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MAR 2022 / ASIA EDITION

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MCI (P) 005/02/2022
ISSN 0219 – 6875
KDN PPS 1867/10/2015(025605)

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GREEN AMBITIONS

As environmental, social and governance (ESG) issues take centre stage around the world, governments are taking steps to create investment opportunities and construct a more environmentally friendly operating environment. Lawyers say Thailand, a leader in ESG disclosure in Southeast Asia, is well placed to court the benefits of such a shift. **BY ELIZABETH BEATTIE**

Asia as a region is catching up with the global trend of sustainable investment, and one of the early leaders is Thailand. Regulators have introduced a series of policy initiatives related to environmental, social and governance (ESG) performance. And companies locally are being urged to evolve in order to take advantage of the opportunities.

In November 2021, Chanchai Chaiprasit, CEO of PwC Thailand said in a media statement that local companies need to embrace ESG to draw foreign investors.

"One of the most common questions we've heard from those looking to make direct investments is what Thai companies have done in relation to ESG. There is a great appetite to increase investment in companies that are serious about ESG, showing the issue now presents both opportunities and risks for those who are not prepared for it," Chanchai said.

Moreover, 49 percent of investors who participated in the PwC 2021 Global Investor ESG Survey answered that they would be willing to divest from a company that was not taking action on ESG issues. ESG is no longer a nice-to-have — and Thailand's officials courting foreign investment are well aware of this.

Green Infrastructure Investment Opportunities Thailand (GIIO), a 2021 report, found that Thailand's latent potential for green infrastructure investment amounts to at least $31.9 billion.

The report determined that future infrastructure investment should focus on green projects, which present opportunities for Thailand to recover from the COVID-19 pandemic and achieve green growth while transitioning to a low-carbon, climate-resilient economy.

David Beckstead, partner, Chandler MHM Limited says Thailand's government support for green investment can be seen in both the government procurement and in policies geared towards stimulating private investment. Thailand's Board of Investment (BOI), the primary government body promoting private investment across all sectors, which spans a broad variety of industries, is already highlighting these green opportunities.

"The BOI's current list of promoted businesses or projects includes various types of eco-friendly manufacturing, renewable energy generation, manufacturing of all aspects of EV infrastructure, and more," Beckstead says.

"BOI promoted projects are eligible for a number of tax and non-tax incentives, including corporate income tax holidays of up to eight years, exemptions on import duties and VAT, special allotments of work permits for foreign experts, and special permission to own land and/or operate in business sectors that are otherwise restricted to foreigners," Beckstead explains.

Government procurement is another avenue for green projects in Thailand. "The Electricity Generating Authority of Thailand (EGAT), as well as the Metropolitan Electricity Authority (MEA) and the Provincial Electricity Authority (PEA), are the state-owned electricity utilities responsible for operating the transmission and distribution grids," Beckstead says, explaining that these utilities regularly purchase electricity from private providers.

"Much of the procurement over the past decade has focused on renewable energy projects, with a primary focus on solar, biomass, biogas and wind energy," he adds.

POLICY REFINEMENT

Additionally, Thailand continues to refine its policy, with the National Energy Policy Council regularly updating Thailand's Power Development Plan (PDP) to set out development priorities, says Beckstead.

"The most recent amendments to the PDP occurred in 2015 and 2019

Equator Principles: The Gold Standard in Sustainable Project Finance

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Almost two decades from the first introduction of the concept of environmental, social and governance (ESG), ESG issues have now become one of the core values of not only project owners, but also financial institutions across the globe. In considering whether to finance the development of a project, financial institutions normally scrutinize a project from various perspectives to ensure the project's viability and, if required, impose measures to be implemented by the project in order to minimize the negative impacts of the project on the surrounding environment. In this connection, it is helpful that financial institutions have internationally recognized guidelines to refer to.

The Equator Principles (EP) are intended to provide a minimum standard of due diligence in supporting responsible decision-making when assessing risk. They are designed to be a financial institution's benchmark for determining, assessing, and managing the environmental and social issues related to projects. Equator Principles adopting financial institutions (EPFIs) are committed to follow certain requirements and comply with ongoing reporting obligations of their project lending activities and resulting outcomes. The adoption to EP is completely voluntary and open to those who meet the relevant adoption requirements.

EP applies to five types of projects across all industries. Those five projects are: project finance advisory services, project finance, project-related corporate loans, bridge loans, project-related refinance, and project-related acquisition finance. In order to comply with EP, EPFIs must implement ten EPs through their internal environmental and social risk management policies, procedures and standards. Commencing from the point at which the financing of a project is proposed, the EPFI will review and categorise the project based on the magnitude of the potential environmental and social risks and impact. The assessment will be in accordance with the International Finance Corporation (IFC)'s environmental and social (E&S) categorisation process. Accordingly, the level of each of E&S assessment process, applicable E&S standards, E&S management systems, EP action plan, stakeholder engagement, grievance mechanism, independent review, covenants, independent monitoring, reporting and transparency required for each project will depend on its categorisation.

Currently, 129 financial institutions from 39 countries have officially adopted EPs. On 31 January 2022, The Siam Commercial Bank Public Company Limited (SCB), one of Thailand's leading commercial banks announced that it had become a signatory of the Equator Principles. This marks the first financial institution of Thailand adopting EP and is therefore a significant step towards the adoption of ESG by Thailand's financial institutional sector.

Financial institutions around the world have been reminded of the importance and practicality of promotion of ESG through EP adoption. Given the recent announcement by SCB, it will be interesting to see whether other Thai financial institutions will follow suit. To that end, we hope to see EP becoming an increasingly important component of project financing by Thai financial institutions in Thailand and elsewhere, therefore bringing about more sustainable and responsible lending practices.

(with retroactive effect to 2018); a further amendment is expected within the next twelve months. Under the PDP, the Ministry of Energy has developed the Alternative Energy Development Plan (AEDP), which set out specific targets for renewable energy generation," Beckstead says.

"The current PDP outlines targets to be achieved by 2037 with respect to renewable energy penetration. This has been ratcheted up in recent years, demonstrating the Thai government's commitment to continue to promote green energy," Beckstead explains. He breaks it down: "By way of example, Thailand's 2037 target for solar power in PDP 2015 was 6,000 MWp in installed capacity; this was increased to 10,000 MWp of installed capacity by 2037 in PDP 2018. These policy signals allow the government electricity utilities (i.e., EGAT, PEA and MEA) to procure electricity from renewable sources."

While a policy update to the PDP is expected sometime in the period between 2022 to 2023, there may be further refinement ahead.

"It will be interesting to see whether the Thai government intends to set out its road map for achieving carbon neutrality in the next amendment to the PDP," Beckstead notes. "The revised PDP and AEDP may include specific measures around other green energy initiatives, such as green and blue hydrogen production and carbon capture, utilisation and storage."

As Thailand continues to accelerate its green business model, Beckstead says that there are many other areas of opportunity where green transformation can be expected.

"Greater liberalisation of the power sector would likely act as a catalyst for further investment in renewable energy. At the moment, the Energy Regulatory Commission is in the process of considering regulations relating to third-party access to the electricity grid," Beckstead says.

"If these third-party access codes are promulgated, it could potentially allow direct sales from private power producers to a portfolio of customers. In practice, this may incentivise the expansion of renewable energy capacity," he notes.

Another area of opportunity is hydrogen. Beckstead says that it would be beneficial for the Thai government to begin developing a comprehensive plan to accommodate this.

"Other jurisdictions in the Asia Pacific with suitable conditions for green and blue hydrogen production, such as Australia, are setting out policy objectives in this sector to attract private investment," he says, noting that at present there is "a degree of uncertainty on how Thailand will regulate this industry — if it ever takes off, thus resulting in minimal interest from the private sector."

"Setting out clear policy objectives would signal to the private sector that Thailand is an attractive jurisdiction for investment in this space," says Beckstead.