



Department of Atomic Energy

FAQs Version 2.0 on CLND Act 2010

The Department of Atomic Energy, as the Department administering the Civil Liability for Nuclear Damage Act 2010 hereby issues FAQ Version 2.0 with a view to inform about updates in respect of some questions included in the FAQs issued in February 2015 and to provide clarification on some other pertinent questions. FAQ Version 2 coexists with the FAQs issued in February 2015 and does not intend to either replace it or modify it, except in respect of the questions updated

A. CLND Act: Genesis and main features		
1	Why did India enact the CLND Act?	It has been enacted with a view to provide prompt compensation to the victims for damage caused by a nuclear incident through a no-fault liability regime. The Act was also meant to facilitate India becoming a State Party to CSC.
2	What are the main features of the Act?	<ul style="list-style-type: none"> - Compensation to victims through a no-fault regime - Exclusive jurisdictional competence and a mechanism to provide compensation - Channelling liability to the Operator - Limiting liability of the operator in amount and time - Mandatory coverage by the operator through financial security or insurance
B. CLND Act and CSC		
3	What is the CSC? How CLND Act is linked to CSC?	The objective of the 1997 Convention on Supplementary Compensation for Nuclear Damage (CSC) is to establish a worldwide liability regime and to increase the amount of compensation available to the victims of nuclear accidents. A State which is a party to either the 1963

		<p>Vienna Convention or the 1960 Paris Convention could become a party to the CSC. A State which is not a party to either of these conventions could also become a party to the CSC if its national law on nuclear liability is in compliance with the provision of the CSC and its Annex, which is an integral part of the CSC.</p> <p>India not being party to the Vienna or the Paris Conventions signed the CSC on 29 October 2010 on the basis of its national law namely the CLND Act and ratified it on 4th February 2016 and has become a State Party to the CSC.</p>
4	Is India's CLND Act compatible with the CSC?	<p>The provisions of the CLND Act are in compliance with the CSC and its Annex in terms of channelling the strict/absolute legal liability to the operator, the limitations of the liability in amount and time, liability cover by insurance or financial security, definitions of nuclear installation, damage, etc. In fact, the CLND Act has provided the basis for India joining the CSC. Article XVIII of CSC requires that the national law of a Contracting Party that is not a Party to either the Vienna Convention or the Paris Convention has to comply with the provisions of the Annex to this Convention. The CLND Act is compliant with the Annex to the Convention. As a result, India became a Party to the CSC.</p>
5	Does the Act channel the liability to the Operator of a nuclear plant as envisaged under CSC?	<p>Yes. Section 4(1) provides that the Operator of the nuclear installation shall be liable for nuclear damage caused by nuclear incident. Further, Section 4(4) provides that the liability of the Operator of the nuclear installation shall be strict and shall be based on the principle of no-fault liability. Section 8(1) provides that the Operator shall before he begins operation of his nuclear installation, take out insurance policy or such further financial security covering his liability. All these provisions along with the long title of the Act are clear and ensure that the liability is strict, and channelled to the Operator through a no-fault liability regime.</p>
C. Operator's Liability		
6	Who is an Operator?	<p>The Act provide for the definition of operator, "operator, in relation to a nuclear installation, means the Central Government or any authority or corporation established by it or a Government company who has been granted a licence pursuant to the Atomic Energy Act, 1962 (33 of 1962) for the operation of that installation"</p>
D. Amount of Liability, compensation etc		
7	How much compensation is	<p>Section 6(1) of the CLND Act presently prescribes that the maximum amount of liability in respect of each nuclear incident shall be the rupee equivalent of three hundred million</p>

	payable under the CLND Act?	Special Drawing Rights (SDRs). As the current value of 1 SDR is about Rs 105.5658, three hundred million SDRs are equivalent to about Rs 3166.97 crores.
8	How much is the Operator's liability	Section 6(2) of the Act lays down that the operator's maximum liability shall be Rs 1500 crore.
9	How do you meet the total compensation then?	In case the total liability exceeds Rs 1500 crores, as per Section 7 (1) (a) of the CLND Act, the gap between this and 300 million SDR equivalent rupees will be bridged by the Central Government. Beyond 300 million SDRs equivalent rupees, India will be able to access international funds under the CSC.
10	Do you have a mechanism for creating government support	Section 7 (2) of the CLND Act provides that the Central Government may establish a "Nuclear Liability Fund" by charging such amount of levy from the operators, in such manner, as may be prescribed. The Nuclear Liability Fund has been established since December 2015.
11	Could operator be asked to pay more compensation in the future on existing contracts than currently provided under the law?	As regards the question of possible enhancement of the amount of compensation in the Act in future and its effect on recourse against suppliers with respect to existing contracts, there is well established jurisprudence that a change in law cannot alter the terms of an existing contract made under the then extant law. A retrospective law which affects the substantive vested rights of a Party under a contract would not be sustainable in a court of law.

E. Applicability of Article 46

12	Does Section 46 permit claims for compensation for nuclear damage to be brought under statutes other than the CLND Act?	<p>Section 46 of the CLND Act provides that "the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt the operator from any proceeding which might, apart from this act, be instituted against such operator". It is a general provision to preserve the application of other law, if any, in respect of the 'operator'. In fact, there is no other law on civil nuclear liability.</p> <p>The language in section 46 of CLND Act 2010 is similar to such language in several other legislations such as Telecom Regulatory Authority of India (TRAI) Act, 1997; The Electricity Act, 2003; Securities and Exchange Board of India (SEBI) Act, 1992; and Insurance Regulatory and Development Authority Act, 1999. Such language is provided to underline that other relevant laws continue to be operable in their respective domains.</p>
13	Does Section 46	It does not create the grounds for victims to move foreign courts. In fact, that would be against

	allow victims to go to foreign courts against the operator or the supplier?	the basic intent of the law to provide a domestic legal framework for victims of nuclear damage to seek compensation. The fact that a specific amendment to introduce the jurisdiction of foreign courts was negated during the adoption of the CLND Bill buttresses this interpretation.
F. Supplier related issues/ Right of Recourse of the Operator		
14	Who is the 'supplier'? Is the supplier always a foreign company?	<p>This is explained in Rule 24 of the CLND Rules, which says that 'supplier' shall include a person who:</p> <ul style="list-style-type: none"> (i) manufactures and supplies, either directly or through an agent, a system, equipment or component or builds a structure on the basis of functional specification; or (ii) provides build to print or detailed design specifications to a vendor for manufacturing a system, equipment or component or building a structure and is responsible to the operator for design and quality assurance; or (iii) provides quality assurance or design services. <p>A detailed examination of the above formulation indicates that 'the system designer and technology owner' is the supplier. Accordingly, NPCIL has taken the role of supplier for PHWRs being set up by it and this is clearly indicated in the General Conditions of Contract.</p> <p>NPCIL or any other operator may look to set up a reactor based on design specifications selected by them and a vendor, who designs the system and owns technology for setting up a reactor and integrates the complete reactor, will be the supplier. 'The system designer and technology owner' will invariably source supplies from several vendors. However, according to Rule 24, he has the role of the supplier on behalf of all vendors and can state this explicitly in the general conditions of contract as has been done by NPCIL with regard to PHWRs.</p>
15	What about Section 17 and the right of recourse against the supplier in Section 17(b)?	<p>Section 17 of the Act provides that the operator of the nuclear installation, after paying the compensation for nuclear damage in accordance with section 6, shall have the right to recourse where-</p> <ul style="list-style-type: none"> a. Such right is expressly provided for in a contract in writing; b. The nuclear incident has resulted as a consequence of an act of supplier or his employee, which includes supply of equipment or material with patent or latent defects or sub-standard services; c. The nuclear incident has resulted from the act of commission or omission of an individual done with the intent to cause nuclear damage.
16	What is the period of right of recourse?	

		The Right of Recourse shall be for the duration of initial license issued under the Atomic Energy Radiation Protection Rules 2004 or the product liability period, whichever is longer. This is typically a five to seven years period. Thus, Right of Recourse over the supplier could be applied only for this limited duration. [Product liability period means the period for which the supplier has undertaken liability for patent or latent defects or sub-standard services under a contract.]
17	What is the liability to supplier if right of recourse is resorted to?	In case the Supplier has taken a Supplier's Policy from INIP and the same is in effect, then INIP will hold the Supplier harmless.
18	Rule 24 specifies a duration for exercising right of recourse. What will happen after the time period is over. Many reactors, now operating in India, were constructed prior to enactment of CLND Act. For spares being purchased for such a reactor, who is the supplier?	With regard to the contracts with manufacturers of, or vendors for supply of spares, or replacement equipment and components, or for provision of services for any nuclear power plant constructed prior to the notification of CLND Act, 2010, or for which role of Supplier lies with NPCIL, or for which time period specified in Rule 24 has been completed, NPCIL shall assume the role of Supplier.
19	What is the maximum liability of supplier	The supplier's liability cannot be more than that of operator's, which is explained in question 8
20	Was this issue discussed in the Indian Parliament?	In Rajya Sabha, the Upper house of the Indian parliament an amendment was proposed to Clause 17 that Provided that the right of recourse of the operator shall not be limited by the provisions of section 6. The question was put to the House and the motion was negated. Thus the right of recourse is restricted to the provisions of section 6. [Annex A].

21	The above mentioned right of recourse, is it not going beyond the Annex to the Convention	<p>Article 10 of the Annex to the CSC covers situations envisaged in Sections 17(a) and 17(c); Section 17 (b) is ostensibly in addition to situations identified for the right of recourse provided in Article 10 of the Annex to the CSC. However, the situations identified in Section 17(b) relate to actions and matters such as product liability stipulations/conditions or service contracts. These are ordinarily part of a contract between the operator and the supplier. This situation is not novel but is rather a normal element of a contract. Thus, this provision is to be read along with/in the context of the relevant clause in the contract between the operator and supplier on product liability. It is open for the operator and the supplier to agree on the terms of their contract relying on the applicable law. The parties to a contract generally elaborate and specify the extent of their obligations pursuant to warranty and indemnity clauses that are normally part of such contracts.</p> <p>Article 10(a) of the CSC Annex does not restrict in any manner the contents of the contract between the operator and the supplier including the basis for recourse agreed by the operator and supplier. Therefore, in view of the above, in so far as the reference to the supplier in Section 17(b) is concerned, it would be in conformity with and not in contradiction of Article 10(a) of the CSC Annex. Its operationalization will be through contract conditions agreed to by the operator and the supplier.</p>
22	How have suppliers queries been satisfied over Right of Recourse issue?	<p>During the course of interactions with Government and industry representatives, the Indian side demonstrated the compatibility of the Civil Liability for Nuclear Damage (CLND) Act and the Convention on Supplementary Compensation for Nuclear Damage (CSC). The mechanism of India Nuclear Insurance Pool as a part of the overall risk-management scheme for liability has also been explained to them. It has also been informed to our interlocutors that the Operator's Policy and Supplier's Policy have been issued.</p>
23	Has the right of Recourse been included in the Contractual conditions of a Supplier	<p>Yes, it has been done based on the explanation of the definition of Supplier as explained in this FAQs.</p>
24	From the above questions one gets an impression that the operator can	<p>The definition of supplier is explained in question no. 14. In case of proposed projects, from the perspective of CLND Act, the system designer will be the supplier. However, if the supplier desires to advise its sub-vendors to buy the Insurance Policy for their own comfort, the operator does not have any objection. The total amount of liability on the part of operator for</p>

	exercise right of recourse to the sub-vendors	any nuclear incident remains Rs. 1500 crore.
G. Non-applicability of Section 46 to Supplier		
25	Does Section 46 extend to suppliers in violation of the CSC?	<p>The provision has no mention of ‘supplier’, and so is ‘operator specific’.</p> <p>This section applies exclusively to the operator and does not extend to the supplier is confirmed by the Parliamentary debates at the time of the adoption of this Act. It may be noted that the CLND Bill was adopted by a vote. During the course of the vote on various clauses of the Bill, amendments to make Section 46 applicable to Supplier were brought in by Hon’ble Members of Parliament in both the Houses of Indian Parliament viz. Rajya Sabha, the Upper House and the Lok Sabha, the Lower House, which were put for voting and negated. Hence, no reference is found to the Supplier in the above clause. [Annex B]</p> <p>A provision that was expressly excluded from the statute cannot be read into the statute by interpretation. It is well-settled principle of law that every statute is to be interpreted in accordance with the intention of the legislature or maker of the Statute.</p>
H. India Nuclear Insurance Pool		
26	What is India Nuclear Insurance Pool (INIP) and how does it function?	GIC Re in association with 11 domestic Non-Life insurance companies has formed India Nuclear Insurance Pool (INIP), a risk transfer mechanism, by participating in a pool arrangement by contributing their capacities to underwrite nuclear liability exposures through a designated policy issuing direct insurance. The Total Capacity of the Pool is Rs. 1500 Cr. INIP covers the risks of the liability of the nuclear operator under Section 6(2) of the CLND Act and of the suppliers under Section 17 (a) and (b) of the CLND Act.
27	What are the kind of insurance policies and premiums offered under the Pool?	<p>INIP covers risks pertaining to the liability of the nuclear operator under Section 6(2) of the CLND Act as well as the liability of the suppliers under Section 17</p> <p>Nuclear Operator’s Liability (CLND Act 2010) Insurance Policy</p> <p>Main Feature: INIP will indemnify the Insured Operators against their statutory liability under the CLND Act 2010 arising out of Nuclear Damage resulting from a Nuclear Incident occurring during the Policy Period, subject to the terms, exclusions and conditions contained in the Policy.</p>

		<p>Nuclear Supplier's Insurance Policy (Right to Recourse Only Under CLND Act-2010) Main Feature: INIP will indemnify and hold harmless the Insured against its liability arising only out of the Nuclear Operator's right of recourse under Section 17 of the CLND Act, 2010, subject to the terms, exclusions and conditions contained in the Policy.</p> <p>The pricing / premiums vary from product to product and depend on various factors. Factors such as age of the reactors, location, number of reactors, policy period etc. are considered while pricing Operators Policy. For pricing of Suppliers Policy factors such as Contract value of Supplier with operator, duration of cover sought, no. of sub-suppliers etc. are considered.</p>
28	Has the operator's policy been issued?	Yes. The Operator's Policy has been issued since 2015
29	Has the Suppliers Policy been issued?	Yes. The Supplier's Policy has been issued since 2018.
30	Will the premium (subscription fee) be same over all the period of Right of Recourse.	This will depend on the market forces. However, no dramatic change is expected.