

# Rules & Regulations Review

## The Civil Liability for Nuclear Damage Rules, 2011

### Key Features of the Rules

- ◆ The Rules were notified under the Civil Liability for Nuclear Damage Act, 2010 on November 11, 2011.
- ◆ Among other requirement, the Rules specify conditions for the operator to seek recourse against the supplier when the right to recourse is provided under a contract.
- ◆ The Rules specify procedures to claim compensation for nuclear damage.

### Issues and Analysis

- ◆ The Act specifies three circumstances under which the operator can seek recourse. The Rules specifically relate to the operator's right to recourse under a contract under Section 17(a). Under the Act it is unclear if a contract specified under Section 17(a) would restrict the right to recourse under other provisions of the Act.
- ◆ Under a contract, the recourse available to the operator may be less than his liability.
- ◆ The right to recourse can be exercised either during the 'initial license period' under the Atomic Energy (Radiation Protection) Rules, 2004, or the product liability period, whichever is longer. The 'initial license period' is not defined.
- ◆ The procedures prescribed to transfer compensation to the claimant differ on the basis of the claimant's gender, literacy level and disability.

The [Civil Liability for Nuclear Damage Act](#) that was passed by Parliament in August 2010 limits the liability of the operator in case of a nuclear incident. It secures the operator the right to recourse under certain circumstances. The Act also provides a mechanism to compensate victims of nuclear damage. The [Civil Liability for Nuclear Damage Rules](#) were notified under the Act on November 11, 2011. The Rules stipulate certain mandatory clauses for contracts that secure the operator the right to recourse. They also prescribe the procedure to provide compensation to victims in case of nuclear incidents.

The Supreme Court of India has recently admitted a Public Interest Litigation which challenges the constitutional validity of the cap on the operator's liability under the Act.<sup>1</sup>

### Key Features

- The Act imposes a no-fault liability on the operator for nuclear damage. It limits the operator's liability to Rs 1,500 crore. The Act secures operators the right to recourse.
- The Rules relate to reporting of nuclear incidents; procedures relating to adjudication of claims for compensation arising from such nuclear incidents; and the extent of recourse available to operators. Chapter V of the Rules specifically relates to the right to recourse under a contract. The Rules provide that the operator's right to recourse under a contract shall at least be the lesser of (i) the operator's liability or (ii) the value of the

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The Civil Liability for Nuclear Damage Rules, dated November 11, 2011

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contract. The right to recourse may be exercised during the subsistence of: (i) the initial license issued by the Atomic Energy Regulatory Board (AERB) for the operation of the plant; or (ii) the product liability period.

- The Rules require the operator to immediately report the occurrence of a nuclear incident to the AERB, the central government and the insurer of the nuclear plant.
- The Rules provide the procedure for claiming compensation before the Nuclear Damage Claims Commission. The Rules empower the Claims Commissioner to adjudicate claims summarily. Special procedures are specified to disburse compensation to claimants who are women, minors, illiterate, semi-literate or persons who suffer from a legal disability.

## Issues and Analysis

### Right to recourse

Section 17 and 46 of the Act Under Section 17, the Act specifies three circumstances when the operator may seek recourse. Under Section 17(a), recourse may be sought when a contract in writing specifies such a right. Section 17(b) secures the right to recourse when a nuclear incident occurs due to a latent or patent defect in the product supplied. Section 17(c) allows the right to recourse when a nuclear incident has resulted from a deliberate action calculated to cause nuclear damage. The Act under Section 46 also allows claims under other laws, including torts. The Rules only relate to the right to recourse when specifically provided under a contract, i.e. under Section 17(a). There are three issues related to this.

Rule 24 First, the extent of recourse available to the operator may be lower than his liability. The Rules require contracts under Section 17(a) to provide recourse up to at least the lesser of two values: (i) the 'value of the contract', or (ii) the operator's liability. A contract may thus limit the extent of recourse to a value lesser than the operator's liability. It is not clear if such a contract would restrict the operator's right to recourse under other provisions of the Act, such as Section 17(b) and 17(c). [It is important to note that this issue arises from the Act, and would exist regardless of the Rules.]

Second, the term 'value of the contract' is unclear, as it is not defined in the Act or the Rules. This term could mean the amount paid to purchase a component, or the amount specified in the contract as the supplier's liability.

Third, the Rules limit the period during which the right to recourse may be exercised. The Rules provide that recourse may be sought during the longer of the two periods: (i) period of product liability, or (ii) term of the initial license. The Rules define product liability period as the period for which the supplier has undertaken liability for latent or patent defects, or sub-standard services under the contract. Under the Atomic Energy (Radiation Protection) Rules 2004, a licence would by default subsist for five years. However, the term "initial license" is not defined. If it is assumed to mean the licence under which the plant was initially operationalised, its purpose is redundant for future license periods.

### Procedure for adjudication of claims

Rule 19(1) and (5) The Rules provide the procedure for disbursing compensation to victims of nuclear incidents. If the claimant is a woman, the compensation may be transferred to a dependant or an heir, or it may be invested. If the claimant is not literate, the compensation amount shall be invested for a minimum period of three years. If the claimant is semi-literate, the procedure applicable to minors should be adopted. The compensation payable to a minor is to be invested in a fixed deposit till he attains the age of 18 years.

- Two issues arise from these provisions. First, the Rules treat persons differently on the basis of their gender, literacy and age. This would imply that some of these categories of people might not be able to gain access to the compensation amount for a few years. Second, the Rules imply that the compensation for a semi-literate person who is an adult should be invested until he attains majority. This is a contradiction. Also, 'semi-literate' persons are not defined under the Act or the Rules.

<sup>1</sup> Supreme Court of India, W.P.(C) 464 of 2011

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