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立法會議員楊岳橋辦公室

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保安事務委員會

**提交《2018年災難狀態條例草案》草擬本
供保安事務委員會討論**

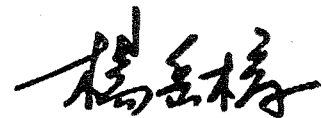
主席：

2018年9月16日，超強颱風山竹吹襲香港，樓宇遭吹毀、公共交通癱瘓，部份地區停水停電，市面滿目瘡痍。風災翌日，市民期望政府能宣佈停工停市，政府卻推搪說「沒有法律基礎」，連採取行政手段宣佈非緊急公務員停工也不願意，導致市民在樹木倒塌、鐵路停駛、垃圾沖上岸邊的情況下仍要上班，險象環生，更顯得政府置市民的安危不顧。

汲取了山竹的教訓，公民黨認為香港需要一個法律框架，訂明災難下的特殊措施，讓政府有例可循，不能輕易卸責。為此，公民黨起草了《2018年災難狀態條例草案》，隨信附上條例草案中英文本。

希望主席能盡快將本條例草案提上保安事務委員會的議程，諮詢保安事務委員會各位委員。肅此奉達，敬候示覆。順頌

公祺



立法會議員
楊岳橋

2018年10月4日

附件：《2018年災難狀態條例草案》中英文本

State of Disaster Bill 2018

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A BILL TO

Confer on the Chief Executive in Council power to declare a State of Disaster upon the occurrence of a major disaster; to provide for disaster response measures under a State of Disaster; amend the Employment Ordinance to regulate conditions of employment under a State of Disaster; and to amend the Securities and Futures Ordinance to necessitate mandatory suspension of services of recognized exchange companies under a State of Disaster.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the State of Disaster Ordinance 2018.

2. Interpretation

In this Ordinance—

Disaster Response Committee (災難應變委員會) means a committee established under section 6, this Ordinance;

Emergency responders (緊急服務) means any of the Government departments set out in section 1 of Schedule 1;

Heads of emergency responders (緊急服務部門首長) means persons specified in section 2 of Schedule 1;

Major disaster (重大災難) means a natural catastrophe or an accident which—

- (a) imperils life;
- (b) endangers property;
- (c) causes extensive damage in Hong Kong; and
- (d) brings about a need for disaster relief and post-disaster management operations;

State of Disaster (災難狀態) means a State of Disaster declared by the Chief Executive in Council under section 3, this Ordinance.

Part 2

Declaration of State of Disaster

3. Declaration of State of Disaster

The Chief Executive in Council may declare a State of Disaster before, during, or after the occurrence of a major disaster.

4. Lifting of State of Disaster

The Chief Executive in Council may lift a State of Disaster on the recommendation of the Disaster Response Committee.

5. Form and notice of the declaration and lifting thereof

- (1) Upon declaring a State of Disaster, the Chief Executive in Council shall publish in the Gazette notice such declaration.
 - (2) Upon lifting of a State of Disaster, the Chief Executive in Council shall publish in the Gazette notice such lifting.
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Part 3

Disaster Response Committee

6. Establishment of the Disaster Response Committee

- (1) Immediately upon his declaration of a State of Disaster, the Chief Executive shall appoint a Disaster Response Committee to administer disaster relief operations.
- (2) Members of the Disaster Response Committee shall include—
 - (a) Chief Executive;
 - (b) Chief Secretary for Administration;
 - (c) Secretary for Security;
 - (d) Secretary for Transport and Housing;
 - (e) Director of Fire Services;
 - (f) Commissioner of Police;
 - (g) Controller of Government Flying Service;
 - (h) Commissioner of Civil Aid Service; and
 - (i) any persons whose presence the Chief Executive deems necessary.
- (3) The duties of the Disaster Response Committee shall be to—
 - (a) make appraisals of the types of relief needed;

- (b) coordinate the administration of relief;
- (c) make plans for recovery.
- (4) The Chief Executive shall preside at Disaster Response Committee meetings.

7. Disbanding of the Disaster Response Committee

- (1) The Chief Executive shall disband the Disaster Response Committee when all of the following conditions are satisfied—
 - (a) the State of Disaster is lifted;
 - (b) the Chief Executive deems the disbanding of the Disaster Response Committee appropriate.
-

Part 4

Operation of Government department or court

8. Operation of emergency responders

- (1) Notwithstanding section 11(1), under a State of Disaster, emergency responders' duties include—
 - (a) report for duty, provide services and open and operate facilities as usual; and
 - (b) complete any task the respective heads of emergency responders deem necessary.

9. Power to amend Schedule 1

The Chief Executive in Council may, by order published in the Gazette, amend Schedule 1.

10. Operation of Government department or court

- (1) Subject to subsection (2) and (3), all public offices and Government departments, excluding emergency responders, shall cease to provide services or operate facilities, offices and works under a State of Disaster.
- (2) Anything in this Ordinance or any other law to the contrary notwithstanding, the head of any Government department may, if in his opinion the interests of the public service or the convenience of

the public so require, open and operate any of the facilities, offices and works thereof under a State of Disaster, and require any of the persons serving in his department to perform any of their duties and functions under a State of Disaster.

- (3) Anything in this Ordinance or any other law to the contrary notwithstanding, the Chief Justice may direct that any court or any of the offices of any court shall be open under a State of Disaster for the transaction of such business as the Chief Justice may think fit and may require any of the persons serving in any such court or office to perform any of their duties and functions under a State of Disaster.
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Part 5

Amendments to the Employment Ordinance

11. Section 2 amended (Interpretation)

Section 2—

Add in alphabetical order

“*State of Disaster* (災難狀態) means a State of Disaster declared by the Chief Executive in Council under section 3 of the State of Disaster Ordinance (Cap.);”.

12. Part IXAA added

After Part IX—

Add

“

Part IXAA

State of Disaster

43AA. Absence from work under a State of Disaster

An employee is entitled to absence from work on the day or days on which a State of Disaster is in effect as the Chief Executive in Council so declares.

43AB. Offences

An employer shall be guilty of an offence and shall be liable on conviction to a fine at level 5 if he does the following—

- (a) impose any penalty whatsoever as to an employee's wages, allowances or any remuneration other than wages as a result of the employee's absence from work under a State of Disaster;
 - (b) dismiss an employee on the basis of the employee's absence from work under a State of Disaster;
 - (c) count a day or days under a State of Disaster on which an employee is absent from work as a day or days of annual leave or any holiday."
-

Part 6

Amendments to the Employees' Compensation Ordinance

13. Section 5 amended (Employer's liability for compensation for death or incapacity resulting from accident)

Section 5(4)(f), after “a gale warning,”—

Repeal

“or of a rainstorm warning,”

Substitute

“a rainstorm warning, or a State of Disaster,”

After Section 5(4)(f)(ii)(B)—

Add

“(C) *State of Disaster* (災難狀態) means a State of Disaster declared by the Chief Executive in Council under section 3 of the State of Disaster Ordinance (Cap.);”

Part 7

Amendments to the Securities and Futures Ordinance

14. Section 29A added

After section 29—

Add

“29A. Direction to cease to provide facilities or services under a State of Disaster

- (1) On the occasion when the Chief Executive in Council has declared a State of Disaster, the Commission shall, by notice in writing served on all recognized exchange companies, direct all recognized exchange companies to cease to provide or operate any facilities and cease to provide any services, until the State of Disaster is lifted.
 - (2) A notice served under subsection (1) shall take effect immediately.
 - (3) For the purpose of this section, *State of Disaster* (災難狀態) means a State of Disaster declared by the Chief Executive in Council under section 3 of the State of Disaster Ordinance (Cap.).”.
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Schedule 1

Definition of Emergency Responders

1. Definition of emergency responders

In this Ordinance, *emergency responders* (緊急服務) refers to—

- (a) Fire Services;
- (b) Police Force;
- (c) Marine Department;
- (d) Civil Aviation Department;
- (e) Transport Department;
- (f) Government Flying Service.

2. Definition of head of Emergency responders

In this Ordinance, *heads of Emergency Responders* (緊急服務部門首長) refers to—

- (a) Director of Fire Services;
- (b) Commissioner of Police Force;
- (c) Director of Marine Department;
- (d) Director-General of Civil Aviation;
- (e) Commissioner for Transport;
- (f) Controller of Government Flying Service.

Explanatory Memorandum

The objects of this bill are to confer on the Chief Executive power to declare a State of Disaster upon the occurrence of a major disaster, to provide for disaster response measures under a State of Disaster, to amend the Employment Ordinance (*Cap. 57*) to regulate conditions of employment under a State of Disaster, and to amend the Securities and Futures Ordinance (*Cap. 571*) to necessitate mandatory suspension of services of recognized exchange companies under a State of Disaster.

2. The Bill has 7 parts with 13 clauses, and contains 1 Schedule.

Part 1—Preliminary

3. Clause 1 sets out the short title.
4. Clause 2 contains definitions that are necessary for the interpretation of the Bill, including the expressions *Disaster Response Committee*, *emergency responders*, *heads of emergency responders*, *major disaster*, and *State of Disaster*.

Part 2—Declaration of State of Disaster

5. Clause 3 and 4 confers on the Chief Executive in Council power to declare a State of Disaster upon the occurrence

of a major disaster, and lifting thereof under the recommendation of the Disaster Response Committee.

6. Clause 5 requires the Chief Executive in Council to publish in the Gazette notice the declaration of a State of Disaster, and lifting thereof.

Part 3—Disaster Response Committee

7. Clause 6 provides for the establishment of the Disaster Response Committee under a State of Disaster, the membership of the Committee, and the duties of the Committee.
8. Clause 7 provides for the conditions under which the Disaster Response Committee shall be disbanded.

Part 4—Operation of Government department or court

9. Clause 8 provides for the duties of emergency responders under a State of Disaster, including to operate as usual, and to complete any task the respective heads of emergency responders deem necessary.
10. Clause 9 confers on the Chief Executive in Council power to amend the definition of *emergency responders* and *heads of emergency responders* in Schedule 1 by order published in the Gazette.
11. Clause 10 necessitates mandatory suspension of services of all public offices and Government departments excluding

emergency responders under a State of Disaster, unless the head of any Government department or the Chief Justice requires otherwise.

Part 5—Amendments to the Employment Ordinance

12. Clause 11 adds the definition of *State of Disaster* to section 2 of the Employment Ordinance (*Cap. 57*).
13. Clause 12 adds Part IXAA to the Employment Ordinance (*Cap. 57*) to establish an employee's entitlement to absence from work under a State of Disaster, which an employer's failure to respect such entitlement shall constitute an offence.

Part 6—Amendments to the Employees' Compensation Ordinance

14. Clause 13 amends section 5 of the Employees' Compensation Ordinance to make an employer liable to pay compensation should his employee be victim to an accident which arises from the employee's commute to work or from work within the duration of a state of disaster.

Part 7—Amendments to the Securities and Futures Ordinance

15. Clause 14 adds section 29A to the Securities and Futures Ordinance (*Cap. 571*) to necessitate mandatory suspension of services of all recognized exchange companies under a State of Disaster.

Schedules

16. Schedule 1 sets out the definition of *emergency responders* and *heads of emergency responders*.

Explanatory Note
State of Disaster Bill 2018

1. On 16 September 2018, tropical cyclone Mangkhut ravaged Hong Kong. The super typhoon brought devastation to the city as trees toppled, windows blown out, and trash washed ashore. While the gale warning was lifted the following day, with buildings damaged, public transportation paralyzed, and utilities shut down in some areas, the city was in a state of debilitation. The government announced the suspension of schools for the day after the typhoon to ensure the safety of school age children, but took no action in ensuring the safety of the rest of the population. Chaos ensued as workers tried to commute to work. The Government's failure to handle the situation in an appropriate manner has become a major source of social discontent.
2. In the aftermath of the typhoon, Chief Executive Carrie Lam Cheng Yuet-ngor noted that there was "no legal grounds" for the Government to declare a day off in a post-disaster situation. While in fact, the Government could have taken administrative measures to declare a day off for non-emergency services in the civil service, and suspend services of the city's two recognized exchange companies. Mangkhut exposed Hong Kong's lack of a mechanism for disaster management, which inspired the Civic Party to draft this draft Bill.
3. Since the Government has refused to manage the disaster by administrative measures, the Civic Party sees a need for a legal framework. The draft Bill confers on the Chief Executive in Council power to declare a State of Disaster before, during, or after the occurrence of a major disaster in Hong Kong. After a State of Disaster is declared, the Chief Executive must appoint a Disaster Response Committee and preside at its meetings. This ensures that the Chief Executive is responsible.
4. More importantly, the draft Bill lays out employment protection under a State of Disaster. The draft Bill stipulates that under a State of Disaster, all of the civil service ceases to provide services or operate facilities, except for emergency responders and any department which its Head of the department requires otherwise. To extend employment protection to employees in the private sector, the draft Bill amends the Employment Ordinance (Cap. 57) to establish an employee's entitlement to absence from work without being subjected to a penalty as to his wages or dismissal on the basis of his absence. In addition, the day or days on which an employee is absent from work under a State of Disaster shall not be counted as a day or days of annual leave or holiday. To extend employment protection to employees in the private sector, the draft Bill amends the Employees' Compensation Ordinance (Cap. 282) to make an employer liable to pay compensation should his employee be victim to an accident which arises from the employee's commute to work or from work within the duration of a state of disaster.
5. The draft Bill also amends the Securities and Futures Ordinance (Cap. 571), which provides for the operation of recognized exchange companies in Hong Kong. By adding section 29A to the Ordinance, the draft Bill necessitates mandatory suspension of services and operation of facilities under a State of Disaster as the Chief Executive in Council so declares.
6. In drafting this draft Bill, the Civic Party has referenced to similar enactments in other Common Law jurisdictions, including the United Kingdom, Australia, New Zealand, and

the United States. Their wisdom in managing disasters informed many of the decisions made during the drafting process. This is one of the areas the Civic Party believes Hong Kong should be on par with international standards for the benefit of the citizens.

4 October 2018