

Fukushima: Enactment of Nuclear Compensation Support Institution Law

Introduction

In our briefings of April 2011 and June 2011 respectively entitled "Fukushima: Potential nuclear liabilities"¹ and "Fukushima: Proposed governmental support for TEPCO for nuclear liabilities"² we discussed various issues relating to the potential liability of Tokyo Electric Power Company (TEPCO) arising out of the earthquake and subsequent tsunami in the Tohoku region of Japan on 11 March 2011 (the Nuclear Accident) and the draft bill that had been introduced into the Japanese Diet dealing with the funding of those liabilities. On 3 August 2011, the Japanese Diet approved and enacted the Nuclear Compensation Support Institution Law (the Law). The Law aims to support TEPCO in its obligations to compensate for the damage caused by the release of radioactive materials due to the damage which Fukushima Daiichi Nuclear Power Plant sustained as a result of the Nuclear Accident. This briefing will further discuss the contents of and other issues under the Law as finally enacted by the Diet, comparing it to the original draft bill of the Law first submitted to the Diet.

Background of Submission of Draft Bill of the Law

Existing law (Article 3 of the Law on Compensation for Nuclear Damage (Law No. 147 of 1961, as amended, the Nuclear Damage Compensation Law)) adopts the Principle of Centred Liabilities, under which a nuclear business operator (i.e., TEPCO in this case) will alone be responsible for damages caused by a nuclear accident.

However, as has become apparent, the effects of a nuclear incident can be widespread and prolonged and a single private company may not be able to fully compensate for the damage caused. This principle was recognised under the existing law, and Article 16 of the Nuclear Damage Compensation Law (the Governmental Assistance Clause) states that the government will provide a nuclear business operator with necessary assistance in relation to the portion of its liabilities that exceeds the amount which can be covered by insurance and governmental guarantee arrangements which a nuclear business operator is obliged to enter into under the Nuclear Damage Compensation Law.

Key issues

Background of submission of draft bill of the Law

Support scheme under the Law

If you would like to know more about the subjects covered in this publication or our services, please contact:

[Peter Kilner](mailto:peter.kilner@cliffordchance.com) +81 3 5561 6619

[Tatsuhiko Kamiyama](mailto:tatsuhiko.kamiyama@cliffordchance.com) +81 3 5561 6395

To email one of the above, please use firstname.lastname@cliffordchance.com

Clifford Chance Law Office
(Gaikokuho Kyodo Jigyo)
Akasaka Tameike Tower, 7th Floor
2-17-7 Akasaka, Minato-ku
Tokyo 107-0052
Japan
www.cliffordchance.com

¹ http://www.cliffordchance.com/publicationviews/publications/2011/04/fukushima_potentialnuclearliabilities.html

² http://www.cliffordchance.com/publicationviews/publications/2011/06/fukushima_proposedgovernmentalsupportfo0.html

The Governmental Assistance Clause, however, merely states in an abstract way that the government will provide assistance. In light of the reality of the current situation the government prepared and submitted its bill of the Law in June this year as the likelihood of triggering the Governmental Assistance Clause became greater. The bill was slightly amended by the House of Representatives and enacted on 3 August.

Support Scheme under the Law

1. Overview of the Support Scheme

The following is a summary of the support scheme offered by the government under the Law. (Please also refer to the structure diagram at the end of this briefing.) The portions underlined below indicate the relevant amendment made to the draft bill during the process of the Diet deliberations.

- An organisation (the Institution) is to be established to support compensation for the nuclear damage.
 - TEPCO and all other nuclear business operators will pay contributions to the Institution.
 - The government will also provide the Institution with necessary assistance such as providing delivery bonds and guarantees, etc.
- The Institution will, subject to approval by its management committee, provide support to any nuclear business operator (a Supported Operator) which requires such support to meet its liability to compensate for nuclear damage.
 - In particular, provision of funding (e.g., provision of cash, loans and/or guarantees, subscription of shares in or assumption of bonds issued by the Supported Operator, etc.) and acquisition of assets are envisaged under the Law as options for support offered by the Institution. The support will not be limited in amount.
 - However, where a Supported Operator is provided with support, it will be obliged to:
 - pay a special contribution (the amount of the special contribution will be determined based on the annual operating revenue of the Supported Operator, etc.); and
 - in respect of nuclear damage which has been suffered prior to the enforcement of the Law, streamline its corporate structure (*keiei gourika*) and identify the TEPCO personnel responsible for the damage (*keiei sekinin no meikaku-ka*) . (This was inserted during the Diet deliberations). Details of the above actions are deliberately left vague but could include making redundancies and/or wage reductions, and resignation of the current management.
 - The Institution may, upon delegation by the Supported Operator, take responsibility for paying out all or part of the compensation to victims of the nuclear accident, on behalf of the Supported Operator. (Inserted during the Diet deliberations).
- In general terms, the government is required to supervise a Supported Operator in relation to its performance of its role. More specifically:
 - Where the Institution requires assistance from the government in providing its support to a Supported Operator, the Institution and the Supported Operator are required to jointly prepare and submit a Special Business Plan (an SBP) to the government and to have the SBP approved by the government.
 - The government will then supervise the Supported Operator to ensure that its approved SBP will be appropriately implemented.

- The Law states that, based on the understanding that the government should be held socially responsible because it promoted nuclear power, the government must take sufficient measures so that the Institution is able to achieve its objectives.
 - This clause was inserted during the deliberations in the Diet to emphasise in the Law that the government itself is also indirectly responsible for the Nuclear Accident.
- The Institution must provide necessary information and advice in response to any request or question made or raised by victims suffering from nuclear damage caused by a Supported Operator. The Institution can entrust such function to a third party.

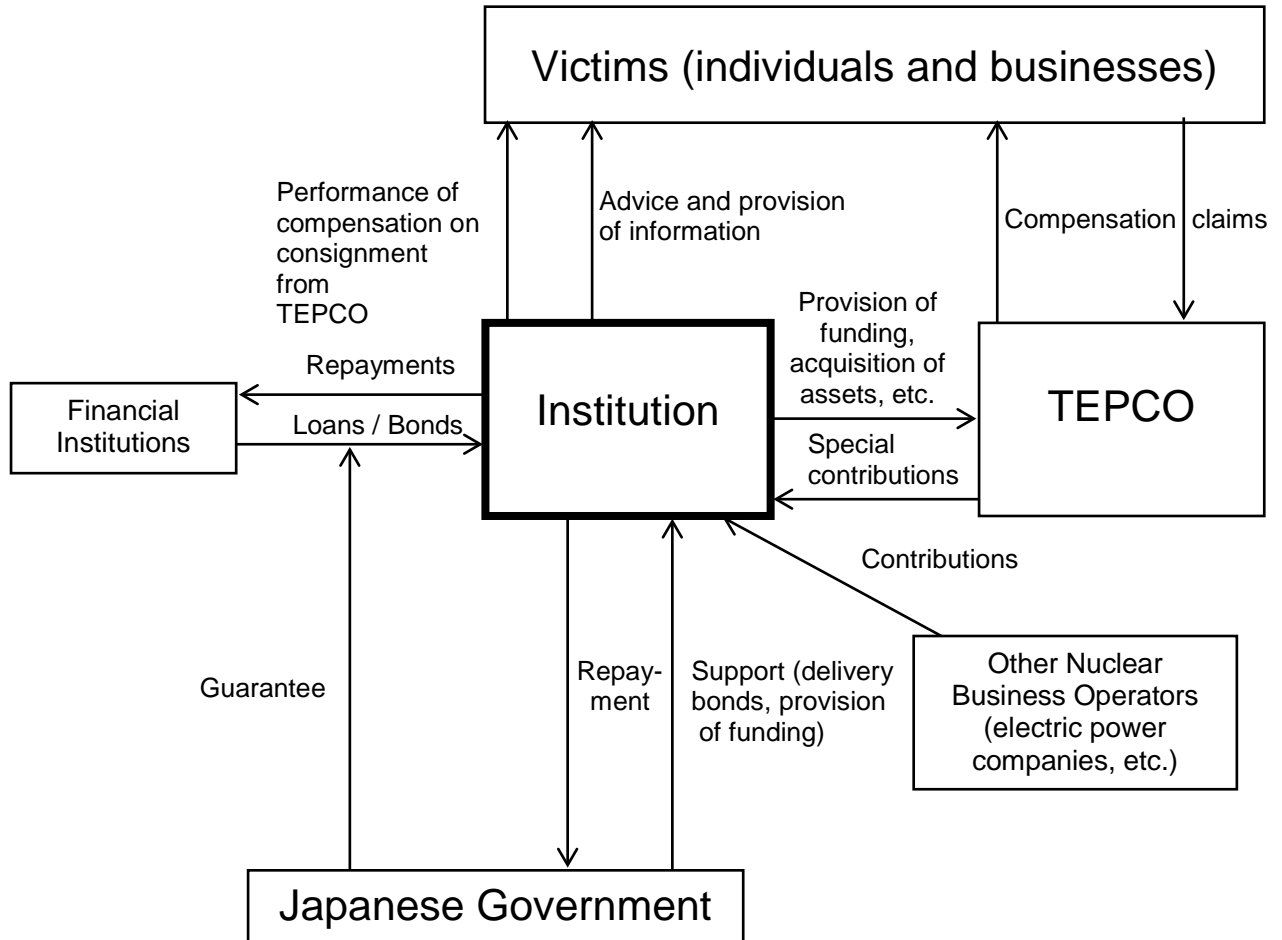
2. Amendments to the Bill during the Diet Deliberations

The Law had originally been designed to focus on providing relief to victims in response to the widespread scope of the damage caused by the Nuclear Accident. However, during the Diet deliberations, some opinions were expressed that the government's role – in terms of its indirect responsibility in promoting nuclear power – should be emphasised in addition to TEPCO's management responsibilities.

In response to these views, certain aspects of the draft bill of the Law were amended as mentioned above (a) to confirm that the government "should be held socially responsible because it promoted nuclear power" in Article 2 of the Law and (b) if government support is provided for nuclear damage caused prior to the enforcement of the Law (i.e., by the Nuclear Accident), to oblige the Supported Operator (i.e., TEPCO) to streamline its corporate structure (*keiei gourika*).

The ministerial ordinance and amendments to the related legislation were published in the official gazette on 10 August 2011. However, these are all technical in nature and do not further clarify the provisions inserted during the diet deliberations.

Structure diagram of governmental support (Based on METI website)



Where Japanese legal concepts have been expressed in the English language, the concepts concerned may not be identical to the concepts described by the equivalent English terminology as they may be interpreted under the laws of other jurisdictions.

This Client Briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. Clifford Chance assumes no responsibility for any situation arising from any act based on this Client Briefing. All rights reserved.

www.cliffordchance.com

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Budapest ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Qatar ■ Riyadh* ■ Rome ■ São Paulo ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

* Clifford Chance also has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh