

No. 81

Environmental Damage Insurance Act

January 30, 1998

Chapter 1

Scope of application

Section 1

Scope of the Act

Compensation shall be paid under this Act for environmental damage as referred to in the Act on Compensation for Environmental Damage (737/1994), caused in Finland by operations in Finland, and for costs arising from the prevention of such damage and from restoring environment so damaged, providing that:

- 1) it has not been possible to collect such compensation in full from the party liable to compensate for the damage under the Act on Compensation for Environmental Damage (*liable party*) and no compensation can be collected under the liable party's liability insurance, if any; or
- 2) it has not been possible to identify the liable party.

No compensation shall be paid under this Act for any environmental damage compensable under the Act on the Oil Pollution Compensation Fund (379/1974).

Chapter 2
Environmental Damage Insurance

Section 2
Obligation to insure

Any private corporation whose operations involve a material risk of environmental damage or whose operations cause harm to the environment in general shall be covered by insurance against loss compensable under this Act (*environmental damage insurance*). Further provisions on the obligation to insure will be issued by decree.

Section 3
Monitoring compliance with the obligation to insure

The regional environment centres shall monitor compliance with the obligation to insure in accordance with further provisions issued by decree.

For the purpose of this monitoring, regional environment centres are entitled to obtain information on all environmental damage insurance policies in force from the corporations engaging in the operations concerned and from the Environmental Insurance Centre referred to in section 6.

Section 4
Insurer

Environmental damage insurance policies can be issued by insurance companies which are authorized to engage in insurance business falling under non-life insurance class 13 in Finland under the Insurance Contracts Act (1062/1979) or

the Act on Operations of Foreign Insurance Companies in Finland (398/1995).

No insurer engaging in insurance operations covered by this Act may refuse to issue environmental damage insurance.

Section 5

Insurer's liability and insurance period

An environmental damage insurance policy issued by an insurer covers loss in cases where compensation cannot be recovered from the liable party or where the loss is not compensable under the liable party's liability insurance, if any. Compensation is paid on condition that the relevant claim has been made during an insurance period.

An insurance period equals one calendar year. If an environmental damage insurance policy takes effect at a date other than the end of a calendar year, the first insurance period expires at the end of the calendar year concerned.

Section 6

Environmental Insurance Centre and its members' liability

An Environmental Insurance Centre has been set up in order to handle matters common to insurers referred to in this Act. The members of the Centre comprise all insurance companies that write insurance referred to in this Act. The members of the Centre are jointly and severally liable for the Centre's obligations.

The Environmental Insurance Centre is liable for loss sustained in cases where

1) the liable party is not protected by environmental damage insurance and it has not been possible to recover compensation from the liable party, and compensation cannot

be collected under the liable party's liability insurance, if any; or

2) it has not been possible to identify the liable party.

The liability of an insurer to pay compensation under an insurance policy issued by it can also be assigned to the Environmental Insurance Centre. In such cases, the Centre shall exercise the insurer's right of action in any judicial proceedings.

Section 7

Administration and supervision of the Environmental Insurance Centre

Decision-making power at the Environmental Insurance Centre shall be exercised by the Plenary Session and the Board. At the Plenary Session, each member company holds a share of the total number of votes equal to its share of the total liability, calculated according to the Environmental Insurance Centre's rules governing limitation of liability, divided between the members present. The Board of the Environmental Insurance Centre shall be elected by the Plenary Session. The Board comprises a minimum of four and a maximum of six members.

The Environmental Insurance Centre shall have two auditors appointed by the Plenary Session, and each of them shall be an accountant or an accounting firm authorized by the Central Chamber of Commerce.

The Environmental Insurance Centre shall have a Consultative Committee set up to maintain and promote cooperation between the member companies and the various interest groups involved in environmental damage insurance.

Details of the administration of the Environmental Insurance Centre and the obligations of its members are laid down in

rules confirmed by the competent ministry. The Environmental Insurance Centre shall also be governed by what is provided in the Associations Act (503/1989), subject to this Act and the Centre's own rules.

The operations of the Environmental Insurance Centre shall be supervised by the competent ministry. Such supervision shall be conducted in compliance with what is provided on the supervision of insurance companies in the Insurance Companies Act and in the Act on Operations of Foreign Insurance Companies in Finland, as applicable.

Section 8

Insurance premiums

Insurance premiums shall be specified so as to safeguard the injured's interest. However, the premium shall be in reasonable proportion to the costs arising from the insurance. Other factors to be considered in premium rating include the extent of business operations as referred to in this Act in the case of the corporation liable to insure, the risk of environmental damage inherent in the operations, and any other harm caused to the environment.

Section 9

Failure to meet the obligation to insure

Any corporation liable to take out an insurance but neglecting to do so shall be liable to pay the Environmental Insurance Centre a penalty premium determined by the Centre, which is at most ten times the average premium for the period of neglect. The Centre's decision on the penalty premium may be appealed to the relevant Provincial Administrative Court under the Administrative Judicial Procedure Act (586/1996).

The competent ministry shall issue regulations on how the average insurance premium is to be calculated.

The insurance premium and the penalty premium referred to in paragraph 1, together with penalty interest accrued during the delay, are recoverable without judgement or decision in accordance with the Act on the Recovery of Taxes and Fees by Recovery Proceedings (367/1961).

Section 10

Notice and termination of policy

Unless terminated in writing no later than three months before the end of an insurance period, the insurance policy shall continue to be in force for one insurance period at a time. Any notice of termination by the policyholder shall be accompanied by written evidence that a new replacement policy has been taken out.

If the operations referred to in section 2 are discontinued or if the corporation winds up its operations or if the obligation to insure otherwise ceases, the policyholder shall notify the insurer thereof in writing. The policy shall end one month after receipt of the notice by the insurer.

Section 11

Ministry's right to obtain information and issue regulations

The insurance company shall give the general and special terms and conditions governing its environmental damage insurance to the competent ministry for information no later than one month before they are introduced.

The ministry may require the insurance companies and the Environmental Insurance Centre to supply the ministry with a

report on the grounds for premiums, and forms and other documents used by the companies in their communications with policyholders.

The ministry may issue regulations on how statistics on insurance policies and claims are to be compiled.

The insurance companies and the Environmental Insurance Centre shall conduct surveys and calculations required in view of their functions under this Act, in a manner prescribed by the ministry.

Chapter 3 **Compensation**

Section 12 *Assessment of compensation*

The amount of compensation shall be specified in compliance with the Act on Compensation for Environmental Damage, as applicable. Pursuant to this Act, however, no advance compensation as referred to in section 9 of the Act on Compensation for Environmental Damage shall be payable, nor shall the insurers be bound by the obligation to redeem referred to in section 10 of the said Act.

Section 13 *Deductible borne by the injured party*

The deductible deducted from the compensation shall be FIM 2,000 if the injured party is a natural person and FIM 20,000 if the injured party is a legal person.

The amounts in Finnish marks given in paragraph 1 above may be altered by decree, if justified by a change in the general price level.

Section 14

Injured party's contributory negligence

If the injured party has contributed to occurrence of the loss, compensation shall be paid only in so far as other circumstances have contributed to the loss. If the injured party is a natural person, his contributory negligence can be considered to reduce compensation only if he acted intentionally or is guilty of gross negligence.

Section 15

Maximum compensation

The maximum compensation payable under this Act for one insurance event is FIM 30 million. However, compensation payable for two or more events reported during one insurance period shall not exceed a total of FIM 50 million.

Losses caused by the same pollution event or other comparable nuisance are considered to constitute one insurance event irrespective of whether claims have been made during one or several insurance periods. If claims for such losses are made during several insurance periods, all are allocated to the insurance period during which the first claim was made.

The amounts in Finnish marks referred to in paragraph 1 above may be altered by decree if justified by a change in the general price level or if there is a material change in either the number or the risk-carrying capacity of the companies engaging in insurance business covered by this Act.

Section 16

Evidence required from the injured

In order to qualify for compensation under this Act, the injured shall prove that

- 1) it has not been possible to recover compensation from the liable party through levy of execution or because of commencement of bankruptcy or other insolvency proceedings or dissolution of the liable party, and no compensation can be collected under the liable party's liability insurance, if any; or that
- 2) the liable party has not been identified, taking account of the injured party's opportunities to identify the liable party.

Section 17

Presentation of claim and limitation

Whenever compensation is claimed under this Act, the loss shall be reported in writing to the insurer or the Environmental Insurance Centre within three years of when the injured party became aware that compensation could be recovered from the liable party or that it proved impossible to identify the liable party.

If special cause exists, a claim can be considered even later than is provided in paragraph 1. However, claims cannot be submitted any later than ten years of when the loss arose.

If action for damages for the same loss is pending in court, claim for the damage or injury may, notwithstanding paragraphs 1 and 2, be made within one year of when the judgement gained legal force.

Section 18

Payment of compensation

Compensation for bodily injury shall be paid or, if applicable, the injured party shall be notified that no compensation is payable, without delay and no later than three months of when either the insurer or the Environmental Insurance Centre received the evidence referred to in section 16 and all other documents and information as referred to in section 69 of the Insurance Contracts Act (543/1994) that are of importance for settlement of the claim.

Compensation for losses other than bodily injury shall be paid in April in the calendar year following report of the loss. If payment of compensation is not possible at such a date, compensation shall be paid no later than three months of when either the insurer or the Environmental Insurance Centre received the evidence, documents and information referred to in paragraph 1.

If the maximum amount of compensation referred to in section 15 is not sufficient for full compensation for the losses reported in the same insurance period, the amount shall be divided according to the size of the compensable losses on a pro rata basis. Compensation for bodily injury shall, however, be paid prior to any other compensation. Compensation payments shall not be recovered from the recipients.

If, on the basis of known occurrences, it is likely that compensation will have to be reduced as provided in paragraph 3, the competent ministry may decide that only part of the full compensation shall be paid for the moment.

Section 19

Delay in settlement of claim

If payment of compensation is delayed, the delayed compensation shall be increased for the period of the delay. The increase in compensation shall be calculated according to the annual rate of interest referred to in section 4, paragraph 3, of the Interest Act (633/1982). This obligation to pay increased compensation does not, however, apply to payments based on coordination or subrogation between insurance or pension institutions writing statutory insurance.

Section 20

Coordination and subrogation

If the injured has already been paid compensation for the loss under some other act, the amount paid out shall be deducted from the amount due under this Act.

If the injured party has received compensation under this Act, that party's entitlement to receive compensation from the liable party is transferred to the party that has paid the compensation, i.e. the insurer concerned or the Environmental Insurance Centre, in respect of amounts paid out by such party.

Section 21

Adjustment for index increase

Any recurring benefits payable under this Act for bodily injury shall be adjusted for index increases in accordance with section 9 of the Employees' Pensions Act (395/1961).

Any index increase shall be paid out by the party that is liable to pay the basic compensation, i.e. the insurer concerned or the Environmental Insurance Centre. The

competent ministry shall issue regulations on how the expenses incurred annually by insurance companies and the Environmental Insurance Centre on account of index increases are to be divided between insurance companies and the Centre, according to the extent of their operations.

Chapter 4

Miscellaneous provisions

Section 22

Environmental Insurance Board

The Council of State shall appoint an Environmental Insurance Board for a period of three years at a time.

The Board shall operate in connection with the Environmental Insurance Centre, its function being to issue those claiming compensation under this Act and those receiving claims for such compensation with recommendations for decisions on compensation payable for environmental damage.

Provisions concerning the composition of the Board, its processing of cases and expenses arising from the processing of cases shall be issued by decree.

Section 23

Venue

Disputes concerning compensation referred to in this Act can also be brought before the District Court which has jurisdiction over the plaintiff's domicile.

No action involving a dispute over insurance or insurance compensation may be instituted in court until the Environmental Insurance Board has issued its opinion on the

decision made by the insurer or the Environmental Insurance Centre.

Section 24

Right to obtain information

The insurer, the Environmental Insurance Centre and the Environmental Insurance Board are entitled to obtain the information needed to examine a case concerning insurance or a claim being processed from authorities, persons engaging in medical treatment or health care operations, the Central Pension Security Institute, insurers or pension institutions, notwithstanding any provisions concerning their confidentiality duty.

Section 25

Confidentiality duty

No-one who has been involved in the processing of a case under this Act or who has learned thereof in their official capacity or otherwise through their function may, without permission, disclose to a third party any circumstance that is to be kept confidential under the law.

Punishment for a violation of the confidentiality duty laid down in paragraph 1 shall be imposed under chapter 38, section 1 or 2, of the Penal Code, unless the act is punishable under chapter 40, section 5, of the Penal Code or unless a more severe punishment is prescribed for the act elsewhere in the law.

Section 26
Authorization to issue decrees

Further provisions on the implementation of this Act will be issued by decree.

Chapter 5
Entry into force

Section 27
Entry into force and transitional provisions

This Act enters into force on January 1, 1999.

This Act does not apply to compensation for loss caused by operations carried out before this Act takes effect, even if the loss arises after this Act enters into force.

Any corporation engaging in operations referred to in section 2 shall take out environmental damage insurance for a whole insurance period within three months of when this Act takes effect.

Measures needed to enforce this Act may be taken before it comes into effect.