

A Study of Legal Issues Based on the Analysis of Environmental Pollution Prevention and Control in China

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ABSTRACT

Environmental pollution liability insurance was first introduced in the developed countries, represented by the United States, and then developed rapidly in the western industrial countries, not only to protect the environment but also to benefit the public, and the insurance system has shown great superiority in environmental risk management. At a glance, environmental pollution liability insurance has become a proven means of environmental protection in the international community, and mandatory environmental pollution liability insurance has become a development trend. This paper takes the 2018 Draft Measures for the Administration of Compulsory Liability Insurance for Environmental Pollution as an entry point to, firstly, explore the legal status of the insurance system in the form of administrative regulations at the national legislative level, further amend the relevant content of the higher law that may result in a conflict of legal status, and improve and perfect China's environmental protection legal system; secondly, improve the insurance system in terms of underwriting institutions, environmental pollution liability and environmental risk levels, etc. Secondly, to improve the insurance system from the content of relevant systems such as underwriting institutions, environmental pollution liability and environmental risk levels, and strive to build an insurance system that meets the current situation of China's economic development. At the same time, we will improve the supporting measures in terms of building an enterprise risk information sharing platform and introducing third party assessment and appraisal agencies. As one of the national environmental protection development strategies, the compulsory liability insurance system for environmental pollution has a long way to go, and we hope that our rough insights will be beneficial to the development of the compulsory liability insurance system for environmental pollution in China.

Keywords: Environment, Pollution Prevention and Control, Legal Issues, Topical Studies.

1. INTRODUCTION

In recent years, the rapid development of China's economy has also brought about serious environmental problems [1]. A series of environmental problems such as air pollution, water pollution and soil pollution have come into the limelight one after another, resulting in serious environmental problems and compensation for damages becoming the focus of society. With the public's awareness of their rights and environmental protection gradually increasing, environmental pollution liability insurance has also gradually come into the public eye.

Most of the subjects of environmental pollution accidents are production enterprises, especially some of the environmental high-risk enterprises. Once an environmental pollution accident occurs [2], such

enterprises not only cause pollution of the natural environment, but also cause huge property losses and even personal injuries, the consequences of which are incalculable [3]. The way such pollution accidents are handled in China is usually that the polluting enterprise is punished, the innocent people suffer and the local government pays the bill, which often leads to many social problems. The environmental pollution liability insurance system, which first emerged from developed countries, has matured after decades of exploration and improvement, and has effectively solved a series of problems brought about by environmental pollution. China introduced this insurance system from the perspective of effectively mitigating the production risks of enterprises, reducing the burden on the government and adequately compensating victims, and has been exploring it continuously since the 1990s, followed by a

policy pilot in 2007 and a formal pilot of compulsory environmental pollution liability insurance in 2013 in two phases. However, due to various reasons such as legislation, system, supporting measures and government guidance, although the pilot work has achieved certain results and accumulated some experience [4], the overall effect is not satisfactory, and the development of the compulsory environmental pollution liability insurance system in China is still very slow. Therefore, the establishment of a sound compulsory liability insurance system for environmental pollution is an important part of the construction of ecological civilization, and accelerating the improvement of the legal system of compulsory liability insurance for environmental pollution is also of great significance to the improvement of the socialist rule of law theory system and the modernization of the national governance system and governance capacity.

2. PROBLEMS OF CHINA'S COMPULSORY LIABILITY INSURANCE SYSTEM FOR ENVIRONMENTAL POLLUTION

2.1. Conflict of legal status

However, as a legal system, it should have fundamental, global, stable and long-term characteristics from the beginning. As the operation of the compulsory liability insurance for environmental pollution still lacks the regulation and guarantee of the legal system, the stability and long-term nature of the legal system is difficult to reflect, which largely restricts its development. Secondly, the "Measures for the Administration of Compulsory Liability Insurance for Environmental Pollution (Draft)", which was considered and adopted in principle by the Ministry of Ecology and Environment of China in 2018, systematically provides for the compulsory liability insurance system for environmental pollution in the form of special legislation in the form of departmental regulations, in order to make up for the fact that in the absence of existing legislation, it can regulate and guide the pilot work of compulsory liability insurance for environmental pollution [5]. According to the relevant provisions of the existing Environmental Protection Law of the People's Republic of China, the State only encourages enterprises, institutions and other production operators to take out environmental pollution liability insurance, and does not make it a mandatory requirement. However, the Draft Measures, as a special legislative departmental regulation, makes it mandatory for eight types of subjects to take out environmental pollution liability insurance, based on the principle of legal ranking in jurisprudence. In the event of a conflict between laws of different levels, the higher law prevails over the lower law, i.e. the law is more effective than the departmental regulations.

2.2. The content of the compulsory liability insurance system for environmental pollution is not perfect

The system of compulsory liability insurance for environmental pollution was introduced from abroad, and although it has achieved some success in the process of economic development in other countries, on the whole, the system lacks the local characteristics of China, does not combine with the specific conditions of China, cannot fully stimulate the vitality of compulsory liability insurance for environmental pollution to adapt to China's economic development, and fails to effectively integrate into China's environmental governance system. After years of pilot work, the legal system of compulsory liability insurance for environmental pollution has revealed problems such as an imperfect legal system, inconsistent damage compensation standards and prominent moral risks.

2.3. Imperfect insurance supporting measures

Environmental pollution liability insurance as a new type of insurance, the relevant state departments in the introduction of policies and regulations and since the launch of the pilot work, due to the lack of relevant experience, making environmental pollution compulsory liability insurance at the beginning of the implementation of many difficult problems, including the new type of insurance supporting measures need to be improved.

2.4. Lack of local government guidance and support

The current understanding of China's enterprises for environmental pollution compulsory liability insurance is still stuck in the compensation of losses, that the insured enterprises after the environmental pollution accident damage liability insurance company to pay for, which has largely defeated the original purpose of this system [6]. Compulsory liability insurance for environmental pollution is not only to fulfil the liability of enterprises, but also to actively guide and motivate them to produce safely and in an environmentally friendly manner, and to improve their environmental development philosophy. In this regard, the government lacks active publicity and policy guidance to give production enterprises a proper orientation towards compulsory liability insurance for environmental pollution. At the same time, the local pilot work lacks tax concessions and financial support from the higher level of government, and the funding in the pilot work is pointed out to be mainly borne by the local treasury.

3. LESSONS FROM THE EXPERIENCE OF COMPULSORY LIABILITY INSURANCE SYSTEMS FOR ENVIRONMENTAL POLLUTION IN DEVELOPED COUNTRIES

3.1. Compulsory liability insurance for environmental pollution in developed countries

Strict environmental liability in the United States: Firstly, the amount of insurance coverage for environmental pollution liability insurance in the United States varies depending on whether the accident is sudden or non-sudden; secondly, the underwriting agency is a specialized environmental protection insurance company, which assumes liability for compensation and pollutant clean-up costs arising from pollution accidents; thirdly, the scope of application of insurance liability includes sudden and non-sudden events; finally, in terms of insurance liability. Finally, in terms of liability exemptions, the insurance company can refuse to assume liability for pollution damage caused by the intentional acts of the insured, provided that the corresponding conditions are met.

Germany's full coverage compulsory liability insurance: Germany initially excluded progressive environmental pollution damage from the insurance coverage and included it in the exclusion of liability, and later added losses caused by water and atmospheric pollution to the coverage, but losses caused by foreseeable emissions outside the territory of the insurance company were still included in the exclusion; finally, the German Draft Environmental Damage Compensation Act provides for. Finally, the German Draft Law on Environmental Damage Compensation provides for a minimum amount of insurance, but some business sectors may be subject to different minimum insurance amounts within certain limits by order of the Federal Government with the consent of the Federal Senate, depending on the level of risk.

3.2. The inspiration of the compulsory liability insurance system for environmental pollution in developed countries to China

With the world of the world pattern of stability and economic development gradually introduced by the developing countries, but that the insurance system of the insurance system has been in the United of the United States and the development of developed countries tend to mature, our China to build to build the construction of the construction of of the experience of the development of developed countries to avoid taking a detour and rapid development.... Although the insurance model of environmental pollution liability insurance in developed countries is different, the following three characteristics have been shown in general:

First, compulsory insurance is the development trend of environmental pollution liability insurance. With the increasing environmental pollution accidents, the public's environmental awareness has increased, and in the face of the inability of the main body of pollution to assume responsibility, in order to maximize the protection of the interests of the victims, mandatory environmental liability insurance has become the development trend.

Secondly, the scope of insurance is gradually expanding. The scope of environmental liability insurance in various countries is focused on the high risk areas of the environment, initially only for sudden pollution accidents, slowly expanding to progressive and cumulative pollution accidents, and also more scientific and reasonable in the provisions of liability exemption.

Third, the development of the system relies on legal protection, countries have successively established the legal status of environmental pollution liability insurance in the form of law, regulating the operation and development of this system. China should learn from and absorb the successful experience of foreign countries in the development of environmental pollution compulsory liability insurance, fully improve the relevant content of the insurance system, and strive to build an insurance system in line with China's insurance system development and ecological civilization construction brick.

4. MEASURES TO IMPROVE CHINA'S COMPULSORY LIABILITY INSURANCE SYSTEM FOR ENVIRONMENTAL POLLUTION

4.1. Effectively solve the problem of conflicting legal status

In order to further raise the risk prevention awareness of enterprises in environmental high-risk areas, strengthen enterprise risk prevention and control, and alleviate the environmental problems and social contradictions caused by enterprise environmental pollution, the state must promote compulsory liability insurance for environmental pollution from the height of legislation, so that relevant enterprises can compulsorily establish the awareness of environmental risk responsibility. The legislature should take the provisions of Article 52 of the newly amended Environmental Protection Law of the People's Republic of China in 2015 as an opportunity to promote compulsory liability insurance for environmental pollution on the basis of the national law that "the state encourages the taking out of liability insurance for environmental pollution", with reference to the compulsory liability insurance system for motor vehicle traffic accidents. The Ministry of Ecology and Environment, together with the CBIRC, should

improve the Measures for the Administration of Compulsory Liability Insurance for Environmental Pollution as soon as possible, with a view to adopting and establishing the legal status of compulsory liability insurance for environmental pollution in the form of administrative regulations, and then making detailed legal provisions on insurance principles, insurance coverage, insurance contracts, insurance premium rates, exclusions, statute of limitations for claims, dispute resolution and insurance supervision, etc. The law also establishes the legal status of compulsory environmental pollution liability insurance.

4.2. Improve the legal system of compulsory liability insurance for environmental pollution

Further clarify the underwriting body: In the future, the development of China's compulsory environmental pollution liability insurance should build a unified, complete and efficient underwriting body, give full play to the role of local governments and the CBIRC, and guide the construction of a joint underwriting model of commercial insurance companies.

Strict liability for environmental pollution damage: China should strengthen the administrative supervision of environmental liability, and strict access threshold for environmental risks of enterprises. administrative authorities should give priority to the relevant procedures within a reasonable period of time, in order to incentivise insurance policies by administrative means.. When enterprises are set up and ready to produce and operate, administrative authorities should urge enterprises in high-risk environmental industries that should be insured but have not taken out compulsory liability insurance for environmental pollution to actively take out insurance during the administrative licensing stage of the enterprise, otherwise they will be refused entry into the market; for enterprises that have already taken out insurance, the Administrative authorities should give priority to the relevant procedures within a reasonable period of time to incentivise insurance policies by administrative means.

5. CONCLUSION

In this paper, in view of the current difficulties in the development of China's compulsory liability insurance system for environmental pollution, the author proposes, through research and analysis, the early adoption of the Measures for the Administration of Compulsory Liability Insurance for Environmental Pollution, the further amendment of the relevant contents of the Environmental Protection Law, the establishment of a sound legal system for compulsory liability insurance for environmental pollution, the improvement of relevant supporting measures and the strengthening of government guidance and supervision. The construction of the legal system of compulsory liability insurance for

environmental pollution is of great significance and is also a systematic project that requires the collaboration of multiple disciplines and fields. For the other issues involved in the system and how to really implement the insurance system, there is still a need for continuous exploration by the theoretical and practical circles. It is expected that the compulsory environmental pollution liability insurance system will form a long-term development mechanism in China and demonstrate its unique value in the process of ecological civilisation development.

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