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Gas Regulation 2021

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Lexology Getting The Deal Through is delighted to publish the nineteenth edition of *Gas Regulation*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Colombia and Iraq.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, David Tennant and Adam Brown of Dentons UK and Middle East LLP, for their assistance with this volume.



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DOMESTIC SECTOR OVERVIEW

State of the market

- 1 Describe the domestic natural gas sector, including the natural gas production, liquefied natural gas (LNG) storage, pipeline transportation, distribution, commodity sales and trading segments and retail sales and usage.

The following is an overview of the natural gas sector in Thailand regarding 2019 gas production, distribution, import and sales.

In 2019, Thailand imported 737 million standard cubic feet per day (MMSCFD) of natural gas from Yadana, Yetagun and Zawtika in Myanmar, imported LNG in the amount of 657 MMSCFD, and procured 3,623 MMSCFD from domestic resources (including the Malaysia–Thailand Joint Development Area (MTJDA)), totalling 5,017 MMSCFD of natural gas. Imports from Yadana and Yetagun are declining. The overlapping claims area (Cambodia and Thailand) may be approved for production in coming years.

Thailand is a net importer of both oil and gas. Given the current petroleum resource base and demand profile, Thailand will remain a net importer of hydrocarbons for the foreseeable future.

The major domestic gas resources of Thailand include the Arthit, Baanpot, Benchamas, Bongkot, Dara, Erawan, Gomin, Jakrawan, Jarmjuree, Jasmine, Kaphong, Maliwan, Morakot, Nam Phong, Pailin, Pakarang, Plamuk, Platong, Pru Krathiam, Satun, Sinphuhorm, Sirikit, Surat, Tantawan, Trat and Yala fields. Natural gas production from the MTJDA commenced at the end of 2007.

Gas is produced principally by PTT Exploration and Production Public Company Limited and Chevron.

PTT Public Company Limited (PTT) is, with only a few exceptions, the purchaser of all natural gas, which is sold under gas sales agreements (GSAs) to power, petrochemical and other industrial users. There are no retail sales of natural gas other than for natural gas vehicles.

Construction of Thailand's first LNG-receiving terminal was completed, and commercial operations began on 6 September 2011 in Map Ta Phut industrial estate. PTT LNG plant expansion was completed in 2017. The facility can currently offtake and unload up to 10 million tonnes of LNG a year (1,400 mmcf/d) and consists of three 160,000 cubic metre LNG storage tanks and a port for LNG vessels from 125,000 to 264,000 cubic metres.

In December 2012, PTT signed a long-term contract with Qatargas for 2 million tonnes of LNG annually for 20 years starting in 2015.

Consumption

- 2 What percentage of the country's energy needs is met directly or indirectly with natural gas and LNG? What percentage of the country's natural gas needs is met through domestic production and imported production?

Throughout 2019, Thailand consumed 4,762 MMSCFD while 59 per cent of natural gas was consumed for electricity generation. The balance was used for NGV (4 per cent), industry sector (16 per cent) and gas separation plant (21 per cent).

Thailand's natural gas needs in 2019 were met as follows: 72 per cent through domestic production (including the MTJDA), 15 per cent through gas imported from Myanmar and 13 per cent LNG imports.

Government policy

- 3 What is the government's policy for the domestic natural gas sector and which bodies set it?

The National Energy Policy Council (NEPC), established under the National Energy Policy Council Act, BE 2535 (1992), is the primary body of the Thai government setting policies in the energy sector. The NEPC consists of the Prime Minister, a number of high-ranking cabinet ministers, as well as high-ranking officers within the Ministry of Energy (MOE).

The NEPC's over-arching policies in connection with Thailand's energy sector is known as Thailand's Integrated Energy Blueprint (TIEB). Under the TIEB, there are five separate policies that are updated from time to time: the Power Development Plan, the Energy Efficiency Plan, the Alternative Energy Development Plan, the Oil Plan and the Gas Plan.

The key pieces of legislation governing natural gas are the Petroleum Act, BE 2514 (1971), as amended (PA), the Petroleum Income Tax Act, BE 2514 (1971), as amended (PITA) and the Energy Industry Act, BE 2550 (2007) (EIA). The PA is administered by the Department of Mineral Fuels (DMF), the PITA by the Revenue Department, and the EIA is under the supervision of the Energy Regulatory Commission (ERC). The domestic trading of natural gas is also governed by the Fuel Oils Trading Act, BE 2543 (2000) and Fuel Oils Control Act, BE 2542 (1999). These two laws are administered by the Department of Energy Business (DOEB). All of DMF, DOEB and ERC are in the MOE and play a role in implementing the policy.

Regulatory authorities

- 4 Which authorities make regulatory policies and decisions in respect of the production, transmission, distribution and supply of natural gas?

Upstream

The primary authority governing the upstream market in Thailand is the DMF. The DMF issues notifications and subordinate rules concerning the exploration and production of natural gas under the PA. Ministerial Regulations under the PA are issued by the MOE.

If a concessionaire or a contractor under a production-sharing contract wishes to challenge a decision of the DMF or the MOE, it may allege a violation of the relevant government contract (ie, the concession agreement or the production-sharing agreement). This contract will contain dispute-resolution provisions applicable between the parties. Other interested parties may be able to challenge decisions of the DMF or MOE, or both, through proceedings at the Administrative Court.

Midstream and downstream

The primary authority governing the midstream and downstream markets in Thailand is the ERC, established in 2007 under the EIA. The ERC issues notifications and rules, and issues proposals for Royal Decrees to regulate the energy sector, including the natural gas sector. The ERC regulates the transportation, transportation systems, storage, LNG, wholesale and retail (other than in the transportation sector).

Section 121 of the EIA outlines the procedures for challenging the decisions or rulings of the ERC. Appeals of decisions rendered by the ERC must be submitted to the ERC, whose decision on the appeal will be final. If the affected party disagrees with the ERC's decision on appeal, it may have grounds for disputing the ERC's decision further; for example, if the affected party contends that the ERC acted in a way that is outside the scope of its authority (ie, *ultra vires*). In such cases, the affected party may bring a claim to the Administrative Court to have the ERC's ruling set aside.

REGULATION OF NATURAL GAS PRODUCTION

Ownership and organisation

- 5 What is the ownership and organisational structure for production of natural gas (other than LNG)? How does the government derive value from natural gas production?

Under the Petroleum Act (PA), petroleum belongs to the state. No person may explore for or produce petroleum in any area, whether the area is owned by that person or other persons, except by virtue of a concession and (since 2017) a production sharing contract (PSC) or service contract (SC).

However, petroleum produced by the concessionaire belongs to the concessionaire. The concessionaire has the right to sell and dispose of the petroleum that it produces. All natural gas produced must be sold to PTT Public Company Limited (PTT) for domestic distribution and use.

A concessionaire or contractor under a PSC or SC must be a company. However, it may be 100 per cent foreign-owned.

Gas separation, distribution and trading are subject to ceilings on foreign ownership under the Foreign Business Operations Act, BE 2542 (1999), the Land Code and other laws.

The government benefits from gas production by receiving royalty and income tax, and maintaining a sufficient and reliable supply of gas for power plants, industrial plants and petrochemical complexes.

Regulatory framework

- 6 Describe the statutory and regulatory framework and any relevant authorisations applicable to natural gas exploration and production.

The PA governs the exploration and production of petroleum (natural gas and oil). It is administered by the Department of Mineral Fuels (DMF) under the Ministry of Energy (MOE).

To date, all natural gas exploration and production has occurred in Thailand by way of petroleum concessions. In 2007, the PA was amended by the Petroleum Act No. 6. Four ministerial regulations under the PA and a revised form of petroleum concession were published in 2012.

Thai practice in granting petroleum concessions (for oil and gas exploration and production) was to award them only following publication of an international invitation, usually with at least 45 days' notice. Applications were evaluated on a points system by the Petroleum Committee, which forwards its recommendations to the cabinet for approval.

Most concession terms and conditions are prescribed in the PA and its regulations. The standard concession form was initially set out in 1972 in the Ministerial Regulation No. 4 (BE 2514) (1971), which includes only 18 sections. In 1989, a new concession form was prescribed in the Ministerial Regulation No. 17 (BE 2532) (1989). A new concession form was also prescribed in 2012. In practice, concession applicants are rarely permitted to negotiate changes in its standard terms. The Petroleum Income Tax Act (PITA) prescribes a special income tax regime for exploration and production companies.

2017 amendments to PA and PITA

The Petroleum Act (No. 7) and the Petroleum Income Tax Act (No. 7) were enacted in March 2017 to establish the PSC and SC contract regimes.

Amendments to section 23 of the PA include the additions that exploration and production of petroleum now require the application for, and the grant of a PSC, SC or concession. The authority to determine which form is appropriate will be vested with the MOE, with rules and procedures to be published with the approval of the Cabinet.

Amendments to the PA in regard to PSCs include general terms and conditions that are to be inserted in the contract. Significant features of such contracts include the following:

- all actual expenses in petroleum operations are to be borne by the contractor and deducted from production, as detailed in the contract, and in accordance with the work plan and budget approved by the director-general (such approval is required annually under section 53/4 during the term of the contract). Deductions may not exceed 50 per cent of the total production. If actual expenses exceed 50 per cent in any year, the excess can be deducted in the following year, as long as such expenses for that year do not exceed 50 per cent. Up to 50 per cent of remainder of the total production, after deduction and payment of royalty, shall be shared with the contractor (sections 53/3(1) and 53/3(2) (a, b, and c));
- the portion of production owned by the state may either be sold or disposed of by the state, or by the contractor at the state's request (section 53/3(5));
- ownership of all construction materials, equipment, properties and facilities used in petroleum operations acquired by the contractor is to be vested in the state (section 53/5);
- certain provisions of Division 3 of the PA on Petroleum Exploration and Production under concessions also apply to PSCs, notably as to grant, renewal and revocation of rights; duration and renewal of exploration and production periods; demarcation, award and relinquishments of exploration blocks; award of production areas; and transfer of rights (section 53/8); and
- the contractor is to pay a royalty of 10 per cent on the total production (section 53/6).

Amendments to the PA in regard to SCs also include general terms and conditions that are to be included in such contracts. Significant features of such contracts include the following:

- remuneration, calculation and payment of remuneration may be made in petroleum production or money, and only upon commercial production (section 55/11(4));
- the term of petroleum exploration and production shall not exceed 30 years, with reasons for early termination to be included in the contract (section 55/11(5));
- rules, procedures, work plan, reporting procedures and conditions of measurement are to be included in the production or exploration contract (section 55/11(6)-(8));
- like PSCs, SCs require annual approval of a work plan and budget by the state, with expenses for petroleum operations to be borne by the contractor, and total production is to be owned by the state. The state may dispose of or sell any portion of its production, or may request the contractor to do so (section 53/11(1)-(4));
- money received by the government from the sale or disposal of production is to be first paid as a royalty, with the remainder to be paid as remuneration and expenses under the production or exploration contract. The remainder, if any, is to be remitted to the Treasury (section 53/14); and
- the government is to pay a royalty of 10 per cent on the petroleum produced (section 53/17).

For the adoption of the PSC form, the PITA has likewise been amended. Under its section 65-quaterdecies, a company that is a party to a PSC must pay income tax of 20 per cent of the net profits from the petroleum business. The PITA does not mention SCs. Thus, a party to such a contract is subject to the general income tax under the Revenue Code of 20 per cent.

In March 2018, the MOE adopted Ministerial Regulation Re: Form of Production Sharing Contract, BE 2561 (2018), which prescribed the PSC form. As of 31 December 2019, the government had not published a form SC (three forms of SC are mentioned in the 2017 amendments to the PA).

The right to produce natural gas in the Bongkot and Erawan fields after the current concessions expire was auctioned in late 2018. The winning bidders for both fields entered into the PSC in February 2019, including PTTEP Energy Development Company Limited (PTTEP ED), a subsidiary of PTTEP with the holding interest of 100 per cent in the Bongkot field and a joint venture of PTTEP ED and MP G2 (Thailand) Limited, a subsidiary of Mubadala Petroleum (Thailand) Holdings Limited with the holding interest of 60 per cent and 40 per cent respectively in the Erawan field. The production from these two fields under the new PSC regime will start from 2022 and 2023; the minimum production volume for Bongkot and Erawan fields is 700 million standard cubic feet per day (MMSCFD) and 800 MMSCFD respectively.

The MOE determines regulatory policies governing the production, transmission, distribution and supply of natural gas, based on advice and recommendations of the Petroleum Committee and the Department of Mineral Fuels (DMF). The Energy Regulatory Commission (ERC) has a role in policies governing transmission, distribution and supply of natural gas. The ERC has also announced a 20-year (2011–2030) Energy Efficiency Development Plan, which will eventually require large-scale businesses in the natural gas industry to implement energy conservation promotion measures to encourage customers to reduce energy use by specified minimum standards, as opposed to voluntarily engaging in such activities, as has been the previous practice.

Unconventional gas production

- 7 | Are there different rules for, or any restrictions on, unconventional natural gas production (including fracking)?

There are currently no differentiated rules for, or restrictions on, unconventional gas production.

Required security and guarantees

- 8 | Are participants required to provide security or any guarantees to be issued with a licence to explore for or to store gas?

Petroleum contractors are required to post both parent company guarantees and bank guarantees to secure their work obligations. The mandatory requirement to provide bank guarantees was introduced in the announcement of the 21st bid round on 21 October 2014. Bids must include bid security of 3 million baht per block, and a letter of intent to place a performance bond to secure expenditure obligations and physical work obligations. The 21st bid round was suspended, and finally cancelled. It is not clear whether this requirement will be retained when the bid round is announced.

Pursuant to the invitation for proposal for Thailand petroleum bidding round 2018 for offshore block G1/61 and G2/61, a pre-qualified bidder was required to submit a bid bond in the amount of 3 million baht per submission. Bid bonds were made in either of the following forms:

- a cashier cheque or bank draft issued by a commercial bank with branches in Thailand payable to the DMF. The date of the cheque or draft must be the actual payment date or not more than three working days before the payment;
- a Thai government bond; or
- an unconditional bank guarantee issued by a bank with branches in Thailand with a long-term Standard and Poor's rating of not less than BBB (or equivalent) according to international credit rating agencies. The guarantee period must not be less than one year from the date of application.

The bid bond is returned to non-successful bidder(s) and the successful bidder upon signing of the PSC. Pre-qualified bidders must submit a letter requesting the return of the bid bond and DMF must return the bid bond within 15 working days of the date of receipt of the letter of request.

A successful bidder must submit a performance guarantee, in the amount of 3.5 billion baht in either of the forms above, except the unconditional bank guarantee must not be less than six years from the date of PSC signing.

A successful bidder is required to submit the performance guarantee to the DMF at least 10 days before the date of the PSC signing.

REGULATION OF NATURAL GAS PIPELINE TRANSPORTATION AND STORAGE

Ownership and infrastructure

- 9 | Describe in general the ownership of natural gas pipeline transportation, and storage infrastructure.

PTT Public Company Limited (PTT) has a monopoly on the natural gas pipeline business, and owns the natural gas pipeline system. PTT is a public limited company that is majority-owned by the Ministry of Finance. There are a few private pipelines for the transportation of oil products.

A number of government bodies are concerned with the transportation of petroleum (oil and gas), which may be divided into the following categories:

- marine transport: Marine Department and the Ministry of Transport;
- railway transport: State Railways of Thailand; and
- tanker truck transport: the Department of Land Transport and the Ministry of Transport.

Regulatory framework

- 10 Describe the statutory and regulatory framework and any relevant authorisations applicable to the construction, ownership, operation and interconnection of natural gas transportation pipelines, and storage.

The construction, ownership, operation and interconnection of natural gas transportation pipelines, and storage are governed by the Energy Industry Act (EIA). The EIA empowers the Energy Regulatory Commission (ERC) to grant the approval of construction of the pipeline and infrastructure.

Sections 100 and 119 to 121 of the EIA provide for settlement of disputes by the Regional Energy Consumer Committee (in the case of complaints by energy consumers), or otherwise in accordance with regulations prescribed by the ERC. Decisions of the commission on appeal are treated as final.

Land rights

- 11 How does a company obtain the land rights to construct a natural gas transportation or storage facility? Is the method for obtaining land rights to construct natural gas distribution network infrastructure broadly similar?

Under the EIA, when it is necessary for a licensee that is a government agency to use immovable property for the purpose of constructing an energy network system (defined as a power network system or a natural gas network system) or other structures necessary and related to such an activity, the expropriation of property will be undertaken by the Office of Energy Regulatory Commission, and the ownership of the expropriated property shall belong to the state pursuant to the law on the expropriation of immovable property.

The Office of Energy Regulatory Commission has the duty to take care of, maintain, use and acquire interests in immovable property vested in the state in accordance with rules, procedures and conditions prescribed by the ERC.

A licensee being private entity may obtain the right to land for construction of natural gas transportation or storage facility by purchase (freehold land) or by lease.

Access

- 12 How is access to the natural gas transportation system and storage facilities arranged? How are tolls and tariffs established?

Under the EIA, a licensee that has an energy network system (defined as a power network system or a natural gas network system) must allow other licensees or energy industry operators to utilise or connect to its system in accordance with terms stipulated and announced by the licensee who has an energy network system.

The terms concerning connection of energy network systems, use of system services and operation of systems must be based on the following principles:

- they must not adversely affect the security, safety and quality of the energy system;
- they must not disadvantage energy consumers and the public;
- they must not discriminate or hinder other licensees or energy industry operators;
- the technical specifications at the end-use points or at the point of connection to the energy network system must be clear, technically

feasible and must not impose an undue burden on the person who asks to use or connect to the system;

- the duties and responsibilities of both the person who asks to use or connect to the system and the person who allows the use of or connection to the system must be clearly specified; and
- any other characteristic specified by the ERC.

Interconnection and expansion

- 13 Can customers, other natural gas suppliers or an authority require a pipeline or storage facilities owner or operator to expand its facilities to accommodate new customers? If so, who bears the costs of interconnection or expansion?

Expansion of an energy network system must be approved by the ERC. If the expansion plan affects the material interest of the public, the ERC must conduct an opinion-hearing process. A licensee that has an energy network system must conduct operations in line with what is stipulated in the approved expansion plan.

Processing

- 14 Describe any statutory and regulatory requirements applicable to the processing of natural gas to extract liquids and to prepare it for pipeline transportation.

At present, PTT is the sole purchaser of natural gas and the builder and operator of gas separation plants. A sixth gas separation plant was completed on 25 January 2011 (at the time, GSP-6 was the world's largest gas separation plant). The plants are subject to the legal regime applicable to factories in general. There is no special statutory or regulatory regime.

Contracts

- 15 Describe the contractual regime for transportation and storage.

Pipeline systems can be interconnected by private contract. A licensee that has an energy network system must disclose the contracts, agreements, conditions and tariffs for the use of or connection to its system, pursuant to the rules, procedures and conditions established by the ERC.

If the ERC considers that the terms concerning interconnection of energy network systems, use of system services and system operations power to order the licensee issuing such terms to revise or improve them in line with those principles.

REGULATION OF NATURAL GAS DISTRIBUTION

Ownership

- 16 Describe in general the ownership of natural gas distribution networks.

PTT Public Company Limited (PTT) has a monopoly on natural gas pipelines and local distribution business.

Regulatory framework

- 17 Describe the statutory and regulatory structure and authorisations required to operate a distribution network. To what extent are gas distribution utilities subject to public service obligations?

Under the Energy Industry Act (EIA), the natural gas business – which means natural gas transmission through pipelines and natural gas network systems, natural gas storage and transformation of natural gas from liquid to gas, natural gas procurement and gas wholesale or retail

through natural gas distribution systems, excluding natural gas business operations in the transportation sector – is under the supervision of the Energy Regulatory Commission (ERC).

Licensees must provide energy services pursuant to standards established by the ERC.

The ERC may assign a licensee to provide energy services in a particular locality where no service exists, or where services are not extensive or are inadequate to meet the demand of energy consumers in that locality.

The Ministry of Energy (MOE) is empowered to set the policy on extensive provision of energy services, as well as energy services for the underprivileged, including the policy dealing with energy consumers' complaints.

If an energy consumer is adversely affected by the service provided by a licensee, the consumer shall have the right to make a written complaint to the Regional Energy Consumer Committee. The complaint must clearly indicate the facts and be accompanied by documents and evidence related to the case.

Disputes between licensees shall be resolved in accordance with regulations prescribed by the ERC. The decision of the ERC on appeal shall be treated as final.

The Administrative Court has jurisdiction over claims by private sector parties against government agencies.

Access and pricing

- 18 | How is access to the natural gas distribution grid organised? Describe any regulation of the prices for distribution services. In which circumstances can a rate or term of service be changed?

Access to the natural gas distribution grid is organised according to regulations of the ERC.

Prices for distribution services are regulated by the ERC.

System/service expansion and limitation

- 19 | May the regulator require a distributor to expand its system to accommodate new customers? May the regulator require the distributor to limit service to existing customers so that new customers can be served?

If the ERC considers that the terms concerning interconnection of energy network systems, use of system services and system operations do not conform to the principles specified in the EIA, it has the power to order the licensee issuing such terms to revise or improve them in line with those principles. Therefore, to an extent, the regulator can require a distributor to expand its system and limit service to existing customers for the purposes above.

Contracts

- 20 | Describe the contractual regime in relation to natural gas distribution.

A natural gas distribution system is defined as an energy business and is regulated by the ERC. PTT has a monopoly on natural gas distribution.

REGULATION OF NATURAL GAS SALES AND TRADING

Ownership and organisation

- 21 | What is the ownership and organisational structure for the supply and trading of natural gas?

PTT Public Company Limited (PTT) negotiates gas sales agreements (GSAs) with the various users of natural gas.

Companies engaging in natural gas supply and trading are subject to ceilings on foreign ownership under the Foreign Business Operations Act (unless the foreign company meets certain minimum capital requirements), the Land Code and other laws.

In addition, to be licensed as an oil trader under the Fuel Oil Trading Act, BE 2543 (2000), the applicant must be a private or public company registered under the Civil and Commercial Code or the Public Limited Companies Act with a registered capital meeting the minimum requirements of the Department of Energy Business.

Government oversight

- 22 | To what extent are natural gas supply and trading activities subject to government oversight? What authorisations are required to engage in wholesale trading of gas?

Generally, the Ministry of Energy (MOE) and the Energy Regulatory Commission (ERC) supervise all chains of gas supply, such as trading, distribution, import, export, storage, transport and standards of equipment.

The Energy Industry Act (EIA) was enacted on 10 December 2007. It became effective on 11 December 2007.

The EIA establishes a regulatory regime for the electricity and natural gas business. One purpose of the EIA is to restructure energy industry management by separating policy making, regulation and operational functions.

Under the EIA, the natural gas business, which covers natural gas transmission through pipelines and through natural gas network systems, natural gas storage and transformation of natural gas from liquid to gas, natural gas procurement, and gas wholesale or retail sale through natural gas distribution systems, excluding natural gas business operations in the transportation sector, is under the supervision of the ERC comprising a chair and six other members.

The Office of Energy Regulatory Commission was established as a state agency with the status of a juristic person, and is under the supervision of the ERC.

The ERC is empowered to issue announcements determining the licences for different types of energy industry operations, and recommend to the Minister the issuance of royal decrees determining the categories, capacities and characteristics of the energy industry exempt from the licensing requirement.

Under the EIA, a licensee who has an energy network system (including a gas piping system) must carry out operations in line with the energy network system expansion plan. An energy network system licensee that is a state agency stipulated by the ERC shall develop its energy network system expansion plan for submission to the Minister of Energy for approval by the cabinet. A licensee that is not a state agency as stipulated by ERC must develop its energy network system expansion plan for submission to the ERC for approval pursuant to the scope and rules prescribed by the ERC.

Regulations and notifications governing the energy industry, including the ownership and organisational structure for pipelines, were issued on 4 December 2008.

Under the EIA, licences for natural gas industry operation are classified into four types, namely:

- natural gas transportation through transmission pipeline system licence (as of 27 November 2020, there are 43 licence holders);
- natural gas acquisition and wholesale licence (as of 27 November 2020, there are two licence holders (ie, PTT and the Electricity Generating Authority of Thailand));
- natural gas retail through distribution pipeline system licence (as of 27 November 2020, there are four licence holders); and
- natural gas storage and transformation of liquid to gas licence (as of 27 November 2020, this licence has never been issued).

Note that storage and transformation of natural gas from liquid to gas where the total storage of LNG of each storage unit is less than 50,000 litres is exempted from the licence requirement, but requires notification to the Office of Energy Regulatory Commission.

Trading processes

23 | How are physical and financial trades of natural gas typically completed?

There are no physical or financial trades of natural gas in the Thai market.

Available services and products

24 | Must wholesale and retail buyers of natural gas purchase a bundled product from a single provider? If not, describe the range of services and products that customers can procure from competing providers.

PTT is the sole seller of natural gas in the Thai market, and it generally only sells under long-term contracts.

REGULATION OF LNG

Ownership and organisation

25 | What is the ownership and organisational structure for LNG, including liquefaction and export facilities, and receiving and regasification facilities?

LNG trading is subject to ceilings on foreign ownership under the Foreign Business Operations Act (unless the foreign company meets certain minimum capital requirements), the Land Code and other laws.

Construction of Thailand's first LNG-receiving terminal was completed, and commercial operations began on 6 September 2011 in Map Ta Phut industrial estate. PTT LNG's LNG plant expansion was completed in 2017. The facility can currently offtake and unload up to 10 million tonnes of LNG a year (1,400mmcf/d) and consists of three 160,000 cubic metre LNG storage tanks and a port for LNG vessels from 125,000 to 264,000 cubic metres. Since 2017 EGAT has some rights to import LNG. Further, in 2020, certain private independent power producers were granted licences to import LNG. Additional licensees will likely emerge in the coming years as the Energy Regulatory Commission is intending to liberalise the market further.

Regulatory framework

26 | Describe the regulatory framework and any relevant authorisations required to build and operate LNG facilities.

The same regulatory framework and governmental and administrative authorisations apply to LNG plants and industrial plants. The first LNG-receiving terminal is operational in Map Ta Phut industrial estate.

Pricing

27 | Describe any regulation of the prices and terms of service in the LNG sector.

No regulations governing the prices and terms of service in the LNG sector have been issued.

MERGERS AND COMPETITION

Competition authorities

28 | Which government body may prevent or punish anticompetitive or manipulative practices in the natural gas sector?

The Trade Competition Act BE 2542 (1999) established the Trade Competition Commission and prohibited certain practices that might lead to a monopoly or unfair competition. The implementation of this Act, which is general law, was limited, and the government was considering amendments to create a more effective law.

A new Trade Competition Act BE 2560 was enacted in 2017 and came into force on 7 October 2017. The Trade Competition Commission remains the government body with general regulatory oversight for anticompetitive or manipulative practices, other than in sectors with specific trade competition regulations. Energy services businesses, which include the mid-stream and downstream markets of natural gas supply, are regulated by the Energy Regulatory Commission (ERC) under the Energy Industry Act (EIA).

The EIA prescribes objectives to promote competition in the energy industry, prevent abusive use of dominance in energy industry operations, and promote fairness and transparency in the provision of services for energy network systems without unjust discrimination.

The ERC is also empowered to monitor and regulate mergers of licensees under the EIA. The Regulation of the Energy Regulatory Commission on Establishment of Criteria to Prevent Mergers, Competition Lessening or Restrictions in Energy Service BE 2552 (2009) outlines procedures for licensees under the EIA.

Competition standards

29 | What substantive standards does that government body apply to determine whether conduct is anticompetitive or manipulative?

Licensees under the EIA are subject to the regulatory oversight of the ERC. For other business operators, such as upstream natural gas producers, the Trade Competition Act will apply to their activities. The Trade Competition Commission is the regulator with supervisory authority of the Trade Competition Act.

Sections 54 and 55 of the new Trade Competition Act proscribe specific conduct that is anticompetitive or an abuse of a dominant operator's market power. These include:

- jointly with a competitor operating in the same market, fixing the purchase or sales prices, or other conditions of the price of goods or services, either directly or indirectly;
- jointly with a competitor operating in the same market, limiting the quantity of goods or services that each operator will produce, purchase or sell;
- jointly with a competitor operating in the same market, to allocate geographical areas will each operator will sell, or to generally reduce the purchase of goods and services;
- jointly with a competitor operating in the same market, to knowingly establish an agreement on conditions for one side to win an auction or to win in a bid of goods or services to allow another operator not to bid in the same auction for goods or services;
- reducing the quality of goods or services to a condition lower than previously produced or sold;
- appointing or assigning any one person to exclusively sell the same goods or provide the same services, or of the same type;
- setting conditions or practices for purchasing or producing goods or services so that the practice follows the agreed terms; and
- other types of joint agreements in other manners as prescribed by the Trade Competition Commission.

With respect to licensees under the EIA, the ERC has discretion to determine whether the conduct may create monopoly lessening and restriction of competition. The following criteria are taken into consideration:

- provision of service relevant to economic principles, market structure and competition level in a relevant market;
- market share; and
- other factors or conditions according to principles of laws on trade competition and other relevant laws taking into consideration public interest, protection of consumers, penetration of new business and competition in a relevant market.

Enforcement

30 | What authority does the government body have to preclude or remedy anticompetitive or manipulative practices?

The Trade Competition Act BE 2560 (2017) empowers the Trade Competition Commission to suspend and unwind any merger that may cause a monopoly or result in a dominant position in the market. Failure to comply will result in the violator being liable to an administrative fine.

The EIA also empowers the ERC to order the licensee to unwind or correct a merger that is monopolistic, reduces competition or limits competition. Failure to comply will result in the licensee being liable to a fine, imprisonment or both.

Merger control

31 | Does any government body have authority to approve or disapprove mergers or other changes in control over businesses in the sector or acquisition of production, transportation or distribution assets?

The Trade Competition Commission established under the Trade Competition Act BE 2560 (2017) is empowered to approve or disapprove mergers and other changes in control over businesses that result in a monopoly or unfair competition.

For activities requiring licences under the EIA, the ERC is empowered to approve mergers and acquisitions.

Price restrictions

32 | In the purchase of a regulated gas utility, are there any restrictions on the inclusion of the purchase cost in the price of services?

Under the EIA, the Minister of Energy has the power, with the approval of the National Energy Policy Council (NEPC), to establish the policies and guidelines for fixing tariffs for energy industry operations.

Subject to policies and guidelines approved by the NEPC, the ERC may prescribe rules for fixing tariffs for each type of licence under the following guidelines:

- they should reflect the actual cost by taking into account a reasonable return of investment of an efficient energy industry operation;
- they should be at a level to ensure efficient and adequate energy procurement to meet the demand for energy within the country;
- they should encourage the improvement of efficiency of energy industry operations;
- fairness must be ensured for both energy consumers and licensees;
- consideration should be given to the assistance of underprivileged power consumers and decentralisation of development to provincial areas;
- the calculation of the tariffs must be clear and transparent, and the tariffs must be made public; and
- there must be no unjust discrimination against energy consumers or those who wish to use energy.

Corporate governance regulations

33 | Are there any restrictions on the acquisition of shares in gas utilities? Do any corporate governance regulations or rules regarding the transfer of assets apply to gas utilities?

The ERC issued the Regulation of the Energy Regulatory Commission on Establishment of Criteria to Prevent Mergers, Competition Lessening or Restrictions in Energy Service, BE 2552. Any holder of a natural gas industry operation wishing to dispose of and acquire assets or shares must comply with this regulation and, where applicable, the permission approval from ERC must be obtained prior to the transaction.

INTERNATIONAL

Foreign participation

34 | Are there any special requirements or limitations on foreign companies acquiring interests in any part of the natural gas sector?

A petroleum contractor must be a company. However, it may be 100 per cent foreign-owned.

Gas separation, distribution and trading are subject to ceilings on foreign ownership under the Foreign Business Operations Act (unless the foreign company meets certain minimum capital requirements), the Land Code and other laws.

International agreements

35 | To what extent is regulatory policy affected by treaties or other multinational agreements?

Thailand is a party to many international treaties, bilateral investment protection treaties and double tax treaties, including those of the World Trade Organization. Thailand is not a party to the International Centre for Settlement of Investment Disputes Convention.

The Association of Southeast Asian Nations (ASEAN) integration includes plans for interconnection of current and planned pipelines among the member states. Such integration will require regulators and governments to collaborate, creating a regulatory framework for transborder trading of energy and natural gas.

Cross-border sales and deliveries

36 | What rules apply to cross-border sales or deliveries of natural gas?

At present, the Thailand–Malaysia Joint Authority Act, BE 2533 (1990) applies to gas exploration and production in the Malaysia–Thailand Joint Development Area.

Other major laws applicable to the export and import of oil and gas include:

- the Export and Import of Goods into the Kingdom Act, BE 2522 (1979);
- the Customs Act, BE 2560 (2017);
- the Emergency Decree on Remedy and Prevention of Shortage of Fuel Oil, BE 2516 (1973); and
- the Fuel Oil Trading Act, BE 2543 (2000), as amended.

In connection with Thailand integrating with ASEAN, Thailand will become subject to ASEAN policies on transborder trading in natural gas.

The ASEAN Plan of Action for Energy Cooperation 2-16-2025 specifies cooperation in seven areas, including Programme Area No. 2 – Trans ASEAN Gas Pipeline.

TRANSACTIONS BETWEEN AFFILIATES

Restrictions

37 | What restrictions exist on transactions between a natural gas utility and its affiliates?

At present, no restrictions exist on transactions between a natural gas utility and its affiliates.

Enforcement

38 | Who enforces the affiliate restrictions and what are the sanctions for non-compliance?

Not applicable.

UPDATE AND TRENDS

Gas sector-specific regulation

39 | Describe recent trends and developments in the regulation of the domestic natural gas sector.

The National Energy Policy Council (NEPC) adopted revisions to Thailand's Power Development Plan in early 2019.

Thailand's reliance on natural gas for the next 10 to 20 years as a fuel for generating electricity will be coupled by a decline in domestic production. As a result, the country will likely need to invest in additional LNG receiving capacity, or additional pipelines from neighbouring countries.

The NEPC approved the Electricity Generating Authority of Thailand (EGAT) developing a floating terminal receiving unit (FSRU) project in 2017. The FSRU would be moored in the Gulf of Thailand and provide feedstock to power plants in Bangkok or the surrounding provinces, or both. In addition to being the first FSRU in Thailand, this project would also see EGAT obtaining third-party access to PTT's pipeline network, which will be another first in Thailand. An environmental impact assessment report for the pipeline part of this project was approved in 2020.

Other regulatory developments of particular relevance to the gas sector

40 | Describe any other recent regulatory trends and developments of particular interest to those operating in the domestic natural gas sector.

Imports from Yadana and Yetagun are declining. The overlapping claims area (Cambodia and Thailand) may be approved for production in coming years.

In November 2020, the Regional Comprehensive Economic Partnership was agreed by the ASEAN countries and the Plus 5 countries, ie, China, Japan, South Korea, Australia and New Zealand. As a result, the Customs Department is now preparing for the drafting of Ministerial Regulations and Notifications for the implementation of the international agreements to which Thailand is a party.

Further, in 2020, the Energy Regulatory Commission granted LNG import licences to two private independent power producers to promote free trade of LNG in Thailand. As a result, we may expect changes in the gas sector in the future, as PTT Public Company Limited will no longer be the sole user of its LNG receiving terminal and gas pipeline transmission system.

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Coronavirus

41 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

There is no emergency legislation, relief programme or other initiative specifically issued nor any government programmes, laws or regulations to address coronavirus or to facilitate or assist the operation of the petroleum or gas business.

However, recent notifications of the Department of Mineral Fuels (DMF) allow business operation to submit certain matters to the DMF via electronic means to reduce physical meetings and contact, as well as to expedite processes. For instance, these include submissions to receive the right to bring in skilled workers and family members into the kingdom as provided in the notification, submissions of forms for the calculation of the payment of special compensation, and submissions of expense accounts for the operation of petroleum business.

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