

Risk Management and Directors' Liability: A Corporate Law Perspective on the Fukushima Daiichi Disaster

KARIYA, Hirosato

On March 11, 2011, one of the most serious nuclear accidents in history took place at the Fukushima Daiichi nuclear power plant. The accident not only caused massive damage to Tokyo Electric Power Co. (TEPCO) itself, but also contaminated the surrounding countryside and left hundreds of thousands of people without homes or jobs.

The Fukushima Daiichi disaster is characterized by failures in risk management and TEPCO's directors will be held accountable for those.

I begin this article by briefly explaining that "internal control" in the Companies Act (Kaisha Ho) is principally conceived as risk management, and directors are responsible for its existence, integrity, and efficacy. I then discuss the liability under section 423 of the Companies Act of TEPCO's directors to the company for harm arising from their breach of duty. Finally, I consider the liability of directors for harm to third parties under section 429 of the Companies Act in relation to the Act on Nuclear Damage Compensation (Genshiryoku Songai no Baisho ni Kansuru Horitsu).

The message of this article is simple. Bearing in mind the current nuclear power policy in Japan, we will continue to face the risk of severe accidents in the future. We therefore need the threat of being held personally liable to provide people managing such an extremely dangerous business with the right incentive to take all reasonable care.