

Draft

Civil Liability for Nuclear and Radiation Damage Act

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Section 1. This Act is called the “Civil Liability for Nuclear and Radiation Damage Act, B.E.”

Section 2. This Act shall come into force after the expiration of one hundred eighty days from the date of its publication in the Government Gazette.

Section 3. In this Act:

"Radiation source" means radioactive material, radiation generator, nuclear material, radioactive waste, nuclear fuel, or spent nuclear fuel as defined by the law on nuclear energy for peace;

"Nuclear facility" means a nuclear facility as defined by the law on nuclear energy for peace;

"Nuclear Damage" means:

(1) Damage to life, personal injury, property, the environment, or natural resources; economic loss arising from aforementioned loss or damage; the cost of reinstatement measures; or any other damage that may be claimed under general principles of civil liability, arising from or resulting from:

(a) ionizing radiation emitted from a radiation source within or released from a nuclear facility;

(b) ionizing radiation emitted from a radiation source transported from or to a nuclear facility;

(c) the radioactive properties, or a combination of the radioactive properties with toxic, explosive, or other hazardous properties of the radiation source specified in (a) or (b);

(2) The cost of preventive measures, and any loss or damage resulting from such measures;

"Radiation damage" means:

(1) Damage to life, personal injury, property, the environment, or natural resources; economic loss resulting from such damage; the cost of reinstatement measures; or any other damage that may be claimed under general principles of civil liability, arising from or resulting from:

(a) ionizing radiation emitted from a radiation source;

(b) the radioactive properties, or a combination of the radioactive properties with toxic or other hazardous properties of the radiation source specified in (a);

(2) the cost of preventive measures and any loss or damage resulting from such measures.

In any case, this shall not include nuclear damage;

"Preventive measure" means any reasonable measure taken by any persons after a nuclear incident or a radiation incident has occurred to prevent or mitigate nuclear damage or radiation damage;

"Reinstatement measure" means any reasonable measure which was taken in accordance with the law, and which aims to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment;

"Reasonable measure" means a measures taken in accordance with the law, which is appropriate and proportionate, having regard to:

(1) the nature and extent of the damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;

(2) the extent to which, at the time they are taken, such measures are likely to be effective;

(3) relevant scientific and technical expertise;

(4) all other relevant circumstances and factors;

"Nuclear incident" means an occurrence or a series of occurrences having the same origin that:

- (1) causes nuclear damage;
- (2) creates a grave and imminent threat of causing such nuclear damage, but only with respect to preventive measures;

"Radiation incident" means an occurrence or a series of occurrences having the same origin that:

- (1) causes radiation damage;
- (2) creates a grave and imminent threat of causing such radiation damage, but only with respect to preventive measures;

"Special drawing right" means the unit of account defined by the International Monetary Fund and used by the Member State for its own operations and transactions. special drawing rights as allocated by the International Monetary Fund to its member countries in accordance with the terms and conditions of the special drawing account under the agreements on the International Monetary Fund of which Thailand is a member and which member countries have designated as the unit of valuation of various currencies;

"Fund" means nuclear and radiation damage fund;

"Operator" means a licensee or a notifier of radioactive material, radiation generators, nuclear material, spent nuclear fuel, or radioactive waste under the law on nuclear energy for peace, and shall include a person who possesses or uses radioactive material, radiation generators, nuclear material, spent nuclear fuel, or radioactive waste;

"Convention" means the Vienna Convention on Civil Liability for Nuclear Damage, as amended by the Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage, or the Convention on Supplementary Compensation for Nuclear Damage, as the case may be, including annexes and amendments to such annexes or conventions;

"**Kingdom**" means the territory of Thailand as recognized under generally accepted principles of international law, including its territorial sea, and shall include exclusive economic zone of Thailand;

"**Office**" means the Office of Atoms for Peace;

"**Secretary General**" means the Secretary General of the Office of Atoms for Peace;

"**Minister**" means the Minister who has charge and control of the execution of this Act.

CHAPTER I GENERAL PROVISIONS

Section 4. This Act shall apply to:

- (1) damage resulting from a nuclear incident or a radiation incident in the Kingdom;
- (2) the costs of preventive measures, wherever taken, for preventing damage in the area under (1).

Section 5. This Act shall not apply to radiation damage in the case of medical use for any medical treatment or diagnostics, and for use in a medical facility.

Medical facilities under paragraph one mean medical facilities under the law on medical facilities, and veterinary facilities under the law on veterinary facilities, and shall also include medical facilities and veterinary facilities of government agencies.

Section 6. An operator shall be liable under this Act to the victims in all cases for nuclear damage or radiation damage that occurs, except where it can be proven that:

- (1) the damage resulted directly from an act of armed conflict, hostilities, civil war, or insurrection;
- (2) the damage resulted from an act or omission of a person done with intent to cause damage or from the gross negligence of such person. In such a case, the operator shall be relieved from liability to the person who caused that damage.

In any case, the victim shall not claim for compensation for nuclear damage or radiation damage under other laws from any other persons.

Section 7. The provisions of this Act shall not affect any right of recourse that the operator have with other persons.

Section 8. The Minister of Higher Education, Science, Research, and Innovation shall have charge and control of the execution of this Act and shall have the power to issue ministerial regulations and notifications to the execution of this Act.

Such ministerial regulations and notifications shall come into force upon their publication in the Government Gazette.

Section 9. The competent officials under the law on nuclear energy for peaceful, as appointed by the Minister, shall be the competent officials to perform under this Act.

In the performance of duties under this Act, a competent official shall have the following powers:

(1) to inquire about facts, inspect relevant activities, documents, and evidence, as well as investigate any violation or failure to comply with this Act;

(2) to seize or confiscate documents or evidence in the case of violation or failure to comply with this Act for the purpose of inspection or legal proceedings;

(3) to summon in writings a person involved to give a statement or deliver a document and evidence as necessary for the consideration of the competent official;

(4) to issue administrative orders to persons responsible for complying with this Act concerning insurance, the provision of financial security, or the payment of contributions to the fund under this Act.

CHAPTER II

LIABILITY FOR NUCLEAR DAMAGE

Section 10. An operator shall be liable for nuclear damage under this Act regardless of where the nuclear damage occurs if such damage:

(1) is caused by a nuclear incident at the operator's nuclear facility;

(2) is caused by a radiation source for which the operator is the last to be licensed or to notify of its possession, regardless of whether the radiation source is in the operator's possession at the time; or

(3) is caused by a radiation source for which the operator is the last to possess.

Section 11. In the case where more than one operator is involved in any nuclear damage and no part of the damage can be attributed to any operator, the operators involved shall be jointly and severally liable for all such damages, unless they can be relieved of liability under this Act.

In case where nuclear damage and other non-nuclear damage occur concurrently, whether caused by a nuclear incident alone or by a nuclear incident and other causes, any non-nuclear damage to the extent that it cannot be separated from the nuclear damage shall be deemed nuclear damage.

Section 12. In the case of transport of a radiation source within the Kingdom, from the Kingdom to a Contracting State of the Convention, or from a Contracting State of the Convention to the Kingdom, as long as the radiation source being transported has not been delivered to the receiving operator, if nuclear damage occurs from the radiation source being transported, the sending operator is liable. However, if the consignee has taken delivery of the radiation source, the consignee is liable, unless agreed otherwise. Such an agreement may be made to transfer liability to the carrier of such radiation source, if the carrier agrees. In such case, the carrier shall be deemed to be a liable operator under this Act.

In the case of transport of a radiation source from the Kingdom to a non-Contracting State of the Convention, the sending operator shall be liable before the radiation source has been unloaded from the means of transport by which it has arrived in the territory of that non-contracting State.

In the case of transport of a radiation source from a non-Contracting State of the Convention to the Kingdom, the receiving operator shall be liable after the radiation source has been loaded on the means of transport by which it is to be carried from the territory of that non-contracting State.

Section 13. An operator shall be entitled to limit the liability under this Act for any one nuclear incident to not exceeding 300 million Special Drawing Rights.

The liability under paragraph one shall not include interest and other costs awarded by a court.

Such liability limit may be amended in accordance with the Convention, and shall be prescribed by Royal Decree.

Section 14. For the purpose of the calculation of liability under this Act, the conversion of the Special Drawing Right unit of account into the Baht currency shall be made on the basis of the exchange rate determined by the International Monetary Fund on the date of the placement of financial security under section 36.

Section 15. An operator shall not be entitled to limit the liability under this Act if it is proved that the nuclear damage resulted from the operator's own act or omission done willingly or recklessly despite the knowledge that such nuclear damage would probably result.

CHAPTER III LIABILITY FOR RADIATION DAMAGE

Section 16. An operator shall be liable for radiation damage under this Act if such damage:

- (1) is caused by a radiation incident at the operator's nuclear facility;
- (2) is caused by a radiation source for which the operator is the last to be licensed or to notify of its possession, regardless of whether the radiation source is in the operator's possession at the time; or
- (3) is caused by a radiation source for which the operator is the last to possess.

Section 17. In the case of transport of a radiation source, as long as the radiation source being transported has not been delivered to the receiving operator, if radiation damage occurs from the radiation source being transported, the sending operator is liable. However, if the consignee has taken delivery of the radiation source, the consignee is liable, unless agreed otherwise. Such an agreement may be made to transfer liability to the carrier of such radiation source, if the carrier agrees. In such case, the carrier shall be deemed to be a liable operator under this Act.

Section 18. In addition to the exemptions specified in section 6, an operator shall be relieved from liability if there is evidence proving that:

(1) the damage would have occurred even the operator complied with the law on nuclear energy for peace and other relevant laws, including regulations issued under such laws, and

(2) equipment or instruments related to the radiation source were not defective.

Section 19. An operator shall procure insurance or financial security for the liability for radiation damage.

Section 20. Insurance under section 19 shall include a provision for an initial compensation payment to a victim, not exceeding 200,000 baht. This initial compensation amount may be adjusted by the Royal Decree.

The types of damage eligible for an initial compensation, the process for claiming such compensation, and the payment for an initial compensation to a victim, under paragraph one, shall be in accordance with the rules, procedures, and rates as prescribed by the Ministerial Regulation.

Section 21. Receiving an initial compensation under section 20 does not preclude the victim from claiming additional compensation under this Act.

CHAPTER IV

INSURANCE OR FINANCIAL SECURITY

Section 22. An operator under this Act shall procure insurance or other financial security, in the amount not less than that specified in this section 13 paragraph one or section 20, as the case may be, to cover nuclear damage and radiation damage under this Act.

The procurement of insurance or financial security under paragraph one shall be in accordance with the rules, procedures, and conditions as prescribed by the Ministerial Regulation.

Section 23. In the event that the insurance or financial guarantee expires, or the insurer or financial guarantor cancels or suspends the insurance or financial guarantee under section 22 paragraph one, the operator shall promptly notify the Office and obtain a new insurance or financial guarantee within a reasonable period or within the period specified by the Secretary General. If this is not done within the specified period, the Secretary General may revoke the license under the law on Nuclear Energy for Peace.

CHAPTER V

FUND

Section 24. In this chapter, "Bank" means the Government Savings Bank.

Section 25. A fund shall be established under the Office, called the "Fund for Nuclear Damage and Radiation Damage," with the purpose of compensating for nuclear damage and radiation damage, consisting of:

- (1) initial capital allocated by the government;
- (2) contributions from operators according to the criteria under section 32 and surcharges received under section 33;
- (3) money or properties donated to the fund;
- (4) yields, gains, and profits generated from the fund's money or properties.

The money or properties under paragraph one shall be deposited into the Fund without being transferred to the treasury as public revenue.

Section 26. The Fund shall be exempted from:

- (1) any direct taxes that would be levied on assets, gains, contributions received, and other properties,
- (2) duties under the law on Customs Tariff and other taxes in the case of import or export for use in the Fund's operations.

Section 27. The operations of the Fund shall be carried out under the following objectives:

- (1) to provide a payment under the obligations of the Convention, as announced by the Minister in the government Gazette,

- (2) to compensate for nuclear damage or radiation damage as specified in this Act,
- (3) to achieve other objectives under the intent of this Act.

Section 28. The bank shall manage and administer the Fund. The bank may deduct reasonable expenses for managing the Fund from the Fund's yields as agreed with the Office.

Section 29. The bank shall close the accounts annually according to the fiscal year and submit financial statements with accompanying details to the Office of the Auditor General for auditing and certification within ninety days from the date of closing of the accounts. A copy of such financial statements shall also be submitted to the Office. Once the financial statements are audited and certified, the bank shall inform the office. Once the Office of the Auditor General has audited and certified the financial statements, the Bank shall submit the financial statements to the Office.

Section 30. In the case of nuclear damage in the Kingdom, the Fund shall pay additional compensation to the victims as specified by the Convention.

In the case of nuclear damage outside the Kingdom, the Fund shall make payments in accordance with the obligations under the Convention.

Section 31. In the case of radiation damage, the Fund shall pay additional compensation to the victims if they have not received initial compensations in the amount specified by the Ministerial Regulation.

Section 32. The operator shall pay contributions to the Fund annually at a rate not exceeding ten percent of the license fee under the law on Nuclear Energy for Peace, or 5,000 baht in the case of notifiers under the law on Nuclear Energy for Peace. The contributions paid by the operators shall be deductible as expenses in calculating income tax under the Revenue Code. The rate of payment of this contribution may be changed as prescribed by the Royal Decree.

The collection and payment of contributions from operators shall be in accordance with the rules and procedures prescribed by the Ministerial Regulation.

Section 33. Any operator, who fails to pay the contribution to the Fund correctly and in full in accordance with section 32, shall pay a surcharge at the rate of two percent per month on the unpaid contribution.

Section 34. In the case where the Office has paid additional compensation or has provided a payment under the obligations of the Convention under section 30 and the operator has not made full contributions as required by the Convention, the Office shall have the right to pursue the outstanding contributions from that operator.

CHAPTER VI

LEGAL PROCEEDINGS AND PERIOD OF PRESCRIPTION

Section 35. Any claim for compensation for a nuclear incident or a radiation incident may be brought directly against the insurer or the person providing financial security for the liability for damage resulting from the nuclear incident or the radiation incident involving the operator.

The insurer or the person providing financial security under paragraph one, who is the defendant, may invoke the defenses in the following matters:

- (1) limitation of liability for nuclear damage as specified in section 13 paragraph one, even if the operator is not entitled to limit the liability under this Act;
- (2) the defenses which the operator would have been entitled to invoke, except bankruptcy or winding up of the operator;
- (3) the willful conduct of the operator in causing damage resulting from such the nuclear incident or the radiation incident.

The defendant may not invoke any other defense which the defendant might have against the operator as a defense against a person having a claim for damage resulting from such nuclear incident or radiation incident.

Section 36. After a nuclear incident has occurred, the operator shall have the right to limit the liability only when the operator, the insurer, or any other person providing security for the operator, has placed security with the Intellectual Property and International Trade Court in the full amount of liability as specified in section 13 paragraph one.

The security under paragraph one may be placed in the form of cash, a bank guarantee, or other security, one or more of which may be combined, as deemed appropriate by the Intellectual Property and International Trade Court. In the case of security, such security shall be convertible into money for payment to persons concerned in a convenient and expeditious manner.

The placement of security shall be in accordance with the rules, procedures, and conditions by the Intellectual Property and International Trade Court.

Section 37. The money from the security under section 22 paragraph one or section 36 paragraph one shall be distributed among all claimants for compensation for damage resulting from the nuclear incident or the radiation incident, in proportion to the amounts of claims proved in court.

Section 38. In the case where an operator acted voluntarily and reasonably, which incurs expenses or sacrifices property to prevent or mitigate nuclear damage or radiation damage, that operator shall be entitled to the expenses incurred or the value of the property sacrificed in the same rank as other claims against the security.

Section 39. The Public Prosecutor shall have the power to conduct all proceedings to claim compensation for damage resulting from a nuclear incident or a radiation incident under this Act, in the capacity as the injured person on behalf of the State or in the capacity as the person authorized by the injured private individual, without prejudicing the private individual's right to institute an action in the individual's own volition.

This case does not deprive the right of private individuals to file lawsuits on their own and the Public Prosecutor shall have the power to assist in proceedings under paragraph one.

The conduct of proceedings by the Public Prosecutor under paragraph one shall be exempt from all fees but this shall not extend to liability for fees at the final stage.

In the case of authorization by an injured private individual under paragraph one or in the case of a private individual filing a lawsuit with the assistance of the Public Prosecutor in proceedings under paragraph two, the Public Prosecutor may entrust the Office and any other agencies concerned to gather evidence, assess compensation for damage resulting from a nuclear incident or a radiation incident, or take other action as deemed appropriate.

Section 40. In the case of a nuclear incident occurring in a Contracting State of the Convention, claims for compensation for nuclear damage shall be filed in the competent court of that State.

Section 41. The right to claim compensation under this Act shall be barred by prescription after three years from the date on which the damage occurred or within the following periods:

(1) in the case of damage to life, personal injury, the claim shall be made within thirty years from the date of the nuclear incident or radiation incident;

(2) in the case of other damage, the claim shall be made within ten years from the date of the nuclear incident or radiation incident.

In the case of nuclear damage or radiation damage to body or health, if at the time of filing the lawsuit, it is impossible to determine the full extent of the damage, the court may state in its judgment that the right to amend the judgment is reserved for a period not exceeding ten years.

CHAPTER VII JURISDICTION

Section 42. The Intellectual Property and International Trade Court shall have jurisdiction over claims for compensation for nuclear damage, and the courts under the Civil Procedure Code shall have jurisdiction over claims for compensation for radiation damage under this Act. In this regard, the defendant shall be duly served a summons and given a reasonable opportunity to present the defendant's case in defense.

Section 43. In the case where the operator has placed financial security for the limitation of liability under Section 36 with the Court, the Court shall be competent to conduct the apportionment and distribution of the security amongst persons entitled to claim compensation under section 27. In this regard, the Court may issue any rules for the purpose of such proceedings.

Section 44. A final judgment concerning nuclear damage of a foreign court in a Contracting State shall be enforceable in Thailand unless:

(1) the judgment was obtained by fraud;

(2) the defendant was not duly served with a summons and was not given a reasonable opportunity to defend the case;

(3) the judgment is contrary to public order or good morals.

The period of time, conditions and procedures for an application to the Court for enforcement of a judgment of a foreign court under paragraph one shall be in accordance with the Rules of the Court.

CHAPTER VIII
ADMINISTRATIVE SANCTIONS

Section 45. Any violation or failure to comply with section 22 paragraph one shall be subject to an administrative fine not exceeding two million baht per individual.

For the purpose of implementing the objectives of this Act, administrative fines and enforcement measures under the law on administrative procedures shall also apply to state agencies.

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