

## NO&amp;T Thailand Legal Update

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**This issue covers the following topics:****I. Upcoming Amendment to the Industrial Waste Management Regulation (Thailand)**Shunsuke Minowa /  
Ponpun Krataykhwan**II. Updates on New Corporate Regulations:  
Appointment of Appraiser in case of Merger**Yothin Intaraprasong/  
Poonyisa Sornchangwat/  
Salin Kongpakpaisarn**I. Upcoming Amendment to the Industrial Waste Management Regulation (Thailand)****Background**

In the operation of a factory business, scrap or industrial waste from the production process is inevitable. Some industrial waste may be recycled or sold to merchants, while certain industrial waste may require proper disposal, as it may lead to environmental pollution or be harmful to people and property. To control the disposal and management of industrial waste, the Department of Industrial Works, Ministry of Industry (“**MOI**”) has issued regulations applicable to all parties involved from upstream to downstream, including waste generators, waste transporters, and waste processors.

On May 31, 2023, the Notification of the Ministry of Industry Re: Management of Sewage or Unused Materials of 2023, dated March 16, 2023 (as recently amended by the Notification (No.2) dated August 8, 2023) (the “**New Notification**”), was published in the Royal Thai Government Gazette as a new main regulation pertaining to industrial waste management. The New Notification was issued under the Factory Act of 1992 and completely replaces its predecessor, the Notification of the Ministry of Industry Re: Disposal of Sewage or Unused Materials of 2005 (as amended) (the “**Existing Notification**”). The New Notification will take effect from November 1, 2023.

The key considerations in respect of the New Notification which may affect the waste management of every factory, as a waste generator, are as follows:

**1. Extension of scope of liability of factory operators**

This matter is the feature amendment to the New Notification.

In principle, the factory operator, as a waste generator, is liable for its waste, including any loss, accidents, and illegal dumping. Under the Existing Notification, the factory operator can be released from this liability once its waste processor agrees to accept and take possession of the waste. However, after the New Notification becomes effective, the liability of the factory operator will be extended until the waste processor, whether or not they are a waste treatment factory, successfully manages/disposes of the waste in accordance with the method approved by the competent authority. Under the New Notification, a waste processor which is a waste treatment factory, is required to manage/dispose of the waste within 30, 60, or 180 days, depending on the type of waste.

It should be noted that, for the purpose of tracking the status of waste management by the waste processor, MOI is planning to issue a sub-regulation to the New Notification to request a waste processor which is a

waste treatment factory to provide the factory operator with a ‘document illustrating the waste management’, upon completion of waste management/disposal. The factory operator will then be required to inform the MOI, through the electronic system, of completion of such waste management/disposal. In the event that the waste processor is not a waste treatment factory, the factory operator must inform the MOI on behalf of the waste processor. Presently, MOI is preparing a sub-regulation to set out the criteria, procedure and timeline for preparation and submission of the document illustrating the waste management by waste generator, waste transporter and waste processor.

This sub-regulation is expected to be announced soon, with a proposed effective date of November 1, 2023.

## 2. Changes to definitions of subject wastes

The New Notification revises the definition of the subject waste to clarify it, as follows:

	The Existing Notification	The New Notification
<b>Subject Waste</b>	<p><b>“Sewage and Unused Materials”</b> means unusable materials, or all types of waste generated from industrial activity, including waste from raw materials, waste generated from production processes, products that have deteriorated in quality, and effluent having hazardous constituents or hazardous characteristics.</p>	<p><b>“Sewage”</b> means excrement and urine produced within the factory of the waste generator, including animal feces or other foulness within the factory of the waste generator as prescribed in Annex 1 of the New Notification.</p> <p><b>“Unused Materials”</b> means materials or other things which are no longer utilized by the factory or those which no longer serve their original purpose, are lacking in quality, or have never been used, which are hazardous or non-hazardous waste, <u>whether they have value, potential for distribution or sale as goods, or are by-products</u>, as prescribed in Annex 1 of the New Notification; however, it shall not include pestilent garbage in accordance with public health laws and radioactive waste in accordance with nuclear energy for peace laws.</p> <p>(In this newsletter, “Sewage” and “Unused Materials” are collectively referred to as “Waste”)</p>
Waste which is exempted from this waste management measure - although it may be subject to other laws	<p>(a) Non-hazardous sewage or unused materials originating from offices, residences, and canteens within the factory premises;</p> <p>(b) Sewage or unused materials regulated by specific laws as follows:</p> <ul style="list-style-type: none"> <li>- Radioactive waste</li> <li>- Garbage under the law on public health; and</li> </ul> <p>(c) Wastewater destined for off-site treatment via pipe.</p>	<p>(a) <u>Sewage which is excrement and urine produced within the factory premises;</u></p> <p>(b) Non-hazardous unused materials originating from offices, residences, and canteens within factory premises, <u>including those generated from consumption activities within the factory premises;</u></p> <p>(c) Untreated wastewater <u>resulting from factory operations</u> that is conveyed through pipelines for</p>

		<p>treatment at a wastewater treatment system outside the factory premises; and                  (d) <u>Pressurized gas containers that are refillable or reusable.</u></p>
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In conclusion, except for pestilent garbage pursuant to public health laws, radioactive waste pursuant to nuclear energy for peace laws and items (a) to (d) above, all other unused items in the factory are potentially classified as Waste under the enforcement of the New Notification and are subject to the MOI's waste disposal measures, even if such items retain monetary value or can be repurposed for other applications, such as filling the land or being raw materials for producing bricks.

**3. Revision to certain obligations of factory operators**

After the enforcement of the New Notification, certain obligations of factory operators concerning their Waste are to be revised, including but not limited to:

- (a) In the event the factory operator manages the Waste within the factory premises e.g. to make fertilizer, to burn it or to use it as fuel for a boiler, the factory operator is no longer required to obtain permission from MOI. Instead, they need to inform MOI in the annual report required by Clause 13 of the New Notification. MOI is currently preparing a sub-regulation to set out a criterion for controlling this self-waste-management of the factory operator;
- (b) Under the Existing Notification, the factory operator cannot retain the Waste at their premises for more than 90 days. If they need to extend the Waste retention period to more than 90 days, they are required to apply for approval. However, this is no longer a requirement under the New Notification;
- (c) Under the Existing Notification, the factory operator must submit an annual report in relation to management of the Waste no later than December 30<sup>th</sup> of the subsequent year. Clause 13 of the New Notification accelerates this due date to no later than April 30<sup>th</sup> of the said subsequent year;
- (d) For Waste which is stored in a container, the factory operator must, as a newly introduced obligation pursuant to Clause 7(2) of the New Notification, affix a label on the container, containing the particulars of the Waste generator's name, Waste code, packaging date, and container closure date; and
- (e) The factory operator must prepare a diagram of the layout in relation to the Waste storage and keep it up to date, ready for inspection by the officer, pursuant to Clause 7(4) of the New Notification. This might not be an entirely new document, since the Existing Notification requires the factory operator to submit a diagram of the Waste storage layout to MOI together with the annual report. However, the New Notification additionally requires the factory operator to keep the diagram up to date and retain it at the premises at all times for the purpose of inspection by the officer.

**Conclusion**

As Waste management is an integral part of a factory's day-to-day operation, it is essential for the factory operator to keep updated to ensure compliance with the applicable law. It should be noted that, apart from the New Notification, MOI is in the process of drafting 6 more sub-regulations to provide further clarity on the provisions in the New Notification.

[Authors]



**Shunsuke Minowa** (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd. Partner)  
 shunsuke\_minowa@noandt.com

Since joining in Bangkok Office, he has been supporting Japanese companies to expand their business into Thailand and other south-east Asian countries and providing advice to Japanese affiliated companies in Thailand. He has a wide range of experience in variety of projects, including, real property development, M&A, joint venture, infrastructure, dispute, labor and pharmaceutical, medical and healthcare business.



**Ponpun Krataykhwan** (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)

ponpun\_krataykhwan@noandt.com

Ponpun is a qualified lawyer and notarial services attorney based in our Bangkok office. She has a decade of work experience practicing corporate and commercial law, both within Thailand and across the ASEAN region. Her expertise covers various legal areas, including foreign direct investment and mergers and acquisitions, with a remarkable focus on Thailand's labor laws. Her exceptional proficiency in providing legal counsel on regulatory compliance for numerous factory businesses highlights her extensive background in the field.

## II. Updates on New Corporate Regulations: Appointment of Appraiser in case of Merger

### Background

On 18 July 2023, the Cabinet passed a resolution to approve the principles adopted in the draft Ministerial Regulation prescribing criteria, methods, and conditions for the appointment of appraisers B.E. ..., as proposed by the Ministry of Commerce, which are to be issued under Section 1239/1, Paragraph Two of the Civil and Commercial Code of Thailand (“CCC”) as amended under the Act on the Amendment of the Civil and Commercial Code (No. 23) B.E. 2565 (2022) (“**Act on the Amendment of the Civil and Commercial Code (No. 23)**”).

### Details of the draft ministerial regulation

Section 1239/1 of the CCC was recently added by virtue of the Act on the Amendment of the Civil and Commercial Code (No. 23) in order to provide a clear criterion for the appointment of an appraiser in the event where a limited company wishes to conduct a merger and the objecting shareholders are unable to agree with the purchaser of the shares on the purchase price. The responsibility of the appraiser is to act as an intermediary and determine the purchase price for the sale and purchase of the shares to ensure the clarity and smoothness of the procedure related to the merger.

Section 1239/1 of the CCC currently stipulates that, in the event that a company passes a special resolution on the merger but certain shareholders object to such merger, the company shall arrange for other purchasers to purchase the shares from such objecting shareholders at the agreed price. If the said purchaser(s) and the objecting shareholders are unable to agree on the purchase price, the purchase price shall be determined by the appraiser. It is also stipulated that the appointment of an appraiser shall be in accordance with the criteria prescribed under the ministerial regulation.

Therefore, it is necessary to issue this draft Ministerial Regulation prescribing criteria, methods, and conditions for the appointment of appraisers B.E. ..., to set the criteria, method, and conditions for the appointment of an appraiser in the event that the shareholders (usually minority shareholders who are not satisfied with the purchase price) and the purchaser are unable to agree on the purchase price.

The key takeaways under this draft are as follows:

- (1) the definitions of key persons who will be subject to this draft ministerial regulation have been provided, i.e.:
  - (a) ‘purchaser’ means a person with whom the company makes arrangements for the purchase of shares from a shareholder who objects to the resolution of a merger of the company;
  - (b) ‘objecting shareholder’ means a shareholder attending a general meeting of the company, which is being held to approve the merger, and having voted to object to such merger when the company passes a special resolution for the merger; and
  - (c) ‘appraiser’ means a person who appraises and determines the share purchase price of the shares to be bought from the objecting shareholders;
- (2) the company is required to appoint an appraiser to appraise and determine the purchase price of the shares to be bought from the objecting shareholders in the event that the purchaser(s) and the objecting shareholder(s) are not able to agree on the purchase price, and prescribe the independence of the appraiser,

- e.g., the appraiser must not have any conflict of interest and must not be biased;
- (3) the qualifications of the appraiser are stipulated, i.e., the appraiser must be a certified auditor in accordance with the accounting profession laws, and the appraiser must hold a position that performs responsibilities related to the appraisal of assets with certification by, approval from, or registration with government agencies or registered associations, or according to the relevant laws, such as 1) arbitrators who are registered with the Office of the Court of Justice for the asset appraisal, 2) Court Specialists for the asset appraisal who are registered with the Office of the Court of Justice, and 3) members of asset appraisal companies or security appraisers certified by the Office of the Securities and Exchange Commission of Thailand (“SEC”); and
  - (4) the purchaser(s) and the objecting shareholder(s) shall adhere to the purchase price determined by the appraiser, and such purchase price shall be final.

### **Next step**

The final draft of the draft ministerial regulation is not yet published and accessible by the public as the draft ministerial regulation is currently under review by the Council of State and the SEC.

[Authors]



**Yothin Intaraprasong** (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd. Partner)

yothin\_intaraprasong@noandt.com

Yothin Intaraprasong is a partner at Nagashima Ohno & Tsunematsu, Bangkok office. He has been involved in providing legal advice on civil and commercial laws, focusing on foreign investments in Thailand. He also represents a number of Japanese, Thai, and international clients in a wide range of ongoing business issues.



**Poonyisa Sornchangwat** (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)

poonyisa\_sornchangwat@noandt.com

Poonyisa is a Thai qualified lawyer based in the Bangkok office. She has been involved in several cross-border transactions, joint ventures and mergers & acquisitions, assisting Japanese companies which aim to expand their businesses into Thailand, and providing legal advice on corporate matters and legal compliance for several businesses, since 2015.



**Salin Kongpakpaisarn** (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)

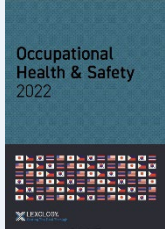
salin\_kongpakpaisarn@noandt.com

Salin is a qualified lawyer based in Bangkok office. She is experienced in a wide range of projects and commercial transactions with emphasis on corporate M&A, competition law and general commercial law.

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This article enabling side-by-side comparison of local insights into legislation, regulations and codes of practice; employer duties and responsibilities; worker duties and responsibilities; workplace hazards and risk management; liabilities, enforcement and penalties; and recent trends.



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[www.noandt.com](http://www.noandt.com)

## NAGASHIMA OHNO & TSUNEMATSU

JP Tower, 2-7-2 Marunouchi, Chiyoda-ku, Tokyo 100-7036, Japan  
 Tel: +81-3-6889-7000 (general) Fax: +81-3-6889-8000 (general) Email: [info@noandt.com](mailto:info@noandt.com)



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### Singapore Office

(Nagashima Ohno & Tsunematsu Singapore LLP)



6 Battery Road Level 41  
 Singapore 049909  
 Tel: +65-6654-1760 (general)  
 Fax: +65-6654-1770 (general)  
 Email: [info-singapore@noandt.com](mailto:info-singapore@noandt.com)

### Bangkok Office

(Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)



34th Floor, Bhiraj Tower at EmQuartier  
 689 Sukhumvit Road, Klongton Nuea  
 Vadhana, Bangkok 10110, Thailand  
 Tel: +66-2-302-4800 (general)  
 Fax: +66-2-302-4899 (general)  
 Email: [info-bangkok@noandt.com](mailto:info-bangkok@noandt.com)

### HCMC Office

(Nagashima Ohno & Tsunematsu HCMC Branch)



Suite 1801, Saigon Tower  
 29 Le Duan Street, District 1  
 Ho Chi Minh City, Vietnam  
 Tel: +84-28-3521-8800 (general)  
 Fax: +84-28-3521-8877 (general)  
 Email: [info-hcmc@noandt.com](mailto:info-hcmc@noandt.com)

### Hanoi Office

(Nagashima Ohno & Tsunematsu Hanoi Branch)



Suite 10.04, CornerStone Building  
 16 Phan Chu Trinh, Hoan Kiem District  
 Ha Noi City, Vietnam  
 Tel: +84-24-3266-8140 (general)  
 Fax: +84-24-3266-8141 (general)  
 Email: [info-hanoi@noandt.com](mailto:info-hanoi@noandt.com)

### Jakarta Office (\*Associate office)

(IM and Partners in association  
 with Nagashima Ohno & Tsunematsu)



Jakarta Mori Tower 14th Floor, Unit 1401  
 Jalan Jenderal Sudirman Kav. 40-41  
 Jakarta 10210, Indonesia  
 Tel: +62-21-25098080 (general)  
 Fax: +62-21-25098090 (general)  
 Email: [info-jakarta@noandt.com](mailto:info-jakarta@noandt.com)

### Shanghai Office

(Nagashima Ohno & Tsunematsu



Shanghai Representative Office)  
 21st Floor, One ICC, 999 Middle Huaihai Road  
 Xuhui District, Shanghai 200031, China  
 Tel: +86-21-2415-2000 (general)  
 Fax: +86-21-6403-5059 (general)  
 Email: [info-shanghai@noandt.com](mailto:info-shanghai@noandt.com)

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