

Fukushima: Proposed Governmental Support for TEPCO for Nuclear Liabilities

Introduction

As a result of the earthquake and subsequent tsunami in the Tohoku region of Japan on 11 March 2011, Fukushima Daiichi Nuclear Power Plant operated by The Tokyo Electric Power Company, Incorporated (TEPCO) sustained damage that has led to the release of radioactive materials (the Nuclear Accident). While we discussed certain issues relating to TEPCO's potential liability arising out of the Nuclear Accident in our previous briefing issued in April¹, we will in this briefing look at the proposed governmental support for TEPCO in connection with its nuclear liabilities which was announced by the Japanese government on 13 May 2011 and officially approved by a cabinet meeting on 14 June 2011.

Background of Decision on Governmental Support

1. Nuclear Damage Compensation Law

In relation to compensation for damage caused by a nuclear accident, 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 whereby a nuclear business operator i.e., TEPCO in this case, will alone be responsible for damages. However, as was clearly the case in the Nuclear Accident, the liabilities in case of a nuclear accident can be extremely heavy as the damage can be greatly expanded and prolonged. Therefore, a single private company, i.e., an electric power company, may not be able to fully compensate for the full extent of damage caused by a nuclear accident.

As such, 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 exceeding the amount which can be covered by agreements with insurance companies and governmental guarantee arrangements which a nuclear business operator is obliged to enter into under the Nuclear Damage Compensation Law.

Key Issues

Background of decision on governmental support

Support schemes

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¹ **Fukushima: Potential nuclear liabilities**

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

2. Request for Support by TEPCO

Based on the Governmental Assistance Clause, TEPCO submitted a document entitled "Request for Assistance by the Government with Nuclear Damage Compensation" to the government on 10 May 2011 seeking governmental support. In response to this request, the government decided to provide support to TEPCO in its meeting attended by relevant cabinet members and the relevant legislative bill entitled "Nuclear Damage Compensation Support Institution Law" has since been approved by the cabinet.

TEPCO mentioned in that document (a) that TEPCO was the "person who has caused the damage as a result of the Nuclear Accident" and (b) that it would "indemnify" the victims pursuant to the Nuclear Damage Compensation Law. However, the exact legal implications of these are still unclear as the terms "person who has caused a nuclear accident" and "indemnify (the victims)" (as opposed to "compensate the victims") are not used in the Nuclear Damage Compensation Law itself.

Support Schemes

1. Arrangements Proposed by the Government

The Governmental Assistance Clause merely states that the government "will provide necessary assistance to a nuclear business operator with its compensation for damage" and does not specifically mention what assistance is to be provided. In this regard, the government has decided on the following support schemes (please also refer to the structure diagram at the end of this briefing):

- An organisation to be known as the Nuclear Damage Compensation Support Institution (the Institution) is to be set up to support compensation by nuclear business operators for nuclear damage.
 - The Institution will be financed by TEPCO and the other nuclear business operators, who will pay contributions to the Institution.
 - The government will provide the Institution with necessary assistance such as the provision of delivery bonds and/or guarantees.
- The Institution will provide its support to a nuclear business operator which requires such support in relation to its liability to compensate for nuclear damage (the Supported Operator).
 - In particular, provision of funding, capital injection (i.e. equity) and/or acquisition of assets are being discussed by the government as options for support offered by the Institution.
 - There will be no upper limit amount for the support. The necessary amount will be provided in full to avoid insolvency of the Supported Operator.
 - However, the Supported Operator will be obliged to pay a special contribution after it is provided the support. The amount of the special contribution will be determined based on the annual operating revenue of the Supported Operator, etc.
- The government will supervise the Supported Operator in relation to its management rationalisation, etc.
- The Institution will repay the funds to the government as necessary out of the contributions collected from its members, i.e., nuclear business operators.
- The government will directly support a nuclear business operator only if making contributions by the nuclear business operator would cause any difficulty with that operator's stable supply of electricity or other exceptional circumstances arise.

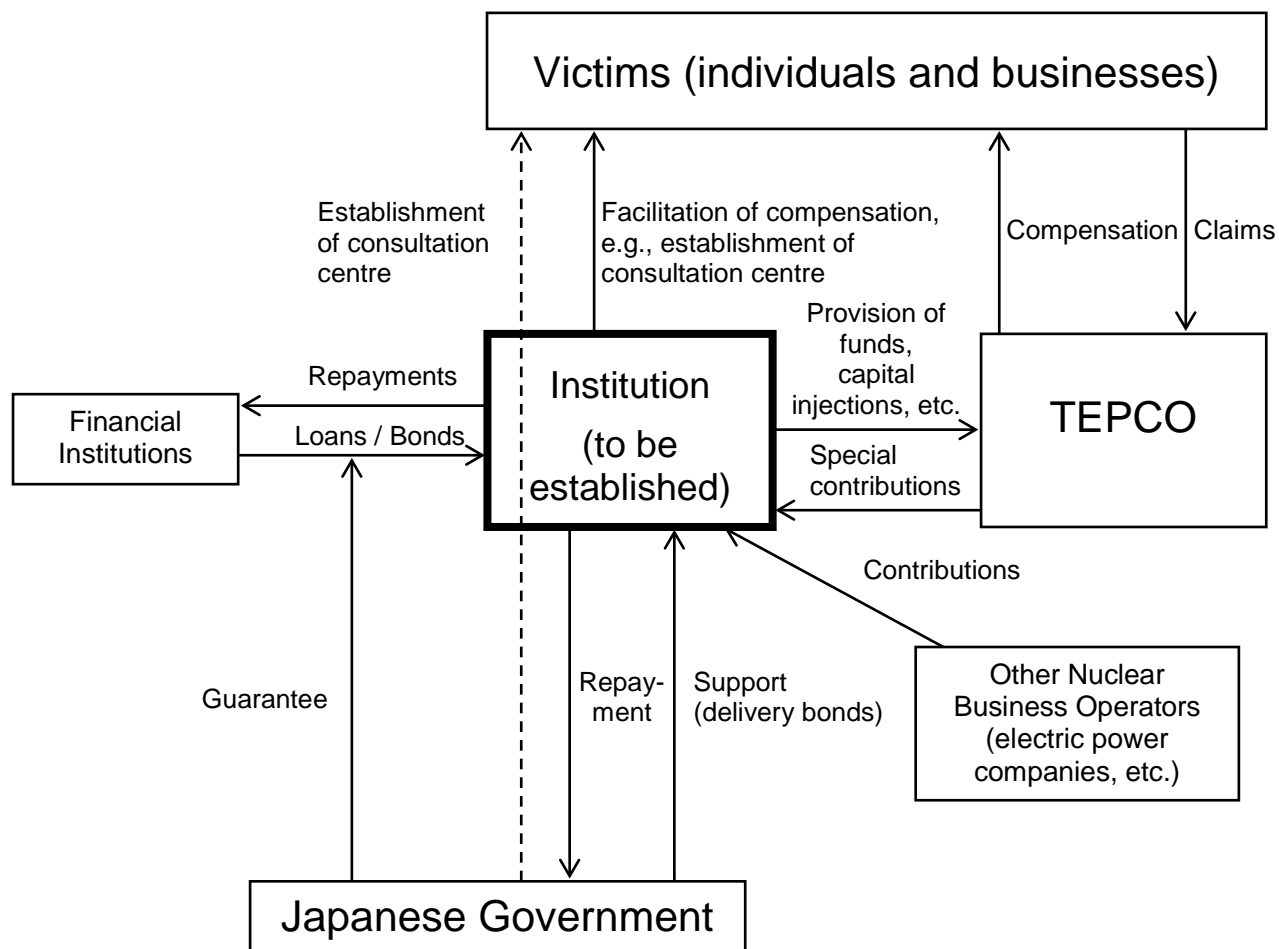
2. Main Features and Important Points of the Support Schemes

When the legislative bill of the Nuclear Damage Compensation Law was discussed in the Diet, the government was originally expected to directly provide loans and other support to nuclear business operators. In the support schemes announced this time, however, the government will basically provide its support to the Institution and it will be exceptional for the government to directly support the Supported Operator. It is further expected in the proposed schemes that nuclear business operators other than the Supported Operator will also make contributions to cooperate with the support schemes.

It should also be noted that the support provided by the government needs to be within the scope of that authorised by the Diet under Paragraph 2 of the Governmental Assistance Clause. Future discussions on the schemes in the Diet should therefore be carefully observed as the schemes are merely a proposal by the government subject to approval from the Diet.

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.

Structure diagram of governmental support (Source: METI website)



- Support provided by the Institution may include provision of a guarantee for loans made by financial institutions to TEPCO, purchase of bonds issued by TEPCO, etc.
- Establishment of a consultation centre for victims by the government or the Institution is also being discussed.

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