

Eco-Compensation Legislations in China —— Progress, Challenge and Outlook

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1. Progress of Legislations on Eco-Compensation in China

- **It has been over 20 years since Chinese government put forward the concept of eco-compensation in its official documents**
 - *Opinions of SEPA on Strengthening Ecological Protection* in Nov. 1997
 - *Communique of the Fifth Plenary Session of the Sixteen Central Committee of the CPC* put forward that “it is necessary to accelerate the pace of building up the mechanism of eco-compensation in accordance with the principle that who exploits the environment shall protect it and who benefits from the environment shall make compensations for it” in Oct. 2005
 - *Outline of the Eleventh Five-Year Plan* also provided that “it is necessary to accelerate the pace of building up the mechanism of eco-compensation in accordance with the principle that who exploits the environment shall protect it and who benefits from the environment shall make compensations for it” in Mar. 2006
 - *Outline of the Twelfth Five-Year Plan* first proposed that “it is necessary to accelerate formulating and implementing the Regulations on Eco-compensation” in Mar. 2011
 - *Report on the 18th National Congress of the Communist Party of China* requests that “it is necessary to establish the system of paid use of resources and the mechanism of eco-compensation reflecting the degree of market supply and demand and scarcity of resources, and embodying ecological value and intergenerational compensation” in Nov. 2012



- In Nov. 2013, the fourteenth part of the *Decision on Some Major Issues Concerning Comprehensively Deepening the Reform* in the Third Plenary Session of the 18th Central Committee of the Communist Party of China stipulates specially on accelerating the construction of ecological civilization system. In the aspect of “natural resources” and “ecological protection”, the Decision requests that “it is necessary to refine the institution of property rights over natural resource assets and the institution of use control to make a price for services of natural resources and environment, and to improve the institution of eco-compensation for key ecological function areas to promote the establishment of horizontal institution of eco-compensation among regions”.
- Paragraph 1 of Article 31 of the *Environmental Protection Law* revised by the NPC Standing Committee in Apr. 2014 stipulates that,
 - The state shall establish and improve an ecological compensation mechanism
 - The state shall increase financial transfer payments to ecological protection areas. The relevant local people's governments shall oversee the use of ecological compensation funds to ensure that such funds are used for ecological compensation purposes
 - The state shall guide the people's governments of ecologically benefited areas and ecological protection areas in making ecological compensation through consultations or under the market rules
- *Integrated Plan for Promoting the Reform of System of Ecological Civilization* was issued by the Central Committee of CPC and the State Council in Sep. 2015
 - The sixth part requests to refine the paid use system of resources and eco-compensation system

- *Opinion on Refining Ecological Protection Compensation System* adopted by the leading group for deepening overall reform in Mar. 2016 (issued by the General Office of the State Council on May 13 the same year)
 - The scope of eco-compensation was limited to “compensation for protection”
 - Eco-Compensation shall be implemented in crucial areas, forbidden exploitation areas and key ecological functional zones such as forest, grassland, wetland, desert, ocean, waters, and cultivated land. All areas, including overall requirement, key areas of each task, mechanism innovation and organization workload, shall be regulated
 - Full coverage for eco-compensation of crucial areas including forbidden areas and key ecological functional zones such as forest, grassland, wetland, desert, ocean, waters, and cultivated land shall be achieved by 2020

- By Nov. 2016, the number of laws relating to eco-compensation issued by the Standing Committee of the NPC has amounted to 16
 - Marine Environmental Protection Law (2016); Wild Animal Protection Law (2016); Water law (2016)
 - Animal Husbandry Law (2015)
 - Environmental Protection Law (2014)
 - Grassland Law (2013); Fisheries Law (2013)
 - Agriculture law (2012)
 - Soil and Water Conservation Law (2010)
 - Island Protection Law (2009); Forest law (2009); Mineral Resources Law (2009)
 - Water Pollution Control Law (2008)
 - Land Management Law (2004)
 - Law on Desert Prevention and Transformation (2001); Law on the Administration of Sea Areas (2001)

- By Nov. 2016, the number of regulations and policies about eco-compensation issued by the State Council has amounted to 91, and the number of departmental rules has amounted to 277
 - 7 areas are covered (administrative legal institution, macro economy, resources and energy, construction, agriculture, animal husbandry, water conservancy and environmental protection)
 - 9 aspects are included (natural reserve, marine environment, watershed, wetland, returning farmland to forest, forest eco-compensation payment, ecological environment restoration compensation for mining areas, national major function regionalization and regional ecological protection construction)
- At least 6 provinces and cities issued comprehensive eco-compensation regulations on “compensation for protection”
 - Anhui, Hebei, Henan, Nanjing and Shijiazhuang issued their own *Opinions on the Implementation of Refining Ecological Protection Compensation System* since Mar. 2016
 - Guangdong issued the *Measures on Ecological Protection Compensation* in Apr. 2012

2. Problems and Challenge in Legislations on Eco-Compensation

- 2.1 Stipulations related to eco-compensation can be seen in the *Environmental Protection Law* and several separate environment and resources protection laws, but they are not specific fiscal, tax and institutional provisions but only regulations in principle.
 - In practice, the money needed for eco-compensation in local areas mainly comes from transfer payment or project appropriation by central government and all levels of local governments, hence fund supply lacks consistency and stability.

- 2.2 Policy documents on eco-compensation usually focus on ecological protection area within the own authority of every department.
 - Inadequate consideration over overall eco-system, over-emphasis on economic value over innate ecological value of natural resources
 - Inconformity of stipulations over the sources, range and methods of eco-compensation fund and lack of information exchange
 - Narrow range of overall compensation, low compensating standard, and overlap or inappropriate use of funds in different areas

- 2.3 Eco-compensation is such a compensation method carried by time-sensitive ecological construction projects, and with compensation in fund as the primary way and policy, substances and intellectual compensation as the supplement.
 - There is no more compensation fund after the completion of ecological construction projects. In this kind of compensation, the government is the solely responsible party for compensation fund; however, a cutoff is found in the relationship between protectors and beneficiaries, and the implementation of power and responsibilities is insufficient, thus it's hard to change traditional conception and methods for production and people's living, nor can the fundamental problems in ecological damage be solved.

- 2.4 There is a lack of instructive regulations in interregional eco-compensation, and the way of interprovincial compensation is still under exploration.
- 2.5 A market-driven operating mechanism in which power and responsibilities are integrated in the way of beneficiaries paying and protectors getting compensation (important in eco-compensation) has not been fully built.

3. Outlook for Legislations on Eco- Compensation

- 3.1 Speeding up innovations on management institutions of eco-compensation
 - First, the government shall separate civil rights over exploiting natural resources from supervisory power of existing competent administrative departments in the reform of institutional innovations, and let newly-established departments who own sole ownership over natural resources give the authority to beneficiaries in the way of bid inviting, auctioning, affiliating and other licensing methods. In so doing, ownership over natural resources and supervisory power can be separated from existing administrative departments, and a passive situation of the government taking replace of exploiters to fund eco-compensation can thus be fundamentally changed.
 - Second, it is necessary to establish a coordination mechanism of eco-compensation led by comprehensive economic and fiscal departments with administrative departments involved, thus the problem that administrative departments are large in number but unidentified in power and responsibilities can be solved.

- 3.2 Defining the interest relationship between protectors and beneficiaries in a scientific and reasonable way and establishing a diversified eco-compensation investment mechanism
 - First is to determine the conditions for protectors and beneficiaries, and make clear the rights enjoyed by protectors and the obligation to pay by beneficiaries. The subject status of some local government in legal relationships shall also be determined when local government acts as protectors or beneficiaries, and the money paid or compensated fund shall be included into financial budget.
 - Second is to define the confines between central government and local governments and among local governments as protectors or beneficiaries. Accordingly, the relationship of rights and obligations in cross-watershed and cross-region compensation shall be determined and a horizontal eco-compensation mechanism with local compensation as the principal part and the support of central finance as the supplement shall also be established.
 - Third is to establish an integrated fund for ecological protection within central and local governments, which is mainly used as the money paid by the government as beneficiaries and can thus solve the situation that fiscal budget funds are occupied by existing eco-compensation funds and the funding source cannot be guaranteed.
 - Fourth is to establish an interactive mechanism between protectors and beneficiaries. Compensation shall be given in accordance with actual needs of protectors to solve the problem of monotonous compensating methods. For example, the system of management and protection led by government purchase shall be established for forest and desert; a part of poverty-stricken population still with labor capacity can be transformed into ecological protection personnel in poverty-stricken areas; original residents can be compensated by collective share rights under the circumstance that collective land are occupied by exploitation.

- 3.3 Establishing the system of evaluating eco-compensation in a scientific and reasonable way and improving the mechanism of formation in the price of ecological products
 - First is to establish a scientific assessment system on ecological service value, determine a reasonable standard of eco-compensation payment and fix the price for ecological products through market needs.
 - Second is to establish a system of performance evaluation on eco-compensation and link the situation of accomplishing ecological protection with the allocation of eco-compensation funds from the government.
 - Third is to establish a mechanism of supervising and evaluating eco-compensation and a mechanism of calling to account in compensation for ecological damages.

- 3.4 Legislative focus for regulations on eco-compensation
 - Establishing and making explicit the following items in eco-compensation
 - Basic principles
 - Main areas and scope for objects
 - Sources of funds and compensating standards
 - Methods and benefits for compensation and related evaluating mechanism
 - Relationship of rights and obligations among subjects
 - Mechanism of supervising and evaluating eco-compensation and mechanism of calling to account
 - Gradually integrating compensation funds and environmental protection tax implemented in every area in a scattered way into special funds for eco-compensation and allocating and using funds by the government in a uniformed way
 - Changing monotonous compensating ways by the government and broadening horizontal eco-compensation methods
 - Establishing a good interactive mechanism between protectors and beneficiaries and a market-driven mechanism of social capital investment involved by the whole society

Thank you!



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