

INSURANCE LEGISLATION ON NUCLEAR RISKS IS DEVELOPING

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Turkey's goal of nuclear-based energy production, which has been expressed since the 1970s, has become concrete in recent years and has started to yield results. The Akkuyu Nuclear Power Plant (**Akkuyu NGS**), established through cooperation agreements with the Russian Federation, officially gained nuclear power plant status on 27.04.2023; and the first production is expected to commence in 2024. Two more nuclear power plants are currently in the planning stage.

Meanwhile, the legal framework for the sector is slowly taking shape. In this context, two regulations, the Regulation on Liability Insurance and Security for Nuclear Risks ("**Nuclear Insurance Regulation**") and the Regulation on the Operating Procedures and Principles of the Nuclear Insurance Pool ("**Nuclear Insurance Pool Regulation**") entered into force simultaneously on 19.10.2023.

These regulations are an extension of the significant legislation amendments at the local level, especially since 04.02.2022 when the latest amendments to the 1960 Convention on Third Party Liability in the Field of Nuclear Energy ("**Paris Convention**") to which Turkey is a party, entered into force. These regulations serve not only to regulate nuclear liability at the local level, but also to ensure the cooperation required by coinsurance and reinsurance relations at the international level as intended by the Paris Convention.¹

Background

The obligation for operators of nuclear power plants to have and maintain insurance is not new. Even in the version of the Paris Convention that was in effect until 2022, the operators of nuclear installations that took place in the signatory countries were required to have liability insurance to cover the legal responsibilities imposed on them by the Convention (Article 10).

However, since there was no nuclear power plant in Turkey that fell within the scope of this Convention at the time, Law No. 5710 on Nuclear Power Plants² explicitly mentioned insurance as an obligation only for the compensation of damages that

¹ Revised rationale of the Paris Convention "Moreover, the potential magnitude of a nuclear incident will often require international cooperation between national insurance companies. To a large extent, pooling the resources of the international insurance market is necessary to ensure that adequate financial security through coinsurance and reinsurance is offered to cover potential claims. In order to ensure this cooperation, third-party liability regulations at the international level need to be established in accordance with each other."

² Law on the Establishment and Operation of Nuclear Power Plants and Sale of Energy, Official Gazette 21.11.2017/26707.

might occur during the construction of the power plant. The Insurance Law, on the other hand, only provided for the establishment of a legal entity, the Special Risks Management Center, to provide coverage for nuclear risks, establish an insurance pool and carry out cooperation and supervision mechanisms. In any case, given that, according to the territoriality rule under Article 15 of the Insurance Law, insurance related to nuclear risks cannot be obtained from foreign markets, comprehensive legislative work in this field was becoming increasingly inevitable.

The amendments to the Paris Convention that entered into force on 04.02.2022 made this legislative work even more meaningful and necessary. These amendments not only redefined and expanded terms such as nuclear installations and nuclear damage but also determined the liability regime of nuclear installation operators and the lower and upper limits of liability.

Underlying Legislation

With the long-awaited amendments to the Paris Convention coming into force, the Nuclear Regulation Law was first enacted and entered into force on 05.03.2022. This law, which also significantly amended the Law on Nuclear Power Plants, aims to regulate the relevant sectors at once and in line with international legislation.

This law, which also explicitly refers to the Paris Convention, has subjected the legal liability of the operator to a special regulation. Accordingly, the operator shall be held exclusively responsible for nuclear damages caused to third parties, up to a certain maximum limit, within the framework of the principle of strict liability (liability without fault).

The same law also regulates the obligation of the nuclear installation operator to have liability insurance for the first time at the local level. In this context, it is stated that the insurance in question can be obtained not only from the domestic market but also from the international market³, and it is aimed to distribute the risk in the insurance market, when necessary, by establishing a separate insurance pool for this risk (Art. 14 and Art. 15).

The determination of the principles and procedures regarding the implementation of these provisions is left to the joint work of the Nuclear Regulatory Authority ("NDK") and the Insurance and Private Pension Regulation and Supervisory Agency ("SEDDK").

Implications of the Regulations

NDK and SEDDK completed their work as stipulated by the law within a year and put into force two regulations on the insurance aspect of nuclear activities on 19.10.2023.

i. Nuclear Insurance Regulation

The Nuclear Insurance Regulation, as expected, details the Nuclear Regulation Law and while doing so, remains in line with the recent amendments to the Paris Convention. The Regulation essentially regulates that:

³ With its circular dated 27.03.2023 and numbered 2023/13, the SEDDK confirmed that these insurances can be taken out abroad and that this insurance constitutes an exception to the principle of territoriality under Article 15 of the Insurance Law.

- the obligation to have insurance is applied to the nuclear installation operator's main activities as well as activities such as transportation and storage (Article 4)
- Insurance coverage will cover not only direct loss of life and property, but also indirect material damage, costs incurred to mitigate and prevent damage, and the cost of measures taken to restore the environment (Article 5)
- Regarding the issues that are not included in the scope of insurance coverage, for example, damages to another nuclear facility, nuclear damages that are the direct result of external factors such as an armed conflict or civil war are not covered by insurance coverage. (Article 6)⁴
- Default interest and costs that the court will rule against the operator will not be covered by the insurance and the operator will be held responsible for them separately.

ii. Nuclear Insurance Pool Regulation

The Special Risks Management Center ("Center"), established by the Insurance Law in 2021, was one of the first concrete steps in the efforts to provide insurance for nuclear risks. The operating procedures and principles of the Center were determined by the SEDDK regulation dated 27.10.2021.⁵ Accordingly, the Center operates as a legal entity with the authority to provide insurance coverage as if it were an insurance company. The Center can even provide reinsurance coverage for risks related to natural disasters and agricultural activities. The Center manages these local risks by transferring them to a pool constituted by local insurance companies or by obtaining reinsurance protection from domestic or foreign insurers. However, to date, the insurance pools managed by the Center have been limited to credit insurance, personal accident insurance for mine workers, liability insurance for medical malpractice, and insurance for civilian sea and air flights affected by the Russia-Ukraine crisis in order to respond to the current needs of the real sector.

With the Nuclear Regulation Law and the aforementioned regulation, the Center has been assigned for a new task, which is to provide protection to the operators of nuclear installations from local or international markets upon their request. In this context:

- The operator's coverage need will be met primarily by a pool to be established by the Center specifically for this risk
- For the risks assumed under this pool, a further coverage will be obtained from national and international insurance, reinsurance and capital markets and other nuclear insurance pools.

Without waiting for this regulation to enter into force, the Center already started providing insurance coverage for Akkuyu NGS in April 2023 based on the Nuclear Regulation Law.⁶

⁴ These matters, which are not covered by the coverage, are already cases where the operator cannot be held liable according to the Paris Convention.

⁵ Official Gazette 27.10.2021/31641

⁶ <https://sigortagazetesi.com/orymden-akkuyu-ngsye-sigorta-teminati/>

Pursuant to the Regulation, within the scope of risk management, the Center will closely observe the activities of the covered operator during the insurance period, act in close cooperation with the NDK, take action in cases where the risk increases due to the operator's activities or license status, and suspend or terminate the insurance contract if the conditions are met.

In addition to risk management, the Center is also responsible for damage notification and compensation processes. Accordingly, third parties can apply directly to the Center instead of the operator as in other conventional liability insurances. Upon this application, the Center will be able to determine whether the risk is covered and the extent of the damage. While determining these, it will also be in consultation with the relevant institutions and, if necessary, the relevant departments of universities that have had the necessary training.

In case of a dispute, Ankara courts shall have exclusive jurisdiction pursuant to Article 20 of the Nuclear Regulation Law.

Conclusion

These regulations and their implications are undoubtedly an important assurance for third parties threatened by nuclear power plants.

The fact that these regulations and the underlying codifications explicitly and implicitly refer to the Paris Convention, which is already a part of our domestic law, contributes to the harmonization of legislation by consolidating the laws and regulations, thereby achieving the goal of uniformity in the legal framework.

The Nuclear Insurance Pool Regulation is a bi-product, not direct outcome of the Convention and therefore it has rather practical function. The nuclear insurance pool shaped by this regulation may serve to eliminate the problems that may be faced in the international insurance and reinsurance market due to the Russian capital structure of the Akkuyu Nuclear Power Plant.

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