

June 8, 2020

**Receipt of Investigation Report from Director Liability Investigation Committee**

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With respect to the incident of our directors and other officers accepting cash and gifts, etc. from external stakeholders and so on (hereinafter referred to as the “Incidents”), our auditors have received from shareholders written demands to file a lawsuit to hold liable 5 current and former directors of KEPCO on November 28, 2019, and 12 current and former directors of KEPCO on April 18, 2020. (As announced on November 28, 2019 and April 20, 2020)

In light of the lawsuit demands from shareholders, our auditors have established the Director Liability Investigation Committee, which consists of independent outside lawyers who have no conflict of interest with KEPCO or the directors, in order to conduct an investigation and examinations of the Incidents from a legal perspective as to whether or not the directors are liable to KEPCO for losses and damages caused by the breach of duty expected of a prudent manager or any other act or omission that was committed by the directors in performing their duties. (As announced on March 30, 2020)

Please find the attached investigation reports we received from the Director Liability Investigation Committee today.

Our auditors will, under the investigation reports, examine as to whether or not the filing of a lawsuit against the current and former directors is necessary, and promptly announce the results thereof.

Attachment: Investigation Report (Summary)

## **Investigation Report (Summary)**

### **Section 1 Summary of Investigation**

#### **1. Background to Establishing the Director Liability Investigation Committee**

In connection with a series of matters including the Incident of Acceptance of Cash and Gifts (as defined below), the Director Liability Investigation Committee (hereinafter referred to as the “**Committee**”) was established by the Audit Committee of KEPCO on March 30, 2020 in order to conduct an investigation and examination from a legal perspective as to whether or not KEPCO’s directors are liable to KEPCO for losses or damages caused by the breach of duty expected of a prudent manager or any other act or omission that was committed by them. The members of the Committee and their assistants have no conflict of interest with KEPCO or the directors who have been subjected to the investigation or examination.

#### **2. Matters Subject to Investigation and Examination**

The Committee conducted the investigation and examination as to whether or not the directors of KEPCO and the former directors of KEPCO who were retired, resigned or otherwise ceased to hold office on or after June 29, 2010 in principle, are to be held liable for the matters raised in the Investigation Report from the Third-Party Panel (i.e., the investigation report submitted on March 14, 2020 by the Third-Party Panel set up by KEPCO on October 9, 2019). Since KEPCO has received demands to file a lawsuit, let it be clear that the Committee did not investigate or examine whether or not any of such matters constituted the crime of aggravated violation of trust under Article 960 of the Companies Act or the crime of giving or accepting bribes under Article 967 of the Companies Act, because the Committee was established to conduct investigations and examinations from a legal perspective as to whether or not the directors are liable to KEPCO for losses or damages caused by the breach of duty expected of a prudent manager or any other act or omission committed by the directors in performing their duties.

#### **3. Manner of Investigation and Examination**

The Committee conducted, based on the Investigation Report from the Third-Party Panel, investigations and examinations, including a review of documents and materials submitted by KEPCO to the Third-Party Panel, further review of KEPCO’s documents and materials that were in the Committee’s opinion necessary for the investigation and examination, and hearings from directors, officers and employees of KEPCO including persons who had served as directors during the relevant period of time.

### **Section 2 Results of Investigation and Examination**

#### **1. Liability for Incident of Acceptance of Cash and Gifts**

A total of 75 directors, officers and employees of KEPCO and its subsidiaries had accepted approximately 360 million yen in total in cash and gifts during the period from around May 1987 to late 2010 from Mr. Eiji Moriyama (hereinafter referred to as “**Mr. Moriyama**”) and/or entities that were considered to have had ascertained relationships with Mr. Moriyama (hereinafter referred to as

“**Business Partners**”). The directors, officers and employees who had personally accepted the cash and/or gifts handled the matter in their respective ways, such as by returning the cash and/or gifts or by giving cash and/or gifts equivalent to those received in kind, by keeping the cash and/or gifts in order to return them at the time of their retirement or resignation, or by consuming or using the cash and/or gifts as they personally deemed it to be within the scope of social courtesy. On the other hand, we could not see any indication that KEPCO addressed any of the matters as a company, for example by requesting Mr. Moriyama not to give any cash or gifts to KEPCO’s directors, officers or employees, by placing the cash and gifts received by the directors, officers and employees from Mr. Moriyama in the custody of the company, or by returning the cash and gifts as a company. (Such matters are hereinafter referred to as the “**Incident of Acceptance of Cash and Gifts**”).

Once a scandal is discovered in connection with a large company or a highly public company, their corporate responsibility will be harshly criticized by the media, etc., which will cause a significant loss of social credibility and force them to spend enormous amounts of money to take care of matters. Furthermore, it was set out in KEPCO’s compliance manual and other company rules and regulations that directors, officers and employees should refrain from receiving large amounts of money or expensive gifts from KEPCO’s business partners or any other stakeholder. From that perspective, the Incident of Acceptance of Cash and Gifts should cause a serious loss of credibility to KEPCO, as the company is a public utilities services provider that operates in the electric power business.

KEPCO could have prevented further cash and gifts from Mr. Moriyama and others, if the Nuclear Power Division or the company as a whole had stood face to face with Mr. Moriyama and told him that KEPCO would return the cash and gifts and reject any further offers thereof as a company. Even though it would have been risky for KEPCO to go face to face with Mr. Moriyama as a company, the company risked more serious consequences, should the cash and gifts become known to the public. In any case, a serious loss of credibility could have been avoided had KEPCO decided, after going through due process (i.e., report and examination in a Board of Directors meeting or otherwise) and considering corporate action in light of the risk that could arise from going face to face with Mr. Moriyama, that the matters were to be addressed personally by the individuals. Moreover, if the received cash and gifts had been placed in the custody of the company instead of the individuals, transparency could have been ensured because it should have been apparent that the individuals would not gain any profit therefrom.

Therefore, because directors were or should have been aware of the risk that KEPCO could lose its credibility as a result of the existence and discovery of the connection between the provision of cash and/or gifts by Mr. Moriyama beyond the scope of social courtesy and the order placement of construction work, each director had the duty to report or otherwise notify the Board of Directors or equivalent meeting body thereof so that, based on discussions and examinations of the best action to pursue, KEPCO could or could cause the responsible directors of the Nuclear Power Division or the Legal, Compliance or other department to notify Mr. Moriyama that KEPCO would reject any further offers of cash and gifts or place the cash and gifts received in the custody of the company. (Such duty is hereinafter referred to as the “**Duty to Act**”).

Mr. Makoto Yagi (hereinafter referred to as “**Mr. Yagi**”), Mr. Shigeki Iwane (hereinafter referred to as “**Mr. Iwane**”), Mr. Hideki Toyomatsu (hereinafter referred to as “**Mr. Toyomatsu**”) and Mr. Ryohei Shirai (hereinafter referred to as “**Mr. Shirai**”) failed to fully perform their Duty to Act as representative directors or directors responsible for operations of the Nuclear Power Division. Mr. Shirai failed to fully perform his duty to monitor the performance of Mr. Yagi and other persons, although Mr. Shirai was not a director responsible for operations in or after June 2013. Consequently,

Mr. Yagi, Mr. Iwane, Mr. Toyomatsu and Mr. Shirai committed a breach of duty expected of a prudent manager in connection with the Incident of Acceptance of Cash and Gifts.

Mr. Ikuo Morinaka (hereinafter referred to as “**Mr. Morinaka**”), on the other hand, did not commit a breach of duty expected of a prudent manager, because the provision of cash and gifts to directors, officers and employees by Mr. Moriyama had ceased by the time Mr. Morinaka assumed the office of director in June 2019.

## **2. Liability for Incident of Advance Promises of Order Placement, etc.**

It is deemed Mr. Moriyama had requested the directors, officers and employees of KEPCO to provide him with information on construction work, etc. controlled by the Nuclear Power Division and Kyoto Branch Office, and to place various orders with the Business Partners. In response to such request, the directors, officers and employees of KEPCO provided Mr. Moriyama in advance with information on the construction work, etc., promised in advance to place an order for each construction work, etc. in such amounts as requested by Mr. Moriyama, and actually placed orders for the construction work, etc. with the Business Partners as promised. (Such matters are hereinafter referred to as the “**Incident of Advance Promises of Order Placement, etc.**”.)

Considering that the directors, officers and employees of KEPCO received large amounts of money or expensive gifts from Mr. Moriyama, that it was the Business Partners who would gain benefits from the advance promises of order placement, etc., and that Mr. Moriyama requested to place orders with the Business Partners, it is easy to suspect that such cash and gifts were originally provided by the Business Partners. Because of the pressure from Mr. Moriyama, the foregoing facts strongly suggest that order placement under the described relationship with the Business Partner was unlawful or inappropriate. Obviously, the potential for unlawfulness or inappropriateness is greater than placing orders with other business partners through normal business practices or contributing to local communities in the area where a power plant or other similar facility is located through economic opportunity, job creation, etc.

Thus, representative directors or directors responsible for operations who were or should have been aware of the advance promises of order placement, etc. had the duty to establish a system that would ensure the appropriateness of order placement on a level higher than normal business practices or contributions to local communities, in order to prevent any unlawful or inappropriate order placement with the Business Partners. (Such duty is hereinafter referred to as the “**Duty to Establish a Proper Order Placement System**”.)

Mr. Yagi, Mr. Iwane, Mr. Toyomatsu and Mr. Shirai failed to fully perform their Duty to Establish a Proper Order Placement System as representative directors or directors responsible for operations of the Nuclear Power Division. Mr. Shirai failed to fully perform his duty to monitor the performance of Mr. Yagi and other persons, although Mr. Shirai was not a director responsible for operations in or after June 2013. Consequently, Mr. Yagi, Mr. Iwane, Mr. Toyomatsu and Mr. Shirai committed a breach of duty expected of a prudent manager in connection with the Incident of Advance Promises of Order Placement, etc.

Mr. Morinaka, on the other hand, did not commit a breach of duty expected of a prudent manager, because the advance promises of order placement, etc. had ceased by the time Mr. Morinaka assumed the office of director in June 2019.

### 3. Liability for Incident of Non-Announcement, etc.

Following the investigation report submitted by the Internal Investigation Panel on September 11, 2018, KEPCO conducted executive training relating to the Incident of Acceptance of Cash and Gifts and other issues on October 9, 2018. Mr. Yagi, who was the Chairman, and Mr. Iwane, who was the President at that time, decided, after consultation with Mr. Shosuke Mori (hereinafter referred to as “**Mr. Mori**”; Mr. Mori was a Corporate Advisor, but not a director, at that time.), not to publicly announce the internal investigation results or report the same to the Board of Directors or external directors. Furthermore, they did not report the same to any auditor (standing auditor) until October 1, 2018. (Such matters are hereinafter referred to as the “**Incident of Non-Announcement, etc.**”)

It is indicated in the Internal Investigation Report submitted by the Internal Investigation Panel that the Incident of Non-Announcement, etc. was inappropriate in terms of compliance but not illegal and that KEPCO did not suffer any loss or damage therefrom. Therefore, the decision by Mr. Yagi and Mr. Iwane not to publicly announce the internal investigation results or report the same to the Board of Directors may be considered reasonable.

Nevertheless, the internal investigation was inappropriate because it had been conducted through the directors, officers and employees who had received the cash and/or gifts from Mr. Moriyama, and for other reasons. Moreover, some may consider that it was necessary to report the internal investigation results and the like to the Board of Directors under the rules and regulations of the Board of Directors. If the internal investigation results, etc., were reported to the Board of Directors, more careful and multilateral examination could have been carried out in the Board of Director meetings to determine whether or not the public announcement was necessary and, if it was concluded not to publicly announce the same after adequate discussion and consideration in the Board of Director meetings, the serious loss of credibility could have been avoided.

Taking above the factors into account, the issue of whether or not the decision not to publicly announce or report the said results constitutes a breach of duty expected of a prudent manager should be brought to court, because we could not conclude that, by making such a decision, Mr. Yagi and Mr. Iwane did not commit a breach of duty expected of a prudent manager, as there are different views about the issue.

On the other hand, it is not necessary to judge whether or not Mr. Toyomatsu, who was aware of the internal investigation results, and Mr. Tomio Inoue, who was involved in the internal investigation, committed a breach of duty expected of a prudent manager, because they did not make the decision not to publicly announce or report the results.

In addition, Mr. Yoshihiro Doi, Mr. Takashi Morimoto, Mr. Toyokazu Misono, Mr. Yasushi Sugimoto, Mr. Tomihiko Oishi, Mr. Kyoji Shimamoto and Mr. Koji Inada attended the executive training class on October 9, 2018, during which a summary of the Incident of Acceptance of Cash and Gifts and the Incident of Advance Promises of Order Placement, etc. were reported to them. However, those directors who attended the executive training class did not commit a breach of duty expected of a prudent manager, because they were not under circumstances in which they could be aware of the necessity of the public announcement or report, as the report made in the executive training expected was not specific and the purpose of the executive training expected was, to their knowledge, to prevent further occurrence of the incidents.

## **4. Liability for Incident of Indemnification for Executive Remuneration Decrease and Incident of Indemnification for Additional Tax Burden**

### **(1) Liability for Incident of Indemnification for Executive Remuneration Decrease**

As a consequence of nuclear power plants being shut down because of the accident at the Fukushima Daiichi Nuclear Power Plant that was triggered by the Great East Japan Earthquake of 2011, KEPCO ran into financial trouble, which led the company to increase electric rates twice. In response to this situation, KEPCO significantly decreased executive remuneration for internal directors and other officers from March 2012 until June 2019. Under such circumstances, around October 2015, Mr. Mori, who was the Chairman at that time, decided, after consultation with Mr. Yagi, who was the President at that time, on a policy that KEPCO would substantially indemnify executives for the decreased remuneration by paying certain considerations to the former internal directors and other officers whose remuneration had been decreased significantly, after their retirement or resignation. Subsequently, Mr. Mori or Mr. Yagi retained 18 former directors and other officers who had retired or resigned, including Mr. Mori and Mr. Toyomatsu, as KEPCO's post-retirement staff under such policy, and paid 260,200,000 yen in total as the consideration, taking into account the decreased executive remuneration and so on. Let it be clear that KEPCO requested the aforementioned 18 former directors and other officers to repay the aforesaid consideration paid for their retainment, etc. on or after March 30, 2020, and such consideration has been repaid in full. (Such matters are hereinafter referred to as the “**Incident of Indemnification for Executive Remuneration Decrease**”.)

Since some of the post-retirement staff declared that they were not certain as to whether the duties actually performed by them were adequate compared to those to be done for the retainment and so on, it cannot be denied that the consideration paid for the retainment, etc. could have included the amount to be a deferred payment of the executive remuneration. If so, it would constitute a violation of the disclosure of remuneration regulations and internal procedures. And, even if it does not constitute a violation, the consideration paid for the retainment, etc. included some amounts that were beyond any reasonable amount of consideration for the duties performed under retainment.

The right to make decisions about personnel matters in regards to this case of retainment, etc. and the amounts of consideration therefor is in fact an exclusive right of the Chairman. Therefore, the Chairman had, as a duty expected of a prudent manager, the duty to ensure, in compliance with laws and regulations as well as company procedures, the reasonableness of the amounts of consideration when he decided on the policy for calculating consideration for the post-retirement staff, etc. and exact amounts of the consideration.

Nevertheless, Mr. Mori and Mr. Yagi decided on a policy that KEPCO would substantially indemnify executives for the decreased executive remuneration, or decided the amounts of consideration for retainment under such policy, without fully performing the abovementioned duty.

Consequently, Mr. Mori and Mr. Yagi committed a breach of duty expected of a prudent manager.

### **(2) Liability for Incident of Indemnification for Additional Tax Burden**

In June 2019, Mr. Iwane, who was the President at that time, approved a proposal that KEPCO would add an amount equal to the additional tax paid by Mr. Toyomatsu for amended income tax returns that had been imposed on the cash and/or gifts received by him from Mr. Moriyama, in the amount of

executive fellow remuneration for Mr. Toyomatsu. On June 14, 2019, Mr. Yagi, who was the Chairman at that time, decided to retain Mr. Toyomatsu as an executive fellow with the amount of consideration based on such proposal.

Taking into account the facts that KEPCO should have addressed the Incident of Acceptance of Cash and Gifts as a company and that it was not necessary to keep the cash and gifts for such a long period of time that caused the additional tax to be imposed, the additional tax borne by Mr. Toyomatsu does not fall under the “costs found to be necessary for the administration of the mandated business” as set out in Paragraph 1 of Article 650 of the Civil Code or any other equivalent costs. Therefore, it was not necessary for KEPCO to indemnify for the amount equal to the additional tax.

Consequently, Mr. Yagi and Mr. Iwane, who decided to indemnify Mr. Toyomatsu for the amount of the additional tax, committed a breach of duty expected of a prudent manager.

### **Section 3 Loss or Damage Caused by Respective Directors’ Breach of Duty Expected of a Prudent Manager**

The loss and damage caused by respective breaches of duty expected of a prudent manager specified in Section 2 are (i) the amounts equivalent to the excessive profit gained by the Business Partners from the orders placed at higher prices than proper prices or from unnecessary orders; at least a part of the amounts equivalent to the excessive profit was distributed to the directors, officers and employees of KEPCO in the form of the cash and gifts provided by Mr. Moriyama, the aggregate amount of which is more than 360 million yen, which is the approximate aggregate value of the cash and gifts provided by Mr. Moriyama, (ii) the loss of business profit resulting from the loss of business opportunities due to the suspension of nominated competitive bidding, etc. because of this matter, and resulting from insufficient business effect of promotions and other marketing activities because of the replacement of KEPCO’s commercials, (iii) costs and expenses incurred for the advertisement and announcement, etc. used for restoring KEPCO’s credibility and trust that were lost as a result of critical coverage of this matter, etc., and (iv) costs and expenses incurred for the investigation, etc. by the Internal Investigation Panel, the Third-Party Panel and the Committee, which were established for investigation, etc. of this matter (the amounts of which were not settled at the time of submission of this report.).

Mr. Yagi, Mr. Toyomatsu and Mr. Shirai have caused KEPCO losses and damages of at least 1.2 billion yen or more as a result of the respective breaches of duty expected of a prudent manager as indicated above. Mr. Iwane has caused KEPCO losses and damages of at least 1 billion yen or more as a result of the breaches of duty expected of a prudent manager as indicated above. Mr. Mori has caused KEPCO a part of such losses and damages as indicated in items (iii) and (iv) above due to the breach of duty expected of a prudent manager in connection with the Incident of Indemnification for Executive Remuneration Decrease.