

TEPCO FUKUSHIMA DAICHI ACCIDENT

AN OVERVIEW OF THE JAPANESE NUCLEAR LIABILITY REGIME & ITS IMPLEMENTATION

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- NUCLEAR LIABILITY REGIMES –

- **Internationally accepted nuclear liability principles**
 - 1960 Paris Convention on Nuclear Third Party Liability (under OECD auspices)
 - 1963 Vienna Convention on Civil Liability for Nuclear Damage (under IAEA auspices)
 - 1997 Convention on Supplementary Compensation for Nuclear Damage (not yet in force)
- **Japan NOT a party to an international nuclear liability convention but has provided the principles in its nuclear liability regime**
 - Civil Code
 - 1961 Act on Compensation for Nuclear Damage (Compensation Act)
 - 1961 Act on Indemnity Agreements for Compensation of Nuclear Damage (Indemnity Act)

- MAIN NUCLEAR LIABILITY PRINCIPLES – As transposed in the Japanese legislation

- Operator's Strict Liability:* Operator held liable **regardless of fault**
- Operator's Exclusive Liability:* Operator is the **only person liable** for nuclear damage
- Liability Amount:* **Unlimited liability**
- Financial Security:* Operator must
- have **financial security (usually insurance)**
 - sign a **Governmental Indemnity Agreement** for non-insurable risks (e.g. earthquakes, tsunami, eruption)
- each for up to **¥ 120 billion** per site for NPPs
(approx. € 930 million / USD 1.2 billion)
- Limited Liability in Time:*
- Actions must be brought within **3 years** from the date the victim has knowledge of both the person liable and the damage
 - Right of action fully extinguished **20 years** following the date of the tort

- TEPCO FUKUSHIMA Daiichi NPP ACCIDENT - The Facts

- No casualties (up to date) directly linked to the accident but **160 000 evacuees** due to radioactive release
- **National and local economy greatly affected** by evacuation instructions and restrictions on business activities, e.g.
 - Navigation danger zones
 - Shipping / Planting restriction orders
 - Rumour
- **Main damages:**
 - Mental anguish
 - Economic loss
 - for individual, e.g. incapacity to work, property loss, expenses due to the evacuation, medical examination expenses
 - for business, e.g., additional expenses, radioactivity checks

- TEPCO SOLELY LIABLE - Practical consequences

- **Exoneration in case of Grave Natural Disaster of an Exceptional Character provided under Compensation Act NOT APPLICABLE**
 - Intensity at the site = 6+ → not a « huge natural disaster beyond all expectations of humankind »
 - Event not covered by private insurance → ¥ 120 billion Governmental Indemnity fully drawn
- **TEPCO solely liable for handling approx. 2 million applications as of 14 June 2013**
 - 91% from individuals
 - 9% from corporations and sole proprietors
- **Compensation procedure**
 - Required simplification, e.g. process, application forms
 - Increased staff and additional compensation center closer to victims

- TYPES OF “NUCLEAR DAMAGE” -

The necessity of further defining the damages

- **General definition in the Compensation Act requires “reasonable causation”**
- **Problem to distinguish from damages due to the earthquake/tsunami**
- **Guidelines to determine the scope and the compensation amounts**
 - **Dispute Reconciliation Committee for Nuclear Damage Compensation** issued several non-binding guidelines between April 2011 and March 2012
 - Guidelines considered as authoritative opinions expressed by neutral experts and may be used in trials
 - Two specific damages:
 - Voluntary evacuation
 - Rumour-related damages

- VICTIMS RECOURSE -

- Victims may, individually or as part of a group, file a claim
 - directly to the operator
 - before the civil courts
 - before the Reconciliation Committee / **Nuclear Damage Compensation Dispute Resolution Center** established in August 2011

- Out of court solutions are preferred

- Concern raised by mediation with regard to the 3-year statute of limitations
 - ➔ specific act enacted in May 2013 provides that when mediation is discontinued (no prospect for settlement through mediation) and the petitioner files an action in court within one month after notice of discontinuation, such action shall be considered filed at the time of the petition for mediation

- PAYMENT PHASES -

- **Provisional payments: April 2011 – March 2012**
 - To evacuees, agriculture/forestry/fisheries operator and SMEs from April 2011
 - **Approx. ¥ 150 billion paid (€ 1 billion / USD 1.5 billion)**
- **Permanent payments: started Sep. 2011**
 - Reconciliation Committee published Interim guidelines in August 2011
 - **As of 21 June 2013, approx ¥ 2 400 billion paid (€ 19 billion / USD 25 billion)**
- **Compensation for property damage: started March 2013**

⇒ **Total amounts paid as of 21 June 2013**
Approx. ¥ 2 500 billion (€ 20 billion / USD 26 billion)

<http://www.tepco.co.jp/en/comp/index-e.htm>

- GOVERNMENTAL AID -

- Required by Compensation Act when compensations exceed financial security to ensure compensation of damages to victims
- **FIRST PHASE: State Provisional Payments (Sept 2011 - Feb 2012)**
 - benefits tourism-related SMEs in 4 prefectures which sustained rumour-related damage
 - approx. **¥ 2 billion (€ 16 million / USD 20 million) paid**
 - Gvt acquired the rights of claims of indemnified victims against TEPCO
- **SECOND PHASE: establishment of the Nuclear Damage Compensation Facilitation Corporation (Sept 2011)**
- **THIRD PHASE: TEPCO's temporary nationalisation (July 2012)**
 - the Corporation pays **¥ 1 trillion (approx € 7.5 million)** for preferred shares and becomes the controlling shareholder with 50,11% voting rights

- Nuclear Damage Compensation Facilitation Corp. – (1/2)

○ Establishment

- registered capital of ¥ 14 billion (approx. € 109 million / USD 143 million)
- equity shared 50/50 between the Government and private investors (in practice nuclear operators such as TEPCO and J-POWER)

○ Purpose: provides necessary support if actual amount to be compensated exceeds financial security in order for operator to ensure

- prompt and appropriate compensation measures
- smooth management of business activities associated with the concerned nuclear installation
- stable supply of electricity

○ Funded by operators annual contributions based on fixed criteria → ⑧Reserves”

- grants funds directly or provides financial assistance (e.g. by way of loan of funds, share subscriptions, acquisition of bonds)
- **financial support does not need to be reimbursed**

- Nuclear Damage Compensation Facilitation Corp. – (2/2)

- **Government Bonds** which may be redeemed by Corporation at any time
- **Pre-conditions**
 - **Special Business Plan** drawn jointly with the Corporation, which must include business rationalization and management accountability;
 - **Pre-agreements** of other interested parties who may have benefited from a liquidation
- **Repayment:**
 - operator must reimburse by paying a Special Contribution
 - Corporation has to reimburse Treasury

⇒ **¥ 2 600 billion : financial support provided as of 24 June 2013**
(approx. € 20 billion / USD 27 billion)

http://www.tepco.co.jp/en/press/corp-com/release/2013/1228456_5130.html

NEA REPORT

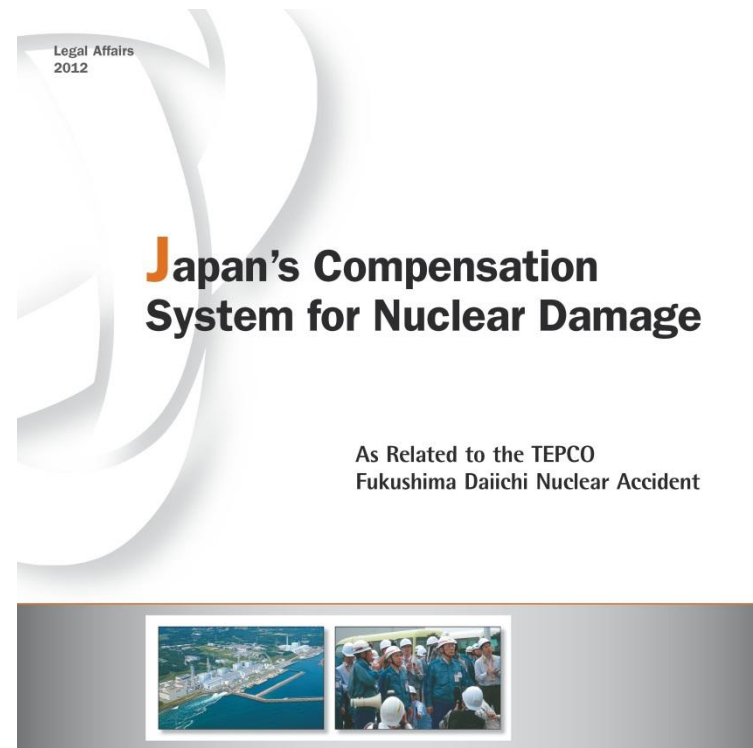
Prepared in close cooperation with
the Japanese authorities

Content

- English translation of major Japanese statutes, guidelines and ordinances
- several commentaries by Japanese experts

Purpose: provide insights to States and legal experts as they reflect on potential improvements in their national regimes and international framework for nuclear liability

Available at <http://www.oecd-nea.org/law/fukushima/7089-fukushima-compensation-system-pp.pdf>



THANK YOU