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THAILAND

Newsletter

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About Time: The Long Overdue Proposed Reformation of the Environmental Act

Introduction

Socioeconomic development and the growth of industrial prosperity have resulted in severe environmental and natural resources degradation, including interconnected effects like climate change and pollution. In battling these changes, the field of environmental law and policy has seen many changes over the decades. We have witnessed significant environmental activism as evident from policies and actions to respond to climate change impacts and to ensure environmental protection from local to global levels. In Thailand, one key instrument deployed for environmental protection and matters connected therewith is the Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992) (as amended) (the “**Environmental Act**”). The Environmental Act serves as the first well-rounded environmental legislation established in line with common international environmental principles. The Environmental Act had been amended several times over the years to address the changes in data and the complexity of environmental problems.

Recently, there has been a proposal for the reforms of the Environmental Act through the enactment of a new act entirely. A new draft enhancement and conservation of national environmental quality bill (the “**Bill**”) is currently being proposed to address recent developments in environmental degradation and pollution. We have set out below some of the key reforms flagged in the Bill.

Overview of the Bill

Environmental impacts caused by certain business operators have been increasingly scrutinized by the public. This, in turn, has created a heightened focus on the statutory review of the Environmental Act by the government and legislature. According to such review, it is found that some provisions of the Environmental Act are inadequate to address the current environmental issues, and the environmental protection mechanisms and measures with respect to pollution control are insufficient to mitigate the increasing severity of pollution problems.

In this context, the core features of the Bill will include a more stringent environmental management and pollution control—with wider areas being protected and increased public participation—providing more synergy among stakeholders, and harsher liabilities and penalties—capable of thoroughly unraveling complicated environmental issues. All to ensure that the impacts of pollution are mitigated, urgent environmental problems are properly addressed, and the quality of the environment is improved and restored.

Besides these core changes, the Bill, similarly to the current Environmental Act, prescribes fundamental environmental quality standards, including the quality of water, air, noise, vibration, and soil, among others, to enhance and conserve environmental quality. These standards apply to any business causing an impact on the environment and society. The concepts of environmental impact assessment have also been incorporated therein with no key changes.

The Bill went through a process of public hearings, which was ended on 15 November 2022. If enacted, the Bill will mark a significant change to current environmental regulations.

Key Proposed Reforms

To efficiently mitigate the degradation of environmental and natural resources, the government and respective state agencies propose that the Bill should be drafted to be more stringent and comprehensive, covering all aspects of the aforementioned concerns with certain changes. The key reforms are, for example:

Environmental management and pollution control

(1) Placement of environmental bond

The Bill empowers the Minister of Natural Resources and Environment (the “Minister”) (with the approval of the National Environmental Board and recommendation of the Pollution Control Board (the “PCB”)) to prescribe the types of businesses, whose operations generate a significant amount of waste and have a serious impact or are harmful to natural resources and environmental quality, where a bond placement is required to secure remediation of related environmental damages. The notification to be later issued will outline the amount of money and procedures for bond placement based on the size of the business or activities, risks on environmental impacts, and expenditures that may be incurred for remediation of the damages to the environment and affected individuals, or for rehabilitation or restorations of such remnants to their original conditions. The environmental bond must be placed prior to a commercial operation date and remain in full force until the termination of such business operation.

(2) Increased participation from stakeholders

The Bill encourages participation from stakeholders whether it be the public, the owner, or possessor of the pollution sources, or the relevant state agencies in forming a pollution mitigation and elimination action plan, especially in areas where pollution problems tend to be harmful to public health or may jeopardize the environmental quality. Specifically, agencies in charge of the industrial estate zones, eastern special development zone, special economic promotional zones, or other conservation areas under applicable specific laws are required to partake in the formulation of a pollution action plan in relevant areas.

(3) Broader control over pollution sources

In order to prevent and control pollution at its sources, the Minister, with the recommendation of the PCB, has the authority to prescribe, for example, the types of pollution sources that must be controlled, types of pollution sources that require the designation of a pollution controller, or types of pollution sources that need to be reported for relocation or discharge. In particular, the Bill allows the Minister to prescribe and designate a broader range of pollution sources, whereas the Environmental Act limits the designation of pollution sources to certain aspects of the environment only. Correspondingly, the subordinate regulations to be issued under the Bill may cover more pollution sources apart from water, air, and noise pollution, which should be beneficial to the promotion of emission mitigation as a whole.

Public participation

(1) Environmental entity

In addition to registered juristic persons, the Bill also allows individuals and community organizations incorporated for the purpose of conservation, preservation, and restoration of the environment and natural resources to be listed on the environmental entity register and eligible for governmental aid and support.

(2) Emergency plan

As the Minister is required to prepare an advance emergency plan in the event that there is a leakage or dispersal of pollution requiring emergency protection or sudden remediation, the Bill permits relevant state agencies to request assistance and support from private sectors to provide useful information and proposals in forming this emergency plan.

Liabilities and penalties

(1) Civil liabilities

In the current Environmental Act, strict liability lies with the owner or possessor of any pollution sources causing or being the source of leakage or dispersal of pollution causing harm to life, body, health, or properties of others or the State. Meanwhile, the Bill poses strict liability on any person who caused or is the source of the leakage or dispersal of pollution causing harm to life, body, health, or properties of others or the State resulting in any damages, with fewer grounds for exemptions.

Further, the Bill introduces the liabilities for causing loss and damages to biodiversity and environmental quality, which are in addition to the losses and damages to the environment and public domain properties that appear in the current Environmental Act. The Bill also provides that such person is liable for the damages, including costs of repair and restoration of the environment, natural resources, or biodiversity to return to their original conditions.

(2) Wider court's discretion

The Bill authorizes the courts to determine additional punitive damages if any person infringes the environmental laws established to protect the safety of life, body, health, or public property, and such actions cause a negative impact or tend to be catastrophic. In which case, the courts have the discretion to increase the punitive damages (in addition to actual damages) at a rate not exceeding four times the actual damages.

In the case that it is impossible to determine the true extent of the damages caused at the time of issuing a verdict, the Bill also empowers the courts to indicate in the judgment that it reserves the right to amend the judgment or order and require the defendant to place security in an amount which the court deems appropriate, provided that such reservation does not exceed ten years from the date of the judgment or order issuance.

(3) Prosecution of civil and criminal environmental claims

The Bill introduces the role of the PCB in coordinating with the public prosecutor to prosecute any polluters for causing the leakage or dispersal of pollution in both civil and criminal cases, provided that the PCB deems such cases to be beneficial to the public.

(4) Criminal penalties

A variety of harsher criminal penalties are included in the Bill, for example, both fines and incarceration for draining or releasing pollutants that have not been treated or disposed of in accordance with the set quality standards, or for any owner or possessor of pollution sources not appointing a pollution controller when required.

(5) Guidelines for damages calculation

The Bill sets certain guidelines and elements to be taken into consideration when calculating the compensation or damages incurred by a person or government agency in preventing the cause of the damages or restoring the environmental quality or any part of natural resources.

Key Takeaways

While many companies do not operate businesses that directly emit pollutants into the environment, the majority of companies have indirect environmental impacts, therefore, an appropriate due diligence assessment needs to be conducted and appropriate measures need to be implemented to ensure compliance. Once the Bill is approved and enacted, it is important that all business operators are prepared to comply with all obligations that arise with the Bill, including the awareness of more stringent punishments. In addition, operators should pay close attention to the subordinate regulations to be issued thereunder for key criteria where important standards and underlying obligations will be thoroughly outlined.

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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