

**Explanatory Note**  
**State of Disaster Bill**

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 under a State of Disaster without being subjected to a penalty as to his/her wages or dismissal on the basis of his/her 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. Also, if an employee works under a State of Disaster, his/her employer must pay him or her wages no less than what is normally payable. The draft Bill also amends the Employees' Compensation Ordinance (Cap. 282), so an employer will be liable should his/her 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.

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# State of Disaster Bill

## Contents

Clause		Page
<b>Part 1</b>		
<b>Preliminary</b>		
1.	Short title .....	1
2.	Interpretation.....	1
<b>Part 2</b>		
<b>Declaration of State of Disaster</b>		
3.	Declaration of State of Disaster .....	3
4.	Lifting of State of Disaster .....	3
5.	Form and notice of the declaration and lifting of such declaration.....	3
<b>Part 3</b>		
<b>Disaster Response Committee</b>		
6.	Establishment of the Disaster Response Committee .....	4
7.	Disbanding of the Disaster Response Committee .....	5
<b>Part 4</b>		
<b>Operation of Government Department or Court</b>		
8.	Operation of emergency responders .....	6
9.	Power to amend Schedule.....	6

---

Clause	Page
10.	Operation of Government department or court ..... 6

**Part 5**

**Amendments to Employment Ordinance**

11.	Employment Ordinance amended..... 8
12.	Section 2 amended (interpretation)..... 8
13.	Part IXAA added ..... 8

**Part IXAA**

**State of Disaster**

43AA.	Absence from work under a State of Disaster ..... 8
43AB.	Offences..... 8

**Part 6**

**Amendments to Employees' Compensation Ordinance**

14.	Employees' Compensation Ordinance amended..... 10
15.	Section 5 amended (employer's liability for compensation for death or incapacity resulting from accident)..... 10

**Part 7**

**Amendment to Securities and Futures Ordinance**

16.	Securities and Futures Ordinance amended..... 11
17.	Section 29A added..... 11
29A.	Direction to cease to provide facilities or services under a State of Disaster ..... 11

## State of Disaster Bill

iii

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Clause	Page
Schedule      Definitions Relating to Emergency Responders .....	12

# 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; to amend the Employment Ordinance and the Employees' Compensation 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.

**2. Interpretation**

In this Ordinance—

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

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

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

***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.

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## **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 upon the recommendation of the Disaster Response Committee.

**5. Form and notice of the declaration and lifting of such declaration**

- (1) Upon declaring a State of Disaster, the Chief Executive in Council must publish in the Gazette notice such declaration.
  - (2) Upon lifting of a State of Disaster, the Chief Executive in Council must 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 the declaration of a State of Disaster, the Chief Executive must appoint a Disaster Response Committee to administer disaster relief operations.
- (2) Members of the Disaster Response Committee 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 include—
  - (a) making appraisals of the types of relief needed;
  - (b) coordinating the administration of relief; and
  - (c) making plans for recovery.
- (4) The Chief Executive is to preside at Disaster Response Committee meetings.

**7. Disbanding of the Disaster Response Committee**

The Chief Executive may only 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.

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## **Part 4**

### **Operation of Government Department or Court**

#### **8. Operation of emergency responders**

Despite section 10, under a State of Disaster, the functions of emergency responders include—

- (a) providing services and opening and operating facilities as usual; and
- (b) completing any task the respective heads of emergency responders deem necessary.

#### **9. Power to amend Schedule**

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

#### **10. Operation of Government department or court**

- (1) Subject to subsections (2) and (3), all public offices and Government departments, excluding emergency responders, must cease to provide services or operate facilities, offices and works under a State of Disaster.
- (2) Despite anything in this Ordinance or any other law to the contrary, the head of any Government department may, if in his or her opinion the interests of the public service or the convenience of the public so require, arrange to open and operate any of the facilities, offices or works of his or her department under a State of Disaster, and require any of the persons serving in his or her department to perform any of their duties and functions under a State of Disaster.
- (3) Despite anything in this Ordinance or any other law to the contrary, the Chief Justice may direct that any court or any of

the offices of any court is to operate 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 Employment Ordinance

#### 11. Employment Ordinance amended

The Employment Ordinance (Cap. 57) is amended as set out in this Part.

#### 12. Section 2 amended (interpretation)

Section 2(1)—

##### 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 ( of 2019);”.

#### 13. 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

Any employer who—

- (a) imposes 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) dismisses an employee on the basis of the employee's absence from work under a State of Disaster;
  - (c) counts 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; or
  - (d) pays an employee who works under a State of Disaster wages, allowances or any remuneration other than wages less than what is normally payable to the employee,
- commits an offence and is liable on conviction to a fine at level 5.”.
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## Part 6

### Amendments to Employees' Compensation Ordinance

#### 14. Employees' Compensation Ordinance amended

The Employees' Compensation Ordinance (Cap. 282) is amended as set out in this Part.

#### 15. Section 5 amended (employer's liability for compensation for death or incapacity resulting from accident)

(1) Section 5(4)(f)—

##### **Repeal**

“or of a rainstorm warning,”

##### **Substitute**

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

(2) 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 ( of 2019);”.

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## Part 7

### Amendment to Securities and Futures Ordinance

#### 16. Securities and Futures Ordinance amended

The Securities and Futures Ordinance (Cap. 571) is amended as set out in this Part.

#### 17. 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 must, 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) is to 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 ( of 2019).”.

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## Schedule

[ss. 2 & 9]

### Definitions Relating to Emergency Responders

#### 1. Definition of *emergency responders*

In this Ordinance—

***emergency responders*** (緊急服務) means—

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

#### 2. Definition of *heads of emergency responders*

In this Ordinance—

***heads of emergency responders*** (緊急服務部門首長) means—

- (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; or
  - (f) Controller of Government Flying Service.
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### **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) and the Employees' Compensation Ordinance (Cap. 282) 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 17 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. Clauses 3 and 4 confer on the Chief Executive in Council power to declare a State of Disaster upon the occurrence of a major disaster, and lifting of such declaration 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 of such declaration.

### **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 may be disbanded.

### **Part 4—Operation of Government Department or Court**

9. Clause 8 provides for the functions of emergency responders under a State of Disaster, including to operate and to provide services 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 definitions of *emergency responders* and *heads of emergency responders* in the Schedule 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 Employment Ordinance**

12. Clause 12 adds the definition of *State of Disaster* to section 2(1) of the Employment Ordinance (Cap. 57).
13. Clause 13 adds Part IXAA to the Employment Ordinance (Cap. 57) to establish an employee's entitlement to absence from work under a State of Disaster and entitlement to wages, allowances and any remuneration other than wages no less than what is normally payable to him or her should he or she work under a State of Disaster, and to provide that an employer's failure to respect such entitlements constitutes an offence.

**Part 6—Amendments to Employees’ Compensation Ordinance**

14. Clause 15 amends section 5 of the Employees’ Compensation Ordinance (Cap. 282) to make an employer liable to pay compensation should his or her 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—Amendment to Securities and Futures Ordinance**

15. Clause 17 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.

**Schedule**

16. The Schedule sets out the definitions of *emergency responders* and *heads of emergency responders*.