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**Bills Committee on
Employees' Compensation (Amendment) Bill 2021**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information and summarizes the deliberations of the Panel on Manpower ("the Panel") on the Administration's legislative proposal to extend the employees' compensation ("EC") protection to employees commuting to or from work under "extreme conditions".

Background

2. Under section 5 of the Employees' Compensation Ordinance (Cap. 282) ("ECO"), if in any employment, personal injury by accident arising out of and in the course of the employment is caused to an employee, his employer shall be liable to pay compensation in accordance with ECO.

3. Under section 5(4)(f) of ECO, an accident to an employee shall be deemed to arise out of and in the course of the employee's employment if it happens to an employee when, within the duration of a gale warning (i.e. a Typhoon Warning Signal No. 8 ("T8") or above is in force) or of a rainstorm warning (i.e. a Red or Black Rainstorm Warning is in force), the employee is travelling from his place of residence to his place of work by a direct route within a period of four hours before the time of commencement of his working hours for that day, or from his place of work to his place of residence within a period of four hours after the time of cessation of his working hours for that day.

4. Following the experience with Super Typhoon Mangkhut in 2018, the Administration has conducted a review of the Government's mechanism of handling future super typhoons, and formulated measures to address work arrangements under "extreme conditions". In case of super typhoon (or other natural disasters of a substantial scale), a Steering Committee for Handling Super Typhoons (or other natural disasters of a substantial scale) ("Steering

Committee") would be set up under the chairmanship of the Chief Secretary for Administration ("CS") to oversee the work and planning throughout the preparedness, response and recovery stages. One of the new measures is that, if the situation warrants, CS, having regard to the views of the Steering Committee, may make a territory-wide "extreme conditions" announcement after cancellation of T8. The public (apart from the essential staff who have an agreement with their employers to be on duty when the "extreme conditions" are in force) are advised to stay in the places they are currently in or safe places for two hours after cancellation of T8. During the first two-hour period when the "extreme conditions" are in force, CS and the Steering Committee will continue to review the situation and advise the public again by the end of the two-hour period whether the "extreme conditions" will be extended or cancelled. Apart from the situation of super typhoons, the Government may issue "extreme conditions" announcement depending on the actual circumstances of other natural disasters of a substantial scale.

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5. The Bill mainly seeks to amend ECO to extend the coverage of EC to the situation where an employee sustains an injury or dies as a result of an accident when commuting to or from work during the period of "extreme conditions" that arise from a super typhoon or other natural disaster of a substantial scale.

Deliberations of the Panel

6. The Panel was consulted on the legislative proposal on 7 January 2021. Members in general welcomed the Administration's proposal to amend ECO to extend its coverage to employees commuting to or from work under "extreme conditions", affording the relevant employees with EC protection on par with that under T8 or above or when the Red or Black Rainstorm Warning is in force as provided under the existing ECO. The major views and concerns expressed by members of the Panel are summarized in the ensuing paragraphs.

Impact on the premium level of employees' compensation insurance

7. While acknowledging the benefits to be brought about by the legislative proposal to employees, some members were concerned about the possible impact on the premium level of EC insurance that might result from the legislative proposal. These members also enquired whether the Labour Advisory Board ("LAB") had raised similar concern on the financial impact to employers, in particular the small- and medium-sized enterprises.

8. The Administration advised that making reference to the experience of extending the EC protection to employees commuting to or from work under T8 or above or the Red or Black Rainstorm Warning, and considering the rare nature of "extreme conditions", it was expected that the resultant increase in premium for EC insurance should not be significant. The Administration further advised that it was understood that LAB members from the employer and employee sides had candidly exchanged their views on the legislative proposal while all members present agreed in general to the proposal.

Work arrangements under "extreme conditions"

9. Some members expressed concern that there were reported cases of wage deduction, being withheld good attendance bonuses and leave deduction if employees could not resume work in time due to road and traffic conditions after the cancellation of T8, despite the Labour Department's appeal to the employers to exercise greater flexibility for resumption of work after typhoon. Given that the work arrangements under "extreme conditions" stipulated in the revised "Code of Practice in Times of Typhoons and Rainstorms" were not legal binding, these members considered that the Administration should formulate specific measures to further improve the work arrangements under "extreme conditions" so as to better protect employees' rights and benefits after the coming into force of the legislative proposal.

10. The Administration advised that following the experience in handling Super Typhoon Mangkhut in 2018, the Government had conducted a review of the handling mechanism for future super typhoons (or other natural disasters of a substantial scale), and formulated measures to address work arrangements under "extreme conditions". Having considered that employees commuting to or from work during "extreme conditions" could be subject to more dangerous circumstances, the Government therefore put forth the proposed amendment to ECO. The Government would continue to consider how to further improve protection of employees' rights and benefits as appropriate.

Relevant papers

11. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Appendix

Relevant papers on the extension of the coverage of the Employees' Compensation Ordinance

Committee	Date of meeting	Paper
Panel on Manpower	7.1.2021 (Item VI)	Agenda

Council Business Division 2
Legislative Council Secretariat
11 March 2021