



THAILAND

by:

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BASELINE REPORT: THAILAND

Overview

The Kingdom of Thailand (Thailand) is situated in Southeast Asia, with its area covers 513,120 sq.km, bordering Myanmar to the West, Cambodia and Laos to the East, and Malaysia to the South. Thailand's economy has largely depended on exports, and from since 1997-1998 crisis, Thailand has experience consistent economic growth at the average rate of 4%. In 2010, the country experienced the highest economic growth since 1995 at 7.8% before plunging to around 4% in 2011 due to historic flooding. The GDP per capita is roughly at \$9,500 in 2011, and its labour force at 39.62 million makes Thailand the World's 16th.¹

In relation to business and human rights, Thailand is party to seven major international human rights instruments namely Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social, and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention Against Torture (CAT), and Convention on the Rights of Persons with Disabilities (CRPD).²

Due its dualist approach, Thailand has implemented its international obligations into its domestic legislations. In addition, Thailand's Constitution establishes the National Human Rights Committee (NHRC) to become the major focal point of contact to receive complaints of potential human rights violation. One of its current projects is to conduct active strategic studies on business-related human rights violations – encompass, among others, issues concerning labour, environment, and women and children – at greater length including the proposition to create Corporate Social Responsibility (CSR) guidelines that relatively mirror the one issued by the UN Global Compact and the OECD.

Moreover, at the corporate level, it is welcoming that certain business firms begin to voluntarily incorporate CSR into their business strategy, by, for instance, adopting international CSR best practices such as the Global Reporting Initiative (GRI) into their business operation.

1 CIA World Fact Book, "Thailand," at <https://www.cia.gov/library/publications/the-world-factbook/geos/th.html>, accessed 1 September 2012

2 Office of the National Human Rights Commission of Thailand, "Thailand's International Human Rights Obligations," at http://www.nhrc.or.th/2012/wb/th/contentpage.php?id=21&menu_id=2&groupID=2&subID=19, accessed 1 September 2012

Snapshot Box

Types of business entities permitted by law ³	<p>Under CCC</p> <ul style="list-style-type: none"> • Ordinary partnerships (1,027) • Limited partnerships (157,506) • Limited companies (343,216) <p>Under the PLC Act</p> <ul style="list-style-type: none"> • Public limited companies (920) <p>State-owned or-controlled enterprises</p> <ul style="list-style-type: none"> • State-owned, incorporated by Act • State-owned, incorporated by Royal Decree pursuant to the B.E.2496 Act • State-owned banks • State-owned or –controlled limited companies
Number of Multinational Business Enterprises operating in the country	N/A
Number of Small and Medium Business Enterprises operating in the country	N/A
Number of State-owned Enterprises and the industries in which they operate	<p>9 categories</p> <ol style="list-style-type: none"> 1) Energy (4) 2) Transportation (11) 3) Communication (4) 4) Public Facilities (6) 5) Industrial and Commercial (8) 6) Agriculture (6) 7) Natural Resources (3) 8) Society and Technology (5) 9) Financial Institutions (10)
Flow of Foreign Direct Investment from 2008 to 2012	N/A
Number of cases involving business-related human rights abuses reported to NHRIs, and/or other national human rights bodies or international human rights bodies	<p>NHRC</p> <ul style="list-style-type: none"> • 1 October 2011 – 10 February 2012: 173 cases • 1 October 2010 – 30 September 2011: 694 cases • 1 October 2009 – 30 September 2010 707 cases

³ Department of Business Development Royal Thai Government, “Information Concerning the Registration of Juristic Persons – February 2012,” issued 1 March 2012.

I. How has the State reacted to the UN “Protect, Respect and Remedy” Framework (“Framework”)?

The subject of correlation between business and human rights has recently gained an increasing prominence at the international level, as the topic has been placed on agenda at various meetings of international organizations, undoubtedly including the United Nations. Resulting from such meetings are several initiatives to form guidelines in order to provide guidance for the protection of human rights caused by business-related operations. Two notable examples are the UN Global Compact and the OECD Guidelines for Multinational Enterprises; the instruments that recognize that business activities can have a negative impact on human rights. Furthermore, in 2011, the United Nations endorsed Guiding Principles prepared by the team of Special Rapporteur Professor John Ruggie called the United Nations “Protect, Respect and Remedy” Framework [hereinafter referred to as “the UN Framework”].⁴

The UN Framework rests on three pillars: “protect, respect and remedy”.⁵ Accordingly, the UN Framework elaborated upon a State duty to protect human rights, a corporate responsibility to respect human rights, and the need for effective remedies in the event following corporate breaches of human rights.⁶ Regarded as the “authoritative focal point”⁷ for further discussion and research at the greater depth, the UN Framework is used in this report as a skeleton for the purpose of examining the business and human rights issue in Thailand.

At present, the government of Thailand has neither made any formal reaction nor reference specifically to the UN Framework, whether through any formal declarations or court judgments. However, similar

4 John Ruggie, Report of the Special Representative of the Secretary-General on the issues of human rights, transnational corporations and other business enterprises, “Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, 21 March 2011. A/HRC/17/31

5 Ibid.

6 Ibid.

7 Ibid., 3

to other members of the Human Rights Council, Thailand endorsed the Council resolution on the Guiding and the establishment of a Working Group on Business and Human Rights. At the broader level, Thailand has made international pledge to voluntarily affirm human rights, as it stated “Thailand is firmly committed to the respect for human dignity, justice, compassion, non-discrimination, and a sense of mutual obligations to the fellow human beings.”⁸ Thailand is also committed to fully cooperate with the Human Rights Council and to reaffirm its belief that all human rights are indivisible, interdependent and interrelated and will continue to promote and protect all human rights, be they civil, political, economic, social, and cultural rights, and the right to development on an equal footing.⁹

With reference to business and human rights, echoing the outcome of the Final Report by the Advisory Council of Jurist (ACJ), an independent organ, at the Asia Pacific Forum that various ‘soft law’ initiatives such as the OECD Guidelines and the ILP Declaration of Principles for Multinational Enterprises have been generally proven to attain a higher level of achievement than the binding international rules¹⁰, the scenario of corporate human rights accountability in Thailand also rely on guidelines and best-practices rather than the binding legal rules. This will be further elaborated at the later part of this research.

Status of Business-related Human Rights Violation in Thailand

While Thailand has neither made any formal reaction nor reference to the UN Framework as indicated, the National Human Rights Commission of Thailand (NHRC) is currently given mandated to conduct active strategic studies on business-related

8 The Permanent Mission of Thailand to the United Nations, “Thailand’s Voluntary Pledges and Commitments in the field of human rights,” Letter No.56101/643, April 24, 2006

9 Ibid.

10 ACJ Reference on Human Rights, Corporate Accountability and Government Responsibility Report, see <http://www.oecd.org/dataoecd/56/36/1922428.pdf>

human rights violation at greater length.¹¹ Its studies include the proposition to create Corporate Social Responsibility (CSR) guidelines that relatively mirror the one issued by the UN Global Compact and the OECD; the study that will seek cooperation with the CSR Asia organization, commencing July 2012.¹²

However, at this point, it is premature to canvass a definite character of what issue would constitute business-related human rights violations, as a number of claims to NHRC seem to have business elements added to them. At the moment, the NHRC receives claims on human rights violation pertaining to a number of contexts, ranging from labour rights to environment. Certain relating areas are highlighted in Question III.2.2.

II. Is the State duty to protect against human rights abuses by third parties, including businesses (“State Duty to Protect”), recognized in the country’s domestic legal system?

Thailand is a party to most major international human rights instruments; hence, by virtue of its dualist approach, its domestic laws, particularly the Constitution and the Criminal Procedure Code, incorporate and endorse such international human rights obligations. Notwithstanding the general human rights protection accorded under the existing domestic laws, Thailand has not ratified certain international instruments, such as International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which should deal directly with the problems of human rights abuses involving business activities. Among the issues, which could potentially become the problem of human rights abuses involving business activities, is the problem on migrant workers. Being an important hub for migrant workers, the context in Thailand largely

implicates the abuses of the rights of migrant workers, including poor working conditions and working rights restrictions. Furthermore, the problem could also aggravate to involve forced labour or even child labour. Therefore, it is fair to conclude that specific consideration on the human rights protection involving abuses by business activities is still lacking in Thailand.

On another angle, Thailand’s corporate laws do not contain any specific reference to corporate human rights accountability. Rather, they merely prescribe requirements needed to form a business entity, general duty of directors, and responsibilities of directors in time of breach or damage.

1. Do any of the State’s domestic laws, including the Constitution / basic law of the State, provide a basis for a State Duty to Protect?

Thailand has not taken a specific position in response to the Framework on State Duty to Protect. However, there exist a number of Thailand’s obligations to uphold fundamental human rights and to prevent human rights violations.

a) Constitution

In general, the Constitution of the Kingdom of Thailand B.E.2550 (2007), or the Constitution,¹³ expressly provides a basis for the affirmation of fundamental human rights, which undoubtedly encompasses the issues on business-related human rights, and reflects the State’s duty to protect those who are violated. The Constitution affirms that all persons, men and women, are equal before the law and shall enjoy equal protection under the law.¹⁴ The Constitution also prohibits unjust discrimination against a person on the grounds of difference in origin, race, language, sex, age, physical and health condition, personal status, economic or social standing, religious belief, education, or Constitution

11 Thai National Human Rights Commission officer, interview by Pawat Satayanurug, Bangkok, Thailand, June 19, 2012

12 Ibid.

13 Constitution of the Kingdom of Thailand B.E. 2550 (2007) [“Constitution”]

14 Constitution, Article 30, para. 1

political views.¹⁵

In addition, the Constitution affirms that all persons shall enjoy the liberties to engage in an enterprise or an occupation and to undertake fair and free competition,¹⁶ as well as to have the right to receive the guarantee of personal safety and security at his or her work, including the guarantee of life security both during and after his or her working period, as provided by law.¹⁷

b) Labour

One of the most notable obligations relating to the prevention of human rights violation arising from the course of business conduct is undoubtedly the obligation to ensure labour protection. To ensure that fundamental protection of human rights for labours is carried out, the Labour Protection Act B.E. 2541 (1998)¹⁸ was enacted, and subsequently amended in 2008. It imposes the duties to employers not to engage in human rights violation arising from the course of the work against all workers regardless of nationality and legal status. However, certain types of employers are excluded from its obligation under the Act: central, provincial, and local administrations; state enterprise under the law of the State Enterprise Labour Relation; and other employers as specified in the Ministerial Regulations.¹⁹ Such other employers include those carrying on the business of a private school under the law governing private schools on the position of headmasters and teachers²⁰, those who recruit employees for housework and who are not involved in any business whatsoever²¹, and those who undertake non-profit activities²². Moreover, certain types of work are given different labour protection rules as prescribed in the Ministerial Regulations:

15 Constitution, Article 30, para. 2

16 Constitution, Article 43

17 Constitution, Article 44

18 Labor Protection Act B.E. 2541 (1998) ["Labor Protection Act"]

19 Labor Protection Act, Section 4

20 Ministerial Regulations B.E. 2541 (1998) issued under the Labor Protection Act. B.E. 2541 (1998), Issue 1, Section 1

21 Ibid., Issue 2, Section 2

22 Ibid.

agriculture, sea fishing, loading or unloading of marine cargoes, home work, transport work, and any other work as mentioned in the Royal Decree. Explicit exclusion from the compliance with the Act are the business organizations that are governed by Security and Stock Exchange Act B.E. 2539 (1996) and High Private Institute Education Act B.E. 2546 (2003).

Generally, the employers are bound to treat the employees in accordance with the rights and duties prescribed in the CCC.²³

c) Environment

Another probable aspect of human rights violation arising from the course of business conduct encompasses environment. Declared as one of the fundamental rights all individuals are entitled to enjoy, particularly and specifically addressed under the Constitution²⁴, Thai law contains a number of environment-related legislations aiming to address the issue. Before 1975, Thailand has yet enacted any law, which directly and holistically concerns the management of environmental problem. Only specific laws dealing with particular problems such as those concerning the regulation of industrialized factories or the maintenance of public health were enacted. The very first comprehensive environmental legislation was enacted in 1975, titled 'the Enhancement and Conservation of National Environmental Quality B.E.2518', establishing the National Environmental Committee, and the Office of the National Environmental Committee to be responsible for all environmentally-related issues in a holistic picture. The Act was superseded in 1992 by the B.E.2535 Act²⁵ of the same title, replacing the Office of the National Environmental Committee by establishing Office of the Natural Resources and Environmental Policy and Planning, Pollution Control Department, and Department of Environmental Quality Promotion.

23 Labor Protection Act, Section 14

24 Constitution, Part 8

25 The Enhancement and Conservation of National Environmental Quality Act B.E.2535 (1992) ["Environmental Quality Act"]

Among the ultimate objects and purposes of the 1992 Act are to encourage individuals and private entities to promote and conserve environmental quality; to accord the powers and duties of government agencies (both central and locals), public entities, and state enterprise to coordinate and be jointly tasked to promote and conserve environmental quality; and to clearly identify the responsibility of those whose actions cause pollution and/or other harms to the environment.²⁶

d) Land

Thailand is an agricultural country, and the large part of its income relies on the agricultural sector that utilizes land. As affirmed in the Constitution, the state must fairly distribute the land ownership and strive to ensure the ownership or right to make use of land for agricultural purpose to farmers.²⁷ In addition, to ensure that those working in the agricultural sector possess land, the Land Reformation for Agriculture Act B.E.2518 (1975), with the latest revision in 1989, was enacted to alleviate the problem of non-ownership of land that once forced many to let land and pay a great sum of money, to fairly distribute lands to maximize their utility, and to narrow the gap of social inequality.²⁸ Consequently, the promulgation of the Act indicates Thailand's intention to protect its nationals from the non-ownership of land, and to ensure their fundamental right to work.

Moreover, to prevent the excessive exploitation and deterioration of land quality from, for instance, business operations, the Land Development Act B.E.2551 (2008) was enacted. The term "land development" refers to any acts carried out to improve land quality or to increase productivity without compromising the land quality, and also refers to the improvement of land that is infertile naturally or by excessive uses.²⁹ The Act stipulates measures to conserve land and water to reduce the

²⁶ Environmental Quality Act, Remarks at the end of the 1992 Act

²⁷ Constitution, Article 85

²⁸ Land Reformation Act for Agriculture B.E.2518 (1975)

²⁹ Land Development Act B.E.2551 (2008) ["Land Development Act"], Section 5

erosion rate and to prevent landslide, and prohibits any acts that may cause pollution or contamination to land.³⁰ Hence, business entities are prohibited from operating in the way that would pose harmful effects to land.

2. Has the State Duty to Protect been recognized by the State's courts?

Recognition on the State Duty to Protect by the Thai courts has not been made explicit. However, the recent development in the case concerning the industrial pollution to the local community caused by the Map Ta Phut industrial estate, or the "Map Ta Phut" case, deserves an attention. The crux of the case concerns the alleged negligence of the National Environmental Committee (the Committee) to declare the Map Ta Phut and the surrounding areas to be the pollution control zone, and thus resulted in the excessive polluting activities by the firms operating in the area. The Rayong Administrative Court ruled in favour of the plaintiffs and ordered the Committee to declare the area as the pollution control zone. The Committee subsequently made such declaration on 16 March 2009.³¹

The sequel continues in that the Anti-Global Warming Association et.al. sued the Committee and 8 government agencies relating to the approval of 76 projects in the area on the account of non-compliance with the requirement prescribed in the Constitution. Section 67 of the Constitution imposes a number of obligations and the most important ones are the requirement that the Environmental Impact Assessment (EIA) be carried out and public hearing be conducted.³² The Rayong Administrative Court issued provisional measures to halt all 76 projects until the release of the final judgment. Entrepreneur and investors then sought appeal to the Supreme Administrative Court, citing

³⁰ Ibid., Section 15

³¹ National Human Rights Commission, Assessment Report on Human Rights Situation in Thailand (2009-2009) ["NHRC Report"], 68

³² Constitution, Section 67

the importance of the projects and the significant financial damage to the Thailand's economy. On 2 December 2009, the Supreme Administrative Court delivered its judgment by ordering the halt of 65 projects, thus allowing 11 projects to continue their operations. The judgment, as expected, received unfavourable response by the local community.³³

At the time being, the government has set up a committee to follow the developments of the situation in the area. Consequently, it is fair to conclude at this stage based on the Map Ta Phut case that Thai courts do recognize the State Duty to Protect, but at the same time they take into consideration other factors in reaching the judgment.

III. Is the State taking steps to prevent, investigate, punish and redress business-related human rights abuses through effective policies, legislation, regulations and adjudication?

1. Are there government bodies and/or State agencies that have the responsibility to prevent, investigate, punish and redress business-related human rights abuses? If so, how have they done so?

In Thailand, there is no government body, which bears direct responsibility to prevent and/or address human rights abuses by businesses. However, there exist two government bodies, whose mandates are to prevent and/or address human rights abuses in general: the National Human Rights Commission of Thailand (NHRC) and the Rights and Liberties Protection Department (RLPD).

a) The National Human Rights Commission of Thailand

The NHRC is established under the auspice of the Constitution of the Kingdom of Thailand B.E.2550 (2007) as one of the "other institutions under the Constitution". It comprises one president and six

members of the committee. Its nine mandates are:³⁴

- (1) Investigating and reporting the act or omission amounting to violation of human rights or in violation of Thailand's international human rights obligations, and proposing appropriate solutions to such individuals or entities. In case of non-compliance, the NHRC shall report to the parliament for further actions.
- (2) Forwarding the issue with opinion to the Constitutional Court: In cases where there are complaints regarding the unconstitutionality of the law, particularly those constituting the human rights violation, the NHRC, upon receiving the complaints, may forward the issue to the Constitutional Court. The law in question must possess the status of the Act, the law promulgated by the parliament, or its equivalent.
- (3) Forwarding the issue with opinion to the Administrative Court: In cases where there are complaints regarding the illegality of the law, regulations, or other administrative measures, particularly those constituting the human rights violation, the NHRC, upon receiving the complaints, may forward the issue to the Administrative Court.
- (4) Instigating the case to the Court of Justice on behalf of the victims: In cases where the NHRC is asked by the victims and it considers appropriate for the purpose of human rights protection as a whole, the NHRC may instigate the case to the Court of Justice on behalf of the victims.
- (5) Providing recommendations regarding the amendment of laws and/or regulations to the parliament or cabinet in order to promote the protection of human rights.
- (6) Promoting the study, research, and distribution of knowledge on human rights.
- (7) Promoting the collaboration and coordination between government entities, non-government organizations, and other human rights organizations.

³³ NHRC Report, 69

³⁴ NHRC Report, Annex

- (8) Providing annual assessment report on human rights in situation in Thailand to the parliament.
- (9) Performing other duties as prescribed in other laws.

As previously mentioned, the NHRC reports annually to the parliament, and coordinates with the Office of the Parliamentary Ombudsman to avoid duplication of work.³⁵ It is headed by the Chair of the NHRC with 24 major sub-committees and 17 ad hoc sub-committees, all labelled under four categories: 7 for Civil, Political, and Community rights; 10 for Economic, Social, and Cultural rights; 9 for Law and Rights to Justice; and 11 for other matters. Each of the NHRC sub-committees is headed by a specific Commissioner,³⁶ and they are mandated to review complaints relating to their designated issues.

The procedure for NHRC grievance mechanisms for those seeking remedy for business-related human rights abuses are subsequently reported in Question III.10.

b) The Rights and Liberties Protection Department (RLPD)

The RLPD is established in 2002 as a department under the Ministry of Justice in response to the growing numbers of human rights violation in the country. Before the RLPD, the Ministry of Justice lacks a specific body to address the issue on inadequate human rights protection as well as to coordinate between relevant bodies to provide both the protection and remedy to the victims. Hence, the RLPD operates under the vision “to promote and to integrate greater human rights protection with innovations towards universality level.” To ensure that human rights protection is widely and equally provided, the RLPD is mandated with eight duties.

- (1) Provide a system to manage the protection of rights and liberties
- (2) Promote and develop the protection of rights and liberties
- (3) Promote and develop the dispute resolution mechanism within the society
- (4) Coordinate on the protection of rights and liberties with both public and private sectors, both domestically and internationally
- (5) Develop a system and measures to ensure adequate assistance of the victims of crime and innocent convicts, and to ensure that those affected are remedied and compensated in accordance with the law concerning the remedy and compensation of victims and defendants in criminal cases
- (6) Monitor and evaluate the outcome of the operation of its mandates
- (7) Ensure protection of witnesses in accordance with the law concerning the witness protection in criminal cases
- (8) Carry out other tasks as prescribed by law.³⁷

RLPD has also been active in carrying out various initiatives to ensure protection of rights and liberties. From its most recent published report, the RLPD has conducted a series of public education training aiming to educate public and government officials to become aware of their rights and liberties, and most commendably some of the training were held in the southern provinces of Thailand.³⁸ However, most of the tasks that RLPD carries out concern the witness protection in criminal cases, and it rarely receives complaints relating to business and human rights.

³⁵ Report on the National Human Rights Commission of Thailand 2010, 273

³⁶ Ibid., 276

³⁷ Rights and Liberties Protection Department, “Mandates,” at http://www.rlpd.moj.go.th/rlpd/index.php?option=com_content&task=blogcategory&id=22&Itemid=38, accessed 11 July 2012

³⁸ RLPD Annual Report 2011, at http://www.rlpd.moj.go.th/rlpdnew/images/AnnualReport/Annual_Report_54.pdf, accessed 11 July 2012

2. Are there laws and/or regulations that hold business enterprises and individuals accountable for business-related human rights abuses, and are they being enforced?

Generally, there are two major laws that govern types of business entities: the Civil and Commercial Code of Thailand or the CCC³⁹ and the Public Limited Company Act B.E. 2535 (1992) or the PLC Act. The CCC governs three types of partnerships or companies: ordinary partnerships, limited partnerships, and limited companies.⁴⁰

A partnership or company, upon registration being made at the Registration Office of the part of kingdom where the principal business office of the partnership or company is situated,⁴¹ constitutes a juristic person distinct from the partners or shareholders of whom it is composed.⁴² At the same time, the PLC Act governs, as the name suggests, public limited companies. Both legislations operate alongside, depending on the type of business entity they govern.

39 The Civil and Commercial Code of Thailand [“CCC”]

40 CCC, Section 1013

41 Ibid., Section 1016

42 Ibid., Section 1015

Types of Business Enterprises in the country

Name of the Type of Business Enterprise	Description of the Legal structure of the Type of Business Enterprise	Does incorporation of the business enterprise require any recognition of a duty to society, including human rights responsibility?	Any legislation specifically applicable to the Type of Business Enterprise (E.g. Corporations Law)	Laws which the Type of Business Enterprise are expressly excluded from
Ordinary partnerships	<ul style="list-style-type: none"> • The kind of partnership in which all the partners are jointly and unlimitedly liable for all the obligations of the partnership.⁴³ • Each partner must bring a contribution, whether in the form of money, other properties, or services, to the partnership,⁴⁴ and in case of doubt, contributions are presumed to be of equal value.⁴⁵ • If nothing has been agreed between the partners as to the management of the business of the partnership, such business may be managed by each of the partners provided that no partner may enter into a contract to which another partner objects, and each partner is a managing partner.⁴⁶ • The provisions of the CCC concerning Agency govern the relations of the managing partners with the other partners.⁴⁷ 	No	The Civil and Commercial Code of Thailand	The Public Limited Company Act B.E. 2535 (1992)

43 CCC, Section 1025

44 Ibid., Section 1026

45 Ibid., Section 1027

46 CCC, Section 1033

47 Ibid., Section 1042

Limited partnerships	<ul style="list-style-type: none"> • The kind of partnership in which there are one or more partners whose liability is limited to such amount as they may respectively undertake to contribute to the partnership, and one or more partner who are jointly and unlimitedly liable for all the obligation of the partnership.⁴⁸ • Until registration, a limited partnership is deemed an ordinary partnership in which all the partners are jointly and unlimitedly liable for all the obligations of the partnership.⁴⁹ • A limited partnership must be managed only by the partners with unlimited liability,⁵⁰ and if the partners with limited liability interfere with the management of the partnership, he or she becomes jointly and unlimitedly liable for all the obligations of the partnership.⁵¹ • Opinions and advice, votes given for the appointment or dismissal of managers in cases provided by the contract of partnership, are not considered as interference with the management of the partnership.⁵² 	No	The Civil and Commercial Code of Thailand	The Public Limited Company Act B.E. 2535 (1992)
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48 Ibid., Section 1077

49 Ibid., Section 1079

50 Ibid., Section 1087

51 Ibid., Section 1088, para.1

52 CCC, Section 1088, para.2

<p>Limited companies</p>	<ul style="list-style-type: none"> • The kind of which is formed with a Capital divided into equal shares, and the liability of the shareholders is limited to the amount, if any, unpaid on the shares respectively held by them.⁵³ • Any three or more persons may, by subscribing their names to a memorandum and otherwise complying with the provisions of this Code, promote and form a limited company.⁵⁴ • The memorandum must contain the following particulars: the name of the proposed company that must always end with the word "limited", the part of the Kingdom in which the registered office of the company shall be situated, the objects of the company, a declaration that the liability of the shareholders shall be limited, the amount of share capital with which the company proposes to be registered, and the divisions thereof into shares of a fixed amount, and the names, addresses, occupations and signatures of the promoters, and the number of shares subscribed by each of them.⁵⁵ 	<p>No</p>	<p>The Civil and Commercial Code of Thailand</p>	<p>The Public Limited Company Act B.E. 2535 (1992)</p>
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53 Ibid., Section 1096

54 Ibid., Section 1097

55 CCC, Section 1098

Public Limited Company	<ul style="list-style-type: none"> • A company established for the purpose of offering shares for sale to the public and the shareholders shall have the liability limited up to the amount to be paid on shares, and the said purpose must be indicated in the memorandum of association of the company.⁵⁶ • Any fifteen or more natural persons may form a public limited company upon the preparation of a memorandum of association of the company as well as complying with other requirements prescribed in the Act.⁵⁷ • The memorandum must contain the following particulars: the name of the company under section 11(1) (the use of the name beginning with the term "Company" and ending with the term "Limited (Public)" or beginning with the abbreviation "PLC." instead of the term "Company" and "Limited (Public)" in Thai characters); the purpose of the company in offering shares for sale to the public; the objects of the company, including a clear statement of the categories of business; the registered capital, including the type, number and value of shares; the location of the head office indicating the locality in the Kingdom in which it will be located; the names, dates of birth, nationalities and addresses of the promoters, and the number of shares subscribed by each promoter.⁵⁸ • Also, the name of the company shall not be under any of the prohibitions as prescribed in the Ministerial Regulations.⁵⁹ 	No	The Public Limited Company Act B.E. 2535 (1992)	The Civil and Commercial Code of Thailand
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56 Public Limited Company Act B.E.2535 (1992) ["PLC Act"], Section 15

57 Ibid., Section 16

58 PLC Act, Section 18

59 Ibid.

2.1. To what extent do business enterprises and company organs face liability for breaches of laws by business enterprises?

2.1.1. Can business enterprises be held legally accountable as legal persons?

Corresponding with other legal regimes, the CCC, as the main legal instrument on civil and commercial matter, provides that a juristic person can come into existence only by virtue of the CCC or of other law.⁶⁰ Hence, a juristic person has rights and duties in conformity with the provisions of the CCC or of other law within the scope of its power and duties, or its object as provided by or defined in the law, regulation or constitutive act.⁶¹ Additionally, subject to Section 66, a juristic person enjoys the same rights and is subject to the same duties as a natural person, except those, which, by reason of their nature, may be enjoyed or incurred only by a natural person.⁶² Therefore, a business entity shall be held accountable as a juristic person for human rights abuses involving its business activities.

Moreover, the CCC requires that the relations between the directors, the company and third persons be governed by the provisions of the CCC concerning Agency.⁶³ Therefore, a business entity (a principle) shall be held accountable as a juristic person for human rights abuses involving its business activities that are carried out by its directors (agents), under the purpose of that business entity (scope of authority).

2.1.2. Do organs of a business enterprise (e.g. owners - shareholders, partners, proprietors) face liability when their businesses breach laws?

60 CCC, Section 65

61 Ibid., Section 66

62 Ibid., Section 67

63 Ibid., Section 1167

2.2. Do laws and/or regulations require business enterprises to avoid causing or contributing to adverse human rights impacts through their activities, or to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services?

In the course of the conduct of business operations, companies may engage in human rights violation. At present, there are a number of notable issues relating to business and human rights in Thailand.

a) Labour

During 2008-2009, there have been a number of cases relating to human rights abuses to labour, with the most notable one being the industrial sector using the temporary sub-contract mechanism to avoid having to comply with relevant obligations under the labour law.⁶⁴ This resulted in the unfair dismissal of many labours, which necessitated the intervention by the government to resolve the problem and to ensure the stability of the employment against unfair dismissal.⁶⁵ However, positive developments to ensure greater labour protection were carried out twice in 2008 and once in 2010 by the amendment of the Labour Protection Act.

The first amendment of the Act in 2008 involves the following changes:

- 1) Prohibiting employers from requesting or accepting guarantee in relation to damage arising from the course of employment;
- 2) According power to Labour Court to order that the employment contract and regulations stipulated by the employers be fair and reasonable;
- 3) Allowing both employers and employees to combine the working hours that were not utilized under the eight-hour-a-day requirement with the working hours of the other day, provided

64 NHRC Report, 48

65 Ibid.

that the combined working hours of that day do not exceed nine hours;

- 4) Requiring the Labour Welfare Committee established under the Labour Protection Act to order the employers to pay compensation in place of providing advance notification concerning the relocation of workplace;
- 5) Requiring employers to submit the form bearing the employment status and working condition; and
- 6) Adjusting relevant punishment provisions to correspond with the amendment.

The second amendment of the Act in 2008 further provides assurance that the minimum wage be adjusted in an efficient and fair manner, as well as requires subsequent monitoring of the wage development plan in accordance with the Act. The third amendment of the Act in 2010 adjusts certain provisions in the Act in order to be in line with the newly-promulgated law concerning safety, welfare, and working environment.

With the Labour Protection Act, the state duty to protect in terms of labour protection is given a legislative base. Three notable issues, which directly concern the protection of human rights of labours, are duty of the employers to ensure equal treatment, prohibition of sexual harassment, and protection of working conditions.

i. Duty to ensure equal treatment

In the course of employment, the employers shall treat both male and female employees equally, except where it is not possible to do so due to the nature or the conditions of the work.⁶⁶ This provision must be highlighted in that it is for the first time that the Thai labour law addresses the issue on gender equal treatment.

ii. Prohibition of sexual harassment

In addition to the duty to ensure gender equal treatment, the Act prohibits the employers, or any

person holding a superior position, such as a chief, a supervisor, or an inspector, to perform any sexual harassment or disturbances against employee.⁶⁷ Initially, Article 16 only encompasses protection for female and child employees, but subsequent amendment in 2008 extends the protection to male employees by eliminating the word “female and child”.

iii. Protection of working conditions

The Labour Protection Act prescribes many obligations, which employers must undertake to ensure protection of human rights and prevent human rights violation arising from the course of business operation.

Ordinary working period

The Act requires that the employer notify the ordinary working period to the employee, and such period may not exceed eight hours a day and not more than forty-eight hours a week. However, for the work, which may be harmful to health and safety of the employee as prescribed by the Ministerial Regulations, such period may not exceed seven hours a day and not more than forty-two hours a week. The daily commencing and ending time of the working period may be determined by the employer, but such period shall not exceed the maximum length as prescribed by the Act.⁶⁸

At present, the types of work, which are considered to be harmful to health and safety of the employee, are prescribed by Ministerial Regulations No.2 (B.E.2541) pursuant to the Article 23 para.1 of the Labour Protection Act. The types are the work which requires the employees to work underground, underwater, in cave, in tunnel, or in places with insufficient air; the work relating to radioactivity; welding; transportation of dangerous items; manufacturing of dangerous chemicals; the work which requires the use of tools or machineries that cause undue quake and/or danger; and the work which may be dangerous to employees due to

⁶⁶ Labor Protection Act, Section 15

⁶⁷ Ibid., Section 16

⁶⁸ Labor Protection Act, Section 23

extreme hotness or coldness.⁶⁹

In addition to ordinary working period, the employer must undertake to provide sufficient rest period during the working period on the working day. The rest period shall not be less than one hour after the employee has worked for not more than five consecutive hours. This requirement may be agreed otherwise, but only to the benefit of the employee with the minimum length of one hour.⁷⁰

Welfare

Labour welfare is considered an ethical concern where businesses, employers, and/or labour union are obliged to provide the adequately comfortable, clean, and safe working conditions to employees. To ensure that the employee is entitled to enjoy such condition, the Act requires that the Minister of Labour issue Ministerial Regulations to prescribe any welfare to be provided by the employer or to prescribe standards of the welfare to be provided.⁷¹

By virtue of such requirement, the Minister of Labour issue Ministerial Regulations Concerning the Provision of Labour Welfare in Workplace B.E.2548 (2005)⁷² to oblige employers to provide the followings to their employees as welfare:

- (1) One clean drinking water station for every forty employees
- (2) Clean restrooms, built in accordance with the plan prescribed by the Building Control Act, separating between male, female, and employee with disability, with regular cleaning to ensure the high level of hygiene
- (3) Sufficient medical kit for a firm of more than ten employees; in case of a firm having more than 200 employees, the employer is obliged to provide a standard medical room with at least one standby certified nurse and a doctor who

must be on site for at least two times a week and not less than six hours a week

In addition to such requirement, the employer of fifty employees or more is obliged to establish the welfare committee in the workplace. The welfare committee must consist of at least five representatives of the employees, elected in accordance with the rules and procedure as determined by the Director-General of the Department of the Labour Protection and Welfare. The existing employees' committee in the workplace, as the case may be, shall act as the welfare committee of that workplace under this Act.⁷³ The welfare committee of the workplace has the following the powers and duties: to jointly consult with the employer in providing welfare for the employees; to give advice and recommendations to the employer in providing welfare for the employees; to inspect, control and supervise the welfare provided for the employees by the employer; to give recommendation and guideline in providing welfare for the employees to the Labour Welfare Committee⁷⁴ established by virtue of Article 92.⁷⁵

a. Migrant workers

The problem of migrant workers continue to persist, despite the prohibition of forced or compulsory labour enshrined in the Constitution, except in the case of national emergency, war, or under the martial law,⁷⁶ and the government's effort in trying to eliminate forced labour. In most cases, the migrant workers are often seized of their travel document by their employers, thus restricting them from moving away.⁷⁷ At present, Thai law does not have specific legislations concerning the protection of migrant workers. Affirming the principle of equality, all migrant workers, whether legally or illegally entered the Kingdom of Thailand, are entitled to be protected under the Labour Protection Act. As

69 Ministerial Regulations No.2 (B.E.2541) pursuant to the Article 23, para. 1 of the Labor Protection Act

70 Labor Protection Act, Section 27

71 Ibid., Section 95

72 Ministerial Regulations Concerning the Provision of Labor Welfare in Workplace B.E.2548 (2005)

73 Labor Protection Act, Section 96

74 Ibid., Section 97

75 Ibid., Section 92

76 Constitution, Article 38

77 US Department of State Bureau of Democracy, Human Rights and Labor, "Country Reports on Human Rights Practices for 2011", 49-50

previously mentioned, there are circumstances, which exempt certain employers from complying with the obligations under the Labour Protection Act.⁷⁸ Therefore, without the inclusion into the list, migrant workers of all statuses are entitled to be protected under the Act.

Statistically, Thailand has been alleged to be one of the major hubs for human trafficking, both as a country of origin, destination, and point of transit. Most humans, both males and females, involved are destined to be for forced labour as well as forced prostitution.⁷⁹ In addition to the general labour protection, migrant workers who are trafficked are entitled for protection under the Anti-Trafficking in Persons Act B.E.2551 (2008). The Act defines exploitation as actions, which include seeking benefits from the prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, forced labour or service, coerced removal of organs for the purpose of trade, or any other similar practices resulting in forced extortion, regardless of such person's consent.⁸⁰ Also, force labour or services, which refer to the act of compelling the other person to work or provide service by putting such person in fear of injury to life, body, liberty, reputation or property, of such person or another person, by means of intimidation, use of force, or any other means causing such person to be in a state of being unable to resist⁸¹, are included as prohibited acts. The consequence of violation of the obligations under the Act is to receive imprisonment from 4 to 10 years, equivalent to crimes of severe characters such as rape, or from 6 to 12 years in case of child trafficking.⁸² For extra-territorial application, The Act stipulates that for the violation committed abroad, the violator shall be punished in Thailand, by virtue of Section 10 of

78 Ibid.

79 Anne Gallagher and Elaine Pearson, "The Detention of Victims of Human Trafficking: An Analysis of Law and Policy", AusAID, August 2008

80 Anti-Trafficking Act in Persons Act B.E.2551 (2008) ["Anti-Trafficking Act"], Section 4

81 Ibid.

82 Ibid., Section 52

Thailand Penal Code.⁸³

b. Women

The Labour Protection Act confers special protection to female employees by listing types of work to be prohibited from employing female workers, and adjusting working time. Also, additional provisions concerning pregnant employees are stipulated.

Concerning the types of work, Section 38 of the Act prohibits women employment in the following works: mining or construction work to be performed underground, underwater, in a cave, in a tunnel or mountain shaft, except when the conditions of work are not harmful to health or body of the employee; work on a scaffold of ten meters or more above the ground; production or transportation of explosive or inflammable materials, except where the conditions of work are not harmful to health or body of the employee; and any other works as prescribed in the Ministerial Regulations.⁸⁴ In addition, the Act requires that employers appropriately change or reduce the female employees' night working hours (between 00.00 and 06.00 hours) in the event that the labour inspector opines that the work may be hazardous to their health and safety and such condition has been reported to the Director-General of the Department of Labour Welfare and Protection, Ministry of Labour.⁸⁵

Pregnant employees are also given special protection, in addition to them being females. They are not to be employed in certain types of work: work involving vibrating machinery or engine; driving or taking place into a vehicle; lifting, carrying on the back, carrying on shoulder, carrying with a pole across shoulder, carrying on a head, pulling or pushing of loads of more than fifteen kilograms; work on a boat; or any other works as prescribed in the Ministerial Regulations.⁸⁶ Employers of pregnant workers are prohibited to require them to work between 22.00 and 06.00 hours, to work overtime, or to work on

83 Ibid., Section 11

84 Ibid., Section 38

85 Ibid., Section 40

86 Labor Protection Act, Section 39

holidays. However, employers of the child-bearing employees working as an executive, an academic, a clerk, an accountant, or other related occupation may require such employees to work overtime in the working days as long as there is no effects on her health and with her prior consent on each occasion.⁸⁷ In addition, the Labour Protection Act ensures the right to maternity leave⁸⁸, right to temporary change of duties before or after delivery⁸⁹, and right not to see the employment contract terminated on the grounds of pregnancy.⁹⁰

c. Children

The Labour Protection Act also confers special protection to children. As a general rule, any employer shall not employ a child under fifteen years of age⁹¹, but the child under eighteen years of age, hereinafter referred to as 'young worker', may be employed when the employers comply with the following duties: duty to notify the labour inspector regarding the employment of a young worker within fifteen days from the work commencement; duty to prepare a record of employment conditions in case of a change, and keep this record in the business premises or at the office of the employer, available for inspection by the labour inspector during working hours; and duty to notify the labour inspector regarding the termination of employment of a young worker within seven days from the date of employment termination.⁹² Additionally, to ensure that young workers are not forced to work long hours, employers are required to provide young workers with rest period of not less than one consecutive hour after the employee has worked for not more than four hours, and during such four-hour work period, the employers may grant additional rest periods to the young workers.⁹³

In terms of working period, employers shall not require young workers to work between 22.00

87 Ibid., Section 39 (1)

88 Ibid., Section 41

89 Ibid., Section 42

90 Ibid., Section 43

91 Ibid., Section 44

92 Ibid., Section 45

93 Ibid., Section 46

and 06.00 hours, similar to the provision applied to female workers, unless permission in writing is granted by the Director-General of the Department of Labour Welfare and Protection, Ministry of Labour, or a person entrusted by the Director-General.⁹⁴ However, in the case of young workers aged below eighteen who acts in movies, on stage, or similar, the employers shall provide them with proper rest periods.⁹⁵ In any event, it is prohibited to require young workers below eighteen years of age to work overtime or to work on a holiday.⁹⁶

In terms of financial protection for young workers, the Labour Protection Act prescribed that employers are prohibited from demanding or receiving safety deposit for any purpose from young workers⁹⁷, as well as from paying wages of the young workers to any other person.⁹⁸ The latter requirement undoubtedly makes it illegal for child traffickers, among others, to exploit the child by receiving payment on behalf of that child.

In addition to working period and financial protection for young workers, the Labour Protection Act also lists certain works that shall not be carried out by young workers: metal smelting, blowing, casting or rolling; metal pressing; work involving heat, cold, vibration, noise and light of an abnormal level which may be hazardous as prescribed in the Ministerial Regulations; work involving hazardous chemical substances as prescribed in the Ministerial Regulations; work involving poisonous microorganism which may be a virus, bacterium, fungus, or any other germs as prescribed in the Ministerial Regulations; work involving poisonous substances, explosive or inflammable material, other than work in a fuel service station as prescribed in the Ministerial Regulations; driving or controlling a forklift or a crane as prescribed in the Ministerial Regulations; work using an electric or motor saw; work that must be done underground, underwater, in a cave, tunnel, or mountain shaft; work involving radioactivity as prescribed in the Ministerial

94 Ibid., Section 47 (1)

95 Ibid., Section 47 (2)

96 Labor Protection Act, Section 48

97 Ibid., Section 51 (1)

98 Ibid., Section 51 (2)

Regulations; cleaning of machinery or engines while in operation; work which must be done on scaffolding ten meters or more above the ground; or other work as prescribed in the Ministerial Regulations.⁹⁹ Additionally, young workers are prohibited to work in the following places: a slaughterhouse; a gambling place; a recreation place in accordance with the law governing recreation places; and any other place as prescribed in the Ministerial Regulations.¹⁰⁰

Furthermore, given the young age of the young workers, the Labour Protection Act also recognizes the right to education of young workers. To develop and promote the quality of life and employment of young people, any young worker aged below eighteen shall be entitled to take leave to attend meetings or seminars, get education or training, or leave for another matter which is arranged by an academic institution, or a government or private agency approved by the Director-General, provided that the young worker shall notify the employer in advance stating clearly that the reason for the leave and presenting relevant evidence, if any.¹⁰¹ Such recognition corresponds with the obligation under the Child's Protection Act B.E. 2546 (2003), which affirms that there shall be no discrimination due to age.¹⁰² In addition, the Act prohibits child employment, which may affect his or her physical or mental growth or development,¹⁰³ and specifically prohibits coercive acts to force a child to play sports or other kinds of activities for commercial purpose, which may affect his or her physical or mental growth or development.

Evidently, young workers are given special protection and consideration under the Labour Protection Act and Child's Protection Act, in line with, or exceeding the minimum standard of, Thailand's obligation under the Convention of the Rights of the Child.

99 Ibid., Section 49

100 Ibid., Section 50

101 Ibid., Section 52

102 Child's Protection Act B.E.2546 (2003) ["Child's Protection Act"], Section 22

103 Ibid., Section 26 (6)

d. Persons with disabilities

Workers with disabilities are protected by law to be treated equally as other workers. Beyond the sphere of labour, all persons with disabilities are to be as equally treated as those without disabilities. In order to ensure that persons with disabilities receive equal treatment without unjust discrimination, the Promotion and Development of Quality of Life for Persons with Disabilities Act B.E.2550 (2007) is enacted.¹⁰⁴ "Persons with disabilities" means any person with limitations in carrying out his or her daily life activities and/or in participating in the society due to defects in hearing, sight, movement, communication, mentality, emotion, behaviour, education, or other defects, and it becomes necessary for his or her to receive special assistance in carrying out his or her daily life activities and/or in participating in the society.¹⁰⁵

In relation to business, the Act requires that employer, both public and private sectors, employ persons with disabilities according to the appropriate nature of the assigned work with the condition of such persons.¹⁰⁶ Ministerial Regulations, issued by the Ministry of Labour by virtue of the Act, specifies that the employers and the owners of the workplace of more than 100 employees must employ one person with disabilities for every 100 employees. The remaining number, if exceeding 50, shall be counted as 100, requiring an employment of another person with disabilities.¹⁰⁷ The same ratio also applies to the governmental bodies.¹⁰⁸ The assessment of the number of employees for the purpose of determining the number of required employment of persons with disabilities shall be carried out annually on 1 October.¹⁰⁹

104 Promotion and Development of Quality of Life for Persons with Disabilities Act B.E.2550 (2007) ["Persons with Disabilities Act"]

105 Ibid., Section 4

106 Ibid., Section 33

107 Ministerial Regulations Concerning the Number of Employment of Persons with Disabilities and the Amount of Money Required to be Transferred to the Fund B.E.2554 (2011), Rule 3

108 Ibid., Rule 4

109 Ibid., Rule 3 and 4

In cases where the employers, the owners of the workplace, or governmental bodies determine not to employ persons with disabilities according to the prescribed ratio, the giving of concession, the outsourcing of certain work, or the lending of assistance as the case may be, may substitute the aforementioned obligations.¹¹⁰ Failing to perform either of the obligations results in that the employers, the owners of the workplace, or governmental bodies, must transfer a certain sum of money, to be calculated based on minimum wage prescribed by the Labour Protection Act on the previous year multiplied by 365, then multiplied by the number of persons with disabilities the employers fail to employ pursuant to the Ministerial Regulation,¹¹¹ to a Promotion and Development of Quality of Life for Persons with Disabilities Fund, established under the Act.¹¹² The Fund will then be used in relation to the promotion and development of quality of life of the persons with disabilities including the provision of education and occupational training.

To further promote the employment of persons with disabilities, the Royal Decree Pursuant to Revenue Code No. 499/2553¹¹³ is issued to waive certain corporate income tax to companies that employ persons with disabilities in accordance with the Persons with Disabilities Act. The amount waived shall be determined by the full amount of expense paid for such employment. Moreover, the companies or workplaces that provide facilities to accommodate persons with disabilities may have parts of their corporate income tax waived for the amount spent on the construction or the procurement of such facilities.¹¹⁴

e. Trade unions

Thai law recognizes to right to form trade union (or labour union as literally translated from the original text), and is governed by the Labour Relations Act B.E.2518 (1975). “Trade Union” refers to an

organization established by workers in accordance with the Labour Relations Act.¹¹⁵ The trade union typically involves in concluding agreements with employers relating to work conditions, which encompass the followings: working days and working hours; wages; welfare; termination of employment; any benefits received by an employer or an employee in relation to work such as retirement compensation, special benefits for long length of service, bonuses, allowance for transport and/or accommodation, and medical benefits.

Generally, both employers and employees as individuals can, in writing, establish a new work conditions agreement, or amend the existing one.¹¹⁶ Names and signatures are compulsory in instigating such an agreement.¹¹⁷ However, a trade union may submit an agreement request to the other party on behalf of the employees who are members of the union.¹¹⁸ In the event that the trade union initiates the request, it is not required to give names and signatures of the employees involved in the request. Nevertheless, it is required that the number of employees who are members of the trade union must not be less than one fifth (20%) of the total number of employees. In case of doubt whether the employees involved in the request are members of the union and whether the number exceeds the percentage required, a written application to the Conciliation Officer, a person appointed by the Minister of Labour pursuant to the Act¹¹⁹, for examination and certification may be submitted.¹²⁰

To ensure that the negotiation proceeds in a timely manner, the Act requires that both parties begin the negotiation within three days of receiving the request.¹²¹ If the negotiation is successful, the working condition agreement must be made in writing and signed by all parties, Then the employer shall, within three days of the date of the agreement,

110 Persons with Disabilities Act, Section 35

111 Persons with Disabilities Act, Section 35

112 Ibid., Section 23

113 Royal Decree Pursuant to Revenue Code No. 499/2553 (2010), Rule 3

114 Ibid., Rule 4

115 Labor Relations Act B.E.2518 (1975) [“Labor Relations Act”], Section 5

116 Ibid., Section 13

117 Ibid., Section 13 (2), (3)

118 Ibid., Section 15

119 Labor Relations Act, Section 5

120 Ibid., Section 15

121 Ibid., Section 16

openly display a notice of the work conditions for at least thirty days at the place where employees involved in the request work, as well as register the work conditions agreement with the Director-General's services within fifteen days of the date of agreement.¹²²

In the event of an unsuccessful negotiation; that is, there has been no negotiation within three days from the date of receiving the demand or there is no agreement after the negotiation for whatever reason, it is considered having a labour dispute.¹²³ To mitigate the damage with regards to the unsettled work conditions, the Labour Relations Act required the party who initiated the request to notify a Conciliation Officer in writing within 24 hours after it is deemed that the negotiation failed.¹²⁴ Then, within five days after the notification, the Conciliation Officer shall start a procedure of settlement between the parties, with an initial duty to present all facts underlying the conflict to the parties and the legislations that may apply. If a settlement can be reached within five days of the notification, obligations under Article 18 shall be apply *mutatis mutandis*. However, if no settlement can be reached within five days of the notification, the labour dispute shall be regarded as a dispute that cannot be settled.¹²⁵ From this point, the parties may agree to appoint a labour dispute arbitrator¹²⁶, the employer may start the lockout, or the trade union may go on strike.¹²⁷

The party who wish to start the lockout or go on strike must give notice to the Conciliation Officer and to the other party at least 24 hours before starting the action.¹²⁸ To protect the labour in the event of illicit lockout by the employer, wages are due to the employees since the lockout is prohibited by the law. On the other hand, in the case of strike, the employees on strike, even a licit strike, are not entitled to their wages since they do not perform

their work duties for the employer.¹²⁹

b) Environment

A number of environmental problems resulting from the conduct of business operations in Thailand take various forms. To combat environmental damage, the general application of the Enhancement and Conservation of National Environmental Quality Act requires that a business entity conduct the Environmental Impact Assessment (EIA) as a pre-condition in order to seek approval before commencing a project. In addition, the EIA requirement expands to obligate all projects whether initiated by the government agencies, state-owned enterprises, or the private sectors, to conduct the EIA.¹³⁰ The Act also affirms the rights and liberties of a person to include the rights to be informed of information concerning the enhancement and the promotion of environmental quality¹³¹, the rights to receive compensation from the government in the event of damage caused by the operation of the government agencies or state-owned enterprises¹³², and the right to file claims against government officials in the event of witnessing the conduct of pollution or the violation of the conservation of natural resources.¹³³

On the more specific scope, the major evident environmental problem appears to be from the management of the industrial estate. The Industrial Estate Authority of Thailand Act B.E.2522 (1979)¹³⁴ was revised in 2007 to introduce the Free Trade Zone, a zone designated for industrial or commercial activities, or any other activities relating to industrial or commercial activities, for the purpose of economic development, natural security, people's welfare, environmental management, and any other purposes to be determined by the Industrial Estate Authority of Thailand. Entities allowed to operate in the Free Zone will be granted tax privileges

122 Ibid., Section 18

123 Ibid., Section 21

124 Ibid., Section 21

125 Ibid., Section 22

126 Ibid., Section 26

127 Ibid., Section 34

128 Ibid.

129 Ibid., Section 35

130 Environmental Quality Act, Section 46

131 Ibid., Section 6(1)

132 Ibid., Section 6(2)

133 Ibid., Section 6(3)

134 Industrial Estate Act B.E.2522 (1979) ["Industrial Estate Act"]

and fee exemption in accordance with the law.¹³⁵ The introduction of the Free Zone results in the expansion of industrial activities in Thailand. To complement the expansion, many supplementary projects are carried out, including the construction of the Pakbara Port in Satun province.¹³⁶

The expansion of industrial activities undoubtedly raises concerns over the impact on environment. This is because the body tasked to monitor and control the industrial activities is not the Department of Industrial Works under the Ministry of Industry, which initially grants approval for the establishment of the industrial factory, but is accorded to the Provincial Industrial Office under the Office of the Permanent Secretary of the Ministry of Industry.¹³⁷ Concerns centre on the fact that with the Provincial Industrial Office for each province having a number of industrial factories to oversee, and working under the Local Administration body. When the industrial factories cause environmental impact to the local community without genuine intervention or solution by the Provincial Industrial Office, the Report by the NHRC indicates that the Office often cite the insufficient of personnel as the cause of non-responsive address to the problem. Further, the Local Administration body, which the Provincial Industrial Office works under, is often criticized to have been influenced by the industrial entrepreneurs in the area.¹³⁸

2.3. To what extent, how, and by whom have the laws and/or regulations identified in Question 2.2 above been enforced by the State?

The laws and regulations are enforced by the State through two major channels: filing complaints to the National Human Rights Committee and instigate claims at the court of justice. Concerning the NHRC, as will also be subsequently discussed in Question III.10, it serves as the major focal

point of contact to receive complaints of potential human rights violation. Ultimately, it can instigate claims on the claimant's behalf to the Constitutional Court to inquire regarding the constitutionality of any legislation, which has effect on human rights.¹³⁹ For instance, in the Constitutional Court's Decision 33/2554 (2011)¹⁴⁰, the Court was asked to determine the constitutionality of Section 6 of the National Park Act B.E.2504 (1961) concerning the declaration of any area to be designated as part of national park, where those affected argued that the declaration was made arbitrarily by the relevant officials without prior consultation with the locals. The Court then ruled that despite the authority vested upon the official to designate any area that it found interesting and appropriate to become national park, prior consultation must be made with the locals in order to affirm the rights to community¹⁴¹ and rights to conserve, protect, and use natural resources as well as other biodiversity.¹⁴²

In addition to NHRC and Constitutional Court, general courts of justice also serve as the enforcer of the legislations identified in Question 2.2. Depending on the jurisdiction of each courts and the nature of the case, those seeking redress have access to justice by filing their claims to the court of justice. For labour-related issue, Labour Court shall have prior jurisdiction over the case. Recently, Labour Court has been one of the most important venues to settle labour dispute and serve as the enforcer of the legislation concerning labour. For instance, in its Decision No. 8131/2553 (2010), it ruled that the plaintiff could not arbitrarily order the moratorium of working days due to inconsistent stock order, as it is normal in the course of business for such inconsistency to occur. Such inconsistency cannot lawfully be served as a ground for the moratorium.¹⁴³ Hence, the legislations identified in Question 2.2 are enforced by both the NHRC and

139 Constitution, Article 257 (2)

140 Constitutional Court Decision 33/2554, dated 23 November 2011

141 Constitution, Article 66

142 Ibid., Article 67

143 Decision No. 8131/2554, at <http://deka2007.supremecourt.or.th/deka/web/docdetail.jsp>, accessed 2 September 2012

135 Ibid., Section 4

136 NHRC Report, 63

137 Ibid.

138 NHRC Report, 63

the Courts of Justices.

Laws and/or regulations which hold individuals accountable for business-related human rights abuses

In addition to Question 2.1, despite the fact that the types of businesses must be primarily determined, rules to hold individuals accountable in their capacity as company organs share certain similarity: the requirement that the acts done must be in the ordinary course of business. For instance, in the case of ordinary partnerships, all the partners are bound by the acts done by any of them in the ordinary course of the business of the partnership and are jointly and unlimitedly liable for the performance of the obligations incurred in such management.¹⁴⁴ Similarly, in the case of limited partnerships, those unlimitedly and jointly liable are bound by the provisions governing the ordinary partnerships, but those with limited liability are to be liable only to the extent agreed upon among the parties in the partnerships.¹⁴⁵ However, a partner with limited liability who expressly or impliedly consents to the use of his or her name in the firm name will be liable to third persons in the same matter as if he or she was a partner of unlimited liability.¹⁴⁶

In the case of limited companies, the shareholders shall have their liability limited, as it is a requirement that the memorandum establishing the company must contain, among others, a declaration that the liability of the shareholders shall be limited.¹⁴⁷ In case of the directors, the liability of the directors of a limited company is generally limited, but such liability may be unlimited following a statement inserted in the memorandum that the liability of certain directors of a limited company may be unlimited.¹⁴⁸ Therefore, in the event of liability, individuals, whether being partners or directors, can be held accountable in their capacity as company organs.

144 CCC, Section 1050

145 Ibid., Section 1080

146 Ibid., Section 1082

147 Ibid., Section 1098

148 Ibid., Section 1101

In addition, the general rule of wrongful acts, or known in the Common Law regime as tort, remains applicable. In other words, partners or directors can still be held individually liable in the event of the wrongful acts conducted by them. The CCC provides that a person who, wilfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefore.¹⁴⁹ Consequently, the partners or directors found in violation of human rights by causing damage to the employees or third persons arising from the course of business operation can also be held individually liable.

3. Is the State periodically assessing the adequacy of the laws and/or regulations identified in Question 2 above, and addressing any gaps?

Thai law, once promulgated, is not static. Similar to other countries, the law can be amended, terminated, or superseded by a new law. Evidently, Thai laws are periodically assessed in order to address the situation in a timely manner. For instance, the Labour Protection Act are periodically assessed to address the emerging issues, as previously indicated in Question 2.2 (a); that is, among others, to accord power to Labour Court to order that the employment contract and regulations stipulated by the employers be fair and reasonable¹⁵⁰, and to provide assurance that the minimum wage be adjusted in an efficient and fair manner in its amendment in 2008.¹⁵¹

Generally, it is the duty of the Council of State, or “Krisdika” office in Thai, to oversee the development of Thai law. One of its mandates, in addition to providing recommendation regarding the proposal of new laws, is to render advice and develop Thai law “in order for it to serve as a tool for economic and

149 Ibid., Section 420

150 See Question III.2.2 on the amendments of the Labor Protection Act

151 Ibid.

social development and to protect public interest.”¹⁵² It must be noted that, according to its annual report, the Council of State has been fulfilling its mandate. In 2009, it set a target to achieve 800 cases, encompassing all of its mandates including providing recommendation to promulgate a new law or to amend existing laws, and they were able to achieve 835 cases, exceeding its set target.¹⁵³

In addition to the work of the Council of State, there are other channels to seek amendment of laws. The amendment of the law can be done through the promulgation of the new law of the same title, and the latter version shall have the number of amendment labelled to its name. For instance, the Labour Protection Act B.E. 2541 (1998) had its first amendment in 2008; hence, the new Act entitled “the Labour Protection Act (Issue 2) B.E. 2551 (2008)” had to be enacted, with provisions designated to replace the then-existing provisions of the relevant content.

To promulgate a new law, the Constitution allows certain entities to first propose a new law. Such entities are government cabinet, at least 20 members of the House of Representatives, Courts or independent organs under the Constitution (only the law relating to the management of the Court or the matter which falls under the mandate of the President of such organization), or at least 10,000 eligible voters.¹⁵⁴ The draft of the amended law shall be submitted to the House of Representatives; with the assurance that the public has access to it. The draft shall then be deliberated throughout, first, the House of Representatives, and, second, to the House of Senate. In the event of no correction or objection, the draft shall be signed by His Majesty the King,

152 Office of the Council of State, “Philosophy, Mandate, and Organizational Chart,” at http://www.krisdika.go.th/wps/portal/general/!ut/p/c/04_SB8K8xLLM9MSSzPy8xBz9CP0os3g_A2czQ0cTQ89ApyAnA0__EIOAQGdXAwM_Y30_j_zcVP2CbEdFAFGmRSc!/dl3/d3/L2dJQSEvUUt3QS9ZQnZ3LzZfTjBDNjFBNDfJUUSQjBJT1QwUFFDRTAwVjA!, accessed 14 June 2012

153 Office of the Council of State, “Operational Report on the Fiscal Year of 2009,” at <http://web.krisdika.go.th/data/news/news11109.pdf>, accessed 14 June 2012

154 Constitution, Article 142

and subsequently become law upon the publication in the Royal Gazette.¹⁵⁵ In case of correction or objection by the House of Senate, the draft shall be reconsidered by the House of Representatives after having been put on hold for 180 days for the ordinary draft¹⁵⁶, or right away for the draft concerning financial matter.¹⁵⁷ If the House of Representatives affirms with not less than half of the members present during the deliberation, the draft is deemed to have been approved by both Houses and shall be processed as if the draft contains no correction or objection.¹⁵⁸

Therefore, the Constitution provides bases for the amendment of the existing law should one believes necessary, in addition to the work of the Council of State.

4. Is the State using corporate governance measures to require or encourage respect for human rights?

4.1. Is the State requiring or encouraging directors of business enterprises to exercise due diligence in ensuring that their business enterprises respect human rights?

Thai law does not contain specific provisions to require or encourage directors of business enterprises to exercise due diligence with regards to the respect of human rights. However, it imposes rather general duties of the directors that they have to comply with, as set out below.

155 Constitution, Article 150

156 Ibid., Article 148(1)

157 Ibid., Article 148(2)

158 Ibid., Article 148(1)

4.1.1. What are the general legal due diligence obligations that directors have to comply with?

In general, the CCC does not explicitly impose the so-called “fiduciary duties”, as commonly found in the Common Law system, to directors of the company. However, the fiduciary duties are applied by virtue of Section 1167, which imposes that the provisions of the CCC concerning Agency shall govern the relations between the directors, the company and third persons.¹⁵⁹ Hence, in the event that the directors, as “agents”, cause any injury resulting from his or her negligence or non-execution of agency, or from an act done without or in excess of authority, he or she is liable to the company.¹⁶⁰ In cases of liability to third persons, the company is bound to third persons by the acts, which the directors have done within the scope of his or her authority by virtue of his “agency”.¹⁶¹ However, if the directors act without authority or beyond the scope of his or her authority, such act does not bind the company, as principal, unless the company ratifies it.¹⁶² If the company does not ratify such act, the directors shall be personally liable to third persons, unless he or she proves that such third persons knew that he or she was acting without authority or beyond the scope of the authority.¹⁶³

In cases of *ultra vires*, if the directors act in excess of his or her authority, but the third person had reasonable grounds, arising from the act of the company, to believe that it was within his or her authority, the company is liable to third persons acting in good faith in the same matter as if the directors act within the scope of his or her authority.¹⁶⁴

Other specific duties are expressly stated in the section concerning limited companies. Generally, the directors must in their conduct of the business

apply the diligence of “a careful business man”.¹⁶⁵ In particular, the directors are jointly responsible for the payment of shares by the shareholders being actually made, for the existence and regular keeping of books and documents prescribed by law, for the proper distribution of the dividend or interest as prescribed by law, and for the proper enforcement of the resolutions of the general meetings.¹⁶⁶ In addition, a director must not, without the consent of a general meeting of shareholders, undertake commercial transactions of the same nature as and competing with that of the company, either on his or her own account or that of a third person, nor may he or she be a partner with unlimited liability in another commercial concern carrying on a business of the same nature as and competing with that of the company.¹⁶⁷

4.1.2. Do directors have specific legal obligations to consider their business enterprises’ human rights impacts in carrying out their duties?

No.

4.1.3. Do directors have specific legal obligations to take into account the human rights impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad (supply chain)?

No.

4.1.4. Have any of the directors’ duties identified above been enforced by the State in relation to business-related human rights abuses?

No.

159 CCC, Section 1167

160 Ibid., Section 812

161 Ibid., Section 820

162 CCC, Section 823, para. 1

163 Ibid., para. 2

164 Ibid., Section 822, 821

165 Ibid., Section 1168, para. 1

166 Ibid., para. 2

167 Ibid., para. 3

4.1.5. Has the State provided non-binding guidelines encouraging directors to take into account (a) their businesses' human rights impacts in carrying out their duties, and/or (b) the human rights impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad (supply chain)?

Not applicable

4.2. Does the State require or encourage business enterprises to communicate their human rights impacts, as well as any action taken to address those impacts?

See Question III.5

4.3. Is/are the country's stock exchange regulator(s) taking steps to require or encourage business enterprises listed on the stock exchange to respect human rights? If so, what are these steps?

Despite the lack of any specific 'hard law' initiatives, Thailand also lacks specific 'soft law' initiatives to require or encourage business enterprises to respect human rights. However, the closest 'soft law' initiative, which mentions human rights, is the Principles of Corporate Governance for Registered Companies B.E.2549 (2006)¹⁶⁸, issued by the Stock Exchange of Thailand (SET).

Being an instrument issued by SET, the precondition to be governed by this instrument is that a company must be registered at the Stock Exchange of Thailand to have its shares traded in the stock market. This is the case for limited companies, but not public limited companies as the latter are automatically required to be listed in the stock market, as one of their purposes of incorporation is to offer shares for

168 "Principles of Corporate Governance for Registered Companies B.E.2549 (2006)" ["2006 Principles"], Stock Exchange of Thailand

sale to the public.¹⁶⁹ Consequently, the Principles only apply to registered or listed limited companies and public limited companies.

The 2006 Principles amended the 2002 Principles in order to be in line with the OECD Principles of Corporate Governance (2004) and the recommendation by the World Bank on Corporate Governance – Reports on the Observance of Standards and Codes (CG-ROSC). The SET claims that it receives good cooperation from listed companies in self-investigating whether their business operations comply with the 2006 Principles.¹⁷⁰

The 2006 Principles contain 5 sections: rights of shareholders, equal treatment of shareholders, roles of stakeholders, disclosure of information and transparency, and responsibility of directors. Reference to human rights can be found in the third and fifth sections on roles of stakeholders. In the meantime, the term "committee" refers to committee of the company or board of directors.

Section 3: Roles of Stakeholders

There exist various groups of stakeholders under the corporate governance mechanism. Most importantly, they are customers, employees, business partners, shareholders, investors, creditors, communities where the company is located, society, and government. Other groups of stakeholders include rivals and independent auditors.¹⁷¹

*Principles*¹⁷²

- 1) All stakeholders should receive treatment from a company in accordance with all relevant law. Committee should consider establishing a mechanism to promote greater cooperation between the company and its stakeholders in

169 PLC Act, Section 15

170 2006 Principles, Preface

171 2006 Principles, 8

172 Ibid., 8

order to generate wealth, financial stability, and enterprise sustainability.

- 2) Committee should issue policies to ensure that treatment to all stakeholders involve consideration of their rights in accordance with the law or any agreement with the company. The company should not perform in any ways that violate the rights of those stakeholders, and at the same time should ensure that the compensation measure arising from violation is prescribed.
- 3) Committee should develop mechanisms to encourage the participation of stakeholders in complementing the operation of the company in order to promote sustainable stability of the company, and should also adequately disclose relevant important information to them for more effective participation.
- 4) Committee should endorse measures to receive claims or complaints on matters relating to violation of law, the accuracy of financial reports, the deficiency of internal control, and unethical conducts. Committee should also instigate a mechanism to protect the rights of such informants.
- 5) Committee should issue clear policies in relation to the protection of environment and the society.

*Best Practices*¹⁷³

- 1) Committee should specify groups of stakeholders as well as their rights in accordance with the law.
- 2) Committee should implement clear measures to receive claims or complaints. Such measures may be directed through independent committee or audit committee in order to perform investigations in accordance with the procedure prescribed by the company and subsequently report the findings to the committee.

¹⁷³ Ibid., 8, Best Practice

- 3) Concerning the policies in relation to the protection of environment and the society, committee should thoroughly consider matters which directly affects the business operation in order for the stakeholders to be assured that the business operation of the company takes into account the aspects on environment and the society for sustainable development.

Section 5: Responsibility of Directors

There are a number of responsibilities of directors, which the 2006 Principles aim to implement. Followings are selected principles and best practices with relevance to human rights.

*Principles*¹⁷⁴

- 1) Committee, as an important body to govern a company to maximize its benefits, must be responsible for the outcome of the operation to shareholders, and be independent from the management.
- 2) Committee should possess leadership, vision, and be independent in decision-making. Committee should implement a system to divide roles, duty, and responsibility between the committee and the management, as well as to ensure that the operation of the company is in accordance with the law and morality.

*Best Practices*¹⁷⁵

Committee should promote the creation of the code of conduct in writing in order for all the committee, executives, and employees to understand the ethical standards that the company uses in business operation. Committee should subsequently monitor the serious compliance of the ethical standards.

Consequently, despite the 2006 Principles containing a number of initiatives which encourage the respect

¹⁷⁴ 2006 Principles, 10

¹⁷⁵ Ibid., 12, Best Practice 3.3

of human rights from various aspects, the Principles still lack its effectiveness in assuring compliance, as it is *per se* a guidance. Also, the scope of application is limited as the Principles only cover listed limited companies and public limited companies in the stock market. However, practice shows that despite the lack of official legal status, companies trading in the stock market treat the 2006 Principles as one of the guidance to comply, and non-compliance may discourage other companies to conduct stock trading with.

5. Has the State adopted other non-binding measures to foster corporate cultures respectful of human rights?

5.1. Is the State implementing any non-binding initiatives requiring or encouraging business enterprises to respect human rights?

a) Investment Promotion

In light of the lack of specific provisions to require business enterprises to respect human rights, Thai law does contain a mechanism to encourage business enterprises to respect human rights. Such mechanism operates on an incentive-giving basis to the business enterprises wishing to be promoted when they invest. For this, despite the status as the Act, the Investment Promotion Act B.E. 2520 (1977) was promulgated, with subsequent amendments in 1991 and 2001, to set up certain conditions required for any business enterprises wishing to be eligible for investment promotion.¹⁷⁶ In other words, it is not required for a business enterprise to receive investment promotion, thus not having to comply with the provisions under this Act, but those who wish to receive such promotion must comply with the obligations prescribed in this Act.

¹⁷⁶ Investment Promotion Act B.E. 2520 (1977) [“Investment Promotion Act”]

The first gateway to be eligible for investment promotion is for the business enterprise to have activities, which are important and beneficial to the economic and social development, and security of the country, involve production for export, have high content of capital, labour or service, or utilize agricultural produce or natural resources as raw materials, provided that in the opinion of the Board of Investment (BOI), they are non-existent in the Kingdom, or existent but inadequate, or use out-of-date production processes.¹⁷⁷ In addition, the investment project to which the Board may grant promotion shall be one, which incorporates appropriate measures for the prevention and control of harmful effects to the quality of the environment in the interest of the common good of the general living of the public and for the perpetuation of mankind and nature.¹⁷⁸ Once the BOI approved the initial application, it may stipulate other conditions in the promotion certificate for the compliance by the promoted entity.¹⁷⁹ Conditions relevant to the protection of human rights are the conditions on nationality and number of workers, technicians and experts, and training and employment of manpower.¹⁸⁰ Also, conditions may encompass prevention and control of damaging elements to the quality of the environment.¹⁸¹

With the promotion certificate, that business enterprise is eligible to receive a number of privileges following the compliance with the obligations prescribed. For instance, the promoted entity is entitled to be granted permission to bring foreign nationals who are skilled workers, experts, or spouses of those mentioned into Thailand for the periods of time determined by the BOI, even though such period is in excess of the quotas or period of time permitted to stay in Thailand as prescribed by the law on immigration.¹⁸² Also, the promoted entity, even a foreign entity, shall be permitted to own land in order to carry on the promoted activity

¹⁷⁷ Ibid., Section 16

¹⁷⁸ Ibid., Section 19

¹⁷⁹ Ibid., Section 20

¹⁸⁰ Ibid., Section 20 (5), (6)

¹⁸¹ Ibid., Section 20 (7)

¹⁸² Ibid., Section 25

to such an extent as the BOI deems appropriate, even in excess of the permissible limit under other laws. However, the foreign entity that dissolves its activity or transfers it to another person shall dispose of the land it has been permitted to own within one year of the date of dissolution or transfer.¹⁸³ Concerning the exemption of import duties, the promoted entity shall be granted exemption for payment of import duties on machinery upon the approval of the BOI, provided that such machinery comparable in quality is not being produced or assembled within the Kingdom in sufficient quantity to be acquired for used in such activity.¹⁸⁴

Therefore, under the Investment Promotion Act, business entities, which falls under the category pursuant to the first gateway, and are able to demonstrate the compliance with the conditions, including the ones on human rights protection and promotion, prescribed by the Act and the BOI, are eligible to receive investment promotion.

In addition to the conditions under the Act, the BOI regularly issues announcements to further promote investment. Each announcement contains conditions, which allow the business entity to take advantage of investment promotion should it satisfies the conditions. Empirically, most announcements by the BOI that concern human rights protection relate to environment. For instance, the BOI Announcement No.3/2550 (2007) on Environmental Problem-Solving Measures stipulates that, by virtue of Section 16 of the Investment Promotion Act that allows the BOI to make announcement designating the types and sizes of investment activity eligible for promotion and may stipulate therein the conditions under which promotion is to be granted and may amend or abolish those conditions at any time¹⁸⁵, it would give incentive to companies that carry out measures to solve environmental problems. From this announcement, the companies must be from the following types: oil refinery, natural gas separation, power generation, chemicals and petrochemicals, and minerals and base metals.

183 Investment Promotion Act, Section 27

184 Ibid., Section 28

185 Ibid., Section 16

They must comply with the environmental management criteria and conditions as specified by the government with pollutant values less than the legal control rate, and ultimately the projects must reduce their environmental impact according to criteria and methods specified by the Office of Board of Investment. The incentives for such compliance are as follows: the promoted project will be granted exemption from import duty on machinery for machinery improvement to reduce their environmental impact; the promoted projects will be granted a 3-year corporate income tax exemption on the revenue of existing projects, accounting for 70% of the investment value of the improvement excluding cost of land and working capital, and the corporate tax exemption period will be counted from the date of income derivation after the issuance of investment promotion certificate onwards. Even though it is stipulated that the business entity must complete the improvements according to the environmental impact reduction plan by March 31, 2011¹⁸⁶, this indicates that the State implementing non-binding initiatives requiring or encouraging business enterprises to respect human rights. Another example is the BOI Announcement No.Sor.2/2551 (2008) concerning the investment promotion for activities that use hi-technology and produce of eco-friendly materials and products, where companies that satisfy the conditions are eligible to receive 8-year corporate income tax exemption without being subject to corporate income tax exemption cap.¹⁸⁷

Each of the BOI Announcements has its own condition and time period of application. The announcements are made easily accessible on the website of the BOI.¹⁸⁸ Therefore, the BOI Announcements indicate that the Thailand is implementing non-binding initiatives to require or

186 BOI Announcement No.3/2550 (2007) on Environmental Problem-Solving Measures, at http://www.boi.go.th/english/download/law_regulations/501/No.3-2550_rev131207.pdf, accessed 17 June 2012

187 BOI Announcement No.Sor.2/2551 (2008), at http://www.boi.go.th/english/download/law_regulations/559/sor2_2551_eng.pdf, accessed 17 June 2012

188 See http://www.boi.go.th/index.php?page=boi_announcements

encourage business enterprises to respect human rights.

b) Corporate Social Responsibility (CSR)

The Thai government has acknowledged and included its pledge to promote corporate governance and to foster corporate cultures respectful of human rights in its current policy.¹⁸⁹ Under the heading of economic development policy, the current Thai government pledged to develop industrial sector to become environmentally friendly and to foster corporate social responsibility by improving production technology, reducing the use of natural resources and greenhouse gases emissions, promoting of use of recycled and reused materials as well as alternative energy in order for the entrepreneurs to generate extra income from selling carbon credits, and promoting local participation in problem-solving and environmental investigation leading to the status of the low-carbon society.¹⁹⁰ On the different aspect, the Thai government pledges to promote corporate governance in the private sector, particularly the system to investigate transparency and to promote corporate social responsibility.¹⁹¹ The acknowledgement in the policy, therefore, predominantly calls for the examination of Corporate Social Responsibility (CSR) in Thailand.

The notion of CSR coincidentally reflects the traditional way of teaching that is deep-rooted in the Thai culture; that is, to “do good deeds for others and making merits”.¹⁹² As a person in the society, a business entity is expected to perform such an ethical duty, which is typically done through “donations” or “philanthropy”.¹⁹³ Also, the concept

of social responsibility has been further emphasized owing to the recommendation by His Majesty King Bhumibol Adulyadej on the philosophy of “sufficiency economy”. This philosophy, in brief, calls for the Thai people to have a balanced way of life in order to achieve the “sustainable development”. Since the focus of this philosophy encompasses other aspects of life such as social development and environmental protection, in addition to the economic growth, it can be concluded that the philosophy of sufficiency economy plays a catalytic role in fostering the fundamental concept of CSR in Thailand.¹⁹⁴

Consequently, with this emergence and the trend as reflected in the most recent government policy, business entities that have caused harm to the location they operate are called upon to perform this ethical duty by, among others, helping contribute to the society to achieve a better quality of life. In practice, good business entities conduct their business operation in the manner that balance and integrate their economic, social and environmental responsibilities, while minimizing societal harm.¹⁹⁵ At present, a number of companies in Thailand implement CSR via a number of forms. Some entities provide regular donations, while others go further to incorporate CSR in their business strategy. From the study, it is illustrated that SMEs in Thailand are performing well in terms of regular donations, while bigger firms, which are pressured by the societal expectation to perform CSR and realized its competitive societal advantage of doing so, proceed to incorporate CSR in their business strategy and corporate missions.¹⁹⁶

The types of firms that are likely to be pressured to incorporate CSR into their business strategy are those whose business operations tend to pose unfavourable impacts to environment and society and those whose business operations tend to create harm to their workers or people living in the society. In Thailand, the company that receives the most

189 Official Declaration of Policy B.E. 2554 (2011) of the Royal Thai Government under Her Excellency Prime Minister Yingluck Shinawatra to the Parliament, at http://www.cabinet.thaigov.go.th/bb_main31.htm, accessed 25 June 2012

190 Ibid., 18

191 Ibid., 42

192 Human Resources Development Working Group, “Corporate Social Responsibility in the APEC region: Current Status and Implications (Economic Paper: Thailand),” APEC#205-HR-01.2, HRDWG, December 2005, at <http://libguides.radford.edu/content.php?pid=49958&sid=366938>

193 Ibid.

194 Ibid.

195 Ibid.

196 Ibid., 4

commendation for its outstanding CSR initiatives is the Siam Cement Group of Companies, for its adoption of international CSR best practices such as the Global Reporting Initiative (GRI) into its business operation.¹⁹⁷ Another company that is praised for its commitment to CSR is PTT Group, an oil company that was once state-owned but now privatized. In its Corporate Sustainability Report 2011, it explicitly states that PTT, including its Board, executives, and employees, must respect and comply with relevant laws, customs and traditions, and culture of each country in which PTT has invested or engaged businesses. Most importantly, it further states that adherence to human rights under the Universal Declaration of Human Rights, including non-violation and non-support of any acts violating the human rights, and adherence to the corporate governance principles and code of conduct, is mandatory.¹⁹⁸

In addition to CSR, the Socially Responsible Investing (SRI) has not been formally incorporated into the Thai legislation concerning business operations, nor has any guidelines been issued by the government or the Stock Exchange of Thailand. However, there have been certain initiatives to call for the greater implementation of the SRI¹⁹⁹, as it encourages investment to be conducted directly to community-based organizations, bypassing the traditional financial organizations. This approach is believed to create greater social impact in the long run. Nevertheless, this approach undoubtedly requires “a lot of efforts from all key stakeholders”²⁰⁰

197 Ibid., 4

198 Sustainability Report of 2011, PTT, 41

199 Socially Responsible Investing, at <http://www.calendar-thailand.com/topic/Socially-Responsible--Investing/41/>, accessed 2 September 2012

200 Suluck Pattarathammas, “On the Possibility of Socially Responsible Investing Funds in Thailand,” the TBS Public Lecture of Corporate Social Responsibility, at <http://www.bus.tu.ac.th/uploadPR>, accessed 2 September 2012

5.2. Is the State providing guidance to business enterprises on how to respect human rights throughout their operations?

a) Labour Standards

At present, specific official guidance to business enterprises on how to respect human rights issued by the Thai government is limited. The most important initiative by the Thai government on the issue is the introduction of Thai Labour Standards (TLS). The Ministry of Labour has issued the TLS No.8001-2546 on 27 June 2003 with the aim to promote corporate social responsibility of business entities in Thailand. The application of TLS is voluntary, but encouraged as such application would foster development of the business operation and management to be in line with international standards, particularly on the improvement of the quality of life of labours.²⁰¹ The introduction of the TLS reflects Thailand’s commitment to uphold the labour protection rights as enshrined in the Constitution and its international obligations under the International Labour Organization Convention and the Charter of the United Nations. The TLS No.8001-2546 was replaced by the new version of TLS No.8001-2553 in 2010 following some adjustments.

The TLS No.8001-2553²⁰² prescribes a number of standards pertaining to the good practice of labour standards, echoing the international standard of ISO 26000. The standards encompass various areas of labour protection, ranging from work conditions to labour safety. The standards are divided into two categories: labour management system and labour rights. The standards on labour management system aim to provide guarantee that the treatment of labour complies with requirements under ISO 9000, whereas the standards on labour rights and protection aim to ensure compliance with the ILO convention and the existing labour laws. Some of

201 Ministry of Labor, “Thai Labor Standard,” at <http://www.labor.go.th/th/webimage/images/load/file/tls17.pdf> , accessed 26 June 2012

202 Ministry of Labor, “Thai Labor Standard TLS No.8001-2553,” at <http://tls.labor.go.th/attachments/article/170/F7E7Ad01.pdf><http://tls.labor.go.th/attachments/article/170/F7E7Ad01.pdf>, accessed 26 June 2012

the standards prescribed by TLS No.8001-2553 require that the labour management system be regularly assessed to ensure compliance with the TLS; that no forced labour be permitted; that wages be paid for the amount of no less than required by law; that number of working hours, working days, and holidays be set in accordance with the law; that discrimination in relation to employment, work conditions and dismissal be prohibited; that no punitive and physical and mental punishment be carried out; that no child labour (aged under 15) be employed and no workers at the age of 15 to 18 be employed in the conditions that may cause harmful effects to their health; that no female workers be employed in the conditions that may cause harmful effects to their health, and no pregnant workers be seized of privileges and perks due to pregnancy; that the liberty to form union and initiate negotiations be affirmed; that the workplace be continually monitored to ensure the standard level of safety, hygiene, and environment; and that the welfare, toilets, drinking water, and canteen be clean and sufficiently provided.²⁰³

The mechanism under the TLS No.8001-2553 allows business entities to self-declare its compliance with the TLS. The self-declaration mechanism, based on the international standard of ISO/IEC 17500, requires the business entities to produce report to be made publicly available with regards to their compliance with the TLS. This would indicate the commitment by the business entities to be socially responsible in an effective manner, and thus improve the image of the respective entities.

b) Investment Promotion for Sustainable Development

The BOI issued an Announcement No.2/2553 (2010) on Investment Promotion for Sustainable Development²⁰⁴ to discern the character of some of the preferred type of activities, which can

²⁰³ Ministry of Labor, “Thai Labor Standard TLS No.8001-2553.”

²⁰⁴ BOI Announcement No.2/2553, at http://www.boi.go.th/english/download/law_regulations/690/No.%202-2553.pdf, accessed 26 June 2012

be viewed as recommendation or guidance to business enterprises on how to promote sustainable development – a long-term human rights protection. For instance, for a business entity relating to energy conservation and alternative energy to receive investment promotion, its business activities must manufacture alcohol or fuel from agricultural products including scrap, garbage and/or waste; manufacture energy-conserving machinery or equipment that uses alternative energy; or alternatively use the production of electricity from alternative energy such as from agricultural material, biogas, and wind.²⁰⁵

6. Is the State taking steps to require or encourage business respect for human rights in its own relationships and dealings with businesses?

6.1. Does the State require or encourage State-owned or controlled business enterprises to respect human rights?

Overall, there are no provisions under Thai law to require State-owned or controlled business enterprises (SE) to respect human rights with specific reference to the term ‘human rights’ itself. However, to determine whether there are any references to the notion of human rights in case of SE, one must discern from specific Acts that create the SE.

In Thailand, the SE is divided into the one that possesses legal personality and the other that does not. Examples of the latter include Thailand Tobacco Monopoly and the Government Lottery Office.

The SE that possesses legal personality performs its business operations as if it is incorporated by private sectors, and is divided into four categories: (1) the SE created by the incorporating Act such as the State Railway of Thailand and the Port Authority of Thailand; (2) the SE created by the Royal Decree promulgated pursuant to the Incorporation of

²⁰⁵ Ibid.

Government-run Organization Act B.E.2496 (1953) and receives its entire financial support from the government such as Forest Industry Organization and Fish Marketing Organization; (3) Government-owned or –controlled banks such as the Bank of Thailand and the Government Savings Bank; and (4) Government-owned or –controlled limited companies such as Thai Airways International PLC and Aeronautical Radio of Thailand Ltd.

For the first category, reference to human rights-related matter can be found in the incorporating Acts. Unsurprisingly, the only reference to human rights-related matter is the mechanism to allow employees to seek appeal in the event of punishment pursuant to the rules and/or regulations of that SE. For instance, both the State Railway of Thailand Act B.E.2494 (1951) and the Port Authority of Thailand Act B.E.2494 (1951) contain mechanism to allow employees to seek appeal subsequent to the punishment under the rules and/or regulations of the SE.²⁰⁶ Even for this regulation, it does not directly an issue of human rights abuses resulting from business operations, but rather an issue of rights to seek appeal in the event of the violation of the internal rules and/or regulations.

For the second category, the Royal Decrees to incorporate the government-run organization only contain provisions relating to, among others, the structure of the management and the management of budget. There are no provisions concerning the respect of human rights found in these legislations.

For the third category, there exist provisions with respect to human rights, which can be found in the incorporating Act of respective banks. However, such provisions only concern the protection of its staff's labour rights. No provisions to specify the duty to respect human rights are promulgated. For instance, Section 12(17) of the Small and Medium Enterprise Development Bank (SME Bank) Act B.E.2545 (2002) requires that the bank provide appropriate welfare for its employees and their family

²⁰⁶ State Railway of Thailand Act B.E.2494 (1951), Section 45, and Port Authority of Thailand Act B.E.2494 (1951), Section 41

members.²⁰⁷ However, no such provision is found in the Export and Import Bank (EXIM Bank) B.E.2536 (1993).²⁰⁸ Furthermore, the Bank for Agriculture and Agricultural Co-operatives Act B.E.2509 (1966) contains objectives to provide financial support and remedy to farmers and other relating agricultural persons. Section 9(13) of the Act requires that the bank participate in the remedial project for those whose agricultural products are affected by natural disasters.²⁰⁹ Nevertheless, there are still no provisions concerning the remedy for human rights abuses arising from business operations.

For the fourth categories, given the more flexibility nature of the operation of this type of companies, there are no legal provisions to require them to respect human rights. However, the CSR concept dictates that they employ certain projects or initiatives to give back to the society and ensure respect of human rights.

6.2. Does the State require or encourage businesses that receive substantial support and services from State agencies (“beneficiary enterprises”) to respect human rights?

No.

6.3. When services that may impact upon the enjoyment of human rights are privatized, is the State taking steps to ensure that the business enterprises performing these privatized services respect human rights?

No.

6.4. Does the State require or encourage respect for human rights in carrying out public procurement?

Not applicable

²⁰⁷ Small and Medium Enterprise Development Bank (SME Bank) Act B.E.2545 (2002), Section 12(17)

²⁰⁸ Export and Import Bank (EXIM Bank) B.E.2536 (1993)

²⁰⁹ Bank for Agriculture and Agricultural Co-operatives Act B.E.2509 (1966), Section 9(13)

7. Is the State taking steps to support business respect for human rights in conflict-affected and high-risk areas?

The definition of conflict-affected and high-risk areas varies and none attains universal acceptance. However, the broad meaning of such terms can be discerned from various sources. For instance, a conflict-affected area is identified by the presences of armed conflict, widespread violence or other risks of harm to people, acknowledging the influence of the international humanitarian law. Furthermore, a high-risk area may encompass situations that involve, among others, political instability or repression, institutional weakness, insecurity, a collapse of civil infrastructure and widespread violence.

Recent developments of unrest in Thailand, especially in the Southern Border Provinces, may lead foreign observers to conclude that the area is considered conflict-affected or having high risk. However, it is premature to conclude so, without the formal endorsement of the Government of the Kingdom of Thailand. According to the Report of the Working Group on the Universal Periodic Review on Thailand, it appears that Thailand, despite not formally endorsing the Southern Border Provinces as conflict-affected, acknowledges the situation as challenges. It reiterates that the situation in the Southern Border Provinces is not an armed conflict, but rather it involves protracted violence.²¹⁰ Provided the sensitivity of such endorsement, it is fair to conclude at this stage that, without prejudice to the status of the situation and for the purpose of this report, the area can be considered conflict-affected, and that there have been developments in terms of imposing special legislations in the area. One of the most notable legislations is the Emergency Decree on Public Administration in Emergency Situation

B.E. 2548 (2005).²¹¹ However, the content in the Emergency Decree only addresses the restriction of certain rights and liberties, particularly concerning criminal justice process, and is rather criticized to be violating fundamental human rights, not encouraging greater protection.

From 2004 to 2009, there have been 9,446 violence incidents causing 4,100 casualties and 6,509 injuries.²¹² In 2008, there were 821, but the number rise up to 1,035 in the following year. Statistically, there were more Muslim-Thai casualties than Buddhist-Thai, while more Buddhist-Thai were injured than Muslim-Thai. In 2009, the National Human Rights Committee received 20 complaints in relation to violence occurring in the Southern Border Provinces, but they were all related to criminal justice process. For instance, 10 complaints related to violence and/or torture committed by government officials, 3 complaints related to effect from the violence, and 4 complaints related to reassessment of undue detention.²¹³ To date, the region continues to be threatened by perpetrators of violence, which cause physical and psychological harm on the locals.²¹⁴

Human rights violation in the Southern Border Provinces takes a number of forms: violation of rights to justice by government officials; use of violence affecting life and living condition of the public; biases based on race, religion, culture, discrimination, and access to resource and public services. In addition, other sources of problems are, but not limited to, as follows: lack of education and professional training, continuous unemployment, poor healthcare scheme, and illegal trading such as drugs and human trafficking.²¹⁵ However, efforts to alleviate the problem, with particular emphasis on rehabilitation of victims, have been made by the government in 2008-2009. Notwithstanding the lack of specific address to business entity to respect

210 Office of the High Commissioner on Human Rights, United Nations, "Report of the Working Group on the Universal Periodic Review" ["UPR Report"], at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/172/64/PDF/G1117264.pdf?OpenElement>, 4, para. 9, accessed 27 June 2012

211 Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005)

212 NHRC Report, 76

213 Ibid., 77

214 UPR Report, 5, para. 9

215 NHRC Report, 77

human rights and ensure no human rights violation is committed, the government had issued various policies with the aim to assist and rehabilitate those affected by the violence. Particular emphasis was made to orphans, widows, students, teachers, and academic officers.²¹⁶ Plans to offer financial support, skill building, business management training, and to promote the establishment of small and medium enterprises to generate income for the locals are issued.

Furthermore, the government designated the Southern Border Provinces to become special development area with the initiation of Halal food industry and tax privilege scheme.²¹⁷ For instance, the BOI has issued an announcement No.9/2552 (2009) to promote and develop industry in three southern provinces, namely Pattani, Yala, and Narathiwat, for social and security benefits of the area. The promotion is, similar to other announcements, based on incentive providing, with the approved entity given 8-year of corporate income tax exemption and 50% corporate income tax reduction of net profit derived from its investment for 5 years after the exemption period, as well as given double deduction for transportation, electricity and water costs for 15 years from the first date of income derivation from promoted project. The entity wishing to be included in the scheme must submit an investment promotion application of the project within December 31, 2012.²¹⁸ There is an example of a Malaysian businessperson being granted investment promotion for the 100-room hotel project in Betong district, Yala province. The project was granted investment promotion as the BOI considers it to be beneficial to the development of the area, as the hotel would serve to accommodate visitors traveling to the area and thus generate

business activity.²¹⁹ Also, the Thai government has issued a policy to promote the area to become a halal food production centre. With the centre, it would reinstate and secure jobs to the locals and consequently generate more income to improve the quality of life.²²⁰

Hence, Thailand has taken a non-legislative approach in addressing the promotion of human rights in the Southern Border Provinces, but such an approach is rather general and subsequent monitoring to ensure implementation is required. In relation to business-related human rights violation in conflict-affected or high-risk areas, there are still no specific addresses on the issue.

7.1. Is the State engaging with business enterprises operating in conflict-affected and high-risk areas in relation to identifying, preventing and mitigating the human rights-related risks of their activities and business relationships?

Human rights abuses can be mitigated, or prevented, through the empowerment of the people. That is why the Thai government has issued a policy to develop the areas in the southern provinces, which have been in reality affected by continuous unrests. Poised with the aim to strengthen the local community, the Thai government has initiated an Islamic Micro-credit plan, which requires assistance from relevant government agencies and state-owned organizations in terms of technical, management, and financial support. Currently, the Islamic Bank of Thailand serves as the major institution to provide support for the Islamic Micro-credit plan.

The interest-free Islamic Micro-credit plan is intended to provide financial assistance to the poor and low-income earners, operating in accordance with the religious teachings, by granting small

216 Ibid.

217 NHRC Report, 77

218 BOI Announcement No.9/2552 (2009), at http://www.boi.go.th/english/download/law_regulations/664/No9_2552_eng_1%20%20.pdf, accessed 26 June 2012

219 "Incentives and Financial Measures to Help Develop Southern Border Provinces," Inside Thailand Review, at <http://thailand.prd.go.th/ebook/review/content.php?chapterID=18>, accessed 29 June 2012

220 Ibid.

loans, which they would normally be denied in the ordinary cases, to enable them to start small business entrepreneurship and earn more income. In addition to the financial assistance, the plan is also to provide knowledge and understanding about transaction and financial mechanisms that are not in contravention with the Islamic teachings.²²¹ With more income, economic development entails, and the living standard of the locals improves. The empowerment and promotion of entrepreneurship would evidently mitigate the human rights abuses arising from business operations in the area.

7.2. Is the State providing assistance to business enterprises operating in conflict-affected and high-risk areas to assess and address the heightened risks of human rights abuses, including gender-based and sexual violence?

See 7.1

7.3. Is the State denying access to public support and services for business enterprises operating in conflict-affected and high-risk areas that they are involved with human rights abuses and refuse to cooperate in addressing the situation? Are there laws, regulations and/or policies that have the effect of doing so?

Not applicable

7.4. Has the State reviewed its policies, legislation, regulations and enforcement measures with a view to determining whether they effectively address the risk of business involvement in human rights abuses in conflict-affected and high-risk areas, and taken steps to address any gaps?

Not applicable

8. Is the State taking steps to ensure coherence in its policies domestically and internationally such that it is able to implement its international human rights obligations?

Thailand has taken steps, in addition to the periodic assessment mechanisms mentioned in Question III.3, to ensure coherence in its policies domestically and internationally. As previously stated, Thailand is a party to major international human rights conventions, and it is therefore obliged to abide by its international obligations. Recently, Thailand has presented its report to the United Nations Human Rights Council under the Universal Periodic Review (UPR) regime on 5 October 2011. The Working Committee, led by H.E. Mr. Sihasak Phuanketkeow, presented Thailand's report, which covered the human rights situations in Thailand as well as other developments in terms of promoting human rights protection and social development in the country.

At the UPR session, Thailand received 172 recommendations from various countries, and has declared its acceptance for 100 recommendations. The remaining 72 recommendations were put on hold, and 34 of which were accepted during the 19th Session of the UN Human Rights Council on Consideration of the Universal Periodic Review Report of Thailand on 15 March 2012.²²²

²²² Statement by H.E. Mr. Sihasak Phuanketkeow, Permanent Secretary for Foreign Affairs and Special Envoy of the Royal Thai Government at the Consideration of the Universal Periodic Review Report of Thailand 19th Session of the UN Human Rights Council Geneva, 15 March 2012

²²¹ "Incentives and Financial Measures to Help Develop Southern Border Provinces," Inside Thailand Review.

In total, Thailand has accepted 134 out of 172 recommendations from the recent UPR session.

In ensuring the implementation of its international human rights obligations, particularly in relation to business and human rights, Thailand has pledged to follow the recommendations on, among others, labours and human trafficking. Thailand pledges to continue with its efforts to promote and protect the right to work, the right to health and the right to education of its people in order to maintain an adequate standard of living for all, as recommended by Brunei Darussalam, and to continue to focus its efforts in ensuring full protection of the human rights for all migrant and foreign workers, particularly to enhance their safety and welfare, as recommended by Myanmar.²²³ In relation to human trafficking, Thailand agrees to accede to the Palermo Protocol and continue improving its implementation of policy and legal framework related to human trafficking, as recommended by Norway, and to continue to strengthen its efforts to combat trafficking and abuses of labour rights, particularly against vulnerable migrants, as recommended by New Zealand.²²⁴

8.1. Is the State taking steps to ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates?

It can be discerned from the recent Official Declaration of Policy of the current Thai government to the parliament that Thailand is presently taking steps to ensure that the governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling

²²³ Office of the High Commissioner on Human Rights, United Nations, "National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1- Thailand."

²²⁴ Ibid.

their respective mandates.²²⁵ Under Section on Good Governance relating to law and justice, the Thai government pledges to reform law enforcement mechanism in order for the state-based institutions to enforce law fairly, equally, transparently, and effectively, in accordance with the Rule of Law and the Universal Declaration of Human Rights. Furthermore, the Thai government pledges to promote the implementation of moral and ethical standards as well as good governance to public and government officials in order to ensure transparency of their conducts, and to seriously suppress corruptions and wrongful conducts of public and government officials in order to boost confidence of the general public.²²⁶

8.2. Is the State taking steps to maintain adequate domestic policy space to meet its human rights obligations when concluding economic agreements with other States or business enterprises?

From the general perspective, Thailand has pledged internationally to comply with its human rights obligations. This undoubtedly encompasses all aspects of Thailand's conduct, including when it concludes economic agreements with other States or business enterprises. However, the recent development on the potential construction of the Xayaburi dam, located in the north of Laos, with the power-purchase agreement by the Electricity Generating Authority of Thailand (EGAT) and the Ch. Karnchang, one of the leading construction firms in Thailand, raises concerns as to Thailand's compliance with its international human rights obligations.

According to the statement by the representative of EGAT at the meeting with Thailand's NHRC, the government of Thailand and Laos has concluded a memorandum of understanding concerning

²²⁵ Official Declaration of Policy B.E. 2554 (2011) of the Royal Thai Government under Her Excellency Prime Minister Yingluck Shinawatra to the Parliament, 49, at http://www.cabinet.thaigov.go.th/bb_main31.htm, accessed 29 June 2012

²²⁶ Ibid., 41

international electricity, by agreeing that Laos will determine an appropriate amount of energy to be sold to Thailand.²²⁷ Since the Xayaburi dam is located in the international river of Mekong that flows to the side of Thailand's north-eastern territory, its effect on Thailand is inevitable. The dam is to be located approximately 30 kilometres from the town of Xayaburi and is 200 kilometres from Thailand. The main objective for the construction of the dam is to generate more income for the purpose of economic and social development in Laos, since allegedly 95 percent of the electricity produced is believed to be sold to Thailand under the aforementioned power-purchase agreement in July 2010.

The construction of the dam is heavily criticized as being a highly potential cause of environmental damage to the area as well as the areas down the river. According to International Rivers, a non-governmental organization based in the US with the main objective to stopping destructive river projects and promoting better options, the Xayaburi dam will cause severe environmental damage, including the critical block of fish migration, the destruction of river's complex local ecosystem, and the block of sediments flows in the Mekong River.²²⁸ With the potential environmental damage, the Xayaburi Dam project had to be submitted for approval by the region's governments through a regional decision-making process called the "Procedures for Notification, Prior Consultation and Agreement" (PNPCA), which is facilitated by the Mekong River Commission (MRC).

The concerned governments agreed in December 2011 to postpone the decision on the Xayaburi dam pending the completion of the joint study on the trans-boundary impacts of the Mekong mainstream dams. However, with the power-

227 Office of the National Human Rights Commission of Thailand, "Public Hearings Concerning the Potential Construction of the Xayaburi Dam on 5 March 2012," at http://www.nhrc.or.th/2012/wb/th/news_detail.php?nid=186&parent_id=1&type=highlight, accessed 1 July 2012

228 "Xayaburi Dam", International Rivers, at <http://www.internationalrivers.org/campaigns/xayaburi-dam>, accessed 1 July 2012

purchase agreement still in place, it raises a concern on the position of Thailand's compliance with its international obligations.

Prompted by concerned public that filed complaint, the NHRC invited both government and private agencies to provide information on the matter. Among the attendees of this meeting on 21 February 2012 are representatives from EGAT, Ministry of Energy, Ministry of Foreign Affairs, Department of Water Resources, the MRC, the Ch. Karnchang, Kasikorn bank, Krung Thai bank, and Siam Commercial bank. However, the outcome of the meeting has yet been completed, but at least the meeting indicates Thailand's intention to comply with its international obligations.²²⁹

8.3. Is the State taking steps to ensure and promote business respect for human rights when acting as members of multilateral institutions that deal with business-related issues?

Not applicable

9. Is the State taking steps to ensure, through judicial, administrative, legislative or other appropriate means, that when business-related human rights abuses occur within their territory and/or jurisdiction those affected have access to effective remedy?

9.1. What are the legal and non-legal State-based grievance mechanisms available to those seeking remedy for business-related human rights abuses?

In addition to the non-legal State-based grievance mechanisms, which are conducted by the NHRC and will be discussed in Question III.10, there exists such kind of mechanism relating to environment. Beginning in 2003, the Department of Environmental

229 Ibid.

Quality Promotion (DEQP) has collaborated with United States-Asia Environmental Partnership (US-AEP) and United States Environmental Protection Agency (US-EPA)²³⁰ to establish a framework in its mediation program, including the training of mediators and the campaign to promote the use of the program.²³¹ At present, the work of mediation relating to environmental dispute in Thailand is still at its fledgling stage. The Division of Public Participation Promotion, one of DEQP's subdivisions, is tasked with mandate to develop the environmental dispute resolution mechanism.²³²

9.2. What barriers to access to remedy through these State-based grievance mechanisms have been reported?

Not applicable

9.3. Are there laws, regulations, policies and/or initiatives requiring or encouraging the establishment of non-State-based grievance mechanisms?

At present, there is no specific legislation, which directly requires or encourages the establishment of non-State-based grievance mechanism. However, according to the Official Declaration of Policy, the current government pledges to improve the assistance mechanism for those facing unfairness by implementing proactive measures for them to access justice and fairness in the expedite manner.²³³

230 "Ministry of Natural Resources and Environment pushes forward the environmental mediation program", <http://www.ryt9.com/s/prg/144101>, accessed 2 September 2012

231 "Mediation Institutions," at http://baseswiki.org/en/Thailand#Mediation_Institutions, accessed 2 September 2012

232 Ministerial Regulations B.E. 2555 (2012) issued under the State Administration Act. B.E. 2532 (1990), modified B.E. 2543 (2000), Section 10(6)

233 Official Declaration of Policy B.E. 2554 (2011) of the Royal Thai Government under Her Excellency Prime Minister Yingluck Shinawatra to the Parliament, at http://www.cabinet.thaigov.go.th/bb_main31.htm, accessed 2 September 2012

10. Is the State giving the country's National Human Rights Institution powers to enable it to contribute to the area of business and human rights?

Established and empowered by the Constitution, the National Human Rights Committee (NHRC) remains the major focal point of contact to receive complaints of potential human rights violation. To file complaints, the NHRC published procedures which are made easily accessible on its website and on free-distribution of pamphlets. Those who can file the case are victims of human rights abuses, human rights-related private organization, or the NHRC itself. Ways of filing the case include by phone at call-centre 1377, by post, by email, in person, through designated human rights-related private organization or directly to the NHRC.²³⁴ Relevant details such as name of person filing complaints, name of person alleged to have violated human rights, and the description of the act or the situation alleged to be in violation of human rights.

Once the complaint is received, the NHRC then convenes a preliminary consideration on the situation and assesses whether it amounts to human rights violation and falls under the mandate of the NHRC. If the result is positive, the NHRC then suggests the parties to go through reconciliation process and produce a memorandum of agreement between them. If the reconciliation process is not possible for whatever reasons, the NHRC shall reconsider the case and produce a report to recommend relevant authorities or persons to comply with its recommendation. In the event of non-compliance, the NHRC shall report directly to the Prime Minister for further actions. Also, should the Prime Minister remains inactive on the matter, the NHRC is empowered to report the case to the Parliament for further actions. During the 2011 fiscal year (1 October 2010 – 30 September 2011), the NHRC received 694 cases, 7 of which

234 Office of the National Human Rights Commission of Thailand, "Information on Filing Claims," at http://www.nhrc.or.th/2012/wb/th/contentpage.php?id=24&menu_id=2&groupID=3&subID=22, accessed 19 March 2012

are from overseas.²³⁵ Police ranks first as the type of civil servant receiving the highest complaints at 85 cases.²³⁶ Very recently, from 1 October 2011 to 10 February 2012, the NHRC received the total of 173 cases.

The NHRC has recently been involved in the investigation of the alleged human rights violation in Sre Ambel District, Koh Kong Province, Cambodia, following the complaint filed by lawyers from the Community Legal Education Centre (CLEC) in Cambodia. The nexus of the NHRC and the situation is the involvements of a Thai sugar company that possesses 70 per cent investment and has effective operational control over two companies that hold the Cambodian concessions. The alleged human rights violation occurred in the form of forced land confiscation from the locals via violent means such as the killing of livestock and threats by armed security groups.²³⁷ As with other situations, the NHRC affirms its commitment to promote human rights by accepting the complaint and embarking on the investigation.

In addition to the investigations, the NHRC is also mandated to produce annual reports on the assessment of human rights situation in Thailand, and provide recommendation to the government and the parliament to promote human rights protection.

235 Office of the National Human Rights Commission of Thailand, NHRC Annual Operational Report of 2011, at <http://www.nhrc.or.th/2012/wb/webdoc/stat2555.pdf>, accessed 19 March 2012

236 Ibid.

237 Earth Rights International, "Thai Human Rights Commission blazes the trail in hearing transnational human rights cases," at <http://www.earthrights.org/blog/thai-human-rights-commission-blazes-trail-hearing-transnational-human-rights-cases>, accessed 10 July 2012

11. What are the efforts that are being made by non-State actors to foster State engagement with the Framework and the Guiding Principles?

See Question III.5.1 b) on CSR

Conclusion

By adopting the UN Framework as the basis for the study, the Report has presented Thailand's existing "works" on the protection of human rights, particularly those arising from the course of business operations, as of October 2012. As indicated at the outset, the present scenario of corporate human rights accountability in Thailand mostly relies on guidelines and best practices rather than binding legal rules. The Report also points out Thailand's inactive role to encourage business enterprises to have respect for human rights, as well as Thailand's not taking adequate steps to ensure such respect. However, the Report highlights that Thailand's comprehensive labor rules and regulations can serve as welcoming examples of the country's initial commitment to ensure the protection from human rights violations from business operations.

Further research on this contemporary topic is timely and necessary. It is interesting to observe whether the following of the UN Framework by ASEAN countries will be successful in combining voluntary and mandatory tools and mechanisms of corporate human rights accountability to produce a new normative business and human rights practice in ASEAN. Thailand's current practice could be seen as a stepping-stone towards such an ambition, and through consistent external pushes and encouragement may such an ambition be realized.