

# Report No. 56 of the Director of Audit — Chapter 8

## IMMIGRATION DEPARTMENT: OPERATION OF THE ENFORCEMENT DIVISION

### Summary

1. The Immigration Department (ImmD) is responsible for the control of people moving into and out of Hong Kong. Visitors and foreign workers are required to comply with the conditions of stay imposed by the ImmD under the Immigration Ordinance (Cap. 115). The Enforcement Division of the ImmD is responsible for formulating and implementing policies in respect of investigation of immigration offences. The Audit Commission (Audit) has recently conducted a review of the operation of the Enforcement Division.

#### Screening of complaints about immigration offences

2. *Screening of complaints.* The Complaint Handling Officer of the Enforcement Division is responsible for classifying complaints about immigration offences into urgent and other cases. Urgent cases are passed to investigation sections for immediate actions. Other cases are screened by the Complaint Vetting Committee (CVC) in accordance with a set of screening criteria. Those meeting the criteria (screened-in cases) are assigned to investigation sections for follow-up. Audit noted that there were no guidelines to help ensure consistency in classifying complaints in accordance with the management criteria. In addition, the screening criteria have not been reviewed since they were set in 1995. *Audit has recommended that the Director of Immigration should: (a) set guidelines for classifying complaints into urgent and other cases; and (b) regularly conduct reviews to ensure that the criteria for screening complaints for investigation are still applicable and appropriate, having regard to changed circumstances.*

3. *Investigation requirements for screened-in cases.* As at 30 June 2010, there were 3,969 screened-in cases which remained uninvestigated or were still under investigation. Many of these cases had been outstanding for years. Audit's sample check revealed that: (a) there were cases of non-compliance with the laid-down requirement of reporting uninvestigated cases to the CVC; (b) for some reported cases, the CVC had not specified any deadline by which investigations had to be conducted; and (c) the spot check requirements to ensure that all closed cases had been properly approved by the CVC were

not strictly complied with. *Audit has recommended that the Director of Immigration should: (a) take measures to clear the backlog of outstanding cases, particularly those which had been outstanding for years; (b) tighten the controls over cases assigned for investigation but remain uninvestigated; and (c) take measures to ensure that the controls over closed cases operate effectively.*

4. ***Investigation requirements for urgent cases.*** The ImmD has not made it clear whether the investigation requirements stipulated for the CVC screened-in cases are also applicable to urgent cases. At present, investigation sections do not report uninvestigated urgent cases to the CVC (although this is a requirement for screened-in cases). Audit's sample check revealed that for some urgent cases, the investigations did not commence within one week. *Audit has recommended that the Director of Immigration should: (a) specify the investigation requirements for urgent cases; (b) review the other urgent cases to see if there are delays in commencing investigations and identify the causes of delays in these cases; and (c) take appropriate measures to ensure that urgent cases are dealt with as soon as possible.*

#### **Investigation of unlawful employment of visitors**

5. ***Prioritising cases.*** The ImmD has issued guidelines for prioritising cases for investigation. However, Audit's sample check revealed no documentary evidence that the cases had been prioritised. *Audit has recommended that the Director of Immigration should take measures to ensure that investigating sections prioritise cases of complaints about immigration offences for investigation in accordance with the ImmD guidelines.*

6. ***Planning enforcement operations.*** In investigating a case, ImmD staff may conduct enforcement operations to gather evidence for initiating prosecution. Although good planning is essential for a successful operation, the ImmD has not issued any guidelines on the planning of operations. *Audit has recommended that the Director of Immigration should take measures to ensure that investigation sections plan their operations adequately, such as issuing guidelines and conducting experience-sharing sessions.*

7. ***Conducting enforcement operations.*** From 2004 to 2009, the number of illegal workers arrested (both total and average per operation) decreased significantly. Audit found that the timeliness of conducting operations was an important factor affecting the effectiveness of the operations. *Audit has recommended that the Director of Immigration should: (a) conduct a review to ascertain the reasons for the significant decreases in the number of illegal workers arrested; and (b) take measures to improve the effectiveness of enforcement operations in future.*

## **Investigation of unlawful employment and overstaying of foreign domestic helpers**

8. ***Investigation of referral cases.*** The Labour Department (LD) refers cases of suspected unlawful employment of foreign domestic helpers (FDHs), found during workplace inspections, to the ImmD for follow-up actions. For some of the cases, the LD officers' one-off observations were too short to provide adequate evidence for initiating prosecution. *Audit has recommended that the Director of Immigration should, in collaboration with the Commissioner for Labour, provide LD officers with additional guidance on collecting evidence on any unlawful employment of FDHs.*

9. ***Joint enforcement operations.*** To combat unlawful employment of FDHs, the ImmD conducts joint enforcement operations with the LD, including surprise visits to employment agencies. Audit noted that such visits for the period 2008 to 2010 were all conducted in the same month. *Audit has recommended that the Director of Immigration should, in conjunction with the Commissioner for Labour, ensure that the joint operations are conducted in different months each year to introduce an additional surprise element.*

10. ***FDHs overstaying in Hong Kong.*** FDHs are allowed to stay in Hong Kong for two years, or two weeks after premature termination of their employment contracts. According to the ImmD, the overstaying rate of FDHs was about 1% in 2008 and 2010. Audit's sample check revealed that many cases had an overstaying period of over one year. Audit also noted that many overstaying cases were detected during identity checks by police officers. There is a need to enhance the ImmD's computer systems to facilitate these checks. *Audit has recommended that the Director of Immigration should: (a) continue to closely monitor the situation of FDHs overstaying in Hong Kong to determine whether enforcement actions should be stepped up to address the problem; and (b) take prompt action to review the feasibility of enhancing the computer systems to facilitate monitoring and detecting overstaying FDHs.*

## **Investigation of bogus marriages**

11. ***Backlog of outstanding cases.*** To cope with the increase in suspected bogus marriage cases in recent years, more staff have been temporarily redeployed to the relevant investigation section. Notwithstanding this, the number of outstanding cases increased from 72 in 2006 to 3,454 in 2010. *Audit has recommended that the Director of Immigration should: (a) assess the long-term manpower requirements; and (b) take additional measures, including deploying more staff resources as appropriate, to clear the backlog of outstanding bogus marriage cases.*

12. **Investigation of cases.** It is important that the ImmD staff can learn lessons from unsuccessful prosecutions. Audit noted that in some cases, the lessons were verbally disseminated to the investigation teams. *Audit has recommended that the Director of Immigration should disseminate through formal channels (such as issuing departmental instructions and guidelines) important lessons learnt from unsuccessful prosecution cases.*

13. **Supervisory checks.** Audit's sample check revealed that the supervisory checks conducted on the work of investigation officers were not in full compliance with the laid-down requirements. *Audit has recommended that the Director of Immigration should take measures to ensure that supervisory checks are conducted on the staff investigation work in accordance with the laid-down requirements.*

### **Performance measurement**

14. **Performance indicators.** In the 2010-11 Controlling Officer's Report, in respect of the investigation activities of the Enforcement Division, the ImmD reported the numbers of investigations and operations conducted as performance indicators. There are no specific performance indicators to measure the productivity and effectiveness of the Enforcement Division. Moreover, the ImmD has not set any performance targets in respect of its enforcement activities. *Audit has recommended that the Director of Immigration should consider setting: (a) performance indicators to provide information about how efficiently and effectively the Enforcement Division has carried out the investigation activities; and (b) performance targets in respect of the investigation activities to help motivate performance and improve accountability.*

### **Response from the Administration**

15. The Administration agrees with the audit recommendations.

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