MINISTRY OF ENVIRONMENT

Korea Environment Institute

Liability, compensation and relief system for damages from environmental pollution

No. 38

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Summary

On September 27, 2012, an accident releasing hydrofluoric acid gas into the atmosphere at a chemical factory in the Gumi National Industrial Complex caused approximately 55 billion KRW worth of human and property damages. As a result, the development of an effective compensation and relief of damages caused by environmental pollution was selected as one of the national agenda of the Park Geun-hye administration and it started to push forward for a compensation and relief framework for damages caused by environmental pollution in earnest. Currently, a “Draft Liability, Compensation and Relief from Damages Caused by Environmental Pollution Act (Draft Act),” to promote a swift relief based on the “polluter pays” principle has been submitted to the National Assembly Judiciary Committee for deliberation. The proposed framework in the draft act aims to alleviate suffering from the victims of environmental pollution, often compounded by prolonged litigations, and to reduce bankruptcy risks of the polluters. Furthermore, it aims to prevent taxing the public substantially and unfairly due to the government’s spending on the recovery efforts of the environmental damages. The Draft Act introduces the concepts of causation estimation and the right to request information in order to reduce the burden of verifying the damages from the victims. It also makes purchasing pollution liability insurance mandatory for businesses handling hazardous chemical substances. The proposed system establishes an environmental pollution damage compensation account in the government budget for environmental accidents by unknown, non-existent, or incompetent offenders as well as for the accidents that exceed the polluters’ liability limits. When enacted, the Draft Act will secure swift and safe relief for victims during environmental pollution emergencies, and distribute risks for the environmental businesses, allowing sustainable management of accidents.

Ⅰ. Background of the Draft Liability, Compensation and Relief from Damages Caused by Environmental Pollution Act

1. Damage from environmental pollution on the rise

With industrialization, the number of environmental pollution accidents such as the recent leaks of chemical material is on a steady rise. Major environmental pollution incidents including the crude oil spillage off the coast of Taean (December 2007), hydrofluoric leak in Gumi (September 2012), hydrochloric acid leak in Sangju (January 2013), Oil spill in Yeosu (January 2014), and others are increasing in frequencies as well as in magnitudes, so much so, the environmental incidents are generally perceived as a genre of national disasters. According to the Ministry of Environment, the number of environmental incidents increased more than two-fold in the past 6 years, going from 45 cases in 2004 to 102 in 2010, and the number of chemical accidents has risen from 13 incidents per annum on average to over 70 cases in 2013. Especially, the hydrofluoric acid gas accident at a chemical factory in Gumi National Industrial Complex in September 2012 shaped the societal consensus for the need to overhaul the existing relief framework for environmental pollution.

Notable environmental pollution cases

Year	Accident location	Accident instigator	Accident details	Damage amount (KRW million)
1983	Ulsan	Oil refinery	Oil leak from fissures in rubber hoses connecting the marine buoy, damaged nearby fisheries	1,279
1991	Nakdonggang river	Electronics factory	Nakdonggang river phenol pollution accident	20,000
2007	Chungcheongnam-do Taean-gun	Oil tanker	Collision between a Hong Kong oil tanker, the Hebei Spirit, and a crane barge owned by Samsung Heavy Industries resulted in oil spillage that polluted the marine environment off the western coast of Korea	4,220,000 (reported amount)
2012	Gyeongsangbuk-do Gumi-si	Chemical factory	A fatal leakage of Hydrofluoric gas that resulted in the death of an employee, caused bodily harm as well as damage to crops, cattle, vehicles, the landscaping, and the concern of work stoppage and tertiary damage	55,400 (public expenditure)

2. Limitations of the existing framework for the relief from environmental pollution

Due to current lack of legislations regulating the liability and compensation process for the damages from environmental pollution, victims should rely on the Civil Act to receive any compensation. As such, it is difficult for victims to collect enough compensation to recover from environmental damages. Lack of information involved with the accident, including the site history, physical setting and possibilities of human errors, it is difficult to prove liability. Even if victims are successful, the characteristically large scopes and scales of environmental pollution accidents make the polluters difficult to fully compensate for the damages. Therefore, if the liable parties do not have the financial means, the victims may not be properly compensated for the damages. If those liable parties without the financial capacities for compensations and pollution remediation costs go bankrupt, compensations and environmental recoveries end up being made by the government, and ultimately, the non-responsible public will also suffer the consequences of the

accidents. Not only that, the current environmental pollution damage compensation framework that is primarily relying on the civil lawsuits makes the victim accountable for proving the polluter liability, which often takes a long time and substantial amounts of financial resources for the victims. As such, a new legal framework of liability definition and compensation procedures for environmental pollution damages is highly desirable.

3. Legislation efforts

Establishment of a liability and compensation framework for damages from environmental pollution, an environmental liability insurance system, as well as a new comprehensive chemical substance safety management framework was selected as one of the National Agenda by the 18th president of the Korean government. Accordingly, a legislative proposal has been drafted, which imposes compensation responsibilities to environmental polluters, introduces the causality estimation principle and the right to demand information, makes it mandatory for businesses handling harmful chemicals to purchase environmental pollution damage insurances, and establishes an environmental pollution damage compensation account. A stakeholder's forum was formed by the Korean Chamber of Commerce, the Federation of Korean Industries, the Korea Chemicals Management Association, the National Assembly, members of academic institutions and NGOs, and the first meeting was held in April 2013. Before the Draft was drawn up, all contested issues were mediated and various issues were reviewed by legal experts during the meeting. In December 2013, based on an industry-wide consensus, the bill was submitted to the National Assembly. In July 2014, Wan-yeong Lee, member of the National Assembly, proposed the motion titled "Draft Liability, Compensation and Relief from Damages Caused by Environmental Pollution Act". Thereafter, members of the National Assembly including Sang-min Kim (the legislative bill pertaining to compensation and relief for chemical accidents, November 2013), Jeong-ae Han (legislative bill for environmental responsibility, February 2014) followed suit. The National Assembly's Environment and Labor Committee held public hearings for all three bills, and on the 23rd of April 2014, the Committee voted in favor of "Draft Liability, Compensation and Relief from Damages Caused by Environmental Pollution Act". Subsequently, the Environment and Labor Committee lodged the selected bill at the Judiciary Committee in April 2014.

Ⅱ. Key contents of the Draft Liability, Compensation and Relief from Damages Caused by Environmental Pollution Act

1. Outline

The objective is to provide swift and fair relief for damages caused by the environmental pollution, and to establish an effective damage relief system. The proposed legislation clarifies compensation liability against environmental pollution damage, and reduces the burden of proof that falls on victims suffering from those damages. In other words, this legislative bill aims to alleviate the pressure on victims by creating a system that operates under the principles of liability without fault and assumption of causality. This, ultimately, is to shift the burden associated with the legal cases unto the party responsible for the pollution. Such change reflects the nature of environmental pollution accidents where most victims have a difficult time proving causal relationships scientifically. Also, the legislation makes environmental liability insurance mandatory for facilities running high risks of environmental pollution. The mandatory insurance system will allow companies to secure the financial means to meet their compensation liabilities. Furthermore, the bill aims to create an effective relief system for environmental pollution accidents by supporting the victims and clearing up any blind spots in the relief system.

○ Composition of Draft Liability, Compensation and Relief from Damages Caused by Environmental Pollution Act

Draft Liability, Compensation and Relief from Damages Caused by Environmental Pollution Act (6 Chapters, 49 Articles, supplementary provisions)

General rules (Chapter 1)	Compensation of damages from environmental pollution (Chapter 2)	Subscription to insurance for the compensation of damages from environmental pollution (Chapter 3)	Environmental pollution compensation (Chapter 4)	Supplementary rules (Chapter 5) Additional rules (Chapter 6) Supplementary provisions (Chapter 7)
–Objectives –Definitions (damage from environmental pollution, facility, business, environmental liability insurance, guarantee amount etc.) –Subject entities –Responsibility of the state etc. –Other legislations and relations to the right to claim	–Environmental pollution liability of the business –Compensation liability limit –Notification duty of businesses –Assumption of causality –Joint liability and right to indemnity, distribution of liability, compensation method –Claim for restoration costs –Right to request information –Policy Committee for the relief of environmental pollution	–Mandatory subscription to environmental liability insurance, and the insurer –Operation and management of the environmental liability insurance –Partial advance payment of insurance payment –Precedent of claim for compensation –Reinsurance business	–Relief for environmental pollution damage –Application, payment and limitations to indemnity payment –Scope and order of surviving family members –Proposing inspection request –Indemnity payment determination committee –Deliberation and determination of claim request –Exclusion, avoidance and aversion of committee members –Proposing a retrial, deliberation and re-determination of the retrial –Compensation and relation with other relief –Environmental pollution damage indemnification account, purpose, management and operation of the account etc.	–Construction, operation of data system –Submission, review, report of data etc. –Academic investigation, research etc. –Financial support –Legal support for vulnerable social groups –Administrative process etc. –Delegation of authority –Obligations of information users –Agenda for public officers when applying additional rules –Additional rules, joint penal provisions, penalties

The legislative bill pertains to the indemnification of damages, and carries the status of a special law. Article 750 of the Civil Act, “Claim for damages resulting from an unlawful act”, is based on liability with fault. Thus, the victim is responsible for proving not only the intent and negligence by the offender but also its illegality and causality. Article 5 of the Draft Act stipulates that all matters pertaining to the establishment and operation of facilities and the compensation of environmental pollution damage shall adhere to the Civil Act excluding matters regulated in the Draft Act. Also, it is stipulated that the right to claim does not affect claims under other legislations such as the Civil Act, which allows victims to claim for compensation at their discretion.

2. The principles of environmental responsibility

A. The principle of liability without fault for liability of facility

Regarding the compensation liability of businesses for losses stemming from environmental damages, the “Draft Liability, Compensation and Relief from Damages Caused by Environmental Pollution Act” (the “Draft Act”) stipulates that the legal principle of liability without fault applies to environmental pollution cases related to the establishment and operation of facilities, excluding damages caused by war, civil war, riot, or natural disasters, and other irresistible natural disasters (Article 6 of the Draft Act).

Based on current interpretations by the Supreme Court, environmental liability is recognized as liability against damages inflicted by judicially illegal activities. Therefore, environmental liability depends on proving negligence i.e. proving duty of care was violated, and that the party at fault could have foreseen the damages resulting from their negligence.

The nature of environmental pollution cases where causality is often difficult to prove has been reflected in the Draft Act. Moreover, to make it easier to provide relief for victims of pollution, the Draft Act incorporates the principle of liability without fault and shifts the responsibility to prove causality, or lack thereof, unto the party at fault.

Responsibility that is independent from fault, i.e. liability without fault, therefore applies to facilities rather than particular actions. This suggests that, a victim can hold the party at fault responsible for environmental pollution regardless of intent and/or negligence if the place that

caused pollution can be classified as a facility. By proving causality between the facility and incurred losses, the victim can ask for compensation.

Liability without fault and this facility-based liability are based on empirical evidence that environmental liability arises not only from a specific action but also from a facility itself. This is an advanced approach in understanding and applying liability which offers a systematic incorporation between the nature and the type of liability.

Also, the application of liability without fault for damages caused by environmental pollution is stipulated under other legislations e.g. the “Framework Act on Environmental Policy”, the “Soil Environment Conservation Act”, and the “Compensation for Oil Pollution Damage Guarantee Act”.

B. Joint responsibility and retroactive legislation

When two or more corporations are implicated in an environmental pollution incident and the principle party at fault cannot be determined, the Draft Act stipulates that all businesses involved are jointly responsible for compensation even if the cause of the damage cannot be specified (Article 10).

This clause is designed to overcome the limitations particular to environmental pollution where causal relationships are often impossible to establish due to a variety of reasons. Pollution tends to span across vast geographical regions, persist for long periods of time, and is prone to be recurring issues, all of which makes it difficult to determine the exact amount of damage a particular party has caused. However, careful consideration is required when joint responsibility is levied. Some examples include setting a total limit to the risk that an individual facility can be responsible for, or enforcing joint responsibility if the probability of damage from a particular source exceeds a predetermined limit.

Regarding retroactive legislation, actions that occurred before the Draft Act’s enactment are not subject to joint responsibility i.e. joint responsibility will not apply retroactively. Along with criticisms that retroactive legislations violate property rights to an excessive degree, and that they instigate instability and inequality, the decision to ban retroactive punitive actions follows the principle set by the Constitutional Court that bans all retroactive legislations. That is, an untrue retroactive legislation before all legal relationships have been established may be allowed if conflicting interests, i.e. the conflict between losses from violated personal rights and public gains resulting from retroactive punitive action, can be quantified. However, the Constitutional Court has determined that true retroactive legislations after relevant legal relationships are fully established will not be permitted.

C. Transferring the burden of proof

The Environmental Responsibility Act takes into consideration the nature of environmental pollution where causal relationships are difficult to prove scientifically. It also assumes that a particular facility is directly responsible for pollution if the evidence suggests it is highly probable that the particular facility is the root cause (Article 9). This is a legalization of a Supreme Court precedent aimed at transferring the legal burden of proof unto the business since, given that causal relationships are difficult to prove in environmental pollution cases, it is difficult for victims to win court cases if burden of proof falls on the plaintiff.

In determining the “significant probability”, the Draft Act specifies factors to be taken into account e.g. operational procedures of the facility, equipments used, types and concentration of input or output materials, weather conditions, time and place of damage, condition of damage (Article 9 paragraph 2).

3. The principal agent and subject of environmental liability

The Draft Act stipulates that the business which is, “the owner, installer, or operator who has actual ownership of the facility in question” as the principle agent of environmental liability. Thereby, it acknowledges facility liability and lists all responsible facilities.

Facility liability refers to the responsibility arising from damages caused by harmful materials emitted from an objectively defined dangerous facility.

This type of liability is affiliated with no fault liability. Since it is impossible to list and regulate the various types of actions that amount to risk under liability law, this measure levies liability of risk by limiting it to specific facilities.

The no fault liability regulation under the existing “Framework Act on Environmental Policy” overreached when attempting to define the principle agent and scope of responsibility, and was no more than a declaratory regulation as a result. However the Draft Act specifies discharging facilities or handling facilities regulated by environment related legislations as liable facilities thus, clarifying the principle agent of responsibility.

All facilities capable of causing environmental damage are listed as facilities. To enhance the Draft Act’s effectiveness as legislation with actual substance, and to resolve practical issues associated with environmental pollution, the Draft Act applies the judicial principle of strict liability

and unequivocally defines liable facilities.

Facilities subject to environmental pollution liability include ① air pollutants disposal facilities, discharge and non-discharge wastewater treatment works, ③ waste disposal facilities, construction waste disposal facilities, ⑤ animal waste disposal facilities, ⑥ solid waste management facilities, ⑦ businesses and facilities handling hazardous substances subject to submission of hazard management plans, ⑧ facilities discharging noise and vibration, ⑨ persistent organic pollutant discharge facilities, ⑩ marine facilities designated by presidential decree, ⑪ other facilities designated by presidential decree (Article 3).

Stipulating liable facilities by law may limit the scope of the Framework Act on Environmental Policy and its application since it only acknowledges the responsibility of damages related to listed facilities. However, it does clarify environmental responsibility and enhances the predictability and judicial stability of the environmental liability law system.

When it can be assumed that benefits and protections of environmental liability laws have been violated, thanks to a more relaxed approach to burden of proof and assumption of causality, limiting the scope of application makes it possible for liable parties to predict their scope of responsibility.

4. Scope and limitations of environmental liability

The Draft Act acknowledges the principle of limited liability regarding environmental liability. It stipulates the limitations to compensation liability taking into account that liability is levied for damages against human life, bodily harm (including psychological damage), and property of a third party excluding damages caused by the discharging facilities (Article 2) and the judicial principle of no fault liability applies to all liable facilities (Article 7).

This reflects the nature of today’s industrial society where accidents can lead to catastrophes that are difficult to predict, and it is also an attempt to reduce the burden on corporations therefore enabling them to secure their economic activities.

The liability limit for damages from environmental pollution is determined by presidential decree with provisions for the facility’s size and the expected damages of up to KRW 200 billion. However, an exception states unlimited liability, if the business intentionally causes an accident or the accident is a result of gross negligence.

This is a measure to ensure sustainable management of businesses against insolvency caused by the environmental pollution accidents, which are indeed difficult to predict. Also, the exception that poses unlimited liability will be an incentive for businesses to raise their awareness on safety management, follow permitted emission levels, and take necessary steps to prevent accidents.

Regarding compensation liability limits, factors such as the type of facility, size of business, and the degree of risk become important criteria when determining the scope of application for the listed facilities under the Draft Act. Of these factors, the type of facility provides the largest common denominator therefore it is easier to confirm the scope of application using this information. In comparison, the size of business requires valuation in terms of quantitative risk while the degree of risk requires valuation in terms of qualitative risk.

Here, 'risk' refers to 'negative impact on the environment'. Quantitative risk is determined by the volume of pollutants emitted etc. Meanwhile, a typical example of qualitative risk can be the use of 'specific harmful substances' based on the fact that the possibility of environmental pollution occurring from this substance is high.

Also, pollution against nature in general is excluded from the liability limit. This is to clarify actual responsibility and right pertaining to liability by eliminating the possibility of arbitrary interpretations. Also, damage relief and administrative measures for pollution against nature in general can be taken under the "Water Quality and Aquatic Ecosystem Conservation Act", "Soil Environment Conservation Act" etc, which is another reason behind such limit.

5. Requirements of environmental liability

A. Alleviation of burden of proof: assumption of causality

This Draft Act takes into account the nature of environmental pollution where proving causal relationships scientifically can be difficult. Under the Draft Act, if damages have been inflicted from pollution and if the probability of a particular facility causing it is substantial enough, it is assumed that the facility in question is at fault. If the damage seems to be a result of different

causes, then it excludes the assumption of causality (Article 9).

Also, in determining the 'significant probability', the Draft Act specifies determining factors to be taken into account such as the operation procedures of the facility, equipments used, types and concentration of input or output materials, weather conditions, time and place of damage, condition of damage, and other factors effecting the cause of damage (Article 9 paragraph 2).

The assumption of causality is a key regulation that helps the relief process for the victims. As for the existing clauses of proving causality, according to the risk liability principle, environmental liability could not be levied without proving causality even if negligence and illegality is not required as a prerequisite of establishing environmental liability. The Draft Act stipulates a Supreme Court precedent that, in environmental cases, proving the plausibility of causality between pollution and damage rather than rigorous scientific verification is sufficient to take punitive actions. Under this new system, the party at fault can avoid being held responsible only if it can provide counter evidence that the causal relationship does not exist.

Given the characteristics of environmental pollution, proving causality can be difficult. When burden of proof is observed rigorously in civil cases, compensation becomes difficult for victims. A closer look at burden of proof and its application under the Draft Act shows that the victim must prove there is "significant probability" that the suffered damages were caused by the facility in question. When the victim proves significant probability, the Draft Act requires the businesses, which was involved in the operation and installation of the facility and possesses the most amount of information regarding input and output materials as well as being in a superior position both technologically and financially compared to the victims, to produce counterevidence. The Draft Act therefore seeks to distribute the burden of proof more equally. Under the Draft Act, the business operating the facility in question is liable for damages if there is significant probability that the facility caused the damage during its operation. Pollution from the facility's equipment, and various types and concentration of input and output materials also contribute to verifying this probability. The Draft Act enables punitive action to be taken without evidence beyond reasonable doubt. Unless the party at fault produces counterevidence that the damage occurred from uncorrelated causes, it will not be relieved of its liability.

B. Right to request information

The right to request information refers to the right of victims to ask for or access information from

the party at fault or from public institutions. In Korea, regarding certain information, the burden of proof falls onto the party that asserts their particular right, based on the normative theory as well as the judicial precedents.

To assert their right to claim against damages from environmental pollution, victims bear the burden of proof. With limited expert knowledge and financial resources, however, proving causality (finding the harmful material that caused environmental damage, identifying different causes if multiple factors exist etc.) can be extremely difficult.

Even if the regulations pertaining to burden of proof is relaxed to a degree, or if plausibility is adequate enough, the victim must still prove the wrongdoing. That is, the victim must obtain information of the facility's operational process, equipment used, types and concentration of input and output materials and other factors. However, such information is almost entirely under the control of the party at fault. Therefore, with no likelihood of gaining access, it is virtually impossible to prove their case.

Article 15 of the Draft Act (Right to request information) stipulates that: ① Under this Act, to claim for damages and to confirm its scope, if necessary the victim can request the business responsible for the facility in question to provide or grant access to information relevant to the assumption of causality; ② The business subject to indemnity can request provision of or access to relevant information to a different business under Article 9 paragraph 2 in order to compensate the victim or to confirm the scope of indemnity towards another business, ③ The party that receives the information request must provide or grant access to the information, ④ If the victim or business refuses to provide or give access to information on the grounds of protecting trade secrets, the requesting party can lodge a petition at the Ministry of Environment to demand the provision of or to grant access to information, ⑤ Upon receiving a petition, the Minister of Environment can order the provision of or access to information after deliberating at the Environmental Pollution Damage Relief Policy Committee (Article 15).

Application of the right to request information is limited to compensation claims. The right to request information is a measure to make it more convenient to secure information necessary to prove the significant probability of causality and to prove damage. This, given that proving the existence of causality for environmental pollution and confirming the scope of damages is difficult, allows victims to request or access necessary information from the business. It is a provision that accounts for victims who are normally at a disadvantage as a result of information asymmetry, and it aims to enhance the effectiveness of the relief system in pollution cases.

6. Financial measures for the new environmental pollution liability system

A. Subscription to mandatory insurance: mandatory provision of financial collateral

The Draft Act requires mandatory subscription to environmental liability insurance for businesses within certain risk groups (Article 19). High risk groups include businesses such as facilities which handle harmful chemicals, facilities that discharge specific air and water, designated waste processing facilities, facilities that manage specific types of soil contamination. The insured amount should be the floor amount, which is to minimize the burden on businesses and help spread the insurance by setting an appropriate insurance premium price. Also, to prepare against cases where insurance companies fail to make timely payments of insurance benefits, the Draft Act includes a clause for partial prepayment of insurance benefits (Article 20).

Insurers providing environmental liability insurance must obtain approval from the committee and enter into a contractual agreement for the environmental liability insurance with the Minister of Environment. To operate the environment liability insurance project more effectively and to disperse risk, the Minister of Environment can form an environmental liability insurance business unit where multiple insurers jointly underwrite the risk if necessary (Article 18).

Meanwhile, licensing institutions for facilities subject to mandatory subscription of environmental liability insurance must confirm the subscription of appropriate environmental liability insurance or security contract according to this Draft Act when issuing the license (Article 19 paragraph 2), and the business must submit the insurance deed for environmental liability insurance to the licensing institution for the subject facility (Article 19 paragraph 3). In addition, the Draft Act provides a regulation to protect victims. First, in terms of compensation claims and insurance payment, the victim takes precedent over other creditors, and the right to claim compensation such as insurance payment etc. cannot be transferred, seized, or provided as collateral (Article 21)

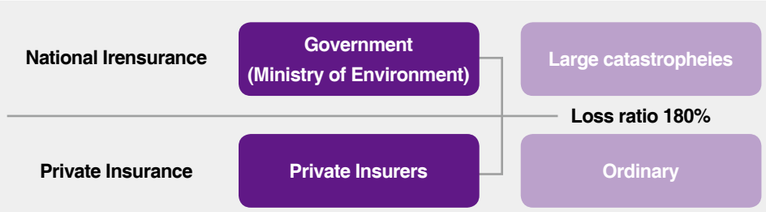
The regulation that stipulates mandatory subscription to environmental liability insurance is significant in that it provides a safety net for people who suffer abrupt accidents caused by environmental pollution, and induces potential polluters to manage their risk voluntarily. Corporations can transfer the risk of environmental pollution onto insurance companies at a relatively low cost and secure the safety of their operations, and victims can receive compensation as soon as possible regardless of the financial state of the business that

caused damage. All of the above factors reduce social cost. Also corporations can reduce insurance payments by taking actions that reduce environmental risk therefore they can prevent environmental pollution voluntarily.

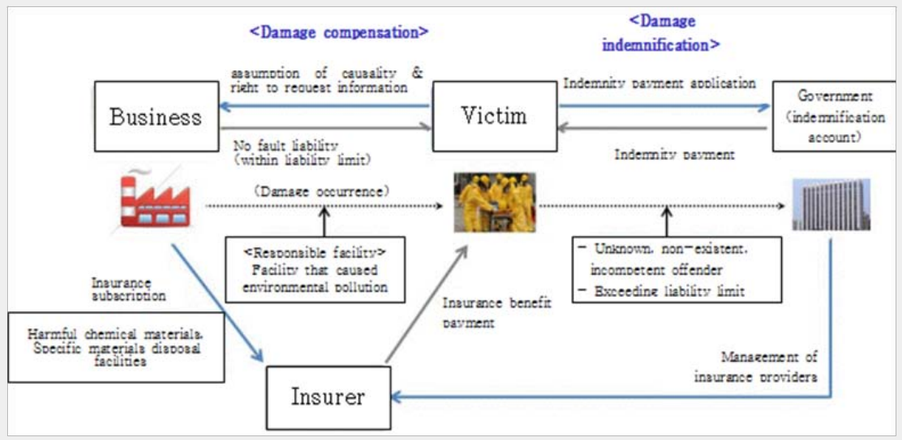
B. Implementation of a national reinsurance scheme

Article 22 of the Draft Act allows the government to operate a reinsurance scheme regarding environmental liability insurance. This is to prepare against large environmental damages, and to disperse risk between the government and insurance companies for damages exceeding the compensation liability limit of insurance. If national reinsurance is absent, private insurers must underwrite large risks, and a market for these large risks may not exist. Insurance companies pay a certain portion of their premium income to the government as reinsurance premiums, and the company operates the reinsurance system using it as a source for funds.

National reinsurance operation system



Environmental pollution damage relief system flow chart



C. Relief for environmental pollution

In order to provide relief for those that cannot be helped under the environmental liability insurance, the Draft Act enables the government to designate an operating organization to calculate and manage the environmental pollution indemnification account. That is, in several cases (e.g. when the entity that caused the environmental pollution is unknown, when it is unclear whether a party at fault exists, if the party at fault is incompetent, if the accident exceeds the liability limit) the victim may be fully compensated. In this case, the Minister of Environment can provide payment to indemnify for the environmental pollution damage (hereafter referred to as “indemnity payment”) to the victim or their family (Article 23).

Indemnity payment is funded by the environmental pollution indemnification account, and is designated by Presidential decree. The fact that it offers public aid, indemnity payment is similar with social security rather than civil liabilities which compensate losses such as lost income.

Meanwhile, indemnity payment is a complementary measure designed to be utilized when compensation cannot be completed through other measures. As such, the Draft Act does not make indemnity payments when victims or their families can receive relief from damages caused by environmental pollution under this legislation or compensation under other legislations. Also, if the victim covered by this Draft Act, is compensated under the “Civil Act” or other legislations on same grounds, indemnity payments should be reduced by the equivalent amount. For indemnity payment applications where the court proceedings have yet to be finalized, the council can decide to suspend all deliberations regarding the application (Article 34).

D. Establishment of the environmental pollution indemnification account

Article 35 of the Draft Act enables the Minister of Environment to create an environmental pollution indemnification account to ensure effective indemnification for damages caused by environmental pollution. The account is designed to provide the necessary resources to make guaranteed payments in accordance with the contract coverage, and also make indemnity payments for victims of environmental pollution with unknown offender. The Draft Act also allows the account to be used for compensation payments, reinsurance payouts, and investigation or research to reduce damages by pollution. Combined with the insurance system, the indemnification account forms another axis for the victim relief system.

Purpose of the indemnification account

1. Payment of guaranteed amounts according to contract coverage
2. Payment or prepayment of indemnification payment
3. Principle and interest repayment for loans according to Article 35 paragraph 3
4. Cover expenses (includes consigned expenses) necessary for managing and operating the indemnification account
5. Reinsurance payment
6. Investigation and research for the evaluation of environmental pollution damage and reduction of damage etc.
7. Other expenses that the Minister of Environment deems necessary in maintaining and improving the account and the environmental pollution damage relief system

The account is funded with reinsurance premiums, operating profits and other profits from the compensation account, loans, recourse amounts received through the exercising the right to indemnity, redeemed reinsurance payments or indemnification payments, private corporate or group donations, contributions from the government or other non-government entities.

E. Legal support for vulnerable social groups

Article 42 defines the necessary legal support during court cases regarding damages from pollution offered to vulnerable social groups such as low income earners, the elderly and infirm, and disabled people. As part of the effort, it requires the formation and management of an ‘environmental pollution legal support counsel’ to support victims from vulnerable social groups by providing legal advice, preparing the various forms for litigation.

Ⅲ. Future plans and expected effects

1. Enactment of the legislation and subordinate legislations

Enactment of the Draft Act will proceed through 2014, with the National Assembly Environment and Labor Committee, the Judicial Committee, and plenary session all casting their votes on the issue. Also, an “industry conference” will be put together in 2015 to collect opinions from various stakeholders regarding the specific implementation of the legislation in order to create subordinate legislations. Also premium rates, insurance terms and conditions, and environmental liability insurance products will be developed, and an environmental pollution damage insurance management system to operate, administer, and manage statistics will be constructed.

2. Expected effects

	Expected effects
Corporate	Risk from environmental pollution can be diversified through liability limits, environmental liability insurance therefore ensuring the sustainable management of corporations
Public	Swift damage relief when environmental pollution damages occur through the application of no fault liability, assumption of causality, right to claim information, environmental liability insurance, environmental pollution damage compensation etc.
Government	New job opportunities following the expansion of the social security net in response to environmental pollution damage and implementation of environmental liability law

Regarding the Draft Act, industry stakeholders are concerned that levying liability without causal relationships beyond reasonable doubt for each pollution accident will prove excessively burdensome on corporations. If the Draft Act is enacted, businesses must compensate damages from environmental pollution without causal relationships being established therefore the number of litigations is expected to increase.

Despite these concerns, future for the Draft Act remains bright. The environmental pollution damage compensation liability and relief system alleviates the burden of litigation on victims while the environmental pollution indemnity account stabilizes compensation and relief to help the environment recover. Also, when the environmental liability insurance is implemented, most environmental pollution accidents will be resolved through insurance much like motor liability insurance. As a result, social costs can be reduced since victims can expect compensation regardless of the financial state of the company that caused the accident. Also, corporations at fault can focus on their business activities without the concern of large compensation liability payments caused by environmental accidents hence allowing more stable management environment.

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