

Legal Policy Study on Nuclear Liability Principle of Nuclear Operator Under Korea Nuclear Liability Law

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1. Introduction

Since the Fukushima nuclear power plant accident in Japan 2011 and the Kyungjoo earthquake in Korea 2016, Korea government has insisted on diminishing of nuclear energy dependency and strengthened the safety regulation of nuclear power plants. In the aftermath of the above transition of the current administration, new amendment of the Korea nuclear liability law is proposed to congress, which deletes current maximum liability limit of nuclear facility operator (300 million SDR¹ ; about ₩ 500 billion Won) per nuclear accident. This means that, in the event of any nuclear accident, the responsibility of the nuclear power plant operator will be unlimited without cause. In this study, we analyze the international trend of nuclear liability system and explain what to consider before changing nuclear operators' liability from limited liability to infinite liability system.

2. Trends of Nuclear Damage Liability System

2.1 International trends

According to the OECD NEA data(Table1), Japan, Russian Federation, and Germany among the 10 largest nuclear power plants countries (based on total electric power of nuclear plants) are obliged to bear unlimited liability to nuclear operators in case of nuclear accident. Remaining 70% of big nuclear power generation countries (United States, France, China, etc.) maintain a limited liability regime.

¹ International Monetary Fund's special drawing rights

Table 1. Nuclear Operator's Total Liability Limit

| | |
|-----------|--|
| Unlimited | Japan, Russian Federation, Germany |
| Limited | United States, France, China, Korea, Canada, Ukraine, United Kingdom |

The table shows that 70% of major nuclear energy country still keeps a limited liability regime as a main stream.

2.2 Domestic trend

Korea increased its nuclear liability limit up to 300 million SDR(about ₩500 billion Won) as the current one by revising the Nuclear Damage Compensation Act in 2001. The amount is same as with most of international nuclear liability convention such as the Vienna Convention or the Paris Convention. Newly proposed amendment regarding nuclear liability will change from limited liability concept to charging unlimited liability to nuclear operators in nuclear accident.

3. Analysis of the Proposed Amendment of Nuclear Liability Law

The amendment of nuclear liability law, proposed by Park Jung, congress member, is intended to remove maximum liability limit.

3.1 Benefits of unlimited liability

Unlimited liability will strengthen the responsibilities of the nuclear power plant operator, and in the event of a nuclear accident, all damage will be borne by the nuclear power plant operator without any restriction, thereby providing complete

damage relief and forcing safer facility management.

3.2 Concerns of the change: Infinite liability

3.2.1 Korea Hydro & Nuclear Power Co., Ltd. monopolizes the operation of all nuclear power plants in Korea. Under the situation of this single nuclear power plant operator, there is a substantial public interest to maintain corporate integrity and constancy from lawsuits such as foreclosure or injunction arising out of minor nuclear accident for stable supply of electric power to the public. In fact, fuel contractors and subcontractors may stop supply of fuel or services if the legal integrity of the nuclear power plant is unstable or dangerous such as bankruptcy or default situation under the unlimited liability regime. Thus, Issue of keeping integrity of nuclear operator under nuclear accident shall be treated well before changing the liability law.

3.2.2 In the event of damage to neighboring countries due to nuclear accidents, if KHNP, single monopolized nuclear power plant operators, directly pays all damages to neighboring countries without any limitation, there may be a diplomatic crisis with neighboring country because the countries will seek a perfect compensation of their countries victim without any consideration of KHNP's business soundness. Additionally, China is a country of nuclear limited liability regime, so Korea victim caused by China nuclear accident shall not be compensated perfectly under the China law. It will be unfair treatment to the Korea.

3.2.3 Korea has chosen a "strict liability" concept in nuclear liability in which nuclear operators bear all responsibility for irrespective of the reason for the accident when a nuclear accident occurs. This is possible because a predictable burden is set that the maximum limit is finite. However, if nuclear operator's liability becomes infinite there may be unfair balance between strict liability and the infinite burden to nuclear operators.

4. Policy Harmonization

Considering practical needs of raising a total liability amount in nuclear damages and compensation, we can compromise the needs and maintaining current limited liability system. That is to say, raising a maximum limit of nuclear operator up to double or further may be the answer for the balance. Though nuclear liability is put to nuclear operators unlimited the operators is only able to assume the liability up to its asset limit, not more than that as a corporate body.

5. Conclusion

We have looked at international trends in nuclear energy liability limits. It is necessary to comprehend the legislative intention of the countries which still maintain the limited liability system in order to balance between keeping a sound nuclear industry for sustainable energy supply and protection of the victims from nuclear accident. Before changing a nuclear liability regime by new amendment of nuclear liability law, the more detailed and harmonized consideration and debate would be required.

REFERENCES

- [1] OECD NEA, Article "Nuclear Operator's Third Party Liability Amounts and Financial Security Limits" <http://www.oecdnea.org/law/table-liability-coverage-limits.pdf> (April 2018).