the time, LD has accepted employers' submission of the insurance policy by fax and email as an endorsed document to meet LD's enforcement requirements. As the upside of the long-established special inspection arrangement for group companies diminished significantly, LD discontinued this arrangement from March 2015.

#### Response to Question 15

50. Senior Labour Inspectors (SLIs) of LD are required to conduct supervisory inspections to ensure the consistency and quality of inspections conducted by their labour inspectors within the time frame specified in the Operation Manual. SLIs have their own activity records to record the supervisory inspections conducted each month.



51. Referring to Table 18 in paragraph 4.20 of the Audit Report, Audit visited three District Offices (DOs) of LD and found that the shortfall of supervisory inspections in Hong Kong East District Office (HKEDO) was the highest. The reason behind the highest shortfall was that the service boundary under the responsibility of HKEDO is relatively extensive. The workload of SLI in HKEDO was heavier than SLIs of the other two DOs. Apart from the routine staff management, assignment and supervision of inspection work as well as vetting of cases, all SLIs concerned during the period as mentioned in the Report were also required to handle various unanticipated and urgent work commitments. Owing to the work priority and deployment, SLI in HKEDO was unable to complete all supervisory inspections within the time frame specified in the Operation Manual.

52. Having regard to Audit's recommendation, LD will review the existing mechanism of supervisory inspections, make enhancement and provide concrete recommendation to enable officers-in-charge of DOs to conduct supervisory inspections in accordance with the Operation Manual.

Referring to paragraphs 4.28 and 4.29  
Response to Question 16

53. To ensure the most effective use of the existing manpower resources, it is not LD's prevailing policy to inspect all establishments in Hong Kong. Subject to the level of offence-proneness of workplaces in the past and the number of complaints and referrals on suspected breaches received, LD will include the relevant establishment records into its workplace database for prioritizing enforcement actions and conducting inspections.

54. In 2001, LD, with the assistance of the Business Registration Office (BRO), attempted to transfer from BRO more than 890 000 establishment records onto LD's workplace database for enforcement purpose. After sorting and screening of records, around 260 000 establishments were found newly registered in 2001. DOs of LD conducted inspections to nearly 380 establishments selected out of the list of new establishments in the fourth quarter of 2001 and prosecuted one establishment for failure to take out employees' compensation insurance policy.

55. From the trial-run experience at that time, LD found that a considerable number of registered establishments in BRO's records were not LD's inspection targets, as quite a lot of companies were owned by self-employed, or companies without employing workers. Also some registered offices were located in domestic premises in which labour inspectors did not have enforcement power to gain access for conducting inspections. In parallel, the sorting and screening of records took up considerable manpower and time, yet the workplace inspections did not yield fruitful results. Hence, LD discontinued the exercise after the completion of the trial-run in end-2001. In view of the operational experience gained in the

trial-run and ineffectiveness of the enforcement, LD found it not cost-effective and also not the most effective means to make reference to BRO's establishment records as a means to update LD's workplace database.

56. Notwithstanding this, LD accepts Audit's recommendation. LD will study possible measures to enhance the completeness of the workplace database of the Labour Inspection Division and will also update the workplace database as appropriate so that a more comprehensive and updated database is available for mapping out inspections in future.

#### Response to Question 17

57. Before conducting routine inspections, LD will identify suitable inspection targets out of the workplace database. Apart from checking employers' compliance with the labour law, it is also labour inspectors' duty to report on new establishments detected in the course of visiting the targeted workplaces and to update the workplace database if the targeted establishments are found removed, locked or vacant. By doing so, LD's database can be kept updated and enriched. Thus, identification of removed, locked and vacant establishments and the subsequent work on recording and updating of information in the database are an important part of the overall task of the labour inspection though no enforcement check has been conducted by labour inspectors in these establishments which were found removed, locked or vacant. It is necessary to continue this part of the task which does not amount to a waste of manpower and does not affect the effectiveness of inspection. In fact, the statistics on removed, locked and vacant establishments serves as a necessary and useful reference for mapping out our inspection strategy and formulating routine inspections in future.

58. Having regard to Audit's recommendation, LD will improve the performance information provided to LegCo in future by showing the yearly total of the number of inspections to the workplaces with a remark indicating the number of inspections to the workplaces where they have been found locked, removed or vacant so as to more clearly reflect LD's enforcement work.