

Employees' compensation for injuries and fatalities

The Audit Commission ("Audit") conducted a review of the operation of the work of Labour Department ("LD") and the Employees Compensation Assistance Fund Board ("ECAFB") in protecting employees in cases of sustaining work injuries, fatalities or suffering from prescribed occupational diseases specified in the Employees' Compensation Ordinance (Cap. 282) ("ECO").

2. LD is responsible for administering ECO, which provides for the payment of employees' compensation in respect of injuries or deaths caused by accidents arising out of and in the course of employment, or prescribed occupational diseases. The Employees' Compensation Division ("ECD") of LD handles employees' compensation claims and assesses the compensation payable by employers. In addition, the Labour Inspection Division ("LID") of LD conducts inspections to workplaces to ensure that employers have taken out employees' compensation insurance to cover their liabilities both under ECO and common law.

3. Employees Compensation Assistance Fund ("ECAF") was established in 1991 under the Employees Compensation Assistance Ordinance (Cap. 365). It is administered by ECAFB. If an employee, or the eligible family member(s) in cases of fatalities, fails to receive from the employer employees' compensation under ECO and/or common law damages for which the employer is liable after exhausting legal and financially viable means of recovery, the employee or the eligible family member(s) may apply for assistance payment (in relation to the unpaid compensation) and/or relief payment (in relation to the unpaid damages) from ECAF. In the period from 1 July 1991 to 31 March 2014, payments of \$1,115 million had been made to 2 270 applicants.

4. The Committee noted the following findings from the Director of Audit's Report:

- as at 30 September 2014, 7 470 (5%) of the 148 490 employees' compensation claims (excluding fatal claims) received by ECD during the period from 1 September 2009 to 31 December 2013 were still not settled. Of the 7 470 outstanding claims, 1 776 (24%) awaited medical assessments for injured employees by the Employee's Compensation (Ordinary Assessment) Board with average waiting time ranging from 6 to 17 weeks;

- Audit's examination of 20 cases assisted by ECAFB revealed that the average time taken by ECAFB in processing an application was 5.7 months (ranging from 1.3 to 19.6 months) for assistance payment and 5.1 months (ranging from 0.1 to 21.1 months) for relief payment. ECAFB did not have a mechanism for periodic reporting of progress of ECAF applications by its Secretariat for it to monitor the progress of applications. The hiring of in-house legal staff and more extensive use of out-of-court settlement and mediation might help to settle cases more efficiently and could save legal costs;
- up to mid-December 2014, 127 039 (37%) of the 344 172 workplaces in LID's workplace database had not been inspected for over three to 10 years to ensure that employees were covered by employees' compensation insurance;
- according to the Operation Manual, Labour Inspectors of LID had to keep a close watch on new workplaces in their course of inspections and the workplace database would be updated once new workplaces were noted. Audit's visits to 39 workplaces in Causeway Bay revealed that eight of them had been in operation but had not been detected by Labour Inspectors for more than one year to 14 years; and
- from 2009 to 2013, the number of inspections reported in the Controlling Officer's Report included 393 203 inspections conducted by LID. However, 163 519 of which were conducted on removed, locked or vacant workplaces where no enforcement work had been carried out.

5. The Committee did not hold any public hearing on this subject. Instead, it asked for written responses regarding employers' compliance with and LD's enforcement of ECO, compensation levels payable to employees, cases of disputes between employers and employees on the employees' compensation claims, inspections strategy carried out by LID and measures to enhance the completeness of workplace database of LID. The replies from the **Commissioner for Labour** are in *Appendix 47*.

6. The Committee wishes to be kept informed of the progress made in implementing the various recommendations made by Audit.