

Nuclear Power Plant Operator's Liability Insurance. An Important Part of the Business

The current public discourse on the first Polish nuclear power plant under construction strongly focuses on the development phase and the permitting process. At the beginning of April, a list of seven Polish companies selected by Westinghouse to support the construction of the project was announced. Also, in April, a ceremony was held to mark the start of the first fieldwork for the project. These are important events concerning the implementation itself, but compared to the life cycle of a nuclear power plant of at least several decades, the construction phase is relatively short. It is therefore also necessary to look to the future in terms of the conditions necessary for the safe, but also cost-effective operation of a nuclear power plant.

One of the nuclear power plant operator's obligations under the provisions of the Act of 29 November 2000 - Atomic Law is to have civil liability insurance for nuclear damage, that is, in simple terms, that which results from irradiation caused by an incident. The nuclear sector, precisely because of the risk of an incident with catastrophic consequences occurring, requires special legal protection. Insurance plays a key role in this context, being an important tool to ensure financial stability for nuclear power plant operators and the possibility of externalising this risk, as well as providing a guarantee to those who may potentially be affected that their claims will be covered. The scale of possible damage from a single incident is particularly high, comparable only to the chemical or oil industry, although the probability of this risk materialising is very low (compared, for example, to the quite high risk of damage during the use of a car).

However, the issue is not as simple as it might seem.

LEGAL BASIS OF THE INSURANCE OBLIGATION

In a nutshell, because it depends on the specific case and the arrangement of the entities, only the operator of the nuclear power plant is liable for nuclear damage (cornerstone of this specific liability regime - principle of channeling). This is an almost absolute liability, and other entities potentially liable on a fault basis do not bear such liability. As far as Poland is concerned, this principle derives primarily from the 1963 Vienna Convention on Civil Liability for Nuclear Damage, as amended in 1997, and has been implemented in domestic act - Atomic Law. Also, under Polish law, the liability of the operator is limited to the amount of 300 million SDRs (i.e. International Monetary Fund units of account; just under EUR 370 million at the current exchange rate - Article 102(1) of the Atomic Law). The guarantee sum of the compulsory insurance against civil liability for nuclear damage should be a minimum of 300 million SDRs for one incident (Article 103(6) of the Atomic Law), which is derived from the liability limit.

It should be noted that the compulsory insurance does not cover damage on the part of the operator, nor that of third parties, but that which occurs on the nuclear power plant site (on-site), and should be additionally insured.

PRACTICAL ASPECTS

The amount of the operator's liability limit, and thus the amount of compulsory insurance, is high and impossible for a single insurer to cover. This poses a significant challenge for the insurance sector. Specific insurance methods dedicated to the nuclear sector have been developed, including pools.

There are two types of pools:

- Insurance pool - is a mechanism whereby a number of insurers and reinsurers agree to jointly insure a specific risk. The limited and designated risks are listed in the contract, creating the insurance pool and transferred to the pool. Insurance pools can be divided into domestic and global pools and pools that insure directly or offer only reinsurance.
- Nuclear power plant operators' pool - in this case, insurance is provided by a grouping of nuclear power plant operators. Operators insure themselves within national and EU nuclear power plant operator pools. The risks are insured collectively by all participants.

These are not the only insurance instruments available to the nuclear sector. A solution worth noting is captive insurance, which, in simple terms, involves the creation of its own insurance company within the same capital group to which the nuclear power plant operator belongs. The effect of this instrument, so to speak, is to freeze the capital (the cost of the insurance premium) in the same capital group. In contrast, the premiums for other types of insurance are non-refundable.

According to Article 104(1) of the Atomic Law, the insurer will also play an important role in handling reported claims if the risk of an event materialises. Claims can be asserted directly against this entity. In practice, insurers bear the overwhelming burden of settling potential claims, the scale of which - as the fortunately relatively small experience of big scale nuclear incidents to date shows - is unprecedented. While the insurance market certainly has the greatest know-how when it comes to settling claims, there is no doubt that nuclear incidents require the development of special, dedicated procedures.

IMPORTANT ASPECT OF THE BUSINESS

Polish operators are therefore faced with the challenge of analysing and selecting an appropriate instrument from among those existing on the market, and probably several to insure the risk in its entirety. This depends on a number of factors individual to each investment, arising not only from its geographical location but also from the chosen business model for financing and operating the nuclear power plant, the operator's capital structure and its corporate relationships.

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