

核安全法热点问题

《核安全法》要点解析

2017年9月1日中国颁布的《中华人民共和国核安全法》(以下简称“**《核安全法》**”)将于2018年1月1日实施。自1986年兴建第一座核电站——大亚湾核电站以来,在总结30年核安全工作实践经验的基础上,中国第一次以法律的形式系统规定了核安全的基本方针、原则,法律制度、措施的建立和实施,核安全责任、公众参与及监督管理体制。

《核安全法》出台之前,我国涉及核安全的法律仅有一部从放射性污染防治的角度加以规范的《放射性污染防治法》。另有九部行政法规分别从民用核设施安全监督、核出口管制、核材料管制、民用核安全设备监督管理、核电厂核事故应急管理、放射性物品运输安全管理、放射性废物安全管理等角度对涉核安全管理进行了规定。关于核损害赔偿,则主要由《侵权责任法》中的原则性规定及1986年《国务院关于处理第三方核责任问题的批复》(下称“**44号批复**”)及2007年《国务院关于核事故损害赔偿责任问题的批复》(下称“**64号批复**”)中的专门规定予以规范。

这里我们将基于《核安全法》与现行核安全法律法规的比较,对《核安全法》的要点进行解读和分析。

一、核安全管理制度

《核安全法》基本延续了《放射性污染防治法》

和前述九部行政法规对核安全的管理制度,对散落在国务院条例和部门规章中的具体要求以法律形式予以系统整理,并以此为基础,对现有核安全制度进行了补充完善,如首次将核安全观的表述写入法律,进一步强调核安全责任的承担,增加了信息公开和公众参与等新内容。以下对《核安全法》主要内容进行简要介绍。

1、核设施安全

《核安全法》中这方面规定占较大篇幅,共计24条,主要包括核设施质量保证、安全许可、核设施进出口、核安全设备管理、核设施相关人员资质要求等内容。这些内容此前在《放射性污染防治法》、《民用核设施安全监督管理条例》、《核电厂安全许可证件的申请和颁发》(民用核设施安全监督管理条例实施细则之一)、《进口民用核安全设备监督管理规定》、《民用核安全设备监督管理条例》中均有所涉及。此次《核安全法》在前述规定的基础上进行了总结,并对相关内容进行了补充和完善,如:对《民用核安全设备监督管理条例》中的首次装料审批和运营许可制度进行了合并,规定核设施营运单位在首次装投料前应当申请核设施运行许可(第27条);新增对核设施安全许可延期的办理(第26、28条)、核设施终止运行后的停闭管理(第29条)、核设施退役时对放射性物质的处理(第30条)。

除以上内容外,《核安全法》还增加了核设施营运单位应设置核设施纵深防御体系(第16条第1款)、定期对核设施进行安全评价(第16条第2款)、建立核安全报告制度(第35条)的内容。这些内容此前仅在国际原子能机构1964年通过、我国于1996年4月批准的《核安全公约》(Convention on Nuclear Safety)中有涉及,此次《核安全法》将我国在《核安全公约》下的义务具体落实到了核设施营运单位层面。

此外,《核安全法》还明确了核设施营运单位为从业人员进行安全教育、技能培训、提供劳动保护和定期体检的制度,体现了保护涉核人员和公众安全健康的立法目的。

2、核材料和放射性废物安全

《核安全法》主要从核材料的持有,放射性废物的处理、贮存和处置,乏燃料的安全管理,及核材料和放射性废物的运输方面进行了规定。其中,放射性废物处理许可、乏燃料的安全管理是《核安全法》的新增内容。其他规定基本与《放射性污染防治法》、《核材料管制条例》、《放射性废物安全管理条例》、《放射性物品运输安全管理条例》的相关规定一致。

关于放射性废物处理,《核安全法》在第43条规定专门从事放射性废物处理、贮存、处置的单位,应当向国务院核安全监督管理部门申请许可。而此前《放射性污染防治法》、《放射性废物安全管理条例》中仅规定对放射性废物的贮存和处置施行许可。这一改变主要是基于目前放射性废物的处理专业化的趋势。不过,放射性废物处理许可制度如何落实,尚待出台该许可的办理指南。

关于乏燃料,《核安全法》在第39条规定了产生、贮存、运输、后处理乏燃料的单位对持有的乏燃料承担核安全责任;第48条规定核设施营运单位应当按照国家规定缴纳乏燃料处理处置费用,列入生产成本,首次从法律角度对乏燃料安全管理责任和处置费用的承担予以明确。

3、核事故应急

《核安全法》主要明确了设立核事故应急协调委员会、制定核事故应急预案、建立核事故应急准备金制度、发生核事故时的应急响应和救援、对核

事故应急信息的发布和通报、核事故后的调查评估等内容。这些内容,除核事故和核事故场外应急行动的调查是新增的外,基本都是在《核电厂核事故应急管理条例》基础上的提炼和澄清,并吸收了《放射性污染防治法》中核事故应急的相关规定。与《放射性污染防治法》中关于核事故应急的内容相比,《核安全法》的规定更为全面和系统。不过《核电厂核事故应急管理条例》及《放射性污染防治法》并没有被《核安全法》取代,对于《核安全法》中没有规定而《核电厂核事故应急管理条例》及《放射性污染防治法》中有规定的事项,原规定仍然继续有效。

4、信息公开和公众参与

这是《核安全法》在核安全管理方面的新要求,也是加强核安全文化建设的具体措施之一。

《核安全法》规定,相关政府部门应依法公开行政许可、安全监督检查报告、总体安全状况、辐射环境质量和核事故等核安全相关信息;核设施营运单位应公开本单位核安全管理制度和文件、核设施安全状况、流出物和周围环境辐射监测数据、年度核安全报告等信息。公开途径有政府公告、网站及其他便于公众知晓的方式,公开应及时。此外,公民、法人和其他组织可依法向相关政府部门申请获取核安全相关信息。

在公众参与方面,对于影响公众利益的重大核安全事项,核设施营运单位、核设施所在地政府应通过听证会、论证会、座谈会或采取其他形式征求利益相关方意见,并进行反馈。

二、核安全行政责任

《核安全法》在总则部分明确规定了核安全责任的主体及责任范围。即核设施营运单位(以下简称“核营运方”)对核安全负全面责任;为核设施营运单位提供设备、工程以及服务等单位(以下简称“核供应方”)应当负相应责任。在随后的章节中,《核安全法》对核营运方及核供应方应履行的职责进行了大量详细的规定。对比《核安全法》与现有涉核行政法规中“法律责任”一章,《核安全法》有以下要点值得关注:

1、 大量增加核营运方及其人员的责任

现有法律及行政法规中对核营运方的行政责任更多是从环境保护的角度进行规定，对核营运方在核设施运营过程中违反安全管理职责的行为基本没有规定相应的行政责任。《核安全法》大量增加了核营运方的行政责任，从核营运方的日常运营、取得相应资质许可、安全评价及防止降低核污染、核事故应急及信息公开方面提出了诸多要求并规定了相应的处罚措施。

根据责任重要性及违反的严重程度，处罚措施包括责令改正，给予警告；处人民币 10 万元至 500 万元不等的罚款；责令停止建设或者停产整顿；没收违法所得；造成环境污染时，责令限期采取治理措施消除污染，逾期不采取措施的，指定有能力的单位代为履行，所需费用由污染者承担。其中，最严重的处罚与未取得核设施建造、运行及退役许可及核设施进口批准相关。

除核营运方的责任，根据具体违法情形，核营运方直接负责的主管人员和其他直接责任人员也须承担相应的法律责任。如在核营运方未取得核设施建造、运行及退役许可即开展相关活动时，其直接负责的主管人员和其他直接责任人员可以被处以人民币 5 万到 20 万元的罚款；在核营运方未编制应急预案或未按应急预案开展工作时，其直接负责的主管人员和其他直接责任人员可以被处以人民币 2 万元以上 5 万元以下的罚款。参照《行政主管部门移送适用行政拘留环境违法案件暂行办法》的规定，直接负责的主管人员是指违法行为主要获利者和在生产、经营中有决定权的管理、指挥、组织人员；其他直接责任人员是指直接排放、倾倒、处置污染物或者篡改、伪造监测数据的工作人员等。

2、 强化进口核供应方办理注册登记的责任

根据《民用核安全设备监督管理条例》，为中国境内民用核设施进行民用核安全设备设计、制造、安装和无损检验活动的境外单位，应当事先到国务院核安全监管部 门办理注册登记手续。但该条例及随后国家环境保护总局于 2007 年 12 月 28 日发布的《进口民用核安全设备监督管理规定

(HAF604)》，对未进行前述注册登记的法律责任均没有明确规定。

《核安全法》第 83 条则明确规定了未经注册，境外机构为境内核设施提供核安全设备设计、制造、安装或者无损检验服务的，国务院核安全监管部 门可以责令改正，处人民币 50 万元以上 100 万元以下的罚款；有违法所得的，没收违法所得。除此以外，境外机构的直接负责的主管人员和其他直接责任人员还可能被处以人民币 2 万元以上 10 万元以下的罚款。

3、 更新并进一步细化放射性废物处置单位的责任

《放射性废物安全管理条例》对放射性废物处置单位未获得许可，及未按照许可及国家规定及标准要求处理、贮存、处置放射性废物规定了法律责任，包括责令停产停业或吊销许可证；没收非法所得；违法所得 10 万元以上的，并处违法所得 1 倍以上 5 倍以下的罚款；没有违法所得或者违法所得不足 10 万元的，并处 5 万元以上 10 万元以下的罚款；造成环境污染时，责令限期采取治理措施消除污染，逾期不采取治理措施，经催告仍不治理的，可以指定有治理能力的单位代为治理，所需费用由违法者承担。

《核安全法》除针对上述违法情形外，增加了对放射性废物处置单位日常处置档案管理以及关闭放射性废物处置设施方面的详细要求。此外，将法律责任更新为责令改正，根据情节严重处人民币 10 万以上 200 万以下罚款；造成环境污染时，责令限期采取治理措施消除污染，逾期不采取措施的，指定有能力的单位代为履行，所需费用由污染者承担。

三、核损害赔偿 responsibility

《核安全法》第 90 条对发生核事故时，核营运方和核供应方应承担的核损害赔偿 responsibility 分别进行了规定。

1、 核营运方的损害赔偿 responsibility

《核安全法》要求因核事故造成他人人身伤亡、财产损失或者环境损害的，核设施营运单位应当按照国家核损害赔偿 responsibility 制度承担赔偿 responsibility。我们理解国家核损害赔偿 responsibility 制度主要指包括《侵权责任法》、

44号批复及64号批复中规定的核营运方的严格责任以及损害赔偿责任的上限、财务保证安排、责任豁免等在内的制度。

2、核供应方的损害赔偿责任

在64号批复的基础上,《核安全法》进一步明确了核供应方在发生核事故时不承担核损害赔偿的原则。但也规定如供应合同中有约定的,核营运方在承担赔偿责任后,可以按照约定向核供应方追偿。供应合同中这方面条款的约定对于核营运方的追索、核供应方及其员工、代理和分包商的追索豁免如何落实将意义重大。

四、核安全管理机构

《核安全法》对我国现有核安全管理机构的设置及职责分工进行了概括规定,其中第六条规定:“国务院核安全监督管理部门负责核安全的监督管理。国务院核工业主管部门、能源主管部门和其他有关部门在各自职责范围内负责有关的核安全管理工作”。第五十四条规定:“国家设立核事故应急协调委员会,组织、协调全国的核事故应急管理工作”。根据前述规定及现行其他与机构设置相关的规定,我国核安全管理机构及各自的职责包括:

1、国家核安全局

即《核安全法》规定的国务院核安全监督管理部门,其组成部分实际为环境保护部下设的核设施安全监管司、核电安全监管司、辐射源安全监管司,环境保护部对外保留国家核安全局的牌子。

国家核安全局对核安全和辐射安全负有总体的监督管理职责,其中包括负责对涉及核电站设计、选址、建造、运行阶段的环境影响评价进行批复,并签发《核电站运行许可证》;负责核安全设备的许可、设计、制造、安装和无损检验活动的监督管理及进口核安全设备的安全检验;负责核技术利用项目;负责放射性废物处理、处置的安全和辐射环境保护工作的监督管理等。

2、国家国防科技工业局

是国务院核工业主管部门,由工业和信息化部管理,对外保留国家原子能机构、国家核事故应急

办公室的牌子。主要负责除核电之外的核工业管理和对军用核设施实施核安全监管以及和平利用核能项目监督管理。此外,在核事故应急方面,承担国家核事故应急协调委员会日常工作,牵头制定国家核事故应急预案,在经国务院批准后负责组织实施。

3、国家能源局

中国核电产业的主要监管机构是国家发展和改革委员会下设的国家能源局。国家能源局从2008年开始继承了原国防科学技术工业委员会在核电方面的监管职责,并且从2013年开始继承了原国家电力监管委员会在发电、并网及输电方面的监管职责。

国家能源局负责核电管理,拟订核电发展规划、准入条件、技术标准并组织实施,提出核电布局 and 重大项目审核意见等。在核事故方面,负责组织核电厂的核事故应急管理工作。

4、核事故应急协调委员会

由国家国防科技工业局牵头,外交部、国家发展改革委、公安部、民政部、财政部、交通部、工业和信息化部、卫生部、国家环保部(含国家核安全局)、安全监管局等部门参加。按照国家核事故应急预案部署,组织协调国务院有关部门、地方人民政府、核设施营运单位实施核事故应急救援工作。

《核安全法》首次从核安全的基本方针、原则,核安全制度、措施,核安全责任,公众参与及监督管理等方面进行系统规范,结束了中国在核安全管理方面只能依赖行政法规和部门规章而缺少顶层立法的局面。对于《核安全法》在放射性废物处理许可、信息公开等现行核安全制度基础上的完善和补充,期待相关部门及时颁布配套规定和细则,并对现行规定进行修订,以便《核安全法》的顺利实施。同时,考虑到国务院于2017年2月28日批复的《核安全与放射性污染防治“十三五”规划及2025年远景目标》中,提及了“积极推进核安全立法,推动出台核安全法、原子能法”,故也期待与《核安全法》,特别是国家核损害责任制度密切相关的《原子能法》按计划出台。

袁家楠 合伙人 电话：86 10 8519 1228 邮箱地址：yuanjn@junhe.com
葛傲雪 律 师 电话：86 10 8519 1227 邮箱地址：geax@junhe.com
刘 璇 律 师 电话：86 10 8553 7827 邮箱地址：liuxuan@junhe.com
李蕴晗 律 师 电话：86 10 8519 1729 邮箱地址：liyunhan@junhe.com

本文仅为分享信息之目的提供。本文的任何内容均不构成君合律师事务所的任何法律意见或建议。如您想获得更多讯息，敬请关注君合官方网站“www.junhe.com”或君合微信公众号“君合法律评论”/微信号“JUNHE_LegalUpdates”。



Key Aspects of Nuclear Safety Law

Analysis of Nuclear Safety Law

Issued on September 1, 2017, the *Nuclear Safety Law of the People's Republic of China* (“**Nuclear Safety Law**”) will become effective on January 1, 2018. Since the establishment of the first nuclear power plant, Daya Bay Nuclear Power Plant, over 30 years ago in 1986, China has learned a lot about safety practices needed for nuclear power plants. Based on this accumulated experience, China for the first time lays out regulations for nuclear safety in the form of law, stipulating basic guidelines and principles, establishment and implementation of legal system procedures, legal liabilities of nuclear power plant safety, public participation and supervision and administration systems.

Before the introduction of the Nuclear Safety Law, the only existing law relating to nuclear safety was the *Prevention and Control of Radioactive Pollution Law*, which only narrowly regulates prevention and control of radioactive pollution. In addition, there are nine administrative regulations that provide for, *inter alia*, administration of nuclear-related safety, covering the supervision over the safety of civil nuclear facilities, control of nuclear exports, control of nuclear material, supervision and administration of civil nuclear safety equipment, administration of emergency responses to nuclear accidents of nuclear power plants,

administration of transport safety for radioactive articles, safety administration of radioactive waste, etc. Compensation for nuclear damage is mainly governed by the principled provisions under the *Tort Liability Law*, the *Approval Reply of the State Council to Ministry of Nuclear Industry, National Nuclear Safety Administration and State Council Leading Group concerning the Handling of Third-Party Nuclear Liability* numbered as Guo Han (1986) No. 44 (“**No.44 Letter**”), and the *Approval Response of the State Council concerning Issues of Compensation against Nuclear Accident Damages* numbered as Guo Han (2007) No. 64 (“**No.64 Letter**”).

This article will brief and analyze the key concepts of the *Nuclear Safety Law* by presenting a comparison between the Nuclear Safety Law and the existing laws and regulations.

I. Administration System of Nuclear Safety

Overall, the *Nuclear Safety Law* maintains the administration system established by the *Prevention and Control of Radioactive Pollution Law* and the nine administrative regulations. It systematically unifies specific requirements scattered across administrative regulations and

ministerial decrees into a law, and supplements and improves the current nuclear safety system. For example, the Nuclear Safety Law puts forward the nuclear safety concept for the first time, further stresses the undertaking of nuclear safety liability, and includes new requirements such as information disclosure, and public participation. The following briefly introduces the main points of the *Nuclear Safety Law*:

1. Safety of Nuclear Facilities

Safety of nuclear facilities accounts for a relatively large portion of the *Nuclear Safety Law*, which is 24 provisions in total, including quality assurance, safety licensing, imports and exports of nuclear facilities, administration of nuclear safety equipment and qualification of related personnel. These requirements are also mentioned in the *Prevention and Control of Radioactive Pollution Law*, *Regulations on Supervision and Administration of Safety of Civil Nuclear Facilities*, *Application and Issuance of Nuclear Power Plant Safety License* (one of the rules for the implementation of the *Regulations on Supervision and Administration of Safety of Civil Nuclear Facilities*), *Provisions on Supervision and Administration of Imported Civil Nuclear Safety Equipment*, and *Regulations on Supervision and Administration of Civil Nuclear Safety Equipment*. The *Nuclear Safety Law* summarizes these provisions and makes further additions. For example, it combines the approval requirement of initial fuel loading and the operation licensing system under the *Regulations on the Supervision and Administration of Civil Nuclear Safety Equipment*, providing that the nuclear facility operations entity (“**Nuclear Operator**”) shall apply for the operation license prior to the initial fuel loading of a nuclear facility (Article 27). It also outlines new provisions of formalities for extending nuclear facility safety licenses (Article 26 and 28), administration of shutting down after a nuclear facility ceases to operate (Article 29),

and the disposal of radioactive substances at the decommissioning of a nuclear facility (Article 30).

Except for the above circumstances, the *Nuclear Safety Law* also provides that a Nuclear Operator shall establish an in-depth facility defense system (Clause 1 of Article 16), perform periodic safety assessments on nuclear equipment (Clause 2 of Article 16) and implement a nuclear safety report system (Article 35). These provisions are originally from the *Convention on Nuclear Safety*, and the *Nuclear Safety Law* applies these requirements at the Nuclear Operator level.

In addition, the *Nuclear Safety Law* specifies that Nuclear Operator shall provide its staffs with nuclear safety education, skills training, appropriate labor protective supplies and occupational checkups, which reflect the legislative intent to protect nuclear-related personnel as well as public safety and health.

2. Safety of Nuclear Material and Radioactive Waste

The *Nuclear Safety Law* mainly regulates the possession of nuclear material, processing, storage and disposal of radioactive waste, safety management of spent fuel, and transportation of nuclear material and radioactive waste. Of these, the new additions are the license for processing radioactive waste and the safety management of spent fuel. The others are consistent with requirements previously set forth in the *Prevention and Control of Radioactive Pollution Law*, *Regulations on Control of Nuclear Material*, *Regulations on the Safety Administration of Radioactive Waste*, and the *Regulations on the Administration of Transport Safety of Radioactive Articles*.

Regarding disposal of radioactive waste, Article 43 of the *Nuclear Safety Law* provides that an

entity specialized in the processing, storage and disposal of radioactive waste shall apply for a license to the nuclear safety supervision and administration department of the State Council. Previously, the *Prevention and Control of Radioactive Pollution Law* and *Regulations on the Safety Administration of Radioactive Waste* only required a license for the storage and disposal of radioactive waste. This change is mainly because of specialization within the field of processing radioactive waste. However, implementation of the licensing system for processing radioactive waste still calls for enactment of specific guidelines.

Regarding spent fuel, Article 39 of the *Nuclear Safety Law* provides that entities producing, storing, transporting or reprocessing spent fuel shall take responsibility for the nuclear safety of the spent fuel it generates; Article 48 provides that nuclear facility operating entities shall pay the costs of processing and disposing of spent fuel according to the provisions issued by the State and list them as production cost. It is the first time that the legislator explicitly stipulates safety management liability and disposal costs of spent fuel from a legal standpoint.

3. Nuclear Accident Emergency Response

The *Nuclear Safety Law* mainly specifically sets forth the establishment of a nuclear accident response coordination committee, development of national emergency plans for nuclear accidents, establishment of a reserves system in case of a nuclear accident, emergency response and rescue in case of a nuclear accident, issuance and notification of nuclear accident emergency response information, investigation, operations evaluation following a nuclear accident, etc. Except for the newly-added requirement of an investigation of nuclear accidents and off-site emergency actions for nuclear accidents, all provisions are derived from and further clarify the *Regulations*

on the Administration of Emergency Responses to Nuclear Accidents of Nuclear Power Plants, and synthesize related provisions under the *Prevention and Control of Radioactive Pollution Law*. The provisions in the *Nuclear Safety Law* are more comprehensive and systematic compared with those relating to nuclear plant accident emergency response in the *Prevention and Control of Radioactive Pollution Law*. However, the *Regulations on the Administration of Emergency Responses to Nuclear Accidents of Nuclear Power Plants* and *Prevention and Control of Radioactive Pollution Law* are not replaced by the *Nuclear Safety Law*, provisions not set forth in the *Nuclear Safety Law* but in the *Regulations on the Administration of Emergency Responses to Nuclear Accidents of Nuclear Power Plants* and *Prevention and Control of Radioactive Pollution Law* are still effective.

4. Information Disclosure and Public Participation

This is a new requirement of nuclear safety administration set forth in the *Nuclear Safety Law*. It is also one of the specific measures to strengthen the building of nuclear safety culture.

The *Nuclear Safety Law* provides that relevant governmental authorities shall publicly disclose, pursuant to law, the administrative licensing relating to nuclear safety and the information of reports on safety supervision and inspection of activities regarding nuclear safety, the overall safety situation, radiation environmental quality, and nuclear accidents; a Nuclear Operator shall publicly disclose the information of its nuclear safety management system and relevant documents, safety situations of the nuclear facility, radiation monitoring data of effluents and surrounding environment, and annual nuclear safety reports. Such information shall be disclosed in a timely manner by government announcements, websites or any other means to facilitate public access to information.

Furthermore, citizens, legal persons or any other organizations may, in accordance with the law, apply to the relevant governmental authorities for access to the information relating to nuclear safety.

In terms of public participation, a Nuclear Operator and the local government of the nuclear facility locale shall solicit the opinions of interested parties on major nuclear safety matters involving public interest through hearings, discussion meetings, or symposiums or by any other means and provide feedback in an appropriate form.

II. Administrative Liabilities of Nuclear Safety

General provisions of the *Nuclear Safety Law* set forth the responsible entities and scope of nuclear safety liabilities. The Nuclear Operator shall be comprehensively responsible for nuclear safety, and entities which provide the nuclear facility operating entities with equipment, engineering or services, among others (“**Nuclear Suppliers**”), shall assume corresponding responsibilities for nuclear safety. In the following chapters of the *Nuclear Safety Law*, there are large portions dedicated to specific provisions regarding liabilities of Nuclear Operator and Nuclear Supplier. In comparison to the legal liabilities set forth in existing nuclear-related administrative regulations, the following main points of the *Nuclear Safety Law* should be noted:

1. Substantially Increased Liabilities of Nuclear Operators and Their Personnel

The existing laws and administrative regulations provide administrative liabilities of Nuclear Operators more from the view of environmental protection. A Nuclear Operator bears few corresponding administrative liabilities for its failure to comply with the safety management duties during operating of the nuclear facility.

The *Nuclear Safety Law* substantially increases administrative liabilities of a Nuclear Operator, providing many requirements and corresponding penalties related to the daily operations, qualifications and licenses, safety assessments, measures for preventing and reducing nuclear pollution, nuclear accident emergency and information disclosure.

Depending upon the significance and seriousness of the violation, penalties includes: a warning with an order to take corrective actions; a fine imposed ranging from RMB100,000 to RMB 5,000,000; an order to cease construction or halt overall production; confiscation of illegal income; an order to take measures to eliminate environmental pollution or designating a capable entity to do so on its behalf. Among these, the most serious punishment relates to construction, operation or decommissioning of a nuclear facility without permission and importing nuclear material without approval.

In addition to liabilities of Nuclear Operators, based on specific violations, fines ranging from RMB 20,000 to RMB 200,000 may be imposed on the persons of the Nuclear Operator who are directly in charge and other persons who are directly responsible. If a Nuclear Operator conducts such activities as construction, operation or decommissioning of a nuclear facility without permission, the persons of the Nuclear Operator who are directly in charge and other persons who are directly responsible may also face a fine of no less than RMB 50,000 but no more than RMB 200,000; If a Nuclear Operator fails to develop emergency plans for nuclear accidents as required or fails to act according to the emergency plans, the persons of the Nuclear Operator who are directly in charge and other persons who are directly responsible may face a fine of no less than RMB 20,000 but no more than RMB 50,000. With reference to the *Interim Measures for the*

Transfer by Administrative Departments of Cases of Environmental Violations for Which the Penalty of Administrative Detention May be Applied, the “persons of the Nuclear Operator who are directly in charge” refer to those personnel who mainly benefit from the illegal activities, or who have the power to make decisions during production or operations and serve as managerial, command or organization personnel; “other persons who are directly responsible” refers to personnel who directly discharge, dump or dispose of pollutants, or falsify or forge monitoring data.

2. Consolidated Liabilities of Registration of Nuclear Supplier for Import

Pursuant to the *Regulations on the Supervision and Administration of Civil Nuclear Safety Equipment*, an overseas entity engaging in the design, manufacturing, installation or nondestructive inspection of civil nuclear power safety equipment for a civil nuclear power plant within the territory of China, shall conduct in advance the procedures for registration with the nuclear safety regulatory authority of the State Council. However, neither such regulations nor the *Provisions on Supervision and Administration of Imported Civil Nuclear Safety Equipment (HAF604)*, issued by the State Environmental Protection Administration thereafter on December 28, 2007, provides any legal liabilities for failure to complete the registration.

Article 83 of the *Nuclear Safety Law* provides that if an overseas entity assists a nuclear facility in China with services to design, manufacture, install and conduct non-destructive testing of nuclear safety equipment without completion of the registration, such overseas entity would face a fine ranging from RMB 500,000 to RMB 1,000,000 and forfeiture of its illegal income if any. Furthermore, the persons of the Nuclear Supplier who are

directly in charge and other persons who are directly responsible would be imposed a fine ranging from RMB 20,000 to RMB 100,000.

3. Renew and Refine Liabilities of Radioactive Waste Disposal Entities

Pursuant to the *Regulations on the Safety Administration of Radioactive Waste*, if a radioactive waste disposal entity fails to obtain a required license, or fails to process, store or dispose of radioactive waste in accordance with the license or relevant provisions and standards of the State, it would be subject to an order to suspend production and business or have the relevant licenses revoked; forfeiture of the illegal income if any; if the illegal income is more than RMB 100,000, it would face a fine of no less than one time but not more than five times the total illegal income; if there is no illegal income or the illegal income is less than RMB 100,000, it would face a fine of no less than RMB 50,000 but no more than RMB 100,000; if environmental pollution is caused, a third party would be designated to take control measures on its behalf.

In addition to the above provisions, the *Nuclear Safety Law* also includes detailed requirements such as archive management of daily disposal activities of the radioactive waste disposal entity, and closure system of the waste disposal facility. Furthermore, corresponding legal liabilities are adjusted to order corrective actions, and impose a fine ranging from RMB 100,000 to RMB 2,000,000 depending on the seriousness of the violation; if environmental pollution is caused, a third party would be designated to take control measures on its behalf.

III. Liabilities of Compensation for Nuclear Damages

Article 90 of the *Nuclear Safety Law* provides liabilities of a Nuclear Operator and a Nuclear

Supplier to compensate nuclear damages in case of nuclear accidents.

1. Liabilities of Nuclear Operators to Compensate Nuclear Damages

Under the *Nuclear Safety Law*, a Nuclear Operator which causes personal injury or death, loss of property or environmental damages by reason of a nuclear accident shall be responsible for making compensations according to the national nuclear damage liability system. It is understood that the national nuclear damage liability system mainly refers to the provisions regarding strict liability of Nuclear Operators, the upper limit of compensation, financial guarantee arrangements and exemptions set forth in the *Tort Liability Law*, No.44 Letter, and No.64 Letter.

2. Liabilities of Nuclear Suppliers to Compensate Nuclear Damages

On the basis of the No.64 Letter, the *Nuclear Safety Law* further stipulates that a Nuclear Supplier is not liable for compensating nuclear damages in case of nuclear accidents. But it also provides that where the Nuclear Operator has an agreement with the Nuclear Supplier, the Nuclear Operator may, after undertaking the liabilities of compensation for nuclear damages, claim recovery against the Nuclear Supplier pursuant to the agreement. Therefore, relevant terms and conditions in the supply contracts would be of great significance in terms of recourse for a Nuclear Operator, exemption of a Nuclear Supplier and its employees, agents and subcontractors.

IV. Administrative Authorities of Nuclear Safety

The *Nuclear Safety Law* summarizes the setup and responsibilities of the existing administrative authorities on nuclear facility safety. Article 6 provides that the nuclear safety supervision and

administration department of the State Council shall be responsible for supervision and administration of nuclear safety, and the nuclear industry department, the energy department and other relevant departments of the State Council shall be responsible for the work with respect to nuclear safety administration within the scope of their respective functions and responsibilities. Article 54 provides that the State shall establish a nuclear accident emergency response coordination committee to organize and coordinate national nuclear accident emergency response management. Pursuant to the aforesaid provisions and other existing relevant provisions relating to setup of governmental authorities, administrative authorities of nuclear safety and their responsibilities are as follows:

1. National Nuclear Safety Administration (“NNSA”)

It is the nuclear safety supervision and administration department of the State Council set forth in the *Nuclear Safety Law*, composed of the department of nuclear facility safety regulations, the department of nuclear power safety regulations, and the department of nuclear radiation safety regulations under the Ministry of Environmental Protection. The NNSA is retained under the administrative purview of the Ministry of Environmental Protection.

The NNSA assumes the general duties of supervision and administration of nuclear safety and radiation safety, including approving environmental impact assessments regarding design, site selection, construction and operations of a nuclear power plant, and issuing nuclear power plant operation licenses; supervision and administration of licensing, design, manufacturing, installation or nondestructive inspection of nuclear safety equipment and safety inspection of imported nuclear safety equipment. It is also in charge of projects using nuclear technology, and oversees

the supervision and administration of the safe processing and disposal of radioactive waste and radiation environment protections, etc.

2. State Administration of Science, Technology and Industry for National Defense (“SASTIND”)

It is the nuclear industry department of the State Council, governed by the Ministry of Industry and Information Technology. It is retained under the administrative purview of the State Atomic Energy Authority and State Nuclear Accident Emergency Response Office. The SASTIND is mainly responsible for the administration of nuclear industries except nuclear power, supervision and administration of military nuclear equipment and projects of peaceful utilization of nuclear energy. In terms of nuclear accident emergency response, it assumes the daily work of the Nuclear Accident Emergency Coordination Committee, taking the lead in developing a national emergency plan for nuclear accidents, and arranging for its implementation as approved by the State Council.

3. National Energy Administration (“NEA”)

The main supervision and administration department of China’s nuclear power industry is NEA founded under the National Development and Reform Commission. In 2008, NEA began to take over the role of former Commission of Science, Technology and Industry for National Defense in supervising and administrating nuclear power. And in 2013, NEA began to take over the role of former State Electricity Regulatory Commission, in supervising and administrating generation, connection and transmission of power.

The NEA is responsible for the administration of nuclear power, drafting development plans, access conditions, technology standards for nuclear power, and organizing the

implementation of the aforementioned areas, putting forward plans of nuclear power plants and approval opinions on significant projects. In terms of nuclear accidents, the NEA is responsible for organizing the nuclear accident emergency administration work of a nuclear power plant.

4. Nuclear Accident Emergency Response Coordination Committee

Led by the SASTIND, Nuclear Accident Emergency Response Coordination Committee is composed of members of many ministries and commissions, including the Ministry of Foreign Affairs, National Development and Reform Commission, Ministry of Public Security, Ministry of Civil Affairs, Ministry of Finance, Ministry of Transport, Ministry of Industry and Information Technology, Ministry of Health, Ministry of Environmental Protection (including National Nuclear Safety Administration) and State Administration of Work Safety. It is responsible for organizing and coordinating the efforts of the relevant departments of the State Council, local people’s governments, and the Nuclear Operators in carrying out nuclear accident emergency response and rescue in accordance with the arrangements of the national emergency response plan for nuclear accidents.

For the first time, the *Nuclear Safety Law* synthesizes provisions of nuclear safety in terms of basic guidelines and principles, legal system and measures, legal liabilities, public participation and supervision and administration system. We no longer lack top-level legislation, which left the administration of nuclear safety to administrative regulations and ministerial decrees. To ensure the implementation of the *Nuclear Safety Law*, relevant authorities are expected to issue corresponding regulations and rules, and revise current provisions with respect to radioactive waste processing licensing, information disclosure systems and

other improvements and supplements to the current nuclear safety administration system. In the meantime, considering that the Plan for Nuclear Safety and Radioactive Pollution Prevention and Control during the Period of the Thirteenth Five-year Plan and the Vision for 2025, approved by the State Council on February 28, 2017, the State will “promote the

legislation of nuclear safety, and push forward the enactment of the *Nuclear Safety Law* and *Atomic Energy Law* actively.” We look forward to the enactment of the *Atomic Energy Law*, which is closely related to the *Nuclear Safety Law* and especially the national nuclear damage liability system thereunder.

Jianan YUAN	Partner	Tel:86 10 8519 1228	Email:yuanjn@junhe.com
Aoxue GE	Associate	Tel: 86 10 8519 1227	Email:geax@junhe.com
Xuan LIU	Associate	Tel: 86 10 8553 7827	Email:liuxuan@junhe.com
Yunhan LI	Associate	Tel: 86 10 8519 1729	Email:liyunhan@junhe.com

This document is provided for and only for the purposes of information sharing. Nothing contained in this document constitutes any legal advice or opinion of JunHe Law Offices.. For more information, please visit our official website at www.junhe.com or our WeChat public account “君合法律评论”/WeChat account “JUNHE_LegalUpdates”.

