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*Practice Group:**Insurance Coverage*

Nuclear Liability

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The UAE introduces new legislation that determines the scope of civil liability and compensation for nuclear damage and aligns UAE law with the Vienna Convention on Civil Liability for Nuclear Damage as amended by the 1997 Protocol

The UAE has recently embarked upon a nuclear power program, and the first nuclear power station in the UAE is currently expected to be commissioned by 2017. Although the program is in its infancy, the UAE has already acceded to the principal international conventions concerning nuclear liability, namely, the Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage of 1997 (the “**1997 Protocol**”) and the Joint Protocol on the Application of the Vienna and Paris Conventions. As well, the UAE has also enacted Federal Decree Law No. 4 of 2012, Concerning Civil Liability for Nuclear Damage (“**Law 4**”), which came into force on November 14, 2012. As outlined below, Law 4 attempts to align UAE domestic legislation with the 1997 Protocol. This legislation represents another step by the UAE to implement its obligations under international conventions and to adopt a regulatory program consistent with international norms.

Previous legislation

Previously, Federal Law No. 6 of 2009, Concerning the Peaceful Uses of Nuclear Energy (“**Law 6**”), was the only UAE law which detailed civil liability for nuclear claims¹. Although Law 6 provides that the operator shall be liable for all matters related to nuclear safety, it did not go so far as to state that all claims *must* be channeled exclusively through the operator. On its face, Law 6 appeared to allow the prosecution of nuclear liability claims against third parties, such as equipment/service providers.

Law 4

Law 4 clarifies the scope of civil liability and compensation for nuclear damage. In doing so, it transposes into UAE law various fundamental principles and obligations contained in international nuclear liability conventions, namely: the channeling of the legal responsibility for nuclear damage exclusively towards the operator; the possibility of establishing the operator’s liability without having to prove negligence; the exclusive jurisdiction of the courts of the country where the nuclear accident occurs; the limitation of liability; and the time limits for claiming compensation.

Channeling of liability

With certain exceptions, Law 4 provides that civil liability for damage caused by a nuclear accident is channeled exclusively to the operator of a nuclear facility (or in some instances, to a party transporting or handling the nuclear waste). The article expressly states that the operator’s liability shall be in accordance with Article 2 of the 1997 Protocol, indicating that the scope of the operator’s liability includes damage caused by a nuclear incident in its facility and in certain

¹ The UAE also imposes criminal penalties for environmental pollution resulting from importing, transporting, burying, drowning, storing or disposing of nuclear substances or waste. The prohibition applies broadly to all persons, corporate entities, and private or public bodies. The penalties for violating this provision are severe and may include the death penalty, or life imprisonment and a fine of up to AED 10,000,000.

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instances, incidents involving material sent to or coming from or originating in the operator's facility.

Under Law 4, the operator is strictly, solely and exclusively liable for "nuclear damage" provided that it is proved to be caused by a nuclear incident. The definition of "nuclear damage" is quite broad and is consistent with that given by the 1997 Protocol and includes death and personal injury; loss of or damage to property; economic loss; cost of restoring the impaired environment; or loss of income from an economic interest arising from using or enjoying the environment. In the event that such damage occurs, strict liability is imposed in that there is no requirement to establish negligence or any type of fault on the part of the operator for liability to attach.

Limits on operator's liability

For each nuclear accident, Law 4 sets a limit on the operator's liability and requires that the operator obtain insurance or provide other financial security up to the set cap. Actions for compensation may only be brought against the operator, or the person providing financial security, within 3 years of the date the person suffering damage had knowledge or ought to have had knowledge of the damage. For loss of life and personal injury, the claim must be made within 30 years, and for other types of damage, within 10 years.

Notwithstanding the channeling of liability exclusively to the operator, Law 4 affords some protection to the operator by providing that the court shall fully or partly exempt the operator from being required to provide compensation for nuclear damage which has fully or partly resulted from the gross negligence of the person suffering damage or from an action or omission by that person done with the intent of causing harm.

Operator's rights of recourse

Of special interest to equipment and service providers, the operator also has the right of recourse if it is expressly provided for by a contract in writing, or if the nuclear incident results from an act or omission done with intent to cause damage, against the individual who has acted or omitted to act with such intent. Accordingly, it appears that the operator may enforce contractual indemnity claims against a supplier/contractor or against anyone who purposely caused the damage. This right of recourse also may be extended to benefit the UAE insofar as it has provided public funds pursuant to the 1997 Protocol.

What's next?

While Law 4 provides needed clarification regarding potential liability for nuclear damage in the UAE, these provisions should be considered in the context of Islamic Shari'a and in light of other applicable UAE Federal and local Emirate laws, including the provisions of the Civil Code, which govern contractual and tortious liability and the scope of damages in the UAE. For example, if an equipment or service provider has agreed to indemnify the operator, although the Civil Code expressly allows contracting parties to fix the amount of compensation, the UAE courts reserve the right in all cases to vary such agreement so as to make the compensation equal to the loss and render any agreement to the contrary as being void. It is also important to bear in mind that, as this Law is published in Arabic, any inconsistency with the English translation will be resolved in favour of the Arabic original.

If you have any queries regarding the implications of the 2012 Law or any other matters relating to nuclear liability in the UAE, please contact the authors listed below.

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