Now that Japan’s Diet, as of Nov. 21, 2014, has approved Japan’s ratification of the Convention on Supplementary Compensation for Nuclear Damage (“CSC”) and implementing domestic legislation, Japan presumably will soon deposit its instrument of ratification with the International Atomic Energy Agency. Ninety days following such action by Japan, the CSC will enter into force, since its requirement for entry into force (a minimum of five ratifying parties collectively having at least 400,000 MW(t) of installed nuclear generating capacity) will have been satisfied.

While the additional compensation aspect of the CSC’s impending entry into force has attracted global attention, less consideration has been given to the CSC’s impact on the nuclear liability of sellers and purchasers of components, nuclear fuel and related technology and services for the construction and operation of nuclear power stations. This article provides our views concerning the most significant near-term implications of the CSC’s entry into force.

Benefits for the Nuclear Industry

While the long-awaited entry into force of the CSC, which was originally adopted by the participating countries and opened for signature in 1997, will clearly be a “watershed” event, the immediate benefits (and costs) to nuclear suppliers and purchasers will be relatively modest, except with respect to U.S. and other suppliers that: (1) are located in a country that has ratified the CSC; and (2) provide products or services for the construction, operation, maintenance or decontamination/decommissioning (“D&D”) of a nuclear power station in a country that has ratified the CSC.

Since only five countries—the U.S., Romania, Argentina, Morocco and the United Arab Emirates—have
ratified the CSC, Japan’s ratification of the CSC will cause the convention, once in force, to be applicable only to nuclear incidents at facilities within those six countries, as well as certain nuclear incidents that occur during transportation of nuclear material to or from facilities in those countries. Unless additional countries that have leading roles as consumers or suppliers of such components, services and nuclear materials become parties to the CSC, the protective effect of the CSC will be geographically narrow. Progress toward the goal of near-universal adherence to the CSC is likely to be quite slow, especially in view of the apparent reluctance of the Western European countries to become CSC parties.

Despite the limited geographic reach of the CSC, upon its entry into force with the above mentioned six countries as CSC parties, the benefits of CSC adherence are likely to be significant in some situations. Suppliers in CSC countries that provide such support to nuclear power stations in other CSC countries will immediately benefit, in two principal ways: (1) lawsuits against such suppliers in their own countries or other CSC countries should be dismissed since the CSC directs or “channels” jurisdiction over such lawsuits exclusively to the courts of the CSC country in which the nuclear incident took place; and (2) a second tier of “supplementary” compensation will be paid by the CSC parties if the first tier amount that must be maintained by CSC parties (at least 300 million Special Drawing Rights [SDRs] or about $440 million) is exhausted. Since a large nuclear incident comparable to the incidents at the Chernobyl or Fukushima Daiichi plants would likely produce nuclear damage greatly exceeding both the CSC’s required first and second tiers of compensation, the supplementary compensation aspect of the CSC may not be sufficient to reduce the risk to suppliers of lawsuits being filed against them in countries that are not parties to the CSC (“third countries”). While the benefits of the CSC’s supplementary compensation provisions have received more attention than the “jurisdiction channeling” aspect of the CSC, the latter aspect may be more significant for vendors of materials and services to nuclear power plants in CSC countries.

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