

# Doing Business in India

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**Special Summit III on Global Nuclear Energy Markets**

**Washington DC, June 7, 2017**

# The civil liability for nuclear damage act

- Basic principles: Liability is strict, based on the principle of no-fault, channelled only to the operator, liability is limited in amount and time during which claims have to be filed, regulatory body to notify an incident (parameters for such announcement have already been notified), single court of jurisdiction.
  - The Act and Rules notified under it constitute domestic legislation and form the basis of ratification of the CSC.
  - A unique feature: Operator's Right of Recourse (Section 17).
  - Rule 24 explains the word "Supplier".
- 17. The operator of a nuclear installation, after paying the compensation for nuclear damage in accordance with section 6, shall have a right of recourse where —*
- *such right is expressly provided for in a contract in writing;*
  - *the nuclear incident has resulted as a consequence of an act of supplier or his employee, which includes supply of equipment or material with patent or latent defects or sub-standard services;*
  - *the nuclear incident has resulted from the act of commission or omission of an individual done with the intent to cause nuclear damage.*

# Supplier as explained in Rule 24

*“Supplier” shall include a person who*

- *(i) manufactures and supplies, either directly or through an agent, a system, equipment or component or builds a structure on the basis of functional specification, or*
- *(ii) provides build to print or detailed design specifications to a vendor for manufacturing a system, equipment or component or building a structure and is responsible to the operator for design and quality assurance; or*
- *(iii) provides quality assurance or design services.*

The explanation included under Rule 24 has three parts:

- a supplier could be a person who provides system, equipment and structures against ‘functional specifications’, or
- a person who has provided ‘build to print’ drawings or detailed design specifications, or
- a person who has provided ‘design or quality assurance services’.

# Supplier: an elaboration

- Pressurised Heavy Water Reactors (PHWRs) are being designed, constructed and operated by the Nuclear Power Corporation of India Limited (NPCIL). Design has been developed by NPCIL, and vendors only supply equipment as per 'build to print' drawings or requirements provided by NPCIL.
- Vendors have no control on how the systems are designed, and requirements of individual systems or equipment are evolved. Examples: Shut down cooling pump, steam generators.
- Moving on to third bullet, quality control at the apex level is the responsibility of NPCIL.
- In short in case of PHWRs, NPCIL, being the system designer, is the supplier. Similarly for PFBR, Bhavini is the supplier.
- The explanation about the word supplier as included in Rule 24 has a clear linkage with practices followed by nuclear industry and leads one to conclude that **supplier is a person who designs and integrates the complete reactor system.**
- The supply chain for a nuclear facility can be divided into several tiers. Different countries/regions follow different nomenclature for various tiers. In the UK (HM Government, 2012), it is classified in 6 tiers with the technology vendor as the first tier, system integrators as the second tier, and equipment and component manufacturers, fabricators, raw material suppliers etc. comprising the remaining tiers.

# Right of recourse

- Three points to be considered for understanding the Right of Recourse
  - First, there is a difference between events that can lead to a situation which has to be categorised as a nuclear incident as per CLNDA and events leading to unavailability of the plant for operation.
  - Second, post delivery, vendors generally have no role to play with regard to operation and maintenance of the products supplied by them and have no control over any changes made by the operator in the plant which might influence their products or services.
  - Third, the difference between vendors and the 'supplier'.
- The way PHWRs are being constructed in India, NPCIL is both the Operator and the Supplier. This renders sub-Section 17 (b) inapplicable or redundant.
- For reactors being set up in technical cooperation with other companies, the system designer will be the supplier and companies from whom various supplies will be sourced, cannot be called suppliers.

## Sections 46: Extracts from the Standing Committee Report

- *“Clause 46 contains two propositions. The first proposition states that the Act shall not override any other law for the time being in force and shall merely supplement them. However, as clarified before the committee, this means that only provision that will remain is with regards to Article 226 and Article 32 of the Constitution on judicial review. All other parallel jurisdiction is barred under this legislation. In any case, Article 226 and 32 cannot be barred and therefore, this clause in its current form has no meaning. Further, as the Section stands, it may be limited to only operators and not suppliers.*
- *Proposed Amendment: - Clause 46: The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force. Nothing contained herein shall exempt the Operator and/or the Supplier of any material, design or services, from any proceeding which may, apart from this Act, be instituted against such person, either in any Indian or any external court.”*
- This amendment was rejected by the Standing Committee as well as the Parliament where similar amendments were moved.

# In conclusion

- Rule 24 provides explanation about a supplier and when one looks at the explanation along with practices in the nuclear industry, one comes to the conclusion that it is the plant system designer, who is the supplier. The 'explanation' has been formulated based on engineering practices followed by the nuclear industry. Any examination of the Indian law without studying the 'explanation' will lead to erroneous result.
- Section 46 is directed only towards the operator
- Indian Nuclear Insurance Pool has been set up and has provision for policy for both:
  - Nuclear Operators Liability (CLND Act 2010) Insurance Policy, and such a policy has been issued to NPCIL.
  - Nuclear Suppliers' Special Contingency (against Right of Recourse) Insurance Policy. Such a policy is available for subscription.

I have given my views in detail in a paper titled “The civil liability for nuclear damage act of India: an engineering perspective regarding supplier’s liability”, published in the journal Progress in Nuclear Energy, presently in press.

Thank You for  
your attention

# Extracts from GCC

- The term "supplier" and the duration and extent of supplier's liability are explained in Rule 24 of the Civil Liability for Nuclear Damage (CLND) Rules, 2011. For any questions relating to supplier's liability under section 17 of the Civil Liability for Nuclear Damage (CLND) Act, 2010, Government of India's clarifications dated February 08, 2015 may be referred to. These have been posted at the websites of the Ministry of External Affairs and the Department of Atomic Energy under the title "Frequently Asked Questions and Answers on Civil Liability for Nuclear Damage Act, 2010 and Related Issues"
- In regard to contracts with manufacturers of or vendors for supply of systems, equipment, components, or building of structures, or provision of services to nuclear installations which are operating or are under construction or those to be installed in future for which NPCIL is the system designer and technology owner, being responsible for safety design of such installations, NPCIL shall assume the role of supplier in accordance with the explanation of the term "supplier" given in Rule 24 of the CLND Rules, 2011 and in the context of section 17(a) and (b) of the CLND Act, 2010.
- Other suppliers can avail of the Nuclear Suppliers' Special Contingency (Against Right of Recourse) Insurance Policy provided by the India Nuclear Insurance Pool to cover any liability exposure under section 17(a) and (b) of the CLND Act, 2010. NPCIL maintains the operator's statutory insurance under the CLND Act, 2010 by subscribing to the Nuclear Operator's Liability Policy offered by the India Nuclear Insurance Pool, thereby subrogating to the India Nuclear Insurance Pool the operator's "right of recourse" against suppliers under section 17 (a) & (b) of the CLND Act, 2010.