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Paper for the House Committee meeting on 16 April 2021

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

Purpose

This paper reports on the deliberations of the Bills Committee on Employees' Compensation (Amendment) Bill 2021 ("the Bill").

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 Tropical Cyclone 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 an inter-departmental review of the handling mechanism to improve Hong Kong's preparedness, emergency response and

recovery efforts for future super typhoons¹ (or other natural disasters of a substantial scale). One of the new measures is that in the event of a super typhoon (or other natural disaster of a substantial scale) and if special circumstances and needs warrant, an inter-departmental Steering Committee for Handling Super Typhoons (or other natural disasters of a substantial scale) ("Steering Committee") will be set up under the chairmanship of the Chief Secretary for Administration ("CS") to oversee the Government's work and planning throughout the preparedness, response and recovery stages. CS may, having regard to the views of the Steering Committee and if the situation warrants, make a territory-wide extreme conditions announcement to provide for extended hours for resumption of work. In the case of a super typhoon, an announcement will be made before the Hong Kong Observatory ("HKO") replaces T8 with No. 3 Signal. The public (apart from the essential staff who have an agreement with their employers to be on duty when the extreme conditions exist) are advised to stay in the places they are currently in or safe places for the period within which extreme conditions exist.

The Bill

5. The Bill was published in the Gazette on 19 February 2021 and received its First Reading at the Council meeting on 24 February 2021. The Bill seeks to amend ECO to provide that an accident that happens to an employee when the employee is travelling between the employee's place of residence and place of work within the period specified in an extreme conditions announcement is deemed to arise out of and in the course of the employee's employment, as in the case where the employee so travels within the duration of a gale warning or rainstorm warning (as provided in ECO).

The Bills Committee

6. At the House Committee meeting on 26 February 2021, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon LUK Chung-hung, the Bills Committee has held one meeting with the Administration. The membership of the Bills Committee is in the **Appendix**.

¹ "Super typhoon" refers to a typhoon that has a maximum sustained wind speed of 185 km/h or above near its centre.

Deliberations of the Bills Committee

Mechanism for making an extreme conditions announcement

7. Under clause 3 of the Bill, it is proposed that section 5(4)(f) of ECO be amended to extend employees' compensation protection to the situation where an employee sustains an injury or dies as a result of an accident when the employee is travelling between the employee's place of residence and his place of work within the period during which extreme conditions exist as specified in an extreme conditions announcement.

8. In view of the mass devastation caused by Super Typhoon Mangkhut in 2018 and the difficulties for members of the public in resuming work due to the serious disruption of public transport services, members welcome and support the proposal to accord employees with better employees' compensation protection when they need to travel to or from work during the period of extreme conditions. Members have enquired about how to activate the mechanism of the Steering Committee and the considerations to be taken into account by CS in making an extreme conditions announcement.

9. The Administration has advised that the Steering Committee, chaired by CS, will comprise relevant Principal Officials as members and be supported by relevant bureaux and departments. The activation of the Steering Committee would not be a routine protocol but to be decided on a case-by-case basis by CS. In the event of a super typhoon (or other natural disaster of a substantial scale), HKO will discuss with the Security Bureau ("SB") the potential impact of the super typhoon/natural disaster on Hong Kong for SB's reporting to CS as necessary. Taking into account SB's advice and the actual circumstances, CS will consider if there is a need to form a Steering Committee. Factors to be taken into account include the anticipated strength and the predictability of the super typhoon, the duration that Hong Kong will likely be affected, the damage and disruption that it will likely cause to Hong Kong, and the anticipated time needed for recovery work.

10. The Administration has further advised that in the case where a super typhoon (or other natural disaster of a substantial scale) seriously affects the working public to resume work effectively,² CS may, having regard to the

² Examples of scenarios that may seriously affect the working public to resume work effectively or bring safety concern for a prolonged period include: large-scale power outage, extensive fallen windows from high-rises leading to dangerous streetscape, major landslides, extensive flooding, widespread serious obstruction of public transport services, etc.

views of the Steering Committee and if the situation warrants, make a territory-wide extreme conditions announcement to provide for extended hours for resumption of work. CS will specify in the announcement a period within which extreme conditions exist. In the case of a super typhoon, an announcement will be made before HKO replaces T8 with No. 3 Signal. In considering whether extreme conditions should be announced, the Steering Committee will consider factors including the strength and impact of the super typhoon/natural disaster, multi-hazard situations arising from the super typhoon/natural disaster (e.g. storm surge and heavy rain), and other scenarios that, depending on the degree of disruption and the scale of it, should seriously and for a prolonged period affect the working public to resume work effectively. During the first two-hour period when the extreme conditions exist, CS and the Steering Committee will continue to review the situation and the public will be advised again by the end of the two-hour period whether the extreme conditions will be extended.

Impact on the premiums of employees' compensation insurance

11. Some members have expressed concern that the proposal of extending the coverage of employees' compensation under section 5 of ECO may exert certain upward pressure on the employees' compensation claim costs to be borne by employers, which may in turn lead to increase in the premiums of employees' compensation insurance. The Administration has advised that it has consulted the insurance sector in this regard, but the Accident Insurance Association of the Hong Kong Federation of Insurers considers not in the position to advise on the possible impact of the legislative proposal on the premium of employees' compensation insurance in view of the Competition Ordinance (Cap. 619).

12. The Administration has further advised that there were 31 days in which T8 or above or the Red or Black Rainstorm Warning was issued in the past four years (January 2017 to December 2020), of which T8 or above was issued on nine occasions, and no extreme conditions announcement was made since its introduction in 2019. Among the 170 reported cases of employees claiming compensation for injuries happened while travelling to and from the places of work within the duration of a gale warning or of a rainstorm warning in the past four years, accounting for less than 0.1% of the total cases of work injuries, 145 cases were settled as at the end of December 2020. The number of working days lost and the amount of compensation for these cases were similar to those of work injuries of other nature. Making reference to the experience of extending the employees' compensation 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, the Administration expects that the resultant increase in premium for employees' compensation insurance will be fairly nominal. Mr CHAN Kin-por has also informed members that

based on his understanding from the insurance sector, the impact of the proposal on employees' compensation insurance premium should not be significant, given that the extreme conditions announcement will unlikely be frequent and the actual number of employees to be required to travel to and from work under extreme conditions will not be many.

13. With respect to some members' concern about employees' compensation coverage for injuries or death caused by accidents when employees were travelling to and from work under different scenarios, the Administration has advised that the employees' compensation regime under ECO follows the "no-fault" compensation principle, whereby compensation is payable by the employer regardless of whether the work injury or resultant death is due to the employee's fault. Under existing ECO, an accident is deemed to arise out of and in the course of employment if an employee sustained an injury or died as a result of an accident when T8 or above or a Red or Black Rainstorm Warning was in force, while 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. Under these circumstances, the employer is liable to pay compensation under ECO. Upon the coming into operation of the Amendment Ordinance, the above employees' compensation protection will be extended to the situation where an employee sustains an injury or dies as a result of an accident when the employee is travelling between his place of residence and place of work within the period during which extreme conditions exist as specified in an extreme conditions announcement.

Work arrangements under extreme conditions

14. Some members have expressed concern that there are reported cases of withholding or deduction of wage, good attendance bonus and leave of those employees who cannot resume work in time due to the serious disruption of public transport services caused by adverse weather conditions, despite the Labour Department ("LD")'s appeal to the employers to exercise greater flexibility for resumption of work in such circumstances. These members have called on the Administration to draw up specific measures to better protect employees' rights and benefits under extreme conditions.

15. The Administration has advised that following the experience in handling Super Typhoon Mangkhut in 2018, the Government has 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. In connection with the above review outcomes and measures, LD has revised the content of the "Code of Practice in times of

Typhoons and Rainstorms" ("CoP") in 2019 to provide relevant guidelines to employers and employees on the work and resumption of work arrangements in the event of the Government issuing an extreme conditions announcement. Employers are advised to draw up in advance reasonable and practical work arrangements in times of typhoons, rainstorm warnings and extreme conditions with their employees.

16. Some members have cast doubt about the effectiveness of CoP as its nature is not mandatory. Mr LUK Chung-hung has suggested that the Administration should consider legislating for suspension of work during natural disasters and emergency situations. Given the diversity in nature and requirements of different jobs in various trades and industries, some members, however, consider that a flexible approach should be adopted in drawing up the work arrangements under extreme conditions between employers and employees. Members have called on the Administration to step up its publicity efforts to raise the public's awareness and better understanding of the revised CoP.

17. The Administration has advised that employees' rights and benefits are protected under the Employment Ordinance (Cap. 57). Employers should adopt a sympathetic and flexible approach and formulate prior work arrangements under adverse weather conditions in consultation with their employees. Apart from strengthening its publicity work, LD will provide conciliation service for both employers and employees in case of any disputes over the work arrangements. LD will continue to consider how to further improve protection of employees' rights and benefits as appropriate.

Commencement of the Bill

18. Members note that the Bill, if passed, would come into operation on a date to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette. To allow sufficient time for the stakeholders to make necessary arrangements in respect of employees' compensation insurance and scrutiny of the Commencement Notice by the Legislative Council, which will be a piece of subsidiary legislation subject to negative vetting, the Bill, if passed, is intended to come into operation before the coming typhoon season, i.e. by end of June or early July 2021.

Resumption of Second Reading debate

19. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 28 April 2021. The Administration and the Bills Committee will not propose any amendment to the Bill.

Advice sought

20. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
14 April 2021

Bills Committee on Employees' Compensation (Amendment) Bill 2021

Membership list

Chairman Hon LUK Chung-hung, JP

Members Hon Jeffrey LAM Kin-fung, GBS, JP
Hon CHAN Kin-por, GBS, JP
Hon YIU Si-wing, BBS
Hon POON Siu-ping, BBS, MH
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Jimmy NG Wing-ka, BBS, JP
Hon SHIU Ka-fai, JP
Dr Hon CHENG Chung-tai
Hon Vincent CHENG Wing-shun, MH, JP

(Total : 10 members)

Clerk Miss Betty MA

Legal adviser Mr Alvin CHUI