

## **Issues, Direction of Rebuilding of Japan's Nuclear Damage Compensation System (Tentative Translation)**

Since its first meeting in May last year, the Experts Group on Nuclear Damage Compensation (hereinafter, “the Group”) has been interviewing representatives from Fukushima Prefecture and related organizations and discussing issues pertinent to a rebuilding of Japan's nuclear damage compensation system (hereinafter, “nuclear compensation system” or “NCS”).

Based on its discussions to date, the Group has categorized the matters related to the rebuilding of the NCS into issues for which it is considered that agreement has been generally reached, and issues for which it is believed more discussion is needed from now.

The Group will conduct intensive discussions from now on the remaining issues that will lead to the revision of relevant laws, including the Act on Compensation for Nuclear Damage (Act No. 147 of 1961) (hereinafter, “Nuclear Compensation Act”).

### **I. Basic Framework of Nuclear Compensation System, etc.**

#### **1. Basic framework of nuclear compensation system**

##### **(1) Protection of victims**

In order to properly prepare for nuclear accidents that may occur in the future, it is necessary to make absolutely certain that victims are protected. Based on the experience from the Tokyo Electric Power Company Fukushima nuclear power plant accident (hereinafter, “TEPCO Fukushima nuclear accident”), a study and rebuilding of the framework design in regards to damage recognized as damage stemming from a nuclear accident is essential to ensure that victims receive appropriate and complete compensation.

Moreover, nuclear damage has particular characteristics, in that radioactive materials may be spread over a wide area depending on the nature of the

accident, the effects of radioactive materials and radiation cannot be immediately felt by the five senses, and the effects of exposure to radiation may not appear until after a long period of time has elapsed since the actual radiation exposure. Because of this, in the planning of the nuclear compensation system, careful study is essential in regards to the framework of the system for the prompt and appropriate compensation for nuclear damage and to the procedures for providing assistance to victims.

## **(2) Citizens' bearing of the compensation burden**

Under the current nuclear compensation system, since liability for compensation lies unquestionably with the nuclear plant operator, the operator must bear the maximum liability before all else, and concerning the design of the institutional framework for assistance by the national government (Nuclear Damage Compensation and Decommissioning Facilitation Corporation Act [Act No. 94 in 2011; hereinafter, “Nuclear Compensation and Decommissioning Act”]) in regards to the TEPCO Fukushima nuclear accident, the minimization of the national burden was sought.

In regards to requests for the national government to bear part of the burden for compensation through a general tax, one view is that the nuclear operator should basically bear liability for compensation, and, therefore, the national government should move very cautiously about bearing part of the compensation burden through a tax. On the other hand, another view is that since the electricity costs paid by electricity consumers would become the funding source for the the general liability costs paid by the nuclear operator to the Nuclear Damage Compensation Facilitation Corporation (hereinafter, “the Corporation”), in a wide sense, taxpayers were bearing the burden for compensation, and, therefore, it would be important to cap rises in electricity costs. In addition, another view is that since it is necessary to maximize funds appropriated for nuclear damage compensation and it may be necessary to extend compensation over a long period depending on the nature of the accident, it becomes more important to consider the way compensation costs are borne.

Based on these viewpoints, it is necessary to consider in conjunction with the discussion on the amount of liability borne by the nuclear operator and the government, the amounts and methods for bearing compensation costs through general taxes and bearing said costs through electricity charges in the rebuilding of the system design, in order to make appropriate preparations for nuclear accidents that may happen in the future.

### **(3) Foreseeability of nuclear operator projects under changing industry environment**

Under the Basic Energy Plan (Cabinet Decision on April 11, 2014), while nuclear energy is considered an important base-load power source, dependence on nuclear energy should be reduced as much as possible. Moreover, the complete liberalization of the retail sale of electricity has been started through the reforms in Japan's electricity system, and the abolishment of rate-of-return regulations. In order to prepare for these changes in the industry environment, from the perspective of ensuring the foreseeability of projects for nuclear operators, attention should be paid to the view that a rebuilding should be carried out on liability limitations for nuclear operators and the system for the general costs borne for compensation and decommissioning mechanisms.

## **2. System framework of the nuclear compensation system**

### **(1) System framework of the Nuclear Compensation Act**

For a rebuilding of the nuclear compensation system, study must be undertaken based on the issues manifested as a result of the experience of the TEPCO Fukushima nuclear accident and consistent with the Conventions on Supplementary Compensation for Nuclear Damage (hereinafter, "CSC"), which Japan has signed. Moreover, for rebuilding of the system framework, although it is important to envisage what kind of nuclear accidents may happen, a flexible approach is required to respond to individual accidents since the modalities of accidents are varied. Furthermore, the facilities that are subject to the Nuclear Compensation Act are also varied, including electricity-generating nuclear reactors, reprocessing facilities, nuclear reactor testing and research facilities,

processing facilities, and so. Attention should also be paid to the fact that the scale of nuclear operators also varies greatly. In particular, if a serious accident occurs at these facilities, and radioactive materials are leaked, it is possible that a serious impact will continue over a long period.

In considering the system framework for ensuring the certain provision of prompt and appropriate compensation, study must be made of the division of liability between the Government and the nuclear operator together with the mechanisms for compensation in order to fulfill those responsibilities. It is necessary that consistency be achieved for the entire compensation system, so that both the victims and the nuclear operator can have a sense of foreseeability about outcomes, and sustainability is ensured.

So that sustainability will not be lost due to changes in the business environment surrounding nuclear operators, the compensation system must be consistent with the nuclear energy policy stipulated by the Basic Energy Plan and be prepared with systemic stability based on the goals and basic measures stipulated in the Basic Atomic Energy Act (Act No. 186 of 1955). Moreover, the protection of victims in the event of a nuclear accident cannot be ensured only by the nuclear compensation system, and responses are required to deal with changes in local conditions in linkage with the various measures successively developed after the accident. In addition, recovery measures as stipulated by the CSC in response to the worsening of the environment are very important, and appropriate measures for responding to environmental damage are demanded.

The current Nuclear Compensation Act is considered a special law under Article 709 (compensation for damages due to an unlawful act) of the Civil Code (Act No. 89 of 1896), and has been applied for nuclear compensation up to now. For the rebuilding of the Nuclear Compensation Act, with the assumption that the NCA will maintain its status as a special law under Article 709 of the Civil Code, supplementary provisions should be considered to ensure the completeness of assistance to victims based on the special nature of nuclear compensation.

## **(2) Nuclear Compensation Act's provisions on purpose**

In regards to the provisions stating that the purposes of the Act are the “protection of victims” and the “sound development of nuclear industry,” as stipulated in Article 1 of the Nuclear Compensation Act, consideration should be given based on the specific discussions related to the rebuilding of the systemic framework based on the situation at the time of the enactment of the Act, such as the design of the framework for the fulfillment of the two purposes of the Nuclear Compensation Act, and the change in the social and economic environment surrounding nuclear power after that.

In addition to the consensus belief that maintaining “protection of the victim” is essential, in regards to the “sound development of nuclear power projects,” the Group will refine this goal based on the view that it is absolutely necessary for nuclear operators to secure compensation resources to protect victims, that it is appropriate to maintain such development from the viewpoint that there is a great necessity for technical development in the future, and that Japan’s energy utilization, including nuclear power projects, must be sustainable.

### **(3) Suitable public-private role sharing in nuclear compensation system**

In regards to the role assumed by the government in the compensation system, under the assumption that nuclear operators bear strict and unlimited liability, the government has developed various measures based on the Nuclear Compensation Act to ensure that victims receive prompt and appropriate assistance. At the same time, with the TEPCO Fukushima nuclear accident as a catalyst, there are views that the government, which has the responsibility to promote nuclear policy, should stand at the forefront in fulfilling its responsibilities, and that the government should also clarify its responsibilities.

For this, it is necessary to continue rebuilding of the government’s measures, the procedure for compensation to the victims, and so on, based on Article 16 of the Nuclear Compensation Act and financial security after

the respective roles of nuclear operators and the government are clarified in accordance with the special nature of nuclear disasters and nuclear compensation and the position of nuclear power as stipulated by the Basic Policy on Energy.

Referencing provisions related to government obligations stipulated in other laws, the Group will consider the necessity of provisions stipulating the government's responsibilities in the Nuclear Compensation Act and the contents of said provisions when applied, after clarification of the government's specific obligations for nuclear compensation based on discussions on the scope of nuclear operators' responsibility, financial security, and government measures based on Article 16 of the Nuclear Compensation Act.

## **II. Framework for Nuclear Compensation**

### **1. Strict liability, channeling of liability**

#### **(1) Strict liability for nuclear operators**

The development and utilization of nuclear energy demand advanced and vast technology requiring enormous investment, as seen by the latest safety regulations and expertise.

Since it has been recognized that requiring victims to prove willful intent or fault on the part of nuclear operators would run counter to the spirit of protection of victims based on Article 709 of the Civil Code, the protection of victims must be maintained based on the concept of risk responsibility. Moreover, the CSC, which Japan has entered into, applies the system of strict liability for nuclear operators. Accordingly, the current application of strict liability for nuclear operators is deemed appropriate.

#### **(2) Exclusive liability to nuclear operators and limits on right of indemnity**

In regards to the channeling of liability to nuclear operators, exempting suppliers providing machinery and equipment (hereinafter, "suppliers") contributes to the simplification of equipment supply transactions and the

stable supply of equipment. Moreover, from the standpoint of the protection of victims, the certain provision of compensation through measures obligating nuclear operators to put into place compensation measures is essential. To ensure that, since the underwriting of insurance can be maximized for insurance contracts related to nuclear compensation by the channeling of liability to nuclear operators, the rationality of such channeling has been recognized. Moreover, for victims, the channeling of liability has the advantage of clarifying that nuclear operators, which are obligated to pay compensation, are the subjects of the liability claims, thus contributing to the providing of prompt assistance to victims.

In regards to the limits on the scope of claims from nuclear operators to third parties, the rationality of the idea of exempting suppliers, regardless of the presence or absence of negligence or the gravity of possible negligence, has been recognized from the viewpoint of ensuring the stable supply of equipment and machinery by suppliers' avoidance of the risk of nuclear compensation claims. It is difficult to consider that third parties should be exempt from liability in cases when it has been deemed that their negligence was intentional. Moreover, since a natural person may be recognized as having clearly committed a negligent act, it is rational for parties to which nuclear operators may exercise their compensation claims should be limited to natural persons. Under the current Nuclear Compensation Act, a special decision has been made regarding the exercise of compensation claims through agreement between nuclear operators and related parties, and such related parties are not normally exempt from liability.

Moreover, under the CSC, which Japan has entered into, the system of the channeling of liability to nuclear operators is adopted, and the subject of claims by nuclear operators is limited to natural persons who have committed a willful act of negligence. Accordingly, it is appropriate for the channeling of liability to nuclear operators and limitations on the right of indemnity to continue according to the current practice.

## **2. Scope of responsibility, measures for damage compensation, Nuclear Damage Compensation and Decommissioning Facilitation**

## **Corporation**

### **(1) Scope of liability**

#### **i) Limited liability**

##### **① Limitation of liability of nuclear operators**

Regarding the scope of liability for nuclear operators, under the current Nuclear Compensation Act, the nuclear operator is subject to unlimited liability, as a general principle of civil liability. As such, the securing of underwriters for future nuclear operators will be essential, and the setting of upper limit of liability amount for compensation will enable, to some extent, the risk assessment for nuclear operators. Since this will be significant from the viewpoint of ensuring the foreseeability of claims for nuclear operators, some believe this system should put a limit on the liability of nuclear operators and limited liability\* should be introduced. Moreover, there are views that conditions should be established for discussion of limited liability based on the idea that such a cap on liability will strengthen safety regulations, ensure better foreseeability and more appropriate compensation together with mechanisms for preventing nuclear damage and strengthening safety regulations, in addition to enhancing nuclear risk assessment. Furthermore, making a system whereby the government holds ultimate liability will lead to peace of mind for citizens.

On the other hand, some members of the Group believe that if limited liability is granted to nuclear operators, limiting liability in the case of an accident where negligence or fault was recognized would be inappropriate. In the case where a judgment on negligence or fault is sought, such a judgment could be left ultimately to a court of law, but since time would be required until such a judgment was determined, it would be a hindrance to the prompt provision of relief measures. Problems have been pointed out from the viewpoint of the prevention of accidents due to a decrease in investment for the improvement of safety. Consideration of the effect of the change of the system from unlimited to limited liability is a very important issue, and some believe that the current system should be maintained in order to ensure the self-responsibility of nuclear operators. Moreover, if limited liability is granted to nuclear operators and if limits are placed on the compensation claims of victims, this would ignore discussion at the



time the Nuclear Compensation Act was enacted that pointed out Constitutional problems from the standpoint of the protection of property rights. In addition, in regards to compensation that could exceed the limited liability of nuclear operators, it would be necessary to consider various problems for the making of a new system.

\*In this case, limited liability means the setting of a fixed amount of compensation liability that a nuclear operator would have toward a victim, and the nuclear operator would be exempt from any compensation exceeding that amount.

## **② Relation between upper limit of liability amount and financial security, etc.**

Concerning the upper limit of liability amount should nuclear operators be granted limited liability, a considerable amount would need to be considered in order to respond to claims in the event of the occurrence of grave accidents. Moreover, as far as the scope of limited liability for nuclear operators, rather than limited liability being applied uniformly to nuclear operators, limited liability could be applied to only certain cases, depending on the cause of the accident. On the other hand, some believe that it would be inappropriate to grant limited liability to nuclear operators that had acted in negligence or fault. Based on these opinions, in what kinds of conditions should limited liability be granted to nuclear operators should be considered.

If an upper limit of liability amount is set for nuclear operators, the question that must be settled is in what way the compensation should be settled, i.e., by the financial security obligatory under the current Nuclear Compensation Act (liability insurance contract, government indemnity agreement for compensation of nuclear damage, etc.), mutual aid by nuclear operators, or government measures in accordance with Article 16 of the Nuclear Compensation Act. As far as all nuclear operators bearing the liability by establishing a mutual aid system as a measure for covering compensation exceeding amounts covered by the current financial security, a clear maximum should be set by appropriate standards. Moreover, it has also been pointed out that nuclear operators may receive financial assistance from the government in accordance with the Nuclear Damage

Compensation Facilitation Corporation Act within the scope of the upper limit of liability amount. Based on these views, there should be further study on designing a system for financial security and so on to cover the scope of the upper limit of liability amount from the viewpoint of determining the division and ratio of liability between nuclear operators and the government.

### **③ Measures in case damage exceeds the upper limit of liability amount amount for nuclear operators**

From the standpoint of the protection of victims, if nuclear operators are granted limited liability and victims' compensation claims are limited, should the amount of damage exceed the upper limit of liability amount of nuclear operators, the protection of victims must continue to be appropriately maintained through measures such as compensation by the government.

In such a case, the government will have to prepare evidence showing the legitimacy of the government's direct compensation to victims, and study must be made of a system, procedures, source of funds, etc. necessary for the government's provision of said compensation. In regards to the source of funds, some Group members believe that the government should bear the amount through tax allocations, while others believe that all electric power consumers should bear the cost through increased electric power charges. If the amount is made up through general tax allocations, for which there are many and various financial demands, the government's severe financial situation must be considered. Moreover, if the government does make up for the remaining compensation, the government will be required both to compensate the victims and lead the rebuilding of the disaster-hit areas. Because of that, some believe that the burden on citizens for compensation should be minimized by making the most effective use of government expenditures and providing prompt and certain assistance to victims. Based on these views, measures must be studied for dealing with cases in which the compensation exceeds that for limited liability of operators.

In addition, if the nation's citizens are asked to bear the burden when compensation is paid by the government, attention should also be paid to seeking a fair share of the burden of liability from the stakeholders of nuclear operators (stockholders, financial institutions, etc.).

## **ii) Unlimited liability**

### **① Unlimited liability for nuclear operators**

Under the current Nuclear Compensation Act, nuclear operators are subject to unlimited liability in accordance with general tort liability under Civil Code. Operators are required to take financial security by entering into liability insurance contracts, an government indemnity agreement for compensation of nuclear damage, etc. In addition, the system awards appropriate compensation to victims by securing compensation resources through government measures in accordance with Article 16 of the Nuclear Compensation Act. However, various problems concerning the current nuclear compensation system have been pointed out since the TEPCO Fukushima nuclear accident. Even if nuclear operators continue to be subject to unlimited liability as at present, the financial security should be rebuilt in order to resolve these problems.

The following views were presented for study.

- a) In order to promote Japan's nuclear power policy and give a great sense of assurance to the local municipalities hosting nuclear power plants, the government should bear liability similar to that prescribed in Article 715 (liability of employer/user) of the Civil Code of Japan, and apportion fair liability in comprehensive consideration of the degree of negligence, degree of involvement, financial resources, circumstances, etc.

Due attention should be given to the compensation claim relationship between the government and nuclear operators, the channeling of liability to nuclear operators, the handling of cases when operators are given exemption from liability, and other legal issues.

- b) Unless the government takes a flexible approach to providing assistance, it will not be able to respond appropriately to various types of accidents. A response system should be designed so that lawmakers can reasonably gain the understanding of citizens. For that, Articles 16 and 17 of the Nuclear Compensation Act should be revised, so that the government can bear a suitable share of the burden in accordance with the type of accident.

## ② Financial security

The current Nuclear Compensation Act ensures a certain level of compensation funds by obligating nuclear operators to take compensation measures such as entering liability insurance contracts for nuclear damage or government indemnity agreements for nuclear damage compensation. In regards to such compensation measures, based on the experience from the TEPCO Fukushima nuclear accident, some believe that the current compensation measures are inadequate to respond to a major nuclear accident. Some nuclear operators themselves also believe that mechanisms for preparing for compensation should be based on an insurance scheme. Moreover, although under the current nuclear compensation system, the maximum amount of compensation is 120 billion yen, up to now, six trillion yen has been provided through mutual aid schemes for nuclear compensation and decommissioning. There is a large discrepancy in the compensation amounts borne by both schemes, and attention should be paid to this imbalance. In accordance with these views, consideration should be given to raising the compensation measures' amounts by paying particular attention to the role of financial security for dealing with a major nuclear accident.

In regards to liability insurance contracts, revisions have been undertaken up to now based on international trends, the capability to take on liability insurance, and so on, but large increases in the amounts for such contracts are viewed as problematic. On the supposition that compensation could not be covered by liability insurance contracts, consideration should be given to whether compensation could be covered by government indemnity agreements or other measures, the scope of such coverage, and the liability

ratio (compensation rates) for nuclear operators.

### **③ Government measures based on Article 16 of the Nuclear Compensation Act**

If the amount of compensation that should be paid exceeds the amount provided by the compensation measures, and if it is recognized that the compensation is necessary to meet the legal aims under Article 16 of the current Nuclear Compensation Act, the government is obligated to extend the necessary assistance so that the nuclear operator can meet its compensation amount. As far as measures by the government, it is necessary to promptly compensate and reimburse the accident victims, and provisions should be in place to seek compensation from nuclear operators at a later date in accordance with the scope of the accident. As with the compensation system for pollution-related health damage based on the Law Concerning Compensation for and Prevention of Pollution-related Health Damage (Act No. 111 of 1973), in order to provide prompt and fair assistance to victims, based on civil liability and premised on the “polluter pays principle,” it will be necessary to enable the secondary establishment of an administrative assistance system in accordance with need.

In regards to government measures based on Article 16 of the Nuclear Compensation Act, the government should consider what kind of measures it should take through discussions on the scope of liability of nuclear operators, financial security, etc.

### **(2) Nuclear Damage Compensation and Decommissioning Facilitation system**

The Nuclear Damage Compensation and Decommissioning Facilitation system has been set up to respond to compensation needs even if serious damage from a nuclear accident results in a huge amount of compensation damage that exceeds compensation measures, in preparation for nuclear accidents that may occur in the future, as a mutual aid scheme among nuclear operators.

In regards to the financial burden the Corporation must bear, it is difficult to quantitatively decide the amount of funds the Corporation will need to prepare for future accidents, and the amount should be decided flexibly in consideration of the financial situation of the nuclear operators. Amid the changes in the environment surrounding nuclear power, including improvements in electric power systems and declining dependency on nuclear power, the Group will consider the future framework of the system after identifying and reaffirming what kind of problems are occurring from the viewpoint of ensuring the appropriate provision of compensation related to the TEPCO Fukushima nuclear accident.

### **3. Legal liquidation for nuclear operators**

The current nuclear compensation system has put into place mechanisms that enable nuclear operators to pay prompt and appropriate compensation to victims and carry out clean-up and decommissioning activities by not laying excessive debt on nuclear operators that have caused nuclear accident damage that exceeds the amount provided by compensation by the nuclear operator through financial security and the nuclear damage compensation and decommissioning system. In consideration of ensuring not only prompt and appropriate compensation but also the conducting of post-accident clean-up, Group members believe that legal liquidation of nuclear operators is an issue that should be cautiously studied and not discussed from the standpoint of compensation.

Based on this, in regards to legal liquidation of nuclear operators, it is necessary to consider it an issue for the entire power industry, including the position of nuclear operators under the changing industry environment brought about by innovations in the electric power generating systems and methods for managing accidents.

On the other hand, the business environment for nuclear operators is changing due to improvements in electric power generating systems, and although it would be too extreme to say that it is necessary to make legal liquidation an assumption for nuclear operators in the case of nuclear compensation, from a legal point of view, compared to the past, situations

could arise whereby legal liquidation, including receivership, may be unavoidable. Moreover, as mentioned previously, in the case of requiring citizens to share the burden when compensation must be provided by the government, stakeholders of the nuclear operator should also be asked to share a fair burden of the liability. For this, any legal issues regarding what kinds of procedures and methods that may be taken regarding the legal liquidation of nuclear operators should be resolved from the standpoint of nuclear damage compensation.

#### **4. Provision of exemption, Article 17 of the Nuclear Compensation Act**

##### **(1) Provision of exemption**

According to Article 3, paragraph 1 of the Nuclear Compensation Act, nuclear operators are exempt from compensation liability in the case of “catastrophic natural disasters” or “social upheavals.” From the legal aim of protecting victims, the legislative intent is to narrowly limit such exemption to very rare cases of more than just force majeure. Moreover, since exemption from liability is also recognized in the CSC entered into by Japan, it is appropriate that exemption for nuclear operators is maintained. Based on the view regarding the necessity of ensuring the transparency and foreseeability of the application of the provision of exemption, study is needed on the methods for applying these provisions.

##### **(2) Government measures based on Article 17 of the Nuclear Compensation Act**

In cases when a nuclear operator is granted exemption from liability, the government shall take measures to assist victims, in accordance with Article 17 of the Nuclear Compensation Act. Based on ordinances in relation to the Act on Special Measures Concerning Nuclear Emergency Preparedness, the Basic Act on Disaster Control Measures, etc., necessary measures have been developed. In addition, in regards to nuclear accidents in which nuclear operators will be deemed exempt, since it is considered difficult to foresee a nuclear disaster beforehand, the government should study means to assist victims under the Nuclear Compensation Act by measures for emergency relief and disaster recovery in accordance with

other related laws and ordinances.

### **III. Procedure for compensation to the victims**

#### **(1) Functions and roles required for processing of procedures for providing prompt and appropriate assistance to victims**

In regards to nuclear damage compensation, procedures are required that facilitate the provision of prompt and appropriate assistance to victims, more specifically, procedures should facilitate responses appropriate to the psychological and financial states of the victims, deal efficiently with the voluminous amount of claims that will arise within a short period, ensure fairness in dealing with the similarities of many of the claims, reduce the burden on victims of having to prove cause and effect, and consider the particularities of responses in the case of the effects of the accident extending over a long period.

For this, the system for compensation by nuclear operators must be anticipated beforehand. In addition, it is necessary to establish mechanisms for encouraging independent resolutions among disputants, reaching clear and prompt resolutions through the mediation of neutral and fair third parties without litigation, and establishing consultation services for victims. Moreover, in order for these mechanisms to function effectively, contact and cooperation among nuclear operators, the national government, local municipalities, relevant organizations, and others are essential.

#### **(2) Formulation of guidelines and establishment of dispute resolution procedures**

##### **(1) Development of guidelines**

In accordance with Article 18 of the Nuclear Compensation Act, the guidelines developed by the Dispute Resolution Committee for Nuclear Damage Compensation (hereinafter, “Committee”) shall be “guidelines for deciding the scope of nuclear damage and general guidelines that contribute to the independent resolution by the parties involved in other disputes.” By summarizing avenues that can be applied for a large number



of claims, the guidelines aim at encouraging the independent resolution of disputes by the parties involved, and guidelines for the mutual resolution of individual disputes are required for appropriately resolving individual and specific disputes.

For the TEPCO Fukushima nuclear accident, guidelines (Interim Guidelines) were applied to “show types of damage that could be classified into categories requiring compensations and the scope of said damage,” and “damage for which a sufficient cause-effect relationship in individual and concrete cases is recognized shall be subject to compensation regardless of whether the damage is shown in the guidelines” (Fourth Supplement to the Interim Guidelines).

There are various types of nuclear accidents, and flexible responses are required for individual accidents. Because of that, regarding the positioning of guidelines, the provisions in the Nuclear Compensation Act remain unchanged, and it is appropriate for the guidelines developed for individual accidents to describe damage types and their scope.

Moreover, based on critical accidents at uranium processing plants and the TEPCO Fukushima nuclear accident, the nuclear operators set compensation standards for each damage item type shown in the guidelines, and since it can be imagined that compensation procedures will be started, it is necessary to promptly formulate the guidelines. In addition, nuclear operators need to maintain a system enabling them to start compensation procedures promptly and appropriately based on the developed guidelines.

## **(2) Dispute resolution procedures**

### **① Settlement mediation**

In accordance with Article 18 of the current Nuclear Compensation Act, the Committee shall mediate a settlement as part of the dispute resolution procedure.

In the case of the criticality accident at the uranium processing plant, the Committee set up a sub-committee to mediate a settlement. In the case of

the TEPCO Fukushima nuclear accident, in order to respond within a short time to the many claims for settlement mediation, the government partially revised Cabinet ordinances, and determined the main points for managing the mediation claims by the Committee, and the Nuclear Compensation Dispute Resolution Center (hereinafter, “Nuclear ADR Center”), set up under the Committee, conducted the mediation procedures for a settlement. Based on the guidelines developed by the Committee and from the standpoint of a prompt and smooth dispute resolution, the Nuclear ADR Center studied the individual and specific cases, including those involving damage not shown in the guidelines, through the dispute resolution procedures, and the mediation members proposed ways to resolve the disputes. Moreover, because of concern that the extinctive prescription would expire during the mediation, special legislation was enacted so that the interruption of the extinctive prescription could be treated as a special case in regards to mediation procedures so that victims would not hesitate to use those procedures.

Since the Nuclear ADR Center has built up a successful record up to now of resolving a high percentage of the cases it has handled up to now, in order to make use of this experience, the government should study the enactment of necessary regulations regarding the dispute mediation procedures from the standpoint of ensuring fast and appropriate assistance to victims, including the incorporation of provisions for interrupting the extinctive prescription.

In regards to the respect for mediation of resolutions by nuclear operators, in the case of the TEPCO Fukushima nuclear accident, TEPCO stated its respect for the dispute mediation procedures in its special emergency plan formulated in accordance with Article 45 of the Nuclear Compensation and Decommissioning Act. The alternative dispute resolution (ADR) mechanism is a system predicated on the legitimatization of agreements based on the voluntary will of the parties involved to resolve the dispute. On the basis of this ADR mechanism, consideration should be given to what kind of methods are appropriate for encouraging respect by nuclear operators for the mediation of disputes through ADR.

## **② Other dispute resolution procedures**

The current Nuclear Compensation Act stipulates only mediation of resolutions as a dispute resolution procedure, but with ADR mechanisms, various dispute resolution procedures can be developed and other options presented to the disputing parties.

In regards to the preparation of dispute resolution procedures other than resolution mediation, it is believed the introduction of other dispute resolution procedures should be introduced other than arbitration with binding force on the disputants, as a dispute resolution option that meets the needs of victims from the standpoint of enhancing the effectiveness of dispute resolution. In the case of disputes where agreement cannot be reached through mediation, from the standpoint of lessening the burden on the disputing parties and expectations of judgment by third-parties that have specialist knowledge in regards to nuclear damage compensation, the preparation of procedures for dispute resolution without depending on litigation is necessary. On the other hand, in the case of victims choosing procedures with binding force, the nuclear operator will be compelled to comply with the outcome, and it is feared that nuclear operators' right to litigation will be curtailed by such procedures. Since it is possible that if agreement cannot be reached by mediation procedures, the dispute will be shifted to procedures with binding force, a disputing party that does not desire the application of procedures with binding force will hesitate to utilize resolution mediation procedures. This will lead to damage to the promptitude and simplicity of the dispute resolution and become a hindrance to the provision of prompt relief to victims.

As to whether other dispute resolution procedures can be prepared in addition to the current resolution mediation procedures, further study should be undertaken with the aim of finding effective resolutions that meet the dispute resolution needs related to nuclear damage compensation.

## **③ Consultation, provision of information**

In the case of the TEPCO Fukushima nuclear accident, the provision of

information and consultations related to compensation, the Nuclear Damage Compensation and Decommissioning Facilitation Corporation provided consultation services and necessary information and advice to victims, in accordance with Article 53 of the Nuclear Compensation and Decommissioning Act.

For victims, the establishment of a consultation channel and the provision of information regarding the receiving of compensation directly after the nuclear accident, not only enhances the predictability of receiving compensation but also is believed to lead to the fostering of a greater sense of security. However, the current provision of consultation and information by the Nuclear Compensation and Decommissioning Corporation is limited to cases when the Corporation also provided financial assistance to nuclear operators. Because of that, a system should be prepared so that consultations and information can be provided promptly for any cases involving the nuclear damage compensation.

### **(3) Organization and management of the Dispute Resolution Committee for Nuclear Damage Compensation and the Nuclear Compensation ADR Center**

Based on Article 18 of the Nuclear Compensation Act, the duties of the Committee are mainly the mediation of dispute resolutions and the development of guidelines. The necessary matters related to the organization and management of the Committee, requests for dispute mediation, and procedures for said mediation are set by government ordinances.

For the formulation of guidelines, the guidelines should be developed from an objective standpoint, and it is necessary that they be accepted and shared by the disputing parties. For that, the neutrality and expertise of the Committee are required. Matters related to the requirements for Committee members, the operation of the Committee, etc. are decided by government ordinances, and it is possible to quickly set up the Committee and formulate Guidelines. Accordingly, it is appropriate for the Committee to continue to formulate guidelines as it currently does.

In regards to the operation of the Committee, in the case of the TEPCO Fukushima nuclear accident, the Committee's meetings were carried out in public, and the Committee endeavored to fully understand the state of the damage and the demands from the disaster-hit areas through public hearings with local governments and related organizations, in situ inspections, etc. The Committee was required to pay close attention to the views of parties requesting the Committee to listen carefully to the voices of victims in the disaster-stricken areas soon after the accident.

As far as the implementing body carrying out the dispute resolution procedures, in consideration of the special nature of nuclear accident compensation, the administrative-type ADR, as it is conducted now, is appropriate since both independence and expertise, the easing of victims' expense burden stemming from the compensation procedures, and the efficient processing of procedures are required.

In order to quickly provide relief to victims when nuclear damage occurs, the prompt setting up of a nuclear compensation ADR center to respond to nuclear accidents is necessary. It is essential for the Committee, which is responsible for formulating guidelines and carrying out dispute resolution procedures promptly and appropriately, and the nuclear compensation ADR center to be operated so that they exchange views and share information.

#### **(4) Others**

##### **① Information-sharing, cooperation with relevant organizations**

Among the responses to the TEPCO Fukushima nuclear accident, the role played by organizations summarizing victims' claims in their compensation procedures, and the role expected for prefectural and municipal governments, which had a closer relationship with the victims, were great. In particular, when specific compensation standards were being drafted based on guidelines developed from the experiences of the TEPCO Fukushima nuclear accident, in order to ease the burden on victims for showing proof of cause and effect, the collaboration of stakeholders such as relevant ministries and agencies and other organizations was essential.

Moreover, with emergency responses necessary when nuclear accidents occur, it is necessary to build a system for providing compensation promptly and appropriately. For this, the role expected of organizations involved in the nuclear accident compensation needs to be clarified and organized, and the sharing of information and maintenance of channels for cooperation are also essential during normal periods.

## **② Multiple-party litigation**

In regards to the introduction of frameworks for responding to American multiple-party litigation for nuclear damage compensation, it is a matter that is closely connected to the workings of Japan's overall legal system. Since a class action lawsuit for the collective compensation for damage to consumers' property will be filed in October 2016, it will be necessary to consider these points. Accordingly, multiple-party litigation will be an issue for future consideration.

## **(3) Provisional payment (advance payments on behalf of the nuclear operator)**

### **(1) Provisional payments by nuclear operators**

In past accidents, provisional payments were made by nuclear operators because of the time required until appropriate compensation could be paid. This provisional payment played a great role in providing prompt relief to victims.

In order to provide compensation promptly, in addition to nuclear operators' preparing compensation beforehand and taking other measures for prompt payment, a fundamental course is for the government to move expeditiously forward with necessary measures for formulating guidelines in this regard, and so on. However, in cases when evacuation orders are given by the government, since it is believed that evacuees' daily lives will be impacted by many problems, necessary procedures should be prepared to enable nuclear operators to make provisional compensation payments. In particular, in regards to the scope of such provisional payments, the guidelines and policies used in past cases should be prepared and utilized.

as reference.

## **(2) Advance payment by the government**

In cases when nuclear operators are unavoidably unable to provide full compensation or make provisional payments, based on the experience from the TEPCO Fukushima nuclear accident, it will be very important for the government to enact into law mechanisms for providing prompt relief to victims by making advance payments to victims in place of the nuclear operator as an emergency measure. As far as advance payment by the government, since a flexible response, such as the scope of the payment, that is in accordance with the severity of the accident and the situation of the victims is necessary, the minimum necessary requirements, such as the compensation claim to nuclear operators, should be decided by law, and in regards to the specific procedures, they should be decided by government ordinance.

In order to avoid citizens having to bear the burden of payment in cases when nuclear operators do not comply with compensation claims by the government, the government must consider the scope of the damage that will be the target for advance payment, the procedures for the advance payment, such as confirmation beforehand of the nuclear operator's response to the government's compensation claim, and the personnel system for conducting the payment transactions, including auditing of the transaction contents of the claims.

## **4. Extinctive prescriptions**

In regards to the extinctive prescription for the damage compensation claims, under the current Nuclear Compensation Act, Civil Code applies, but in the case of the TEPCO Fukushima nuclear accident, there were problems accompanying the exercise of the right to make damage claims. While nuclear damage has a special nature, based on the intent of the extinctive prescription system, the fact that the types of nuclear accidents and the state of damage are varied, and the handling of the extinctive prescription for damage compensation claims in other fields, establishing

special legal conditions uniformly for the extinctive prescription related to nuclear damage claims should be considered very carefully.