31 May 2023

# THAILAND

# Newsletter

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## Catching the Next ESG Wave: Thailand's Latest Developments

Regulators, investors, and other stakeholders in Thailand are placing an increasing focus on the adoption of Environmental, Social, and Governance ("ESG") principles across all sectors. This emphasis aligns with the global implementation of ESG-related regulations and societal expectations. ESG has become one of the key priorities for Thailand, and the country has established various sustainability policies, such as mobilizing transition finance for decarbonization projects and implementing the Bio-Circular-Green framework. Additionally, private companies are voluntarily reviewing their practices to prevent human rights abuses, implement stringent corporate governance measures to prevent corporate oversight, and engage in initiatives related to carbon credits aimed at reducing their carbon footprint.

Despite the absence of a unified legal framework on ESG in the Thai regulatory landscape, corporate behaviors are already shifting in response to these initiatives. This shift has led to an increase in proposed regulations and voluntary compliance and commitments. Notably, ESG considerations in M&A transactions have slowly been moving up on the list of priorities, especially when such transactions involve public or multinational companies.

In this newsletter, we highlight below the latest developments in the three pillars since our last ESG publication (LINK)

## Policy development in Thailand

Thailand's ESG policy framework consists of a series of non-mandatory guidelines that may be observed by enterprises in those relevant sectors. In light of this fragmented nature, we list below some key ESG-related updates which are applicable to companies, either as legally required measures or as voluntary guidelines for action.

1. **Development from the Bank of Thailand ("BOT")**

   **1.1. Banks' policy to take into account environmental factors**

   As part of the sustainable financing incentives, the BOT introduced the policy on the business operations of financial institutions in consideration of environmental perspectives and climate change ("**BOT Policy**") in February 2023. The BOT Policy encourages financial institutions in Thailand to integrate environmental considerations into their business operations and provides guidance for developing internal policies aligned with these considerations.

In its core aspects, the BOT Policy aims to raise the standard of governance, strategy, risk management, and disclosure to be in line with international standards, e.g. the UN's Principles for Responsible Banking (UNPRB), Principles for Responsible Investment (UNPRI), and Equator Principles. The notable points are as follows:

(1) **Governance** – The board of directors and high-level management should have the roles to set the direction of their financial institutions in consideration of environmental perspectives.

(2) **Strategy** – The financial institutions should integrate environmental considerations into their strategy and promote the transition to sustainability by encouraging green financing, e.g. with sustainability-linked loans or green loans, and adopting acceptable standards, e.g. the ASEAN Taxonomy or Thailand Taxonomy (see below).

(3) **Risk Management** – The financial institutions should integrate environmental considerations into their risk management.

(4) **Disclosure** – The financial institutions should commit to constant disclosure of their sustainability which is in accordance with acceptable or international standards, e.g. the Task Force on Climate-related Financial Disclosures (TCFD) or International Sustainability Standards Board (ISSB).

Although the BOT Policy does not have a mandatory effect, the BOT will monitor and assess the adoption of the BOT Policy from the year 2024 onwards. As the adoption will allow financial institutions to manage risks, attract investors and customers, and contribute to long-term business viability in a rapidly evolving and sustainability-focused landscape, it is likely that financial institutions will cooperate in implementing this.

In the upcoming stages, the BOT may introduce an industry book that outlines the steps to adopt its policy. While awaiting further guidance, the BOT recommends financial institutions to apply international benchmarks, e.g. regional or international taxonomies, to their business activities and practice.

**1.2. Thailand Taxonomy**

The BOT has taken another significant stride towards promoting sustainable financing through the preparation of the draft Thailand Taxonomy (the "Taxonomy"). This Taxonomy will serve as a common framework for financial institutions, corporate sectors, and investors in classifying economic activities that align with sustainability goals. Though the Taxonomy will be used as a guideline applicable on a voluntary basis, the implementation of the Taxonomy is expected to play a significant role in Thailand's green financing market. This could align the country's green financing standards with international benchmarks. For more details on the Taxonomy, please see our newsletter on the Taxonomy (LINK).

**2. Development from the Securities and Exchange Commission ("SEC")**

The SEC also demonstrates its commitment to the sustainability movement by actively promoting the issuance and offer for sale of green bonds, social bonds, and sustainability bonds. These bonds share the characteristics of debt securities with other types of bonds and are not considered as a distinct category of debt securities. Their only distinction is their fundamental purpose, which is to finance sustainable projects. As such, the issuers must adhere to the SEC regulations on debt securities at a minimum, in addition to meeting additional information standards. To ensure that green bonds, social bonds, and sustainability bonds will be used for their fundamental objectives, the SEC places emphasis on their disclosure standards. This means that the issuers must comply with disclosure requirements in accordance with internationally recognized standards, such as the ASEAN Bond Standards or the International Capital Market Association Bond Principles (ICMA) which are applicable to these types of bonds. The issuers must disclose key information, including the use and management of proceeds, as well as the evaluation and selection process of the investment projects. Collectively, green bonds, social bonds, and sustainability bonds are referred to as "environment conservation bonds". The criteria and the conditions of issuance of environment conservation bonds are provided under the Notification of Capital Market Supervisory Board TorJor. 16/2565.

In addition to facilitating bond issuance, the SEC has established regulations and guidelines for sustainable and responsible investing funds, known as SRI Funds. To encourage market participants to actively participate in sustainable finance initiatives, the SEC's approach is to exempt official fees associated with ESG-related bond issuance and the establishment of SRI funds (for applications submitted in 2023). Moreover, the SEC has also published comprehensive guidelines addressing the management and disclosure of such risks for asset management companies.

**3. Other key developments**

**3.1. Equator Principles**

Equator Principles serve as a risk management framework for financial institutions, enabling them to assess and evaluate environmental and social risks associated with project finance. Financial institutions worldwide can opt to adopt the Equator Principles and refrain from financing projects that are non-compliant with the Equator Principles. Recently, the Siam Commercial Bank marked a milestone in becoming the pilot bank in Thailand to join the Equator Principles. While it is possible that more financial institutions in Thailand may follow, some financial institutions may alternatively consider comparable principles when investing in projects without formally joining the Equator Principles.

**3.2. Human Rights Due Diligence ("HRDD")**

HRDD is a process undertaken by companies to identify, prevent, mitigate, and account for the impacts of their activities, operations, and business relationships on human rights. Recognizing the interconnected nature of human rights with social and environmental issues, the United Nations Development Programme (UNDP) has developed global guidance in the form of guidelines on HRDD. These guidelines provide a comprehensive framework for companies to ensure the respect of human rights and avoid any involvement in or contribution to human rights abuses. It is important to note that the legal framework concerning business and human rights guidelines is recent and non-binding in Thailand.

However, companies in Thailand are being encouraged to examine the extent to which their human rights commitments apply as part of the global supply chain. This is due to the adoption of mandatory HRDD requirements in various countries aimed at identifying and mitigating risks across value chains. Consequently, companies operating in Thailand may also be required, through contractual obligations with purchaser companies, to conduct human rights due diligence in certain instances.

With growing awareness of the link between business activities and human rights abuses, it is expected that human rights-related litigation may continue to rise, and financial institutions, investors, customers, and business partners are likely to give more consideration to HRDD as part of their risk assessment and decision-making processes.

**3.3. Carbon Credit Market**

The Thailand Voluntary Emission Reduction Program (T-VER Program) was developed and introduced by the Thailand Greenhouse Gas Management Organization (TGO) as a mechanism for acquiring carbon credit in Thailand. The program enables projects to generate carbon credits, which can then be used to offset greenhouse gas emissions or sold to businesses that are unable to reduce their own emissions. Recently, the TGO announced updates to the qualification criteria and registration process for the T-VER Program. These updates are outlined in the TGO rules on criteria, methods, and conditions for the consideration of national voluntary emission reduction projects B.E. 2566 (2023), as well as the guidelines for the development of voluntary emission reduction projects in Thailand, No. 3. As part of these updates, the TGO has introduced the T-VERs premium standard known as T-CERs, which incorporates additional methodologies aligned with international practices. In the future, Thai companies may be able to register projects for T-CERs which can conform with the modalities and procedures of Article 6, eligibility criteria under CORSIA, and other relevant mechanisms. However, as the program has recently launched at the beginning of this year, T-CERs are still pending approvals/verification from relevant schemes.

## Final thoughts

ESG developments present a challenging yet transformative landscape that businesses must navigate to harness opportunities and mitigate risks. To effectively incorporate ESG principles into their strategies, businesses should stay well-informed and updated on the ever-evolving legal and regulatory frameworks surrounding environmental, social, and governance issues. With climate change, social justice, and activist shareholders among the many facets of ESG, it is crucial to recognize that the entire landscape is dynamic. Shareholder activism is on the rise, with companies' ESG commitments facing greater scrutiny. To avoid stakeholder discontent, activist challenges, and unwanted attention, businesses must fully grasp the ESG narrative and consistently address related concerns.

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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As part of the global movement to progress towards net zero, individual, corporate, and governmental sectors are in a race for reaching the ultimate sustainable development goals. Globally, several financial institutions are committed to sustainable financing, including some commercial banks in Thailand. In this regard, there is a significant rise in investment products being marketed as sustainable and labelled with terms such as 'green' or 'ESG'. However, there are growing concerns about the accuracy of these claims and whether these products truly align with these sustainability indications. As such, the adoption of Thailand Taxonomy can fill in this gap where investors and financial institutions can employ it to identify which economic activities are sustainable investment opportunities, and minimize their risks of greenwashing. Meanwhile companies may use alignment with taxonomy to demonstrate their commitments to sustainability and to access sustainable finance. In addition, although Thailand Taxonomy itself is not legally binding, the Thai government could take Thailand Taxonomy into consideration when forming and proposing any relevant policy and regulation in the future.

Against this backdrop, we expect to see various incentives for taxonomy-aligned projects and financial products. For example, the companies may be able to access better loan packages if financial institutions decide to incentivize taxonomy-aligned activities e.g., more favorable terms, particularly on interest rates and pricing. In terms of the issuance of green bonds or provisions of green loans, Thailand Taxonomy criteria may be employed to supplement the green bonds and loans standards. For instance, to be qualified as a green bond or a green loan, the proceeds from the issued bonds or loans must be allocated to taxonomy-aligned projects. In addition, we may also see more policies from the Thai government to achieve decarbonization goals in line with the Thailand Taxonomy.

## Summary

Thailand Taxonomy Phase 1 represents a gradual but significant shift towards sustainable investing and a greener economy. While it may pose some challenges for businesses and investors in the short term, it also provides an opportunity to transition toward a more sustainable future. Thailand Taxonomy will serve as a tool to assess the sustainable development of economic projects and activities. As the Taxonomy is closely linked to environmental, social, and governance factors – all of which are increasingly important considerations for investors and businesses, especially for Thai listed companies whose reporting obligation on their ESG performance is mandatory – the adoption of taxonomy can be used as a benchmark to help these companies and other stakeholders better understand how to align with sustainability goals. It is also important to note that overlapping and diverse taxonomies could lead to difficult situations, especially where business is conducted on a cross-border basis. Therefore, understanding and complying with the applicable rules as well as the applicable taxonomy should be at the top of the agenda for all stakeholders, especially for global institutions.

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