Legal study offers first comprehensive overview of liability issues in connection with the Fukushima nuclear accident

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With expected damage claims estimated as high as 90 billion Euros, the nuclear accident in Fukushima represents the largest liability case in Japanese history. Claims for compensation are expected from various categories of victims, including evacuated plant workers and citizens, impacted farmers and fishermen, and representatives of industry and tourism. Notwithstanding the unlimited liability imposed on nuclear operators under Japanese law, lump-sum State payments have been initiated in connection with extra-judicial proceedings. The economic burden thus primarily falls upon the treasury but will also impact the financial institutions which are being required by the government to make the necessary financial support available; other energy providers may be required to bear a financial burden as well, with the result that consumers could ultimately face higher energy prices. These are some of the conclusions reached by a newly released study of the Japan Unit at the Max Planck Institute for Comparative and International Private Law.

In his article “Die Haftung für Nuklearschäden nach japanischem Atomrecht – Rechtsprobleme der Reaktorkatastrophe von Fukushima I” (Liability for Nuclear Damages pursuant to Japanese Atomic Law – Legal Problems Arising from the Fukushima I Nuclear Accident)(published in the Zeitschrift für Japanisches Recht / Journal of Japanese Law, ZJapanR 31, 2011), Julius Weitzdörfer, Research Associate with the Japan Unit of the Max Planck Institute for Comparative and International Private Law, examines the legal challenges currently facing

the Japanese judiciary, government and economy in the aftermath of the nuclear disaster.

The question whether Japan's most powerful earthquake constitutes an "extraordinary natural disaster" excluding operator liability was subject to considerable debate in the wake of the accident, yet such an exclusion has thus far been rejected in legal and governmental circles. Accordingly, it remains to be clarified what standard of causality is applicable, e.g. in relation to subsequent health consequences, and how to treat lost business profits resulting from mere rumours in regard to radiation levels. Additionally, the question arises whether the Japanese State could be made liable on account of insufficient nuclear energy supervision.

The decision of the Japanese government to provide relief to victims as quickly and non-bureaucratically as possible on the basis of central guidelines and through the payment of lump-sum damages is a prime example of institutionalised conflict management demonstrating obvious practical advantages. By contrast, in light of the complexity of the legal problems presented and the number of individual damage claims which can be expected from affected parties – claims which will be raised by lawyers in formal judicial proceedings – the danger of an overburdened Japanese judiciary looms. Simultaneously, the government's currently pursued strategy for coping with the catastrophe also raises a number of constitutional questions.

More information: The full text of the article (in German) by Julius Weitz is available for download: www.mpipriv.de/shared/data/pdf_…_09_weitzdoerfer.pdf

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