

The Legal Regulation of Compulsory Liability Insurance for Environmental Pollution in China

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Abstract: Compulsory liability insurance for environmental pollution is one of the green insurances currently being promoted in China, which has practical significance for achieving green and low-carbon development. However, there are many problems in the compulsory insurance for environmental pollution. The lack of a specialized legal basis leads to an awkward situation where there is no legitimate authorization from higher-level laws. The insurance model has not been clearly defined, and there is a lack of an official stance and attitude of praise. The lack of clear related legal relationships makes it difficult to form a hierarchical and effective legal system for compulsory liability insurance for environmental pollution. Therefore, from the perspective of the combination of insurance law and environmental law, we should draw on the development experience abroad, explore effective paths to improve the compulsory liability insurance for environmental pollution, promote the effective connection between the insurance industry and environmental protection, and achieve a win-win situation for both.

1. The Presentation of the Issue

Environmental pollution liability insurance is one of the green insurance products in our country, which originated in the United States and appeared in our country in the 1990s. At first, the environmental pollution liability insurance products are voluntary insurance, so the insurance scale is small, the development is slow, and even stagnant. Later, our country carried out the pilot program of environmental pollution liability insurance in 2007, which still relied mainly on voluntary insurance, and the results of the pilot program were not satisfactory. In 2013, the former Ministry of Environmental Protection (MEP) and the former CIRC released Guiding Opinions on Carrying out Pilot Programs for Compulsory Environmental Pollution Liability Insurance (hereinafter referred to as Guiding Opinions), requiring regions to carry out pilot programs for compulsory environmental pollution liability insurance. After decades of development, environmental pollution compulsory liability insurance has also become a part of the relevant legal norms reflected in the initial results. At present, there are still many aspects to be improved in the legal system of our country, such as the lack of specific legislation and thus the lack of a specific legal system. Therefore, in view of the current legislation status of compulsory liability insurance of environmental pollution, how to improve the legal regulation of compulsory liability insurance of environmental pollution as the theme, promote green development, achieve the double carbon target

as the ultimate goal, comb the current relevant extraterritorial legislation experience and use the legal basis to analyze the problem and the way of improvement. Thus, it promotes the environmental pollution compulsory liability insurance in our country to truly establish and maximize its advantages and function.

2. Problems existing in compulsory liability insurance for environmental pollution

2.1 The lack of a special legal system

There is a lack of special legal system foundation relating to compulsory environmental pollution liability insurance; there is no legal basis for implementation. In fact, all local governments have issued relevant laws, regulations and policies concerning compulsory environmental pollution liability insurance. However, such laws, regulations and policies are of low effect, prone to change, lack stability, and cannot be widely applied at all.

On May 7, 2018, the Ministry of Ecology and Environment approved the Administrative Measures on Compulsory Environmental Pollution Liability Insurance (Draft) (hereinafter referred to as "The Administrative Measures (Draft)"). Although it is clear that environmental liability insurance is a compulsory insurance, the Administrative Measures is just a department of regulations, not at the level of law and administrative regulation, and there are also many defects.

"The Administrative Measures (Draft) mainly concern the specific scope of compensation, regulate the scope of compulsory insurance, liability limits, premium rate supervision and floating, conclusion and termination of insurance contracts, methods of underwriting and insurance, etc., but fail to provide for the rules of liability identification and sharing mechanism in case of pollution accidents."^[1] The scope of compulsory environmental pollution liability insurance stipulated in Article 6 does not cover all high-risk laws, either. It is stipulated in the form of "list plus miscellaneous" in Article 5 that the compulsory insurance scope of "compulsory environmental pollution liability insurance" includes eight categories of enterprises with high environmental risks, including the oil, natural gas, hazardous wastes, etc. "^[2] However, the scope of high environmental risk enterprises is vague and indefinite, and there is no precise definition.

2.2 Uncertainty over Insurance Model

The intended status of compulsory environmental pollution liability insurance is dislocated from the actual status, which shall refer to the provisions of compulsory environmental pollution liability insurance on the level of law, and in fact refers to whether the insurance is complied with and enforced in practice. At present, the mode of compulsory liability insurance of environmental pollution has not been clearly defined in law, but in practice, most places carry out compulsory liability insurance of environmental pollution. The existing laws and administrative regulations show that the attitude of our country to the insurance model is not clear, and there are different stipulations in the basic law and special law. For example, the insurance model specified in the Environmental Law is optional insurance, while that in the Law on the Prevention and Control of Environmental Pollution Caused by Solid Waste is mandatory insurance. Special laws such as the Law on the Prevention and Control of Atmospheric Pollution, the Law on the Prevention and Control of Water Pollution and the Law on the Prevention and Control of Soil Pollution do not reflect the insurance model. Although in practice, most of the policies have shown the attitude of compulsory insurance, but at the legislative level, it is not clear.

2.3 Confusion of Associated Legal Relations

The provisions on compulsory environmental pollution liability insurance are inconsistent among laws in the field of environmental law in our country. The Environmental Protection Law covers water, land, atmosphere and other aspects, and the State has also issued corresponding separate regulations, but the provisions on compulsory environmental pollution liability insurance vary from one separate regulation to another. The whole environmental law system is an interconnected organic whole. The ideal state shall be to establish relevant stipulated measures for compulsory environmental pollution liability insurance according to all directions within the environmental system so as to form a perfect environmental protection system. However, in fact, there is no effective linking system of compulsory liability insurance of environmental pollution among the separate laws. The Air, Water and Soil Pollution Prevention and Control Act has not embodied compulsory liability insurance of environmental pollution, but the Solid Waste Pollution Act has provided corresponding provisions.

3. Perfect Paths for Compulsory Environmental Pollution Liability Insurance

3.1 Accelerating the Legislation for Compulsory Environmental Pollution Liability Insurance

Compulsory environmental pollution liability insurance should be developed as an independent legal system and should not be included in separate chapters of the Insurance Law and the Environmental Protection Law but directly included in the Insurance Law and the Environmental Protection Law. As they are the basic laws of the field of insurance and the field of environment respectively, compulsory environmental pollution liability insurance is a small part of the intersection of insurance and the field of environment and has particularity. Therefore, compulsory environmental pollution liability insurance may be stipulated in the Insurance Law as a special type of insurance, therefore, the legal status of compulsory environmental pollution liability insurance is established in the field of insurance. There is no need to prescribe too much compulsory liability insurance of environmental pollution in the Environmental Protection Law in order to avoid damaging the legal structure and style of the law.

Only the principal stipulation still can not provide the sufficient legal support; therefore, we must carry on the special legislation, the clear legislation form, and the establishment of the consummation legislation system. Through the basic law, the special law, or the basic law and the special law, the form of the combination form, forms the upper and lower connected law whole. The United States determines the form of separate law, in a series of separate laws to establish the compulsory environmental pollution liability insurance content. Sweden establishes the form of basic law, in the basic law provides the compulsory environmental pollution liability insurance. On the premise of having adopted general legislation on environmental pollution liability, Germany has set up a separate law to form a comprehensive legal system for compulsory environmental pollution liability insurance. Our current legislative form is similar to that of Germany, but it has not yet been perfected.

For example, Regulations on Environmental Pollution Liability Insurance should be enacted to incorporate general provisions on environmental liability insurance and compulsory environmental pollution liability insurance as one piece of legislation. Establish basic rules on environmental liability insurance, and in combination with the Insurance Law, the Environmental Protection Law and the Administrative Measures (Draft), clearly set forth the coverage, insured subjects, insurance premium rates, liability limits, disputes and other content of the environmental liability insurance.^[3]

3.2 Make environmental pollution liability insurance mandatory

The main reason for adopting the compulsory insurance model in the field of environmental pollution liability is that it is difficult to form an effective environmental liability insurance market spontaneously.^[4] Given the market characteristics of profitability, enterprises carry out operating activities for the purpose of profit, so that their spontaneous insurance can hardly form an effective market effect. Moreover, environmental pollution is uncertain, and enterprises that hold a fluky attitude as to whether pollution occurs will lower their enthusiasm to take out insurance.

The United States, Sweden, and Germany have made the compulsory insurance model clear. The Clean Water Act of the United States provides that all ships entering into its territory shall be covered with liability insurance. The theoretical principles of retroactive liability, no-fault liability, and joint and several liability are set forth in CERCLA to ensure that victims are able to obtain compensation to the largest extent. In Sweden, Section 65 of the Environmental Protection Act provides that for the purpose of compensating victims in certain circumstances, the Government or an agency designated by the Government shall draw up an insurance policy subject to approved conditions. In Germany, the Environmental Liability Act of 1990 recognized the compulsory liability insurance model, and after the amendment in 2002, the insurance system has been transformed from the compulsory liability insurance model combined with financial guarantee or guarantee to the compulsory liability insurance model.^[5]

To summarize, the development path may be as follows: Firstly, it is clearly stated in the Insurance Law that China's insurance model is compulsory insurance. Secondly, the attitude towards compulsory environmental pollution liability insurance is specified in the Environmental Protection Law.

3.3 Clarification of Affiliated Legal Relationships

We should clarify the respective positioning of the Insurance Law and the Environmental Law and realize the effective connection of compulsory environmental pollution liability insurance in the fields of the Insurance Law and the Environmental Law. General principles shall be set up in the Insurance Law in respect of compulsory environmental pollution liability insurance so as to clarify the insurance status thereof and facilitate the practice so as to identify the positioning of compulsory environmental pollution liability insurance and carry out the relevant work. On the premise of taking the Insurance Law as the general basis, a legal system in respect of compulsory environmental pollution liability insurance under the Environmental Law shall be constructed to form a complete chain of the general (Insurance Law) -general (Environmental Protection Law) -branch (other separate laws and administrative regulations) and a structural legal mode of compulsory environmental pollution liability insurance.

Based on the overall legal system of China and by learning the relevant foreign legislative practice, a compulsory environmental pollution liability insurance legal system reflecting the unique national conditions of China will be established. "The USA has formulated the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Underground Oil Storage Tanks Act and other special laws specializing in environmental protection and pollution control, among which the liability insurance taken out by enterprises has been expressly provided."^[3]

In conclusion, we shall clarify principle provisions on compulsory environmental pollution liability insurance in the Basic Law on the legislative level as soon as possible and detail principles in other laws so as to form rules on compulsory environmental pollution liability insurance.

4. Conclusion

Compulsory environmental pollution liability insurance, as a typical type of green insurance, is not only an important standard for measuring the level of insurance development and the degree of green protection, but also a path choice for effectively achieving green development. Before a perfect legal system for compulsory environmental pollution liability insurance is formed, there is still a need to constantly identify, put forward, pursue and solve problems on the road of law so as to explore and improve new paths for compulsory environmental pollution liability insurance.

References

- [1] Shen Xiaoyun, Ren Hongtao, *Regulatory Dilemmas of Compulsory Environmental Pollution Liability Insurance and Path Selection of Operating Mechanism—Taking the Administrative Measures for Compulsory Environmental Pollution Liability Insurance (Draft for Comment) as Research Object* [J]. *Climb*, 2021, 40 (02): 109-116.
- [2] Li Zhaodi, Liu Zhongmei, *Legal Dilemmas and Responses of Compulsory Environmental Pollution Liability Insurance in China* [J]. *Scientific Development*, 2023 (04): 92-96.
- [3] Zhang Zhenxu and Li Xiaoping, *Brief Analysis of the Optimization Path for the Compulsory Environmental Pollution Liability Insurance System – Looking at the Administrative Measures for Compulsory Environmental Pollution Liability Insurance (Draft)* [J]. *Journal of Changchun University of Science and Technology (Social Sciences Edition)*, 2019, 32 (04): 37-43 + 48.
- [4] Xiong Xueyu, *Current Obstacles and Legal Needs for the Implementation of Compulsory Environmental Pollution Liability Insurance System in Our Country* [J]. *Shanghai Insurance*, 2019 (04): 40-46.
- [5] Cao Xue, *Study on the Legal System of Compulsory Environmental Pollution Liability Insurance of our Country* [D]. Tianjin: Tianjin University of Finance and Economics, 2022.