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New Exporter and Importer Registration Order

2023 年 5 月 23 日、ミャンマー貿易省は通達第 35/2023 号により新たな輸出入者登録令を發布した。同通達は、輸出入管理（暫定）法（1947 年）に基づいて発行された従来の登録（輸出入）令第 42/1954 号、及び 2018 年 8 月 9 日に貿易省が発行した輸出入公報第 6 号/2018 号に代わるもので、既存の手続きを統合・更新するものである。輸出・輸入業者登録は、輸出入業を行うミャンマー国内の全ての事業者（外資企業を含む。）にとって必要な手続きであり、特定の商品の輸出・輸入ライセンスを申請するための前提条件でもある。本稿では刷新された輸出・輸入業者登録制度について概説する。

Introduction

On 23 May 2023, the Department of Trade of the Ministry of Commerce (“**MOC**”) under the State Administration Council issued a new Exporter/Importer Registration Order by Notification No. 35/2023 (the “**Notification 35/2023**”). This Notification 35/2023 replaces the previous Registration (Imports and Exports) Order 42/1954, which was issued under the Control of Imports and Exports (Provisional) Act 1947, as well as the Export and Import Bulletin No.6/2018, issued by the Department of Trade on 9 August 2018. The procedures for Exporter/Importer Registration were previously undertaken with these abovementioned multiple issuances from the MOC. However, this has now changed with the introduction of Notification 35/2023, which serves to consolidate and update the existing procedures. It appears that most of the procedures and requirements have remained unchanged from before. Nevertheless, there are some notable additions such as providing a specific timeline for new registration and renewal, information regarding a new online portal and the appeal procedure. Exporter/Importer Registration is a requirement for all businesses in Myanmar that engage in export or import activities, and also a prerequisite for applying for export/import licenses for certain goods. Notification 35/2023 outlines the details and requirements for registration for entities conducting export and/or import business activities in Myanmar. In addition, under Notification 35/2023, the MOC has introduced two distinct categories of Exporter/Importer Registration: (i) the Exporter/Importer Business Owner Registration; and (ii) the Exporter/Importer Business Registration. The following summary highlights the key provisions of Notification 35/2023.

Key Provisions of Notification 35/2023**1. Definition of Exporter/Importer Business Owner Registration and Exporter/Importer Business Registration**

“Exporter/Importer Business Owner Registration” is defined as a registration issued under Notification 35/2023 by the Department of Trade which enables the commercial exportation of goods out of the country or the importation of goods into the country. According to Notification 35/2023, companies established under the Myanmar Companies Law and cooperatives established under the Myanmar Cooperative Law are eligible to apply for

Exporter/Importer Business Owner Registration.

“Exporter/Importer Business Registration” is defined as a registration issued under Notification 35/2023 by the Department of Trade which enables the non-commercial exportation of goods out of the country or the non-commercial importation of goods into the country. Notification 35/2023 states that government departments and organizations, state-owned enterprises, associations registered with relevant departments, religious figures, and diplomats are eligible to apply for Exporter/Importer Business Registration. Previously, government entities were exempt from the requirement to apply for the Exporter/Importer Registration to export and import goods.

2. The rights of Exporter/Importer Registration holders

Entities or individuals who obtain the Exporter/Importer Registration have the following rights:

- (a) They have the right to export and import goods following the prescribed procedures. This includes utilizing sea, air, and conventional trade channels through designated trading stations located in the border region or within the border trade system.
- (b) They have the right to export and import goods under the terms and conditions specified, except for goods whose export or import is prohibited under applicable laws, rules, regulations, notifications, directives, and procedures.

3. Supporting documents for the Exporter/Importer Business Owner Registration application

Notification 35/2023 stipulates the necessary documents that need to be submitted for registration. Companies are required to submit the following documents when applying for an Exporter/Importer Business Owner Registration:

- (a) Application letter on the company’s letterhead;
- (b) Company registration certificate and company extract;
- (c) Copy of national scrutiny card or passport of the person representing the applicant; and
- (d) List of company’s directors with their name, position, address, passport photo and signature, and a copy of their national scrutiny cards or passports.

In the case of foreign companies engaging in trade, they are required to provide evidence of investment from abroad, such as bank statements. Additionally, if relevant to its business operations, the company must submit copies of permit or endorsement issued to the company by the Myanmar Investment Commission or permit issued by the Special Economic Zone Committee.

4. Requirements to be complied with

Notification 35/2023 stipulates that only the headquarters of a company established in Myanmar are eligible to apply for Exporter/Importer Business Owner Registration, regardless of the number of branches it may have. If the company is established outside of Myanmar and registered under the Myanmar Companies Law, only one branch is allowed to apply for the Export/Import Business Owner Registration Certificate, irrespective of the number of branches it has opened.

A company director who is a director of another company whose Exporter/Importer Business Owner Registration has been suspended or cancelled is not eligible to apply for, renew, or amend the Exporter/Importer Business Owner Registration during the penalty period.

5. Procedure for application and grant of registration

The Notification prescribes that all the Exporter/Importer Registration applications are to be made on an online portal managed by the MOC which is TradeNet 2.0 system (<https://myanmartradenet.com>).

Once the application is received, the Department of Trade will carry out an on-site inspection to verify the

submitted documents. If all requirements are fulfilled, approval for new registration will be granted within 15 working days. For amendments and renewal applications, the approval process will take approximately 3 working days after the application review and inspection.

6. Registration terms and fees for the Exporter/Importer Business Owner Registration

The Exporter/Importer Business Owner Registration for a company is valid for five years from the date of approval, and the registration fee is MMK 200,000.

The company has the option to apply for the renewal of its registration with the Directorate of Trade within six months before the expiration date. The renewal fee is the same as the initial registration fee. It is important to note that if no application for renewal is made within one year from the registration expiry date, the Exporter/Importer Business Owner Registration will be automatically cancelled.

7. Rejection, cancellation and appeals

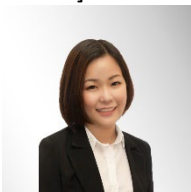
The Department of Trade is empowered to reject applications or suspend for a period ranging from three months to one year or cancel registration for both Exporter/Importer Business Owner and Exporter/Importer Business Registration if it identifies non-compliance with the requirements outlined in Notification 35/2023.

If the application for Exporter/Importer Business Owner Registration has been suspended or cancelled, the entity has the option to appeal to the MOC within 30 days of the cancellation.

Conclusion

Businesses operating export/import activities in Myanmar must familiarize themselves with the provisions outlined in Notification 35/2023 to ensure they meet the necessary registration requirements. As the State Administrative Council of Myanmar continues to issue new regulations, it is imperative to stay updated on these regulations and adapt to the regulatory framework accordingly.

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Thailand

The Development of ESG in Thailand

タイにおいても ESG 戦略を掲げる企業が増えている。上場企業の年次開示書類（One Report）においては ESG の実践に関する情報の開示が求められており、また、タイ中央銀行も金融機関等に気候変動に関する指針の導入を求め、ESG に関する取り組みを推進している。排出権取引の分野でも、自主的排出量削減プログラム（T-VER）や I-REC（国際的な再エネ属性証書）の利用が進んでいる。

Introduction

Environmental, social and governance (“**ESG**”) metrics serve as a framework to measure the sustainability and ethical impact of an investment in a company. As of today, an increasing number of companies in Thailand are announcing their commitment to adopt ESG practices, which represent the following:

“E” stands for ‘Environmental’ representing the company's dedication to environmental responsibility. This encompasses various aspects, including the energy usage and efficiency, climate change strategy, waste reduction, biodiversity loss, greenhouse gas emissions and carbon footprint reduction.

“S” stands for ‘Social’ focusing on how the company treats its stakeholders to ensure social responsibility. This encompasses various aspects, including fair pay and living wages, equal employment opportunities, employee benefits, workplace health and safety, community engagement, responsible supply chain partnerships and compliance with labor laws.

Lastly, “G” stands for ‘Governance’ which examines how a company is governed. This includes assessing corporate policies on compliance, ethical business practices, avoidance of conflicts of interest, prevention of corruption and bribery and ensuring accounting integrity and transparency.

This article aims to provide an update on the current developments of ESG practices in Thailand, specifically focusing on the “E” - the environmental aspect.

1. Obligation to implement ESG practices in Thailand

According to the 13th National Economic and Social Development Plan which outlines 5 goals for Thailand’s transformation from 2023 to 2027, one of the main goals during this 5-year period is “ensuring the transition of production and consumption towards sustainability” which includes reducing pollution together with improving natural resource utilization in linewith ecosystem capacity¹.

However, the formal regulatory frameworks which regulate ESG as a compulsory obligation have not yet been developed; therefore, the implementation of ESG in Thailand by corporate sectors is still on a voluntary basis.

In Thailand, Thai financial market led by the Office of the Securities and Exchange Commission (“**SEC**”) and the Bank of Thailand (“**BOT**”) are the most active regulators which demonstrate their commitment to the sustainability goal and enhance the importance of ESG. They encourage listed companies and financial institutions to start implementing ESG principles and policies as explained below:

1.1 ESG for listed companies

Since 2015, Stock Exchange of Thailand has been encouraging listed companies to develop their organization in line with sustainable business practices by creating the Thailand Sustainability Investment (“**THIS**”) list which comprises of listed companies that voluntarily value their responsibility to ESG and provides a choice to investors who desire to adopt a responsible investment approach.

Thereafter, in 2022, SEC took further steps towards the THIS list by mandating listed companies in Thailand to disclose information concerning their ESG performance across their entire business value chain by submitting the

¹ Office of the National Economic and Social Development Council
“https://www.nesdc.go.th/article_attach/article_file_20230615134223.pdf”

Form 56-1 One Report (the “**One Report**”) to the SEC on an annual basis. However, the One Report still does not impose an obligation on listed companies to implement the ESG practices. Instead, it serves as a means for listed companies to disclose the information to the investor to gain an understanding of the listed company’s ESG policy and material operations.

Furthermore, SEC promotes the issuance of sustainable financing instruments to finance projects with environmental and social benefits. These products include (i) sustainable bonds (i.e. green bonds, social bonds, sustainability bonds and sustainability-linked bonds)² and (ii) SRI Fund (i.e. a mutual fund that incorporates ESG factors as its key investment focus and reflects this in the investment objective and/or strategy). Additionally, to attract market participants to issue or set up these (i) and (ii) products, the SEC currently exempts official fees therefor.

1.2 ESG for financial institutions

Recently, BOT has issued Policy Statement of the Bank of Thailand Re: Internalizing Environmental and Climate Change Aspects into Financial Institution Business dated 15 February 2023. This policy statement by BOT does not have a mandatory effect, but BOT expects financial institutions and companies within the financial business group to adopt this policy statement so that it can appropriately assess climate-related opportunities and risks as part of their business conduct without creating additional risks. Another purpose of this policy statement is to have financial institutions provide green financial products and services to support concrete transition for the Thai economic and financial system to a more sustainable business environment.

In this regard, BOT will commence progress evaluation in accordance with the policy statement from 2024 onwards. In the early stage, the self-assessment exercise by financial institutions including foreign commercial bank branches will be used.

2. Net zero

In accordance with the 13th National Economic and Social Development Plan (2023 to 2027), Thailand has established ambitious targets to address greenhouse gas emissions reduction. The short-term goal for Thailand is to reduce greenhouse gas emissions by a minimum of 20% by 2027, compared to the 17% reduction achieved in 2019. Looking ahead, Thailand is committed to achieving carbon neutrality by 2050 and attaining net-zero greenhouse gas emissions by 2065. These targets align with the statement made by Thai Prime Minister Prayut Chan-o-cha during the UN Climate Change Conference in Glasgow (COP26) in 2021.

To meet this target, Thailand is currently taking proactive measures by enacting several legislations and policies. Examples include provision of tax incentives for renewable power projects by Board of Investment of Thailand, exemption of import duty for Battery Electric Vehicle (BEV) and EV parts, mandating the design of new building construction to be of certain type and size to comply with the building energy code.

The Ministry of Energy is also currently in the process of formulating the National Energy Plan to align with the aforementioned net zero plan. As per the draft of the National Energy Plan thus far, the target is to have renewable and clean energy electricity generated from new power plants achieve at least 50% of the total new power plants within the prescribed timeframe, compared with the recent power generation statistics of 2022 released by the Energy Policy and Planning Office which reveals that the percentage of renewable energy power generation stands at 10.1% and hydroelectricity generation stands at 3.1% of the total power generation in 2022.

Moreover, there are many bills proposed that attempt to reduce greenhouse gas emissions, but these have so far not been approved by the Parliament e.g., Climate Change Bill which aims to establish a mechanism and plan for reducing greenhouse gas emissions and Bill on Pollutant Release and Transfer Registers whose primary purpose is to establish a system that mandates business operators to produce periodical report on the possession, release and transfer of chemical substances imposing risks to human health or the environment, including ozone-depleting

² According to the information published by SEC, green bonds, social bonds and sustainability bonds are bond instruments where the proceeds will be exclusively applied to finance or re-finance of eligible Green projects, Social projects or a combination of both Green and Social projects. Meanwhile, sustainability-linked bond is bond instrument for which the coupon and/or obligation on issuer to implement sustainability-related measures can vary depending on whether the issuer achieves predefined Key Performance Indicators and Sustainability Performance Targets “<https://sustainablefinance.sec.or.th/Bond>”.

substances.

3. **Carbon Credit**

Presently, Thailand has no legislation in relation to the tradeable emission permit or regulatory carbon market. However, Thailand has established Thailand Greenhouse Gas Management Organization (Public Organization) (“TGO”) under Ministry of Natural Resources and Environment as the focal point for carbon market in Thailand.

In 2014, TGO has launched the Thailand Voluntary Emission Reduction Program (“T-VER”)³ to promote and support all sectors to voluntarily participate in the greenhouse gas emissions reduction program. The carbon credits which are gained from T-VER program are called TVERs (Thailand Verified Emission Reduction) which can be used to offset the carbon or sold to businesses unable to reduce their own emissions.

Net profit gained from the sale of carbon credit within Thailand under the T-VER Program shall be entitled to income tax exemption for 3 fiscal years pursuant to Royal Decree issued under the Revenue Code concerning the Tax Exemption (No. 760) B.E. 2566 (2023) dated 19 March 2023.

4. **Energy Attribute Certificate (EAC)**

In addition to the T-VER Program which supports the trading of carbon credit in Thailand, there is also the scheme for voluntary purchasing of Energy Attribute Certificate (the “EAC”) which is a global certificate representing the environmental attributes of the generation of a one-megawatt hour (MWh) of energy produced by renewable sources.

In Thailand, the Electricity Generating Authority of Thailand is the local issuer of the International Renewable Energy Certification (“I-REC”) which is a type of EAC that prove the generation of energy through renewable sources. I-REC is still voluntary in Thailand since there is no legislation requesting the market participant to sell, purchase or use renewable energy in its business operation. However, using the I-REC, the participants can make reliable claims about their renewable energy usage or even participate in the RE100.

The I-REC and the T-VER are different schemes with different purposes. To avoid double counting on the same renewable energy attributes, the project which applies for the I-REC cannot apply for the T-VER and vice versa.

5. **Greenwashing in Thailand**

In recent years, there has been a rise of lawsuits against various business operators due to their false and misleading green claims, commonly referred to as “greenwashing”, in the global market. This issue has become so prevalent that the European Commission proposed a draft of the Green Claim Directive in March 2023 to address and combat such greenwashing claims.

However, when compared to the global market, the situation regarding greenwashing in Thailand is relatively less severe. As of the date of this article, no allegations or court judgments related to greenwashing claims have been identified. The sustainability claims and labeling in Thailand are currently regulated by the general principles of consumer protection law. Any claim which is false or exaggerated or causes misunderstanding in the essential elements concerning goods or services shall be deemed unfair to consumers or may cause adverse effects to society, which shall be prohibited under this law. As on date, there are no proposals to introduce new regulations specifically targeting greenwashing.

To avoid greenwashing allegations, there are voluntary standards that business operators could participate in order to obtain the environmental label to affix on their products, e.g. Thai Green Label and Carbon Footprint of Product.

For Thai Green Label or Eco-Label, it is an environmental certification initiated by the Thailand Business Council for Sustainable Development in October 1993 and formally launched in August 1994 by Thailand Environment Institute with the cooperation from various government agencies. It is the label awarded to environmentally friendly products, with specific standards established for each product category. As of January 2023, a total of 872 products

³ Thailand Greenhouse Gas Management Organization (Public Organization) “<https://ghgreduction.tgo.or.th/en/what-is-t-ver/what-is-t-ver.html>”

from 119 companies/manufacturers have been certified with the Green Label⁴.

For Carbon Footprint of Product, it is a project initiated by the TGO since 2009 to provide the consumer information on the greenhouse gas emissions of the products and services. Finished products that have their Carbon Footprint quantified based on their life cycle are eligible to use the carbon footprint label on their products. There is also a carbon footprint label issued for the organization. As of June 2023, there are 278 companies and 3,050 products actively participating in the Carbon Footprint of Products project⁵.

Conclusion

ESG has evolved to become an emerging trend in Thailand. Companies that prioritize ESG values in their operations not only contribute to society and the planet, but are also likely to gain an advantage over their competitors.

However, one of the major challenges associated with ESG adoption is the identification and management of ESG risks in compliance with legal obligations. ESG initiatives, such as installing rooftop solar panels, participating in carbon market, and meeting disclosure requirements, all carry legal implications that companies must carefully observe. Establishing a working group to consider how the company would integrate ESG considerations into their governance and management system and consult the legal experts before making claims about their ESG adoption or labeling themselves as “green” is recommended.

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⁴ Thailand Environment Institute “<https://www.tei.or.th/greenlabel/download/2023-01-Name-GL-th.pdf>”

⁵ Thailand Greenhouse Gas Management Organization (Public Organization)
“<http://thaicarbonlabel.tgo.or.th/index.php?lang=EN&mod=Y0hKdIpIVmpkSE5mWVhCd2NtOTJZV3c9>”

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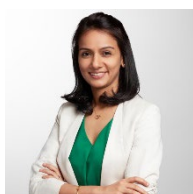
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