

A COMPARISON OF RENEWABLE ENERGY LAWS



IN A RACE TO ACHIEVE NET ZERO, ASIAN COUNTRIES HAVE SET POLICIES FOR WIND AND SOLAR ENERGY DEPLOYMENT AND GENERATION. BUSINESSES SHOULD KEEP ABREAST OF ENVIRONMENTAL STANDARDS AND REQUIRED ASSESSMENTS IN THIS EVOLVING SECTOR

THAILAND



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Project developers must comply with multiple layers of laws and regulations to implement and operate an energy business in Thailand. These include the Petroleum Act, Energy Industry Act, Fuel Trade Act, Enhancement and Conservation of the National Environmental Quality Act and Energy Conservation Promotion Act.

Environmental standards and impact assessment requirements are prescribed under all this legislation to prevent environmental degradation, and violation subjects an energy business operator to certain penalties.

In addition, certain environmental measures are prescribed to promote sustainable consumption.

In relation to project development such as converting primary natural resources like coal or natural gas into electricity, certain licences and permits must be obtained. Once these are issued, the permitted activities become subject to state monitoring and evolving environmental standards.

Non-compliance with regulatory requirements will incur fines and criminal penalties, and require operators to compensate parties that have suffered injury arising from non-compliance.

NATURAL RESOURCES

Petroleum resources *in situ* belong to the state. Therefore, pursuant to section 23 of the Petroleum Act, exploration and production of crude oil and natural gas in Thailand, both onshore and offshore, must be authorised by the Ministry of Energy.

A petroleum concession agreement, production sharing agreement or service agreement must be authorised by the ministry. Relevant fees and taxes also apply to the extraction and utilisation of protected natural resources. In addition, petroleum concessions are subject to royalty, special remuneration and other fees under the Petroleum Act. Corporate income tax is also levied as prescribed in section 20 of the Petroleum Tax Act.

ELECTRICITY AND NATURAL GAS

Reflecting energy liberalisation in Thailand, the Energy Act clarifies roles of the

energy policy maker, energy regulator and energy operators. It governs activities involving the generation of electricity for commercial purposes from primary resources such as petroleum, coal, sunlight and water resources. The act also governs natural gas business operations such as transporting extracted natural gas via pipelines.

In the absence of exemption by royal decree, electricity and natural gas operators must obtain an energy licence from the Energy Regulatory Commission (ERC). In relation to engineering and safety standards, the licensee is bound under section 72 of the Energy Act to fully comply with energy engineering and safety standards.

To encourage competition, the Energy Act stipulates that any licensee in an energy network must allow other licensees or energy industry operators within its network to utilise or connect to its energy network system.

At the operational level, if electricity producers wish to sell electricity commercially to the wholesale electricity market under the current enhanced single buyer model, they must do so through a competitive bidding process in line with guidelines set out by the ERC.

A successful private bidder typically signs a long-term power purchase agreement (PPA) with a state-owned electricity enterprise, namely the Electricity Generating Authority of Thailand, Metropolitan Electricity Authority, or Provincial Electricity Authority.

Once a PPA has been signed, an operator can construct physical facilities by relying on a one-stop-service system under section 48 of the Energy Act. This system is available for producers to obtain other relevant licences from the ERC, including for factory establishment and building construction, which are required for setting up a power plant.

However, the Energy Act does not cover activities relating to natural gas supply for the transport sector. These activities are subject to the Fuel Trade Act. Section 7 stipulates that a person seeking to become a fuel trader – namely, an importer of more than 100,000 metric tonnes of

natural gas per annum (but excluding a petroleum producer under the Petroleum Act) – must obtain a licence from the Ministry of Energy.

If a natural gas trader wishes to establish and operate a natural gas station for road vehicles, registration is required with the director general of the Department of Energy Business, within the Ministry of Energy.

ENVIRONMENTAL IMPACT

The energy licensing regime is also subject to an environmental regulatory framework. At the pre-approval stage for energy business and natural resource exploitation, an environmental impact assessment (EIA) is required from the relevant authority.

The Ministry of Natural Resources and the Environment has the power under section 48 of the Environmental Conservation Act to declare which activities or projects require an EIA report. The EIA report must be submitted to the Office of Natural Resources and Environment Policy and Planning (ONEP) for approval from an expert committee.

The expert committee, appointed by the National Environment Board, exercises its discretionary power to endorse an EIA before the official with power to permit the announced activities grants permission for the establishment of a power plant or petroleum exploration agreement.

The authorising agencies have the power under section 51/5 of the Environmental Conservation Act to instruct a power plant licensee that fails to comply with or implement measures in the approved EIA to fully comply and submit a report to the ONEP.

The Ministry of Natural Resources and the Environment is in charge of environmental regulation in Thailand relating to emissions and waste standards, responsible for setting emission caps for dust, sulphur dioxide and nitrogen dioxide for power plants, advised by the Pollution Control Committee and subject to National Environment Board approval, in accordance with section 55 of the Environmental Conservation Act.

Additionally, a thermal power plant is

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considered a controlled source of pollution under the Environmental Conservation Act. The owner or possessor of a thermal power plant is required under section 80 to have in place a system for the treatment of polluted air, as well as equipment or instruments to control the discharge of polluted air; and is also responsible for collecting statistics and data showing daily functioning of the systems, and relevant equipment and instruments. Monthly reports must be submitted to the local office where the source of pollution is situated.

LIABILITIES

Section 101 of the Environmental Conservation Act stipulates that a person who conducts activities and projects subject to EIA requirements – such as petroleum exploration and the establishment of a thermal power plant having a generation capacity of 10MW or more – without first obtaining the approval of an expert committee is liable to imprisonment or a fine not exceeding THB1 million (USD29,000), plus a daily fine of THB100,000 throughout the period of violation.

Civil liability for damage caused by a pollutant is explicitly recognised under

section 96 of the act, which states that if leakage or dispersion of pollutants caused by (or originating from) a source of pollution causes death, bodily harm, injury or ill health of a person, or causes damage in any manner to the property of a private individual or the state, the owner or possessor of such source of pollution is liable to pay compensation or damages, regardless of whether the leakage or dispersion results from a willful or negligent act. The competent court will determine the amount of compensation to be awarded to the injured party based on the actual losses caused by the pollutant.

SUSTAINABLE CONSUMPTION

Energy consumption is regulated under the Energy Conservation Act, which is aimed at controlling energy consumption in certain factories and buildings.

A royal decree promulgated under section 8 of the act categorises a factory that uses more than 10,000kW as a controlled factory. According to section 8, paragraph 1, the owner of a controlled factory must ensure that energy is consumed in quantity and according to methods set out in the promulgated royal decree.

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