

Report No. 42 of the Director of Audit — Chapter 8

PROVISION OF LABOUR INSPECTION SERVICES AND ADMINISTRATION OF THE PROTECTION OF WAGES ON INSOLVENCY FUND

Summary

1. Inspection of workplaces and administration of the Protection of Wages on Insolvency Fund (the Fund) are two key measures of the Labour Department (LD) to safeguard the rights and benefits of employees. Labour inspectors of the LD's Labour Inspection Division (LID) inspect workplaces to ensure compliance with the labour laws. The Fund provides timely financial relief in the form of ex-gratia payment to employees of insolvent employers.

Use of staff resources for delivering labour inspection services

2. *Strategy for delivering labour inspection services.* The LID has adopted a two-tier inspection and referral system for delivering labour inspection services. Labour inspectors of District Offices (DOs) initially conduct inspections to workplaces. When they detect suspected offences in the course of inspections, they refer the offences to Special Enforcement Teams (SETs) for in-depth investigation. As a result of the reorganisation of the LID, which took effect from January 2004, eventually a pair of DO and SET will be jointly responsible for enforcing various labour laws in the same district. *The Audit Commission (Audit) has recommended that the Commissioner for Labour should monitor closely the progress of the LID's reorganisation and ensure that it brings about the LD's expected benefits.*

3. *Utilisation of staff resources of the Labour Inspection Division.* Audit noted that, on average, Labour Inspectors I and Labour Inspectors II spent 65% and 60% of their time on office work respectively. Consequently, they could only spend about 29% of their time on inspections. Senior Labour Inspectors spent as much as 82% of their time on office work and only 7% on inspections. Audit expressed concern that labour inspectors had not elaborated details of their office work in the official diaries. *Audit has recommended that the Commissioner for Labour should ensure that the official diaries kept by labour inspectors show clearly details of their office work to enable effective monitoring by LD management, and that he should conduct periodic reviews of the utilisation of staff resources.*

Labour inspection practices

4. *Labour inspection cycles.* Audit analysis of the inspection cycles (i.e. the re-inspection frequencies) of DOs' labour inspectors found that the cycles varied among

DOs. The multifarious inspection cycles of DOs indicated that labour inspectors did not render timely inspection services to some establishments. *Audit has recommended that the Commissioner for Labour should continue to monitor the inspection cycles of DOs so as to ascertain whether, after the reorganisation of the LID, the service boundaries of DOs have been effectively realigned to prevent uneven spread in inspection cycles, and if necessary, further realign the service boundaries of DOs.*

5. ***Inspections to construction sites.*** When visiting construction sites, labour inspectors are mainly required to detect illegal workers and to ensure that child workers are not employed. In view of the growing concern over wage disputes there, the LD has implemented measures to tackle wage offences of the Employment Ordinance at construction sites. However, the LD did not require labour inspectors or other staff to look for other instances of non-compliance with the Employment Ordinance (e.g. failing to grant statutory holidays and rest days) at construction sites. *Audit has recommended that the Commissioner for Labour should keep in view the need for extending the scope of construction site inspections beyond the detection of unpaid wages to include other benefit provisions of the Employment Ordinance.*

6. ***Inspections to workplaces of child entertainers.*** Audit review of LID records from July 2002 to June 2003 revealed that, for those child entertainers performing outdoor filming, the LID did not conduct any inspections to the filming locations to ascertain whether the employers had actually complied with the stipulated conditions of employment. *Audit has recommended that the Commissioner for Labour should conduct more random inspections to workplaces of child entertainers, including filming locations, to ensure that employers of child entertainers comply with the stipulated conditions of employment.*

7. ***Extent of check in inspections.*** Audit review of inspection files of SETs revealed two cases where the labour inspectors concerned did not take the initiative to interview more employees, after suspected offences had been detected from the sample of employees interviewed during inspections. *Audit has recommended that the Commissioner for Labour should consider revising the LID's Operational Manual to specify the circumstances under which the sample of employees selected for checking during inspections needs to be increased and how this could be achieved.*

8. ***Timeliness of inspections.*** Audit review of inspection files of SETs revealed two cases where inspections could have been successfully conducted, had prompt action been taken. In these two cases, SETs only carried out the investigations a few months after receipt of the referrals from DOs. In the event, investigations into the suspected offences could not proceed because the establishments had already moved. *Audit has recommended that the Commissioner for Labour should ensure that SETs conduct promptly follow-up inspections to establishments suspected of having breached the labour laws so as to properly safeguard the rights and benefits of employees.*

Performance reporting of labour inspection services

9. ***Performance indicators published by the Labour Department.*** The performance indicators published by the LD in its annual report and Controlling Officer's Report (COR) of the Estimates are limited in number. *Audit has recommended that the*

Commissioner for Labour should review whether the existing performance indicators published in the LD's annual report and COR are adequate and, if necessary, consider publishing more performance indicators.

10. ***Adequacy of the Labour Inspection Division's management information system.*** Audit noted that the LID's revamped computerised Labour Inspection Information System (LIS) would still not provide a centralised database linking the databases of DOs and SETs together. Without a centralised database, labour inspectors cannot readily determine whether an employer who had not complied with labour laws in one district had similar cases of non-compliance in other districts. *Audit has recommended that the Commissioner for Labour should assess whether, after revamping, the LIS is adequate in meeting the LID's management information needs and, if necessary, take action to further enhance the LIS or to develop a new computerised management information system.*

Administration of the Protection of Wages on Insolvency Fund

11. ***Financial viability of the Fund.*** The Fund has been operating at a deficit since 1997-98. As at 31 March 2003, the Fund's balance fell to a record low of \$35 million (\$878 million as at 31 March 1997). The Fund also recorded contingent liabilities of \$521 million in respect of claims received but not yet approved. A bridging loan of \$695 million may have to be drawn down from the Government to enable the Fund to tide over its immediate cash flow problem. *In view of this development, Audit has recommended that the Commissioner for Labour should continue to closely monitor the financial position of the Fund and, if necessary, take further action to ensure the long-term financial viability of the Fund.*

12. ***Caseload of the Fund.*** Due to the increase in the number of applications for claim payment, the number of outstanding claim applications from 1998 to 2003 increased by three-fold from 3,093 to 12,348. Of the 12,348 outstanding claim applications as at 31 March 2003, 3,907 (32%) claim applications had been received for more than six months. *Audit has recommended that the Commissioner for Labour should closely monitor the backlog of outstanding claim applications and explore other means to clear the backlog.*

13. ***Customer opinion survey.*** The Wage Security Unit (WSU) of the LD is responsible for processing and approving claim payments. Audit notes that the WSU does not have a system in place to collect regularly feedback from its clients regarding their needs and expectations. *Audit has recommended that the Commissioner for Labour should conduct periodic client satisfaction surveys of the WSU.*

Response from the Administration

14. The Administration has accepted the audit recommendations.

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