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# THAILAND

## Newsletter

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## Proposed Amendments to Thailand's Energy Industry Act: New Regulations for Emerging Businesses and Changes to the Licensing Regime Appear to be Forthcoming

### Introduction

The Energy Industry Act 2007 (the "EIA") is the principal legislation governing electricity, natural gas, and energy network systems in Thailand. Since its launch in December 2007, the EIA has been the basis for the Energy Regulatory Commission (the "ERC") enacting subordinate regulations to respond to market developments in the energy sector. Pursuant to the EIA, the ERC has adopted regulations that have permitted greater private investment in power generation capacity, including introducing a licensing scheme that allows for the private selling of electricity. This licensing scheme has been foundational in permitting the development of Thailand's rooftop solar market in the commercial and industrial (C&I) sectors. Nevertheless, new energy solutions emerging due to technological developments and lower costs, as well as practical challenges on the current supervision of the Thai energy sector have created the impetus to update the EIA, which underpins the ERC's supervisory direction.

On 28 April 2023, the ERC released a draft amendment to the EIA (the "Amendment"). Below are some of the key proposed amendments which were open to public comments until 27 May 2023.

### Key proposed amendments

#### A. New regulated power businesses

Under the amended EIA, the definition of "Energy Industry" would be broadened in order to capture new and emerging business models. The proposed revisions are set out below:

Original	Revision
<p><b>"Electricity Industry"</b> means production, procurement, transmission or distribution of electricity, or the control of the power system.</p>	<p><b>"Electricity Industry"</b> means production, procurement, transmission, distribution <u>or import and export</u> of electricity, control of the power system, or <u>load aggregation or management of the electricity storage system.</u></p>

The scope of the definition of the "Electricity Industry" as specified in the EIA is the foundation upon which the ERC is authorized to further designate regulated power businesses.

Based on the ERC's public hearing materials, new energy businesses which will potentially be regulated include:

1. Carbon capture and storage;
2. Hydrogen production;
3. Load aggregation; and
4. Gas transportation via means other than pipelines.

The Amendment does not explicitly create new legal regimes for each of these businesses, but rather, creates the legal conditions to permit the ERC to further regulate in these areas.

As the Amendment is currently only in draft form, there are no draft notifications which formally set out the new rules that may regulate these activities.

The proposed Amendment and forthcoming notifications would be welcome, as they will provide greater clarity on activities which previously lacked a comprehensive regulatory regime. As we mentioned in our newsletter relating to hydrogen ([LINK](#)), Thailand currently does not have a specific regulatory regime that applies to hydrogen production. As such, other laws of general applicability will apply to hydrogen producers, without taking into account the specific characteristics of the business model. New ERC regulations relating to hydrogen will provide greater certainty as to the licenses, permits, and technical standards that need to be followed when operating in Thailand.

## B. Change in licensing regime

Currently, Section 48 of the EIA permits the ERC to act as a one-stop service unit which grants all approvals required for energy businesses. This includes licenses and permits required under the Factory Act, Building Control Act, Town Planning Act, and Energy Development and Promotion Act, whereby the ERC currently seeks opinions from the lead regulators in each area in order to process the relevant approvals.

The proposed licensing regime would revert the authority to issue approvals back to the primary regulators, as they are the experts in the field. If the Amendment is enacted as currently drafted, energy license applicants would be required to obtain approvals with respect to the construction of buildings and factories directly from the lead regulators (i.e., the local government organizations and the Department of Industrial Works, Ministry of Industry, respectively) and then submit the approval results to the ERC in support of their applications for energy licenses. The ERC would therefore no longer be a competent issuer of construction and factory licenses related to the energy sector.

## Final thoughts

Apart from the key proposed amendments outlined above, the Amendment also addresses a broad range of other issues, including: a new composition of the nomination committee of the ERC, an introduction of the new inspection units for the energy sector, new criteria on the appeal of administrative orders, an extended authority of the officials appointed by the ERC, and a redesign of the sanction regime. If enacted, the Amendment may improve the efficiency of regulatory supervision in Thailand's energy sector. We will continue to monitor updates in this area.

If you have any questions in relation to the topic raised in this briefing, please contact the authors listed in the left-hand column.

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