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Newsletter

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Thailand's First Climate Change Bill to be Submitted for Approval

Introduction

Thailand, as a signatory to the Paris Agreement, actively promotes measures to fight against climate change. The main goal of the Paris agreement is to limit global heating to below 2 degrees Celsius above pre-industrial levels, while pursuing efforts to stay within the lower and safer threshold of 1.5 degrees Celsius. Countries set out targets to stay within those limits in the form of nationally determined contributions ("NDCs"). Thailand has set NDCs to reduce carbon emissions by 20 to 25 percent from its business-as-usual levels by 2030. The Paris Agreement contains a mechanism by which every five years countries must return to the negotiating table with fresh commitments. During the United Nations Climate Change Conference of the Parties (the "COP 26"), Thailand further pledged to aggressively tackle climate change by setting a goal for carbon neutrality by 2050 and net-zero emissions by 2065. To ultimately meet this net-zero goal, Thailand will need to identify its total emissions as well as reduction, removal, and offsetting possibilities.

Corresponding to this, the Cabinet approved a long-term low greenhouse gas emission development strategy in 2021 to guide the country's national development agenda. Thailand's long-term environmentally friendly development strategies include drafting a climate change bill, adopting the bio-circular green economy model, and setting a target for electric vehicle deployment, among others.

Overview of the climate change bill

In line with the long-term development strategy, the Climate Change Bill (the "Bill") is going to be submitted to the Cabinet for approval. If enacted, the Bill and subordinate regulations contemplated thereunder will be the first set of direct legislation on climate change in Thailand.

The Bill aims to provide a regulatory framework for Thailand's climate change response and stipulate policies and measures to tackle greenhouse gas ("GHG") emissions, including reducing emissions at the source, increasing carbon sinks, and other initiatives that bolster the reduction of GHG from entering the atmosphere. These objectives will lead to extensive planning at policy, sectorial and project levels, and impose reporting and disclosure obligations on the public sector and certain operations in the private sector. Pertinent details and requirements included in the

Bill will be discussed in this briefing.

Under the Bill, a National Climate Change Policy Committee ("**NCCPC**") will be established. The NCCPC will be responsible for formulating the development and integration of climate change policies, strategies, and plans including mitigation and adaptation frameworks. In addition, the NCCPC will provide suggestions on necessary mechanisms and measures, both legal and financial, to achieve climate change policies and goals. The NCCPC will push plans into action through the Cabinet and relevant state agencies in collaboration with the Office of Natural Resources and Environmental Policy and Planning ("**ONEP**"), as the lead state agency responsible for the implementation of the Bill and coordinate with other state agencies in an effort to address climate change challenges. The ONEP will also act as a focal point for data collection used to monitor progress toward reduction targets and assess risks and impacts of climate change.

Introducing climate change work plans

To achieve the climate change mitigation commitment as pledged by Thailand as a signatory to the Paris Agreement, the Bill will introduce three major plans as follows:

(i) The climate change master plan

The NCCPC, with approval from the Cabinet, will issue a climate change master plan (the "**Master Plan**") as an overarching framework for handling climate change issues. The Master Plan will: (i) outline objectives and operational strategies for reducing GHG emissions; (ii) reflect on climate change mitigation, adaptation, and capacity building; (iii) promote cooperation with the private sector; and (iv) set standards for monitoring, evaluating, and reporting the results of implementation of the Master Plan. The Master Plan, which will be revisited every five years, will be used as the framework for producing Thailand's updated NDCs.

According to the transitional provisions of the Bill, the Climate Change Master Plan 2015-2050 will be adopted as the Master Plan in the Bill's initial implementation period.

(ii) The GHG mitigation action plan

The GHG mitigation action plan (the "**Action Plan**"), to be prepared by the NCCPC, will prescribe key measures and allocate emission reduction targets and responsibilities to relevant sectors to reach the overall GHG mitigation goal. The Action Plan will have to rely heavily on the national GHG inventory as will be further discussed below.

(iii) The climate change adaptation plan

The adaptation plan for climate change (the "**Adaptation Plan**"), to be prepared by the NCCPC, aims to build adaptive capacity and enhance climate resilience in six priority sectors. These sectors are: (i) water resources management; (ii) agricultural and food security; (iii) tourism; (iv) public health; (v) natural resources management and human settlement; and (vi) security. The Adaptation Plan will set out the standards and measures required to enhance state agencies' capacities for dealing with and adapting to long-term climate change.

Relevant state agencies will be required to report their plan implementation results to the NCCPC. These reports will be featured on the ONEP's website for public access. The NCCPC's other main task is to ensure that these plans are mainstreamed into national budgets.

Public participation

The Bill affirms the right of public and local communities to be informed by the state, to participate in offering climate change mitigation solutions, and to be promoted for climate change-related undertakings. In relation to this, the state also has the responsibility to evaluate the risks and impact of climate change, support research and development of new technologies, designate and allocate emissions reduction goals to relevant sectoral agencies, provide information and adopt policies that account for climate change. In preparation for the aforementioned work plans, the Bill also requires that public hearings with the stakeholders, relevant government entities, and the public are properly conducted.

National communication and GHG inventory

The Bill tasks the ONEP with the establishment and monitoring of the national GHG inventory and central national climate database to have comprehensive climate change information. Climate change information will be disclosed and communicated to the public via the ONEP's portal.

(i) National GHG inventory

The national GHG inventory will be used as a baseline for tracking emissions, developing mitigation strategies and policies, and prescribing activities for which records should be kept for the purposes of inspection, monitoring, or any other purposes under the Bill.

The Bill imposes duties on the ONEP to initially work with six sectoral agencies. These agencies are: (i) the Ministry of Agriculture and Cooperatives; (ii) the Ministry of Transport; (iii) the Ministry of Natural Resources and Environment; (iv) the Ministry of Energy, (v) the Ministry of Interior; (vi) the Ministry of Industry; and other government entities to be assigned by the Cabinet. These agencies will collect and disclose information regarding the amount of GHG emissions, and sequestration and reduction activities to create a database that will be used to formulate a nationwide climate change policy.

Prescribed state agencies will be required to furnish a report of their climate change obligations performance to the ONEP. These obligations can be extended to other public entities and the private sector upon request, as such prescribed state agencies are empowered to retrieve GHG information from other public entities and the private sector (i.e., factory operators under the factory law, operators under the energy industry law, owners of controlled factories and buildings under the energy conservation promotion law, and others as may be prescribed by the ministerial regulation under the Bill).

The Bill imposes administrative fines on any person that fails to comply with such obligations, provides false information or conceals information. In the case of a juristic person, the penalties may be extended to directors, managers, or any individual responsible for business operations.

(ii) Central national climate database

The ONEP, in collaboration with the Meteorological Department, will maintain a central national climate database that includes data on forecasted climate change events, and associated risks. The gathered data will be communicated to the government to determine priority climate action areas where relevant

government entities' efforts should be directed to strengthen resilience and reduce vulnerabilities, and to notify the public without delay.

Other key mitigation enablers

The Bill aims to set up a financial-related instrument to incentivize the private sector to reduce emissions with available funds and support. This should provide the private sector with the means to voluntarily pursue cost-effective GHG emissions reduction activities.

Currently, Thailand focuses on a market-based cooperation approach in contributing to the mitigation of GHG emissions, has implemented many projects and developed various mechanisms according to a voluntary carbon market framework to earn more carbon credits over the past years. Led by the Thailand Greenhouse Gas Management Organization, a domestic GHG crediting mechanism to offset Thailand's emissions footprint, called Voluntary Emission Reduction Program, was implemented where the issuance of verified and certified carbon credits are issued to clean development projects, as well as to its related complementary programs. These programs include, for example, the low carbon city program, carbon offsetting program, and the energy performance certificate scheme. Thailand is also a party to the first-ever bilateral market-based cooperation under the Thai-Swiss implementing agreement to the Paris Agreement for emission reduction cooperation entered into in June 2022.

Key takeaways

To bring emissions in line with overarching global warming temperature targets, climate change has become a more pressing issue at both the policy and regulatory levels. To achieve target climate change goals, cooperation from both the public and the private sectors is required. The Bill will not be a stand-alone piece of legislation responsible for establishing climate change policies in Thailand. The Bill provides mechanisms that will be a starting point for inclusion of climate change considerations in Thailand's overall regulatory framework. This may include the ability for private citizens to initiate legal action against private and public entities to reduce the impact of climate change.

The Bill will preliminarily impose obligations on prescribed state agencies. Obligations under the Bill may apply to private sector operations at the discretion of the prescribed state agencies. We envisage that cooperation from the private sector will become increasingly relevant over the next few years. In turn, business operators may need to start considering the implementation of greener business plans, and development of proper data collection and reporting mechanisms to mitigate the risks of incurring penalties. Once the Bill is enacted, all stakeholders should also keep a close eye on subordinate regulations where key criteria, timeframes, and underlying obligations will be described in detail.

To discuss the legal topics included in this briefing in further detail, please contact the authors listed in the left-hand column.

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