

**Annual Report of the
Protection of Wages on Insolvency Fund Board**

2003-04

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Chairman's Foreword

Introduction

The Protection of Wages on Insolvency Fund (the Fund) was set up in 1985 to provide timely relief in the form of ex-gratia payment to employees of insolvent employers. Over the past 19 years, the Fund has made important contribution to maintaining Hong Kong's harmonious labour relations and social stability in that speedy financial relief is provided to needy and aggrieved workers in insolvency cases.

Performance of the Fund

This year has proved to be another difficult year for both the Fund Board (the Board) and the Wages Security Unit (WSU) of the Labour Department (LD). While the economy continued to suffer from the deflationary spiral, the outbreak of the Severe Acute Respiratory Syndrome (SARS) in early 2003 aggravated the pressure. The number of insolvency and winding-up cases stood at a high level. Fortunately, the impact of SARS was only temporary and the economy has been picking up rapidly since late 2003. As a result, the total number of applications received by the Fund in 2003-04 was 21 567, down 6% from the record high figure of 22 851 in 2002-03.

To cope with the large number of applications, the Board and the WSU have taken prompt action to streamline the processing of applications for ex-gratia payment, and deploy additional manpower to speed up payment to applicants. A temporary office was set up within the WSU in October 2003 to further expand its case processing capacity. As a result of such measures, a record high of 23 218 applications were processed during the year.

Financial Position of the Fund

With the increase of the levy charged on the Business Registration Certificate from \$250 to \$600 per annum effective from 16 May 2002, the Fund's income has grown by 7.9%, from \$395.6 million in 2002-03 to \$426.8 million in 2003-04. Also, the implementation of the Mandatory Provident Fund Schemes in December 2000 has brought about savings to the Fund as the amount of ex-gratia payment on severance payment can be reduced by the employers' contributions under the schemes. In this area, the Fund achieved savings of \$71.0 million in 2003-04, as compared with \$49.0 million in 2002-03, and \$3.3 million in 2001-02.

In 2003-04, the Fund paid out \$465.7 million, a decrease of 16% over the previous financial year. It is encouraging to note that the Fund's deficit has narrowed to \$53.5 million this year, representing a significant drop of 67% compared to a deficit of \$159.8 million recorded in the previous financial year.

The Board made the first drawdown of the Government bridging loan¹ of \$22 million in late March 2004 to meet its short-term cash-flow commitments. This was necessitated by the upsurge in claims payment arising from the setting up of the

¹ On 8 November 2002, the Finance Committee of the Legislative Council approved the extension of a standby government loan of \$695 million to the Fund Board. The loan is in the form of a credit line with interest and can be drawn down as and when necessary.

temporary office to help clear the outstanding applications. Nevertheless, the rebound in the local economy has resulted in a substantial drop in the number of applications received. This has eased pressure on the Fund. Indeed, the Fund has recently been able to register small surpluses.

Inter-departmental “Task Force”

The inter-departmental “Task Force”, comprising representatives of the LD, the Official Receiver’s Office (ORO), the Legal Aid Department (LAD) and the Commercial Crime Bureau (CCB) of the Hong Kong Police Force was set up in November 2002 to investigate into suspected cases of abuse of the Fund. The proactive efforts of the Task Force have yielded encouraging results.

By 31 March 2004, the LD has referred 42 cases to the CCB and the ORO for investigation. The CCB has arrested 6 directors, 2 managers and 28 employees in five suspected conspiracy and deception cases. In a conviction case, a director and an employee of a printing company were both sentenced to 12 months' imprisonment for false accounting with intent to defraud the Fund. The Board and the Task Force will continue to endeavour to guard against any possible abuse of the Fund.

Value for Money Study

The Audit Commission (the Audit) in late 2003 conducted a value for money study in respect of the administration of the Fund. One of the recommendations made by the Audit was that the WSU, which is responsible for processing the applications for payment from the Fund, should conduct periodic client satisfaction surveys to collect feedback on its services. The Board will work in conjunction with the WSU to conduct such a survey in 2004-05.

Conclusion

This year has been a difficult and busy year for the Board and the WSU. On behalf of the Board, I would like to express our appreciation to the staff of the WSU for their unfaltering commitment and dedication to ensure prompt payment to qualified applicants. I would also like to thank various parties for their invaluable contribution to the Fund, notably the Inland Revenue Department for collecting the levy, the LD, the LAD and the ORO for their professional advice and support, and the CCB for their unfailing efforts in cracking down on abuses of the Fund.

Looking ahead, we will continue to monitor closely the caseload and the financial position of the Fund. More importantly, we will ensure that the Fund will continue to play its vital role of a safety net in providing relief to employees in distress, in defusing confrontation on the labour scene and in fostering Hong Kong’s industrial harmony.

HO Sai-chu, SBS, JP
Chairman

Protection of Wages on Insolvency Fund Board
September 2004

**Membership list of the
Protection of Wages on Insolvency Fund Board
2003-04**

Chairman

Mr. HO Sai-chu, SBS, JP

Members

Representing employees

Mr. CHU Ming

Mr. WAN Koon-sun

Ms. LAM Shuk-yee, BBS

Representing employers

Mr. Michael LI Hon-shing, BBS, JP

Mr. Joseph PANG Yuk-wing, JP

Mr. Clement CHEN Cheng-jen

Representing government departments

Assistant Commissioner of the Labour Department
responsible for wage security matters

Assistant Principal Legal Aid Counsel of the Legal Aid Department
responsible for matters relating to insolvency, costing and enforcement

Assistant Principal Solicitor of the Official Receiver's Office

Secretary

Senior Labour Officer, Wage Security Unit of the Labour Department

Group photo of members and staff of the Protection of Wages on Insolvency Fund Board



Rear row from the left :

Mrs. Nina TAM LEE Po-lin
Assistant Principal Legal Aid Counsel,
Legal Aid Department

Mr. CHU Ming
Representing employees

Mr. Michael LI Hon-shing, BBS, JP
Representing employers

Mr. WAN Koon-sun
Representing employees

Mr. Joseph PANG Yuk-wing, JP
Representing employers

Mr. Alan WONG Kwok-lun
Assistant Commissioner,
Labour Department

Mr. Ernest IP Yee-cheung
Secretary

Front row from the left :

Mr. Clement CHEN Cheng-jen
Representing employers

Ms. Fiona LEE Kwan-wai
Assistant Principal Solicitor,
Official Receiver's Office

Mr. HO Sai-chu, SBS, JP
Chairman

Ms. LAM Shuk-ye, BBS
Representing employees

Introduction

The Protection of Wages on Insolvency Ordinance (the Ordinance), which came into effect on 19 April 1985, provides for the establishment of a board to administer the Protection of Wages on Insolvency Fund (the Fund). The Ordinance also empowers the Commissioner for Labour to make ex-gratia payment from the Fund to employees whose employers have become insolvent.

This report covers the activities of the Protection of Wages on Insolvency Fund Board (the Board) and the operation of the Fund for the financial year ended 31 March 2004.

Protection of Wages on Insolvency Fund Board

The Ordinance provides that the Board should consist of a chairman and not more than 10 members appointed by the Chief Executive. There shall be an equal number of persons representing employers and employees and not more than four public officers.

The Board has the following statutory functions:

- (a) to administer the Fund;
- (b) to make recommendations to the Chief Executive with respect to the rate of levy; and
- (c) to review applications upon request from applicants aggrieved by any decision of the Commissioner for Labour in connection with the application for ex-gratia payment from the Fund.

Protection of Wages on Insolvency Fund

The Fund is mainly financed by a levy on each business registration certificate. The levy is collected by the Inland Revenue Department when the business registration fee is paid. The levy rate has been increased from \$250 to \$600 per annum with effect from 16 May 2002.

Under the Ordinance, employees who are owed wages, wages in lieu of notice and severance payment by their insolvent employers may apply for ex-gratia payment from the Fund. The application should be made in an approved form and supported by a statutory declaration. The application has to be made within a period of six months from the applicant's last day of service.

Maximum amount of ex-gratia payment payable by the Fund

Ex-gratia payment from the Fund covers:

- (a) wages of an employee for services rendered to his employer during the four months prior to the last day of service but not exceeding \$36,000 (“wages” include remuneration and earnings and items deemed to be wages under section 43 of the Employment Ordinance, namely, statutory holiday pay, annual leave pay, end of year payment, maternity leave pay and sickness allowance);
- (b) wages in lieu of notice up to one month’s wages or \$22,500, whichever is the lesser; and
- (c) severance payment up to \$50,000 plus 50% of any entitlement, under the Employment Ordinance, in excess of \$50,000.

Prerequisites for making ex-gratia payment from the Fund

Section 16(1) of the Ordinance requires the presentation of a winding-up or bankruptcy petition as a pre-condition for payment from the Fund. However, under section 18(1) of the Ordinance, the Commissioner for Labour may exercise discretion to make payment without the presentation of a petition in circumstances where -

- (a) the size of employment is less than 20 employees;
- (b) sufficient evidence exists to support the presentation of a petition in that case on the ground -
 - (i) if the employer is a company, that he is unable to pay his debts; or
 - (ii) if the employer is a person other than a company, that he is liable to have a bankruptcy petition presented against him; and
- (c) it is unreasonable or uneconomic to present a petition in that case.

The Commissioner for Labour is also empowered under section 16(1)(a)(ii) of the Ordinance to make ex-gratia payment from the Fund to employees who, because of a restriction imposed by the Bankruptcy Ordinance, cannot present a bankruptcy petition against their employer as the aggregate amount of outstanding payment is below \$10,000.

The Commissioner for Labour is empowered by the Ordinance to investigate applicants’ claims before making payment from the Fund. For the purpose of verifying applications, the Commissioner may demand employers and applicants to submit wage and employment records and request them to attend interviews.

Subrogation rights of the Fund

Where ex-gratia payment has been made to an applicant in respect of wages, wages in lieu of notice and severance payment, his rights and remedies under the Companies Ordinance or the Bankruptcy Ordinance would, to the extent of the amount of payment, be transferred to the Board. The Board, in exercising these subrogated rights, may file a proof of debt with the Official Receiver or the private liquidator for the purpose of recovering in the course of winding-up or bankruptcy proceedings any payment made to the applicant.

Application of the Fund's reserve

In accordance with section 10 of the Ordinance, the Board has obtained the Financial Secretary's approval to invest not more than 20% of the Fund's uncommitted balance in equities as the Board thinks fit. However, with falling reserve, all investment holdings entrusted with the fund manager has been liquidated in October 2001. A property was purchased in 1990 to provide office accommodation for the Board. All cash has been placed in banks approved by the Board as term deposits.

Annual review of applications received and processed

The applications received and processed in this financial year, together with the relevant analyses, are summarized as follows:

Applications received

During the year 2003-04, 21 567 applications involving claims for ex-gratia payment of \$819.2 million were received from employees in 2 250 suspected insolvency cases. Detailed breakdown of the applications is at Appendix I.

Of the 2 250 suspected insolvency cases, 2 009 involved less than 20 employees, and 19 involved 100 employees or more. The remaining 222 cases involved 20 to 99 employees.

During the year, the restaurant and catering trade recorded the largest number of applications. The applications amounted to 8 856 with a total claim of \$191.4 million. This was followed by the construction industry with 4 180 applications and a total claim of \$188.2 million, and the miscellaneous personal services with 990 applications and a total claim of \$32.3 million. These three trades accounted for 65.0% of the total number of applications and 50.3% of the total amount claimed.

Out of 21 567 applicants, 19 266 applied for ex-gratia payment on arrears of wages, 14 113 applied for payment on wages in lieu of notice and 7 629 applied for payment on severance payment. Breakdowns of these applications are at Appendices II, III and IV.

Applications processed

A total of 20 790 applications were approved during the year, resulting in payment amounting to \$465.7 million. Out of these, a total payment of \$78.6 million was made to 3 627 applicants by the Commissioner for Labour exercising his discretionary powers under section 16(1)(a)(ii) or section 18(1) of the Ordinance.

An analysis of ex-gratia payment approved is at Appendix V. As indicated at Appendix VI, the claimed amount was met in full in respect of 53.0% of applicants on arrears of wages, 67.3% of applicants on wages in lieu of notice, and 10.6% of applicants on severance payment.

The Commissioner for Labour rejected 724 applications involving claims totalling \$58.5 million. Among the cases rejected, 301 applications were not eligible for the claims, 287 applications produced insufficient evidence, and 136 applications had already been settled with their employers or liquidators. The grounds rendering ineligibility of the claims were due to applicants' status as registered company directors, claims outside the 6-month qualifying period, claims without legal backing or claims without petitions.

A total of 1 704 applications involving claims amounting to \$59.7 million were withdrawn, mainly as a result of direct settlement between employees and their employers or liquidators, or because the applicants decided not to pursue their claims for various reasons.

Appendices VII and VIII set out the comparative figures on the Fund's performance in the last five to ten years.

Meetings of the Protection of Wages on Insolvency Fund Board

The Board met four times during the year to discuss matters relating to the administration of the Fund. These included examination of its performance and financial statements as well as projection of income and expenditure, and discussion of a consultation paper on proposals relating to the Trust Account Arrangement under the Companies (Corporate Rescue) Bill. At one of the Board's meetings, an outside liquidator was invited to report on the progress of three major liquidation cases. The Board also reviewed 13 appeals against the decisions of the Commissioner for Labour under section 17 of the Ordinance.

Financial position of the Protection of Wages on Insolvency Fund

During the year, the Fund received levy income of \$426.8 million and paid out a total of \$465.7 million. Together with other expenditures, it registered a deficit of \$53.5 million, as compared with a deficit of \$159.8 million in the previous financial year.

As at 31 March 2004, the Fund's accumulated deficit was \$18.4 million. To meet the short-term cash-flow commitments, the Board made its first drawdown of the Government bridging loan, in the sum of \$22 million on 29 March 2004.

A copy of the financial statements and the auditors' report for the year ended 31 March 2004 is at Appendix IX.

Activities highlight

Board meeting held at the Chinese Cuisine Training Institute

The Board's 76th meeting was convened at the Chinese Cuisine Training Institute on 26 May 2003. After the meeting, a Board Member and also the Vice-Chairman of the Institute, Mr. Michael LI, BBS, JP, led members to tour around the training centre and briefed Board Members on the opportunities and challenges of the catering and hospitality industry.



The 76th Board meeting was convened at the Chinese Cuisine Training Institute on 26 May 2003.



The Board Members showed great interest in the training facilities provided by the Institute.

Seminar on “Partnership Approach: Trade Unions’ Role in Wage Recovery and Insolvency”

With a view to strengthening the co-ordination among government departments, relevant organisations and trade unions in safeguarding employees’ interests in wage recovery in solvent and insolvent situations, the Board and the Labour Department co-organised a seminar on 2 December 2003 at the City University of Hong Kong.



The Permanent Secretary for Economic Development and Labour (Labour), Mr. Matthew CHEUNG Kin-chung, JP, made his opening address in the seminar.



The seminar comprised two discussion panels and was well received by some 270 participants from trade unions, employers associations, accounting firms and individual companies.



The Board Chairman, Mr. HO Sai-chu, SBS, JP, presented souvenirs to two guest speakers: Mr. CHOI Chun-wa (left) and Mr. CHAN Wai-lun (right).



(From the left) Ms. LAM Sau-ching (Labour Department), Mr. Ronnie LAI (Mandatory Provident Fund Authority), Miss Bertha CHENG (Labour Department), Mr. CHOI Chun-wa (Hong Kong Federation of Trade Unions) and Mr. CHAN Wai-lun (Federation of Hong Kong & Kowloon Labour Unions) addressed the issues of employers' non-payment and delayed payment of wages as well as employers' default contribution of mandatory provident fund schemes during the first panel discussion.

(From the left) Mr. LO Ho-fai (Legal Aid Department), Mr. HO Cheung-fun (Official Receiver's Office), Mr. Ernest IP (Labour Department), Mr. Patrick LAW (Hong Kong Police Force) and Mr. Rainier LAM (PricewaterhouseCoopers) enlightened participants on how to protect employees' rights and interests in employers' insolvency situations in the second panel discussion.



Board Members' visits to the offices of the Wage Security Unit at Overseas Trust Bank Building and Lippo Centre

Year 2003 was a difficult year for both the Board and the WSU. Due to the impact of SARS, there was an upsurge in applications to the Fund. Led by the Board Chairman, Mr. HO Sai-chu, SBS, JP, the Board Members visited the two offices on 10 December 2003 to show support to colleagues of the WSU and to gain a better understanding of the latest caseload situation.



The Board Members visited the WSU office at Overseas Trust Bank Building and were briefed on the latest caseload situation.



A temporary sub-office at Lippo Centre was set up in October 2003 to speed up the processing of upsurge in applications.

Achievements of the “Task Force” in combating possible abuse of the Fund

The Labour Department (LD), the Official Receiver’s Office (ORO), the Legal Aid Department (LAD) and the Commercial Crime Bureau (CCB) of the Hong Kong Police Force have set up an inter-departmental “Task Force” in November 2002 to proactively pursue and investigate allegations of possible abuse by employers and employees under the Fund.

As at 31 March 2004, LD referred 42 cases to CCB and ORO for investigation. CCB arrested 6 directors, 2 managers and 28 employees in five suspected conspiracy and deception cases. In a conviction case, a director and an employee of a printing company were both sentenced to 12 months' imprisonment for false accounting with intent to defraud the Fund.



Media reports on the arrest and conviction cases relating to the abuse of the Fund.

Audit Commission’s value for money study

The Audit Commission conducted a value for money study of the administration of the Fund in late 2003 and made three recommendations in March 2004 to further improve the administration of the Fund. The Audit Commission recommended that the Commissioner for Labour should:

- in conjunction with the Board, continue to closely monitor the financial position of the Fund and take further action to ensure its long-term financial viability if necessary;
- closely monitor the backlog of outstanding applications and explore other means to clear the backlog; and
- conduct periodic client satisfaction surveys of the WSU and, based on the results of the customer surveys, take action to further improve the WSU’s service.



Audit Commission’s value for money study report on the administration of the Fund.

The Commissioner for Labour accepted the audit recommendations.

**Operating results of
the Protection of Wages on Insolvency Fund
in 2003-04**

I. Breakdown of application by results

(1) No. of cases received	<u>2 250</u>
(2) No. of applications	
(i) b/f last period	12 484
received this period	21 567
reconsidered this period	<u>222</u>
	<u>34 273</u>
(ii) Processed	23 218
<i>approved</i>	<u>20 790</u>
<i>refused</i>	724
<i>withdrawn</i>	<u>1 704</u>
outstanding	11 012
put aside *	43
	<u>34 273</u>

(3) Amount of ex-gratia payment (in HK\$'000) applied for	Arrears of wages		Wages in lieu of notice		Severance payment		
							<u>HK\$'000</u>
(i) b/f last period							520,795
received this period	399,295	+	91,831	+	328,072	=	819,198
reconsidered this period	5,865	+	2,602	+	3,720	=	<u>12,187</u>
							<u>1,352,180</u>

	Arrears of wages		Wages in lieu of notice		Severance payment		
							<u>HK\$'000</u>
(ii) approved	232,790	+	60,674	+	172,228	=	465,692
screened							308,065
refused							58,482
withdrawn							59,727
outstanding							
put aside * }							460,214
							<u>1,352,180</u>

(4) No. of applications seeking review by the Fund Board	<u>13</u>
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II. Presentation of petition in relation to applications approved

(1) No. of applications where a winding-up petition has been made	15 792
(2) No. of applications where a bankruptcy petition has been made	1 371
(3) No. of applications dealt with under S.18(1) of the Protection of Wages on Insolvency Ordinance	3 262
(4) No. of applications dealt with under S.16(1)(a)(ii) of the Protection of Wages on Insolvency Ordinance	365

III. Breakdown of cases by employment size

(1) Less than 20 employees	2 009
(2) 20 - 49 employees	157
(3) 50 - 99 employees	65
(4) 100 or more employees	<u>19</u>
	<u>2 250</u>

* Cases pending private settlement or withdrawal.

IV. Breakdown of applications by industry :

Hong Kong Standard Industrial Classification	Industry in which applicants worked	No. of Applicants		Amount claimed (including wages, wages in lieu of notice and severance payment)
<i>Division 1</i>	<i>Agriculture and Fishing</i>	8	(4)	\$144,662.33
<i>Division 3</i>	<i>Manufacturing</i>			
Sub-group				
311-312	Food	152	(12)	\$6,955,244.81
313	Beverage industries	3	(1)	\$76,925.90
320-322	Wearing apparel, except footwear	243	(25)	\$16,349,567.71
323	Leather and leather products, except footwear and wearing apparel	13	(5)	\$2,044,142.15
324	Footwear, except rubber, plastic and wooden footwear	2	(2)	\$129,093.47
325-329	Textiles	97	(10)	\$5,450,548.17
331	Wood and cork products, except furniture	5	(1)	\$233,732.51
332	Furniture and fixtures, except primarily of metal	10	(3)	\$115,711.30
341	Paper and paper products	11	(3)	\$1,027,120.66
342	Printing, publishing and allied industries	316	(40)	\$20,156,089.06
351-352	Chemicals and chemical products	13	(4)	\$649,291.49
353-354	Products of petroleum and coal	1	(1)	\$201,520.02
355	Rubber products	18	(3)	\$1,461,345.50
356	Plastic products	27	(12)	\$3,645,140.87
361-369	Non-metallic mineral products, except products of petroleum and coal	12	(2)	\$677,019.29
371-372	Basic metal industries	10	(3)	\$450,709.60
380-381	Fabricated metal products, except machinery and equipment	37	(5)	\$3,916,530.32
384	Electronic parts and components	152	(14)	\$18,943,541.87
385	Electrical appliances & houseware and electronic toys	41	(4)	\$4,969,377.47
386-387	Machinery, equipments, apparatus, parts and components, not elsewhere classified	10	(5)	\$1,407,078.50
389	Professional & scientific, measuring & controlling equipment, not elsewhere classified, and photographic & optical goods	27	(2)	\$422,562.40
390-391	Manufacturing industries, not elsewhere classified	196	(37)	\$18,173,214.91
<i>Division 4</i>	<i>Electricity, Gas and Water</i>	87	(12)	\$8,240,516.68
<i>Division 5</i>	<i>Construction</i>	4 180	(511)	\$188,165,872.10
<i>Division 6</i>	<i>Wholesale, Retail and Import/Export Trades, Restaurants and Hotels</i>			
Sub-group				
611-612	Wholesale	99	(21)	\$5,110,589.15
621	Retail	940	(144)	\$40,886,352.26
631-632	Import/Export	961	(258)	\$60,722,811.86
641	Restaurants	8 856	(393)	\$191,397,931.69
651	Hotels and boarding houses	250	(6)	\$14,150,741.08

Note : Figure in brackets denotes the number of suspected insolvency cases.

Hong Kong Standard Industrial Classification	Industry in which applicants worked	No. of Applicants		Amount claimed (including wages, wages in lieu of notice and severance payment)
<i>Division 7</i>	<i>Transport, Storage and Communication</i>			
Sub-group				
711	Land passenger transport	64	(10)	\$1,231,077.09
712	Land freight transport	421	(97)	\$28,431,081.29
713	Supporting services to land transport	29	(7)	\$905,341.44
714	Ocean and coastal water transport	23	(5)	\$965,594.78
715	Inland water transport	1	(1)	\$66,830.00
716	Supporting services to water transport	8	(4)	\$331,639.60
717	Air transport	28	(5)	\$2,339,366.68
718	Services incidental to transport	29	(10)	\$1,556,630.93
721	Storage	13	(2)	\$374,589.00
731	Communications	145	(23)	\$8,317,190.40
<i>Division 8</i>	<i>Financing, Insurance, Real Estate and Business Services</i>			
Sub-group				
812	Finance and investment companies	29	(13)	\$2,570,018.60
813	Stock, commodity and bullion brokers, exchanges and services	1	(1)	\$6,600.00
819	Financial institutions, not elsewhere classified	26	(9)	\$1,017,114.79
821	Insurance	3	(2)	\$187,833.93
831	Real Estate	773	(19)	\$30,502,513.85
832	Rental of machinery and equipment	5	(2)	\$363,710.69
833	Business services except rental of machinery and equipment	876	(161)	\$46,364,058.10
<i>Division 9</i>	<i>Community, Social and Personal Services</i>			
Sub-group				
910	Public administration	6	(1)	\$1,047,703.70
921	Sanitary and similar services	59	(14)	\$2,188,198.72
931	Education services	148	(36)	\$3,728,276.58
933	Medical, dental, other health and veterinary services	92	(14)	\$3,662,995.93
934	Welfare institutions	2	(1)	\$569,260.00
935	Business, professional and labour associations	45	(5)	\$1,579,967.75
939	Miscellaneous social and related community services	22	(7)	\$1,756,662.58
940-941	Motion pictures and other entertainment services	53	(9)	\$1,578,144.32
942	Libraries, museums, gardens and cultural services	5	(4)	\$85,269.23
949	Miscellaneous amusement & recreational services	790	(44)	\$24,732,091.79
951	Repair services	79	(18)	\$2,737,103.35
952	Laundry, dry cleaning, dyeing and garment services	25	(8)	\$1,420,591.68
959	Miscellaneous personal services	990	(175)	\$32,305,831.97
	Total :	21 567	(2 250)	\$819,198,273.90

Note : Figure in brackets denotes the number of suspected insolvency cases.

**Breakdown of applications for ex-gratia payment on arrears of wages
received in 2003-04**

A. By amount

(including overtime pay and "deemed wages" under S.43 of the Employment Ordinance)

Amount	No. of applicants	Percentage
No entitlement/Not claimed	2 301	10.67
\$8,000* or less	6 848	31.75
\$8,001 - \$18,000	6 491	30.10
\$18,001 - \$24,000	1 684	7.81
\$24,001 - \$27,000	605	2.80
\$27,001 - \$30,000	473	2.19
\$30,001 - \$33,000	373	1.73
\$33,001 - \$36,000 [#]	339	1.57
\$36,001 - \$39,000	269	1.25
More than \$39,000	2 184	10.13
Total :	<u>21 567</u>	<u>100.00</u>

B. By periods of outstanding wages

(excluding overtime pay and "deemed wages" under S.43 of the Employment Ordinance)

Period	No. of applicants	Percentage
No entitlement/Not claimed	3 156	14.63
1/2 month or less	2 465	11.43
More than 1/2 month to 1 month	3 877	17.98
More than 1 month to 2 months	7 445	34.52
More than 2 months to 3 months	2 180	10.11
More than 3 months to 4 months	858	3.98
More than 4 months	1 586	7.35
Total :	<u>21 567</u>	<u>100.00</u>

* Preferential limit under the Bankruptcy Ordinance and the Companies Ordinance, i.e. wages not exceeding \$8,000 should be paid in priority to all other debts in the distribution of the remaining assets of the company during the winding-up/bankruptcy proceedings.

Maximum amount of ex-gratia payment on arrears of wages under the Protection of Wages on Insolvency Ordinance.

Appendix III

Breakdown of applications for ex-gratia payment on wages in lieu of notice received in 2003-04

A. By amount

Amount	No. of applicants	Percentage
No entitlement/Not claimed	7 454	34.56
\$2,000* or less	4 621	21.43
\$2,001 - \$6,000	4 877	22.61
\$6,001 - \$10,000	2 043	9.47
\$10,001 - \$15,000	1 292	5.99
\$15,001 - \$22,500 [#]	809	3.75
\$22,501 - \$25,000	126	0.59
More than \$25,000	345	1.60
Total :	<u>21 567</u>	<u>100.00</u>

B. By notice period

Notice period	No. of applicants	Percentage
No entitlement/Not claimed	7 454	34.56
1 day - 7 days	8 168	37.87
8 days - 14 days	135	0.63
15 days	94	0.43
16 days - less than 1 month	440	2.04
1 month ^{* #}	5 186	24.05
More than 1 month	90	0.42
Total :	<u>21 567</u>	<u>100.00</u>

* Preferential limit under the Bankruptcy Ordinance and the Companies Ordinance, i.e. wages in lieu of notice not exceeding one month's wages or \$2,000, whichever is the lesser, should be paid in priority to all other debts in the distribution of the remaining assets of the company during the winding-up/bankruptcy proceedings.

Maximum amount of ex-gratia payment on wages in lieu of notice under the Protection of Wages on Insolvency Ordinance, i.e. not exceeding \$22,500 or one month's wages, whichever is the lesser.

**Breakdown of applications for ex-gratia payment on severance payment[#]
received in 2003-04**

A. By amount

Amount	No. of applicants	Percentage
No entitlement/Not claimed	13 938	64.62
\$8,000* or less	573	2.66
\$8,001 - \$36,000	4 049	18.77
\$36,001 - \$50,000	953	4.42
\$50,001 - \$80,000	1 012	4.69
\$80,001 - \$110,000	493	2.28
\$110,001 - \$140,000	227	1.05
\$140,001 - \$170,000	121	0.56
\$170,001 - \$200,000	75	0.35
\$200,001 - \$250,000	62	0.29
\$250,001 - \$300,000	30	0.14
\$300,001 - \$350,000	19	0.09
\$350,001 - \$370,000	13	0.06
\$370,001 - \$390,000	1	0.01
More than \$390,000	1	0.01
Total :	<u>21 567</u>	<u>100.00</u>

B. By length of service

Length of service	No. of applicants	Percentage
Not claimed or less than 2 years' service	14 072	65.25
2 - 4.99 years	3 714	17.22
5 - 5.99 years	861	3.99
6 - 6.99 years	589	2.73
7 - 7.99 years	455	2.11
8 - 8.99 years	387	1.79
9 - 9.99 years	285	1.32
10 - 14.99 years	847	3.93
15 - 19.99 years	224	1.04
20 - 24.99 years	82	0.38
25 - 29.99 years	31	0.14
30 - 34.99 years	10	0.05
35 - 38.99 years	7	0.03
39 - 40.99 years	0	0.00
41 [†] - 42.99 years	2	0.01
43 ^ψ years' service and over	1	0.01
Total :	<u>21 567</u>	<u>100.00</u>

[#] The maximum amount of payment out of the Protection of Wages on Insolvency Fund is \$210,000 for date of termination of employment which falls between 1.10.2002 to 30.9.2003 and \$220,000 from 1.10.2003 to 30.9.2004.

* Preferential limit under the Bankruptcy Ordinance and the Companies Ordinance, i.e. severance payment not exceeding \$8,000 should be paid in priority to all other debts in the distribution of the remaining assets of the company during the winding-up/bankruptcy proceedings.

[†] Fully reckonable years of service under the Employment Ordinance for date of termination of employment which falls between 1.10.2002 to 30.9.2003 are 41 years plus 50% of any period exceeding 41 years.

^ψ Fully reckonable years of service under the Employment Ordinance for date of termination of employment which falls between 1.10.2003 to 30.9.2004 are 43 years plus 50% of any period exceeding 43 years.

Analysis of ex-gratia payment approved in 2003-04

A. Analysis of payment approved for arrears of wages

(including overtime pay and "deemed wages" under S.43 of the Employment Ordinance)

Amount	No. of applicants	Percentage
No claimed/Not approved	2 464	11.85
\$4,000 or less	3 576	17.20
\$4,001 - \$8,000	4 331	20.83
\$8,001 - \$10,000	1 776	8.54
\$10,001 - \$12,000	1 393	6.70
\$12,001 - \$14,000	1 220	5.87
\$14,001 - \$16,000	876	4.22
\$16,001 - \$18,000	744	3.58
\$18,001 - \$28,000	2 144	10.31
\$28,001 - \$36,000 [#]	2 266	10.90
Total :	<u><u>20 790</u></u>	<u><u>100.00</u></u>

B. Analysis of payment approved for wages in lieu of notice

Amount	No. of applicants	Percentage
No claimed/Not approved	7 489	36.02
\$2,000 or less	5 558	26.74
\$2,001 - \$3,000	2 231	10.73
\$3,001 - \$4,000	1 427	6.86
\$4,001 - \$5,000	588	2.83
\$5,001 - \$6,000	435	2.09
\$6,001 - \$10,000	1 451	6.98
\$10,001 - \$22,500 [†]	1 611	7.75
Total :	<u><u>20 790</u></u>	<u><u>100.00</u></u>

C. Analysis of payment approved for severance payment

Amount	No. of applicants	Percentage
No claimed/Not approved	13 977	67.23
\$8,000 or less	1 490	7.17
\$8,001 - \$22,000	2 310	11.11
\$22,001 - \$36,000	1 259	6.06
\$36,001 - \$50,000	929	4.47
\$50,001 - \$80,000	651	3.13
\$80,001 - \$110,000	130	0.62
\$110,001 - \$140,000	25	0.12
\$140,001 - \$170,000	15	0.07
\$170,001 - \$200,000	4	0.02
\$200,001 - \$210,000*	0	0.00
\$210,001 - \$220,000**	0	0.00
Total :	<u><u>20 790</u></u>	<u><u>100.00</u></u>

The maximum amount of ex-gratia payment out of the Protection of Wages on Insolvency Fund (the Fund) on arrears of wages.

† The maximum amount of ex-gratia payment out of the Fund on wages in lieu of notice.

* The maximum amount of ex-gratia payment out of the Fund on severance payment for date of termination of employment which falls between 1.10.2002 to 30.9.2003.

** The maximum amount of ex-gratia payment out of the Fund on severance payment for date of termination of employment which falls between 1.10.2003 to 30.9.2004.

**Analysis of approved ex-gratia payment as percentage of applicants' claimed amount
in 2003-04**

A. Arrears of wages (AW) at maximum payment of \$36,000

Approved payment as percentage of applicants' claimed amount for AW	Percentage of applicants
100%	52.97
90% or above	71.17
80% or above	80.23
70% or above	85.59
60% or above	89.28
50% or above	92.58
40% or above	95.05
30% or above	96.70
20% or above	98.15
10% or above	99.43
5% or above	99.79

B. Wages in lieu of notice (WILON) at maximum payment of \$22,500

Approved payment as percentage of applicants' claimed amount for WILON	Percentage of applicants
100%	67.29
90% or above	76.01
80% or above	80.52
70% or above	82.65
60% or above	84.39
50% or above	85.73
40% or above	86.65
30% or above	87.84
20% or above	98.31
10% or above	99.77

C. Severance payment (SP) at maximum payment of \$50,000 + 50% of excess entitlements

Approved payment as percentage of applicants' claimed amount for SP	Percentage of applicants
100%	10.59
90% or above	22.03
80% or above	35.61
70% or above	50.21
60% or above	63.29
50% or above	74.26

Comparative figures on the performance of the Protection of Wages on Insolvency Fund from 1999-00 to 2003-04

Figure 1.
Number of Applications Received by the Fund from 1999-00 to 2003-04

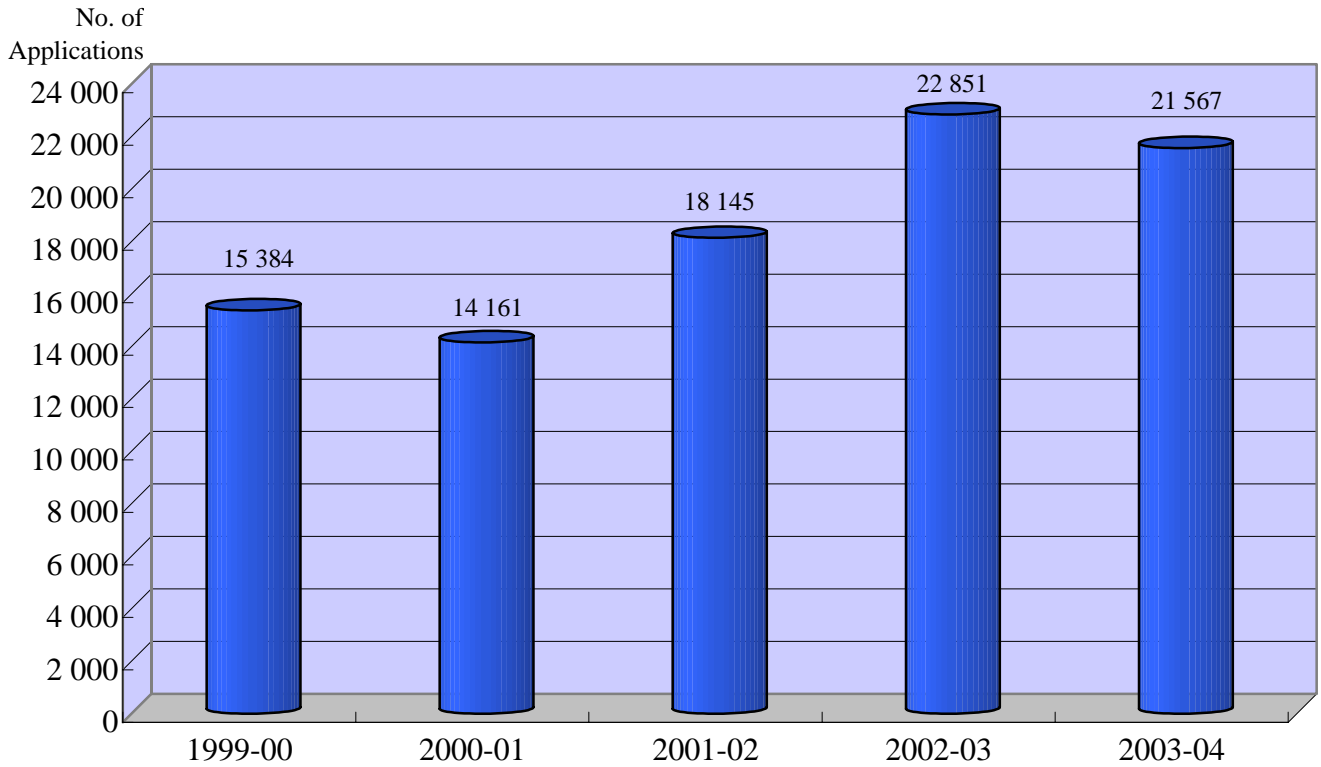


Figure 2.
First Three Industries/Trades with the Largest Number of Applications Received from 1999-00 to 2003-04

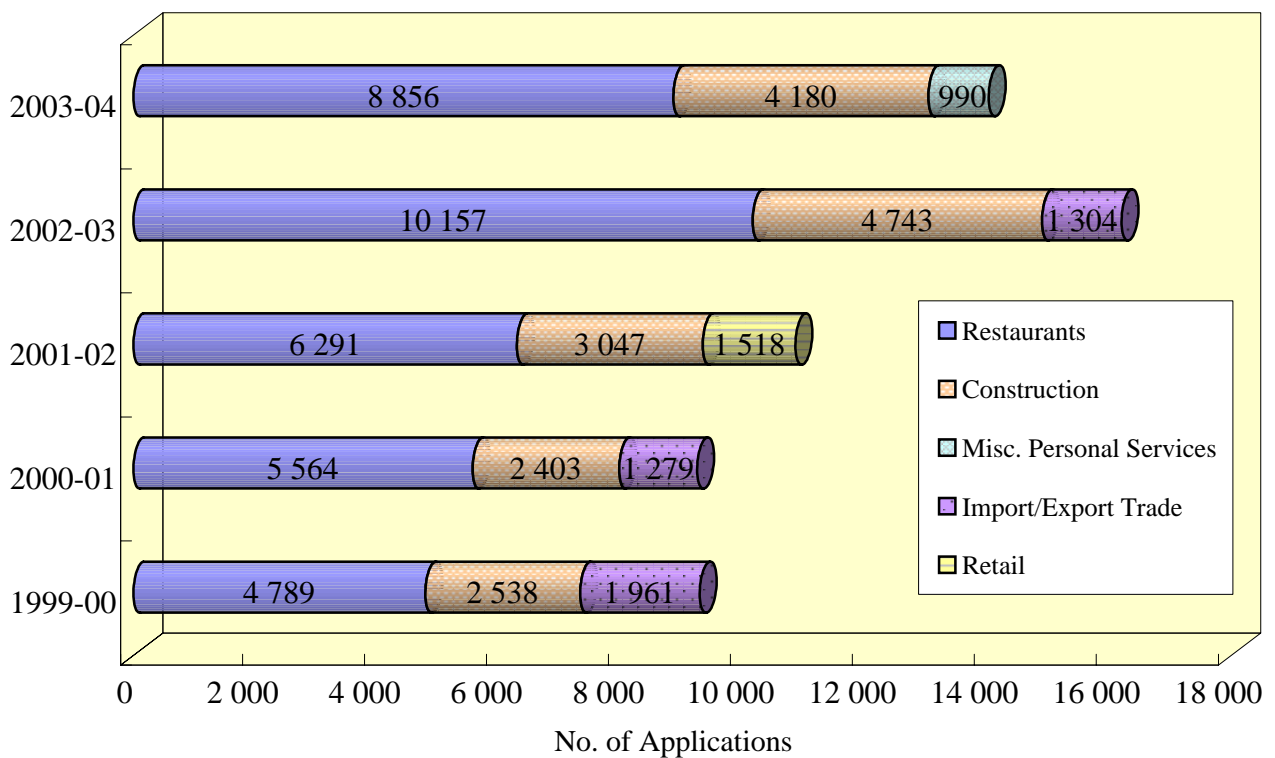


Figure 3.
Number of Applications and Amount of Ex-gratia Payment Approved from 1999-00 to 2003-04

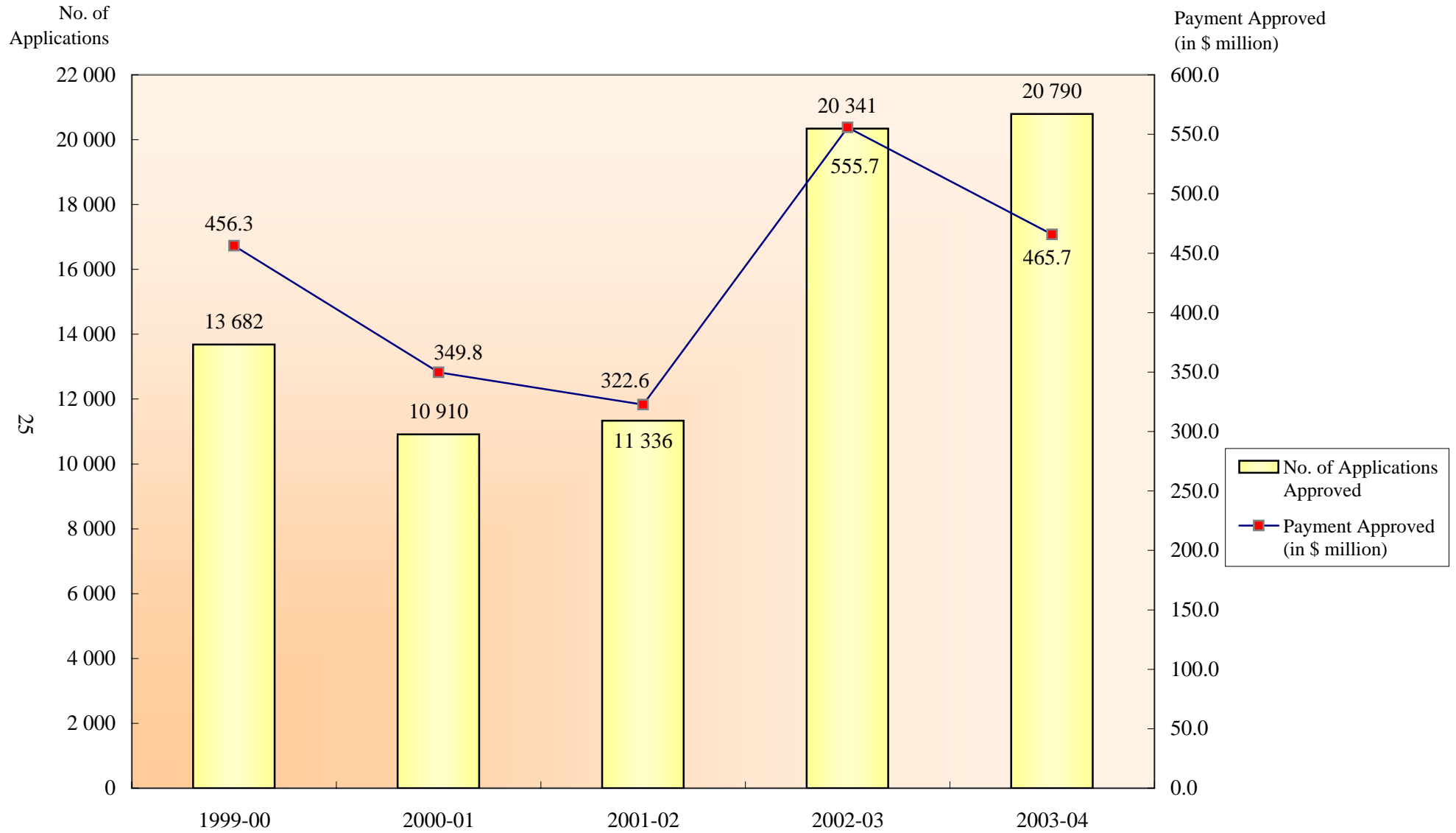


Figure 4.
Total Income and Expenditure of the Fund from 1999-00 to 2003-04

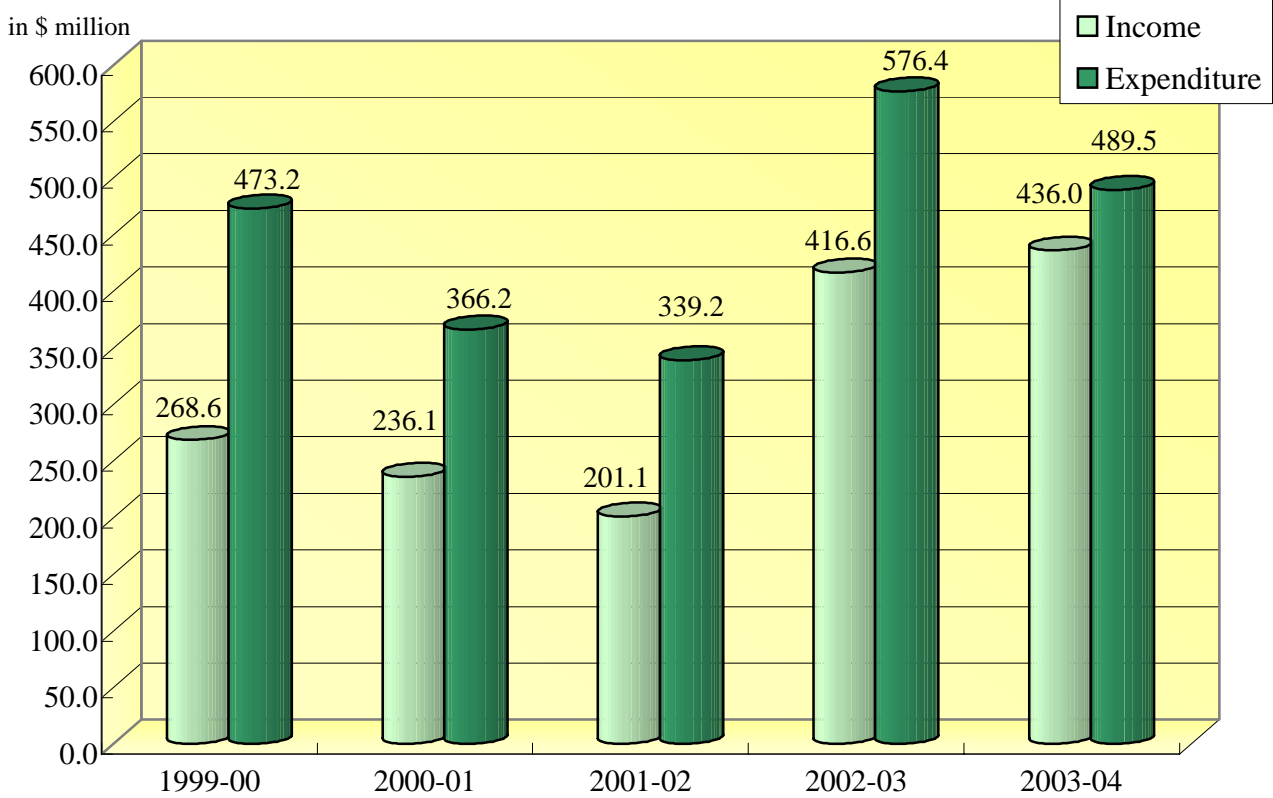
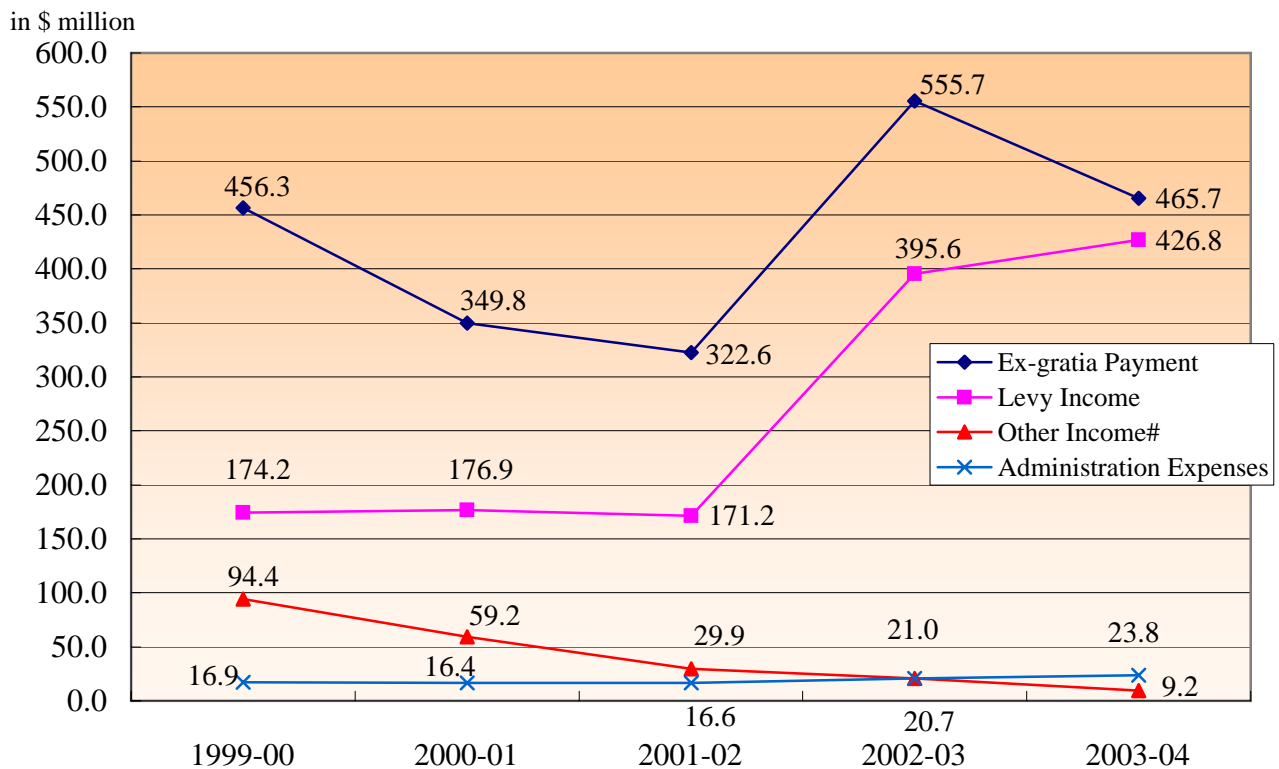
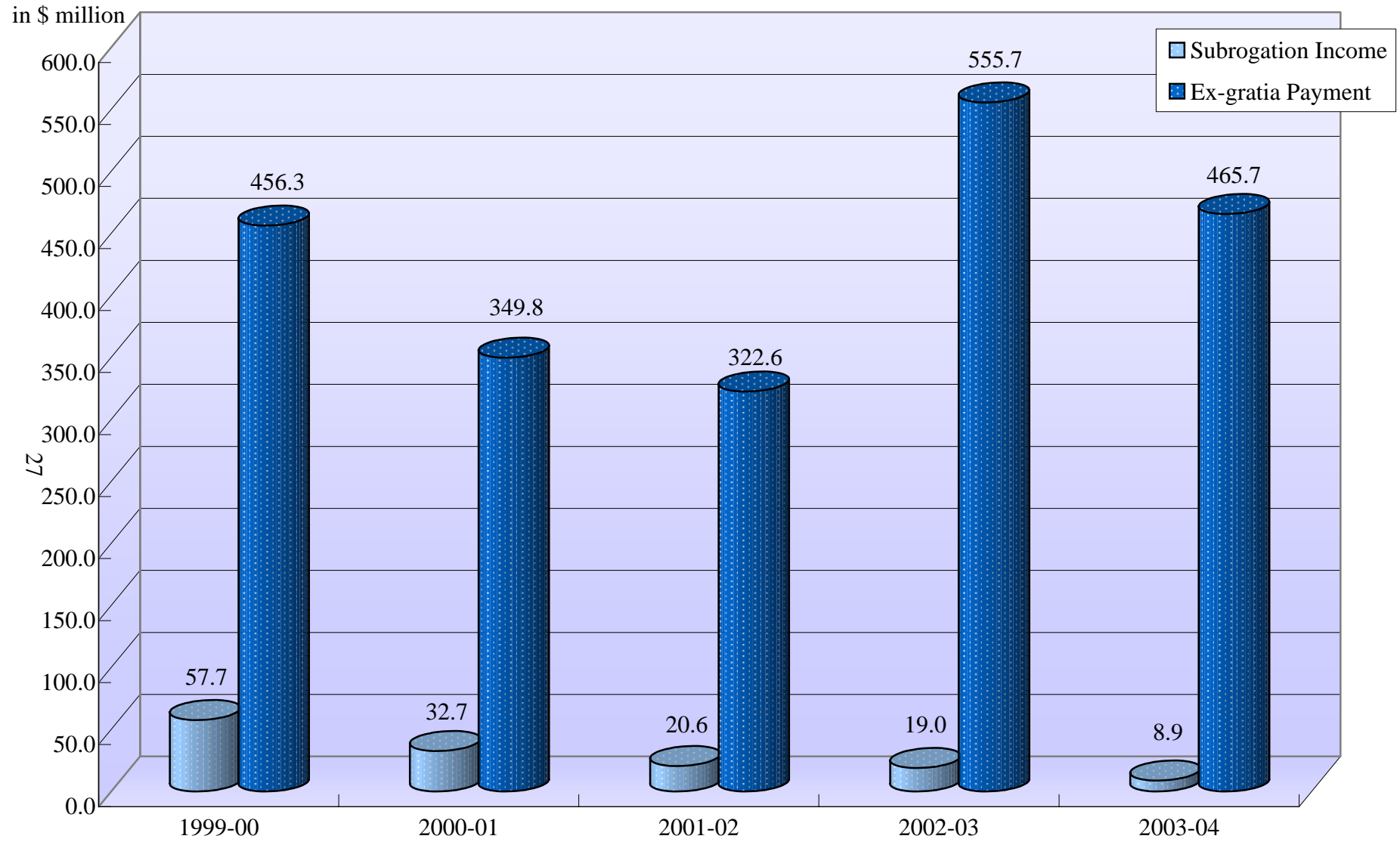


Figure 5.
Breakdown of Income and Expenditure of the Fund from 1999-00 to 2003-04

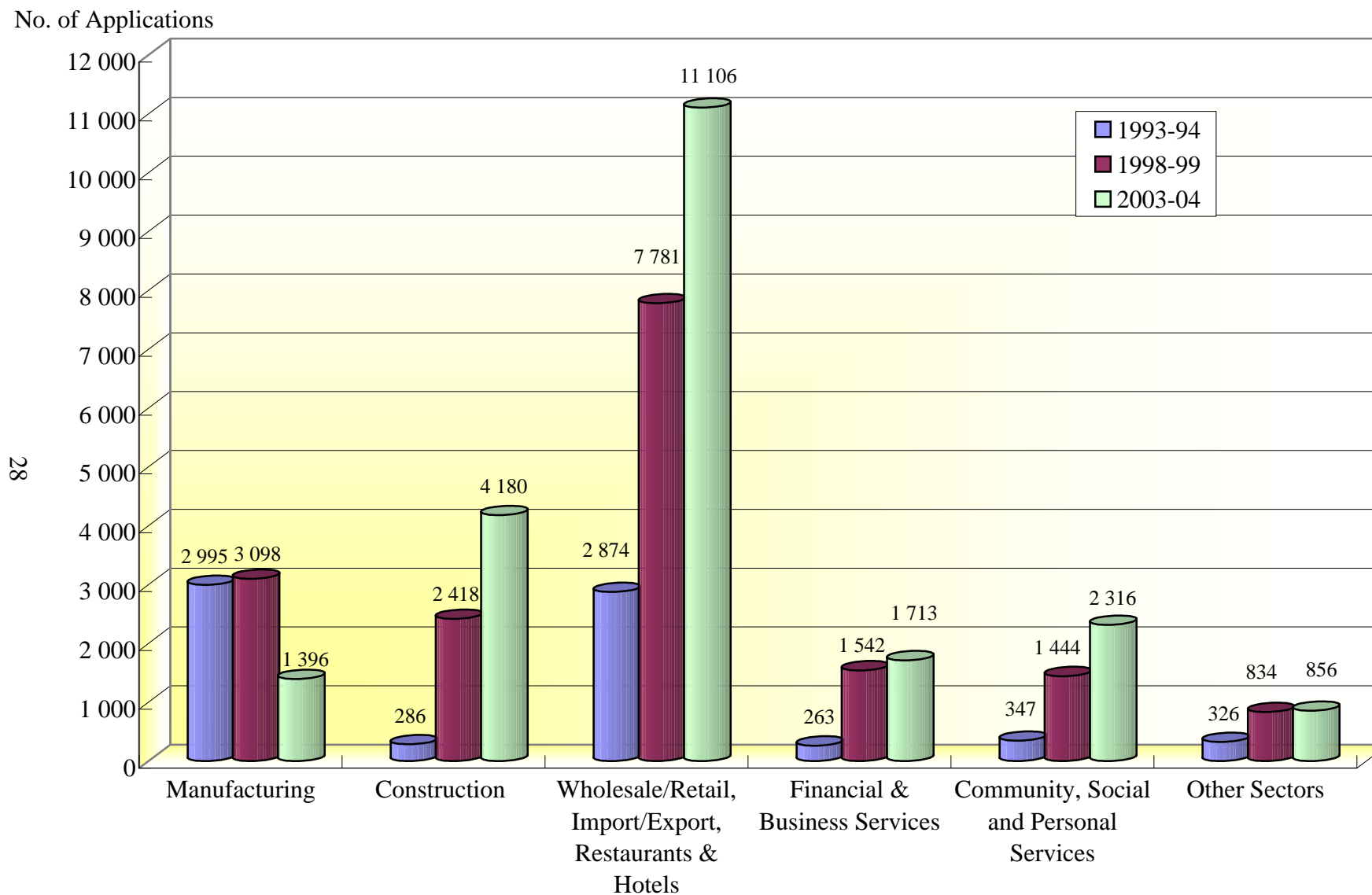


Bank deposit interests, money recovered through subrogation and net portfolio investment gains

Figure 6.
Ex-gratia Payment and Subrogation Income of the Fund from 1999-00 to 2003-04



Analysis of applications received by economic sectors from 1993-94 to 2003-04



Appendix IX



PROTECTION OF WAGES ON INSOLVENCY FUND

Report and Financial Statements
For the year ended 31 March 2004

PROTECTION OF WAGES OF INSOLVENCY FUND

REPORT AND FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 MARCH 2004

<u>CONTENTS</u>	<u>PAGE(S)</u>
AUDITORS' REPORT	1
STATEMENT OF INCOME AND EXPENDITURE	2
STATEMENT OF ASSETS AND LIABILITIES	3
STATEMENT OF CHANGES IN FUND AND RESERVES	4
CASH FLOW STATEMENT	5
NOTES TO THE FINANCIAL STATEMENTS	6-9

AUDITORS' REPORT

TO THE MEMBERS OF
PROTECTION OF WAGES ON INSOLVENCY FUND BOARD (THE "BOARD")
(Established under the Protection of Wages on Insolvency Ordinance)

We have audited the financial statements on pages 2 to 9 which have been prepared in accordance with accounting principles generally accepted in Hong Kong.

Respective responsibilities of the board and auditors

The Protection of Wages on Insolvency Ordinance requires the Board to prepare financial statements of the Protection of Wages on Insolvency Fund (the "Fund"). In preparing the financial statements it is fundamental that appropriate accounting policies are selected and applied consistently.

It is our responsibility to form an independent opinion, based on our audit, on those financial statements and to report our opinion solely to you, as a body, in accordance with our agreed terms of engagement, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

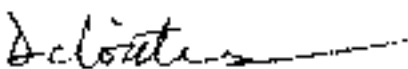
Basis of opinion

We conducted our audit in accordance with Statements of Auditing Standards issued by the Hong Kong Society of Accountants. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgments made by the Board in the preparation of the financial statements, and of whether the accounting policies are appropriate to the Fund's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance as to whether the financial statements are free from material misstatement. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements. We believe that our audit provides a reasonable basis for our opinion.

Opinion

In our opinion the financial statements gives a true and fair view of the state of the Fund's affairs as at 31 March 2004 and of its deficit and cash flows for the year then ended and have been properly prepared in accordance with the Protection of Wages on Insolvency Ordinance.



Deloitte Touche Tohmatsu
Certified Public Accountants
Hong Kong
13 August 2004

PROTECTION OF WAGES ON INSOLVENCY FUND

STATEMENT OF INCOME AND EXPENDITURE
FOR THE YEAR ENDED 31 MARCH 2004

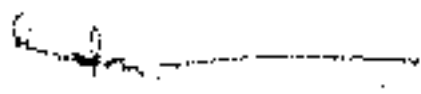
	<u>NOTES</u>	<u>2004</u> <u>HK\$</u>	<u>2003</u> <u>HK\$</u>
INCOME			
Levy	3	426,753,500	395,629,900
Money recovered by subrogation		8,960,208	19,045,562
Interest income		282,742	1,935,671
		<u>435,996,450</u>	<u>416,611,133</u>
RECURRENT EXPENDITURE			
Claims	4	465,691,985	555,714,527
Supervision fee	5	22,417,717	19,077,185
Auditors' remuneration		41,800	43,200
Rates and building management charges		371,707	368,897
Insurance		6,802	5,584
Interest expense		5,096	-
Printing and stationery		50,002	125,478
Miscellaneous expenses		781,769	596,465
		<u>489,366,878</u>	<u>575,931,336</u>
CAPITAL EXPENDITURE	6	116,061	457,260
TOTAL EXPENDITURE		<u>489,482,939</u>	<u>576,388,596</u>
DEFICIT FOR THE YEAR		<u>(53,486,489)</u>	<u>(159,777,463)</u>

PROTECTION OF WAGES ON INSOLVENCY FUND

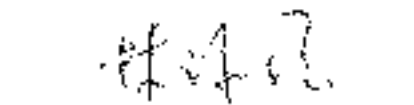
STATEMENT OF ASSETS AND LIABILITIES
AS AT 31 MARCH 2004

	<u>NOTES</u>	<u>2004</u> <u>HK\$</u>	<u>2003</u> <u>HK\$</u>
NON-CURRENT ASSET			
Property	7	<u>27,474,677</u>	<u>27,474,677</u>
CURRENT ASSETS			
Cash at banks		2,857,988	30,720,135
Levy receivable		39,688,750	39,647,650
Interest receivable		-	3,722
Sundry deposits		14,200	14,200
Sundry debtors		6,374	8,374
		<u>42,567,312</u>	<u>70,394,081</u>
CURRENT LIABILITIES			
Approved claims payable		16,696,702	16,240,138
Accrued operation expenses		48,820	50,760
Accrued supervision fee	5	<u>22,200,000</u>	<u>19,000,000</u>
		<u>38,945,522</u>	<u>35,290,898</u>
NET CURRENT ASSETS			
		<u>3,621,790</u>	<u>35,103,183</u>
		<u>31,096,467</u>	<u>62,577,860</u>
FINANCED BY			
Accumulated (deficit) fund		(34,922,093)	18,564,396
General reserve	8	16,538,787	16,538,787
Building reserve	7	<u>27,474,677</u>	<u>27,474,677</u>
		<u>9,091,371</u>	<u>62,577,860</u>
NON-CURRENT LIABILITY			
Government loan	9	22,000,000	-
Government loan interest payable		5,096	-
		<u>22,005,096</u>	<u>-</u>
		<u>31,096,467</u>	<u>62,577,860</u>

The financial statements on pages 2 to 9 were approved and authorised for issue by the Board on 13 August 2004 and are signed on its behalf by:



CHAIRMAN



BOARD MEMBER

PROTECTION OF WAGES ON INSOLVENCY FUND

STATEMENT OF CHANGES IN FUND AND RESERVES
FOR THE YEAR ENDED 31 MARCH 2004

	<u>Accumulated (deficit) fund</u> HK\$	<u>General reserve</u> HK\$	<u>Building reserve</u> HK\$	<u>Total</u> HK\$
Balance at 1 April 2002	178,341,859	16,538,787	27,474,677	222,355,323
Deficit for the year	<u>(159,777,463)</u>	<u>-</u>	<u>-</u>	<u>(159,777,463)</u>
Balance at 31 March 2003	18,564,396	16,538,787	27,474,677	62,577,860
Deficit for the year	<u>(53,486,489)</u>	<u>-</u>	<u>-</u>	<u>(53,486,489)</u>
Balance at 31 March 2004	<u><u>(34,922,093)</u></u>	<u><u>16,538,787</u></u>	<u><u>27,474,677</u></u>	<u><u>9,091,371</u></u>

PROTECTION OF WAGES ON INSOLVENCY FUND

CASH FLOW STATEMENT
FOR THE YEAR ENDED 31 MARCH 2004

	<u>2004</u> HK\$	<u>2003</u> HK\$
OPERATING ACTIVITIES		
Deficit for the year	(53,486,489)	(159,777,463)
Adjustments for:		
Interest income	(282,742)	(1,935,671)
Interest expense	5,096	-
Operating cash flows before movements in working capital	<u>(53,764,135)</u>	<u>(161,713,134)</u>
Increase in levy receivable	(41,100)	(25,360,150)
Increase in sundry deposits	-	(9,200)
Decrease (increase) in sundry debtors	2,000	(8,374)
Increase in approved claims payable	456,564	8,725,227
Decrease in accrued operation expenses	(1,940)	(7,803)
Increase in accrued supervision fee	3,200,000	3,300,000
NET CASH USED IN OPERATING ACTIVITIES	<u>(50,148,611)</u>	<u>(175,073,434)</u>
INVESTING ACTIVITIES		
Interest received	286,464	2,455,382
Decrease in bank deposits with maturity over three months	-	142,207,930
CASH FROM INVESTING ACTIVITIES	<u>286,464</u>	<u>144,663,312</u>
CASH FROM FINANCING ACTIVITY		
New government loan obtained	22,000,000	-
NET DECREASE IN CASH AND CASH EQUIVALENTS	<u>(27,862,147)</u>	<u>(30,410,122)</u>
CASH AND CASH EQUIVALENTS AT BEGINNING OF THE YEAR		
	<u>30,720,135</u>	<u>61,130,257</u>
CASH AND CASH EQUIVALENTS AT END OF THE YEAR, REPRESENTED BY		
Cash at banks with maturity of three months or less	<u>2,857,988</u>	<u>30,720,135</u>

PROTECTION OF WAGES ON INSOLVENCY FUND

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2004

1. GENERAL

The Protection of Wages on Insolvency Fund (the “Fund”) was established by the Hong Kong Government under the Protection of Wages on Insolvency Ordinance of Hong Kong in 1985 for the purpose of providing ex-gratia payments to employees whose employers have become insolvent.

The fund consists principally of moneys received from the Commissioner of Inland Revenue being an annual levy collected on each Business Registration Certificate issued.

2. SIGNIFICANT ACCOUNTING POLICIES

The financial statements have been prepared under the historical cost convention and in accordance with accounting principles generally accepted in Hong Kong as modified for the accounting of property, plant and equipment stated below. The principal accounting policies adopted are as follows:

Income recognition

Levy income is recognised when the amounts are received by the Inland Revenue Department.

Interest income is accrued on a time basis, by reference to the principal outstanding and at the interest rate applicable.

Money recovered by way of subrogation is recognised when the amounts are received.

Property, plant and equipment

The Fund has taken the advantage of the exemption under section 2 of Statement of Standard Accounting Practice 17 “Property, plant and equipment” issued by the Hong Kong Society of Accountants. Accordingly, no depreciation has been provided on the property. Capital expenditure other than for the acquisition of properties incurred during an accounting period is charged entirely to the statement of income and expenditure in that period.

Recognition of claims

Claims are accounted for on an accrual basis upon approval by the Commissioner for Labour.

Operating leases

Rentals payable under operating leases are charged to the statement of income and expenditure on a straight-line basis over the relevant lease term.

Retirement benefits costs

Payments to defined contribution retirement benefit plans are charged as an expense as they fall due.

PROTECTION OF WAGES ON INSOLVENCY FUND

3. LEVY

In accordance with the provisions of Sections 7 and 21 of the Business Registration Ordinance and Section 6 in Part III of the Protection of Wages on Insolvency Ordinance, a levy is imposed at the rate of HK\$600 and HK\$1,800 respectively on those one-year and three-year Business Registration Certificates issued on or after 16 May 2002.

4. CLAIMS

In accordance with the provisions of Sections 16(1), (2) and (3) and Section 18(1) in Part V of the Protection of Wages on Insolvency Ordinance, the Commissioner for Labour may make ex-gratia payments to applicants out of the Fund of the following amounts:

Wages

Not exceeding HK\$36,000, being wages for services rendered not more than 4 months prior to an applicant's last day of service;

Wages in lieu of notice

Not exceeding the equivalent of 1 month's wages of the applicant or HK\$22,500, whichever is the lesser, which became due not more than 6 months prior to the date of application;

Severance payment

Not exceeding the aggregate of HK\$50,000 and half of that part of the applicant's entitlement in excess of HK\$50,000, being severance payment, the liability for payment of which arose not more than 6 months prior to the date of application.

5. SUPERVISION FEE

In accordance with the provisions of Section 14 in Part IV of the Protection of Wages on Insolvency Ordinance, the Financial Secretary may determine a supervision fee, which shall be charged against the income of the Fund, at any time determined by him. An agreement has been reached between the Protection of Wages on Insolvency Fund Board (the "Board") and the Hong Kong Government that the fee will be two-thirds of the Government's cost of administration in respect of the Fund. The Board however reserves its right of re-negotiation.

6. CAPITAL EXPENDITURE

	<u>2004</u> <u>HK\$</u>	<u>2003</u> <u>HK\$</u>
Office equipment and fixtures	<u>116,061</u>	<u>457,260</u>

PROTECTION OF WAGES ON INSOLVENCY FUND

7. PROPERTY

This represents the total cost of purchase of the Board's office premises situated in Hong Kong which is held under long lease. The cost was funded from an appropriation from the Accumulated Fund in the year of purchase. The appropriation has been credited to the Building Reserve Account.

8. GENERAL RESERVE

Levy collected and interest received prior to the establishment of the Protection of Wages on Insolvency Fund Board were set aside under the General Reserve Account.

9. GOVERNMENT LOAN

	<u>2004</u> HK\$	<u>2003</u> HK\$
Government loan, unsecured	<u>22,000,000</u>	<u>-</u>

During the year, the Fund has obtained a government loan in the amount of HK\$22,000,000 (2003: Nil). The amount is unsecured, bearing interest at a pre-determined rate and is repayable by 18 equal half-yearly instalments commencing 1 April 2007.

10. TAXATION

The Fund is exempt from Hong Kong taxation.

11. OPERATION LEASE COMMITMENTS

Lease payments under an operating lease paid during the year amounted to HK\$55,200 (2003: HK\$20,626).

At 31 March 2004, the Fund had commitments for future minimum lease payments under non-cancellable operating leases in respect of rented premises, as follows:

	<u>2004</u> HK\$	<u>2003</u> HK\$
Within one year	<u>9,200</u>	<u>25,300</u>

Operating lease payments represent rentals payable by the Fund for its rented premises. Leases are negotiated for terms of 1 year on fixed monthly rentals.

PROTECTION OF WAGES ON INSOLVENCY FUND

12. CONTINGENT LIABILITIES

As at the balance sheet date, the Fund had contingent liabilities not provided for in these financial statements as follows:

	<u>2004</u> HK\$	<u>2003</u> HK\$
Claims received but not yet approved	<u>460,214,000</u>	<u>520,795,000</u>
