

II. Recent Movement on the Law on Climate Change

Background

Global climate change has become a major worldwide concern over the past several years as it has caused numerous observable impacts on the environment, e.g., rise in sea level, intense heatwaves, or flooding. Thus, in order to address the global problem of climate change and cooperate with the international community to tackle this problem, Thailand together with many countries ratified the Paris Agreement under the United Nations Framework Convention on Climate Change (the “**Paris Climate Agreement**”) on 21 September 2016, and has been committed to achieving the objectives, which are to keep the increase of the global average temperature to well below two (2) degrees Celsius and to limit the temperature increase to one point five (1.5) degrees Celsius above pre-industrial level. This is the Paris Climate Agreement that the US President Joe Biden, in one of the first tasks on his inauguration day, just signed an executive order to re-join.

To implement the Paris Climate Agreement as agreed and accomplish its goals, Thailand, as one of the signatories, needs to direct efforts to, among others, reducing carbon emissions. Thailand expressed its nationally determined contribution to reduce greenhouse gas emissions twenty (20) to twenty-five (25) percent within the timeframe from 2021 to 2030¹. To do so, the Thai government gave the green light for the preparation of the Bill on Climate Change (the “**Bill**”). To date, there has been a public hearing on the Bill, which started in September 2020 and for which five (5) sessions were held before its conclusion on 19 October 2020.

Key takeaways

On examination, the Bill prepared by the Office of Natural Resources and Environmental Policy and Planning (“**ONEP**”) mainly establishes measures to collect information, such as in relation to carbon footprint, which is necessary for the assessment of emissions or the enhancement of the sinks in respect of greenhouse gases² in accordance with the Paris Climate Agreement.

Under the Bill, the Committee on Climate Change Policy (the “**Committee**”) will be established in order principally to prepare plans with respect to climate change in Thailand, including a master plan for national climate change, a national operation plan for greenhouse gas reduction and the like, as well as to implement the foregoing. There will also be a national greenhouse gas inventory administered and managed by ONEP.

What seems to be significant here is the national greenhouse gas inventory. The national greenhouse gas inventory will be provided. It will also be disclosed to the public and contain information on the following as a minimum:

- (1) Quantity of greenhouse gas emissions produced by human activities;
- (2) Quantity of greenhouse gases contained in greenhouse gas absorption sources; and
- (3) Quantity in respect of net reduction of greenhouse gases within the timeframe of greenhouse gas reduction plan.

In preparation for this national greenhouse gas inventory, there is a requirement for the introduction of a reporting duty directed at both the government sector and the private sector. This will impose on the government sector, e.g., Ministry of Industry, Ministry of Energy, and Ministry of Transport, the duty to report information regarding emissions, storage and reduction of greenhouse gases to ONEP. Likewise, the private sector also shares such corresponding obligations, as detailed below.

Possible Impacts on Private Sector

The potential impacts of the Bill on the private sector can be summarized as follows:

1. Reporting duties and corresponding rights

The Bill stipulates obligations on certain private sector operators to report information for the preparation of the

¹ According to ONEP’s letter no. 1007.2/13850 dated 20 October 2020 to UNFCCC Secretariat.

² Section 5 of the Bill. “Greenhouse gases” means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, nitrogen trifluoride, and other gases as to be prescribed in the ministerial regulation.

national greenhouse gas inventory. Specifically, when requested by ONEP or the government sector, the following persons will be obliged to report information regarding emissions, storage and reduction of greenhouse gases in order to assist the authorities in preparing the national greenhouse gas inventory:

- (1) Operators of a factory business under the factory law;
- (2) Operators under the law related to energy business operation;
- (3) Owner of designated factories and designated buildings under the law related to promotion of energy conservation;
- (4) Other persons as prescribed in ministerial regulations; and
- (5) Other government sector which possesses the relevant information or has the duty to request the said information under other laws.

In addition, the Bill also establishes a protection clause for the disclosure of the information. Persons are prohibited from disclosing information on emissions, storage and reduction of greenhouse gas activity that ONEP or the government sector obtains or possesses which is information pertaining to a person or is a trade secret under the trade secrets law. Further, a person can request the Committee not to disclose such information if the information is disclosed to the public and will cause damage to a particular person.

2. Applying for financial support

A private organization related to the environment, a private sector, an entrepreneur or any other business is entitled to apply for a subsidy from the Environment Fund³ established under the law related to the enhancement and conservation of the national environmental quality in order to support the following activities⁴:

- (1) Operations in order to obtain information on emissions and storage of greenhouse gas activity or other necessary information;
- (2) Operations in order to obtain the information on greenhouse gas reduction activity or other necessary information;
- (3) Operation of projects or activity pertaining to greenhouse gas reduction;
- (4) Operations in respect of projects or activity pertaining to climate change adaptation;
- (5) Research, development of knowledge, technology and enhancement of capacity in operations for climate change; and
- (6) Other activity as prescribed by the Committee.

3. Administrative penalties

With respect to the penalties, the Bill provides merely for administrative fines and daily fines for failure to report the information without reasonable cause, reporting false information or concealing information which is required to be reported. However, the amount of the fines remains unclear and under consideration. The penalty of a fine may be extended to directors as well if the offender is a juristic person and such offence is committed as a result of an order or an act of a director of such juristic person.

Conclusion

This can be regarded as a significant attempt by Thailand to contribute to tackling a global environmental problems such as global warming. The Bill is now under the consideration of the Ministry of Natural Resources and Environment, and, as the next step, will be submitted to the Office of Council of State. Hence, the Bill is in the preliminary stages and still has a long way to go. It has to undergo all necessary procedures before being enacted as an official and effective law and there is undoubtedly considerable room for modification along the way.

³ The Environment Fund is already established under the Enhancement and Conservation of the National Environmental Quality Act of 1992 and overseen by the Ministry of Natural Resources and Environment.

⁴ The subsidy or incentive from the Environment Fund has been granted to certain activities under the Enhancement and Conservation of the National Environmental Quality Act of 1992. The new law will be expected to clearly specify that the activities in relation to greenhouse gas would be eligible to apply for subsidy therefrom.

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