State Practice of Asian Countries in International Law

Thailand

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TREATIES – AGREEMENTS CONCURRED BY THAILAND IN 2017

Labor Rights – ILO Convention No. 111 on Discrimination (Employment and Occupation)

On 13 June 2017, Thailand has become a party to the International Labour Organization (ILO) Convention No. 111 on Discrimination (Employment and Occupation), which is among the most widely ratified ILO Conventions, with 175 ratifications as of today, out of 187 member states. This ratification encourages Thailand's commitments in protecting persons from all forms of discrimination in employment in compliance with international labor standards. The Convention will enter into force for Thailand on 13 June 2018.

The ILO Convention No. 111 is one of eight ILO fundamental conventions on the elimination of discrimination in respect of employment and occupation. Member states that ratify this Convention are obliged to enable legislation which prohibits all forms of discrimination. The Convention provides the definition of discrimination as “any distinction, exclusion or preference based on race, color, sex, religion, political opinion, national or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”. In addition, it calls on States that have ratified it to commit to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in employment and profession, to eliminate discrimination in this field. Its provisions cover matters such as discrimination in access to vocational training, to employment and to particular occupations, and conditions of employment.

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**ENVIRONMENTAL LAW – THE INTERNATIONAL CONVENTION ON
CIVIL LIABILITY FOR OIL POLLUTION DAMAGE – THE
INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN
INTERNATIONAL FUND FOR COMPENSATION FOR OIL
POLLUTION DAMAGE**

On 7 July 2017, Thailand has become a party to the 1992 International Convention on Civil Liability for Oil Pollution Damage (CLC) and the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention). These Conventions cover compensation for pollution damage caused by spills from oil tankers is governed by an international regime elaborated under the auspices of the International Maritime Organization (IMO). The framework for the regime was originally the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

The CLC Convention ensures that compensation is available to people who suffer oil pollution damage from maritime casualties, involving oil-carrying ships, and places liability on the owner of the ship from which the polluting oil escaped or was discharged. While the IOPC Fund Convention provides additional financial compensation for oil pollution damage that occurs in the member states, resulting from spills of persistent oil from tankers.

ENVIRONMENTAL LAW – LAWS AND REGULATIONS

**Civil Liability for Oil Pollution Damage Caused by Ships Act, B.E. 2560
(2017)**

To comply with the obligations as a party to the 1992 International Convention on Civil Liability for Oil Pollution Damage (CLC) of the International Maritime Organization (IMO), on 7 July 2017, the National Legislative Assembly of Thailand enacted the Civil Liability for Oil Pollution Damage Caused by Ships Act, B.E. 2560 (2017). The main purpose of this Act is to provide civil liability for pollution damage which may be made against the shipowner and this new law will become effective on 6 July 2018. This Act defines important terms for the application with regard to the oil pollution damage caused

by ships in Section 3 of the Act such as 'ship',¹ 'shipowner',² 'oil',³ or 'pollution damage'.⁴

Pursuant to the principle of territoriality, this Act covers pollution damage caused in the areas of Thailand, including the territorial sea and in the exclusive economic zone; and the costs of preventive measures, wherever taken, for preventing damage in those areas (Section 5). Accordingly, it also applies to ships owned by a Contracting State to the Convention and used for commercial purposes. Then it provides that the Act shall not apply to warships or any other ships owned or operated by a State on government non-commercial service (Section 6).

At the time of an incident or at the time of the first of the series of occurrences, the shipowner shall be liable for any pollution damage as a result of such incident (Section 7). In the case where two or more ships are involved in any incident causing pollution damage which is not separable amongst any of the ships, the owners of all the ships concerned shall be jointly and severally liable for all such damage which has arisen (Section 8).

1 The Civil Liability for Oil Pollution Damage Caused by Ships Act, B.E. 2560 (2017), Section 3 provides:

"ship" means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship within this meaning only when it is actually carrying oil in bulk as cargo and shall continue to be regarded as a ship during any voyage following the carriage of oil until it is proved that it has no residues of oil in bulk aboard.

2 *Id.*, Section 3 provides:

"shipowner" means the person registered as the owner of the ship or, in the absence of registration, shall mean the person actually owning the ship, and, in the case of a ship owned by a State and operated by a company which is registered in that State as the ship's operator, "shipowner" shall mean such company.

3 *Id.*, Section 3 provides:

"oil" means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.

4 *Id.*, Section 3 provides:

"pollution damage" means:

(1) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, including compensation for impairment of the environment and loss of profit from impairment of the environment;

provided that compensation for impairment of the environment shall be limited to costs of reasonable measures already undertaken or to be undertaken for the reinstatement of the impaired environment;

(2) the costs of preventive measures and loss or damage caused by such measures.

The Act contains some exceptions for the liability such as pollution damage resulted from an act of war, hostilities, civil war, insurrection or natural phenomenon of an exceptional, inevitable and irresistible character; wholly caused by an act or omission done by a third party with intent to cause such damage; or wholly caused by the negligence or wrongful act of the State or an agency having the duty to take care of or maintain lights or other navigational aids in the exercise of such duty (Section 9). The shipowner may be exonerated wholly or partially from liability if the shipowner proves that the pollution damage resulted wholly or partially from an act or omission done, whether willfully or negligently, by the person who suffered such damage (Section 10).

The Act also contains some limitation of liability of the shipowner in respect of any one incident to an aggregate amount as 4.51 million Special Drawing Rights, for a ship not exceeding 5,000 gross tonnage; or 4.51 million Special Drawing Rights, for a ship with a tonnage in excess of 5,000 gross tonnage and, for each additional unit of tonnage over 5,000 gross tonnage, 631 Special Drawing Rights, provided that the aggregate amount of liability shall not exceed 89.77 million Special Drawing Rights (Section 12).

Importantly, the Act provides a number of measures for its application such as a Thai ship carrying more than 2,000 tons upwards of oil in bulk as cargo shall have a certificate issued by the Marine Department (Section 16); the maintenance of insurance or financial security under paragraph one shall be in accordance with the rules, procedures, and conditions prescribed in the Ministerial Regulation (Section 15); a foreign ship not registered in a Contracting State to the Convention may apply for a certificate from the Marine Department (Section 17).

Requirement of Contributions to the International Fund for Compensation for Oil Pollution Damage Caused by Ships Act, B.E. 2560 (2017)

As a party to the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention) of the International Maritime Organization (IMO), on 7 July 2017, the National Legislative Assembly of Thailand enacted the Requirement of Contributions to the International Fund for Compensation for Oil Pollution Damage Caused by Ships, B.E. 2560 (2017), which will become effective on 6 July 2018.

The main purpose of this Act is to provide the annual contributions to the fund for compensation for pollution damage caused by ships of person who has received the contributing oil in total quantities exceeding 150,000 metric tons in each calendar year; and each of associated persons who has received oil in each calendar year in the quantity not exceeding 150,000 metric tons but has

had the quantity of contributing oil, when aggregated altogether, exceeding 150,000 metric tons; in this regard, each associated person shall pay contributions in respect of the quantity actually received (Section 20).

The contributing oil under this Act means oil received from the carriage by sea at a port or an oil terminal installation in the Kingdom; and oil first received, at any installation in the Kingdom, from any other country not being a Contracting State to the Fund Convention after the carriage by sea and discharge in such country (Section 21). And legal proceedings for making claims under this Act shall fall within the jurisdiction of the Intellectual Property and International Trade Court. In this regard, the Chief Judge of the Central Intellectual Property and International Trade Court, with the approval of the President of the Supreme Court, has the power to issue any Rules on the conduct of proceedings (Section 30).

HUMAN RIGHTS – HUMAN TRAFFICKING – LAWS AND REGULATIONS

Prevention and Suppression of Human Trafficking (No. 3) Act B.E. 2560 (2017)

On 26 January 2017, the National Legislative Assembly of Thailand enacted the Prevention and Suppression of Human Trafficking (No. 3) Act B.E. 2560 (2017) (Human Trafficking (No. 3) Act) for amending the definitions of terms and adding acts for the offence of human trafficking contained in the Prevention and Suppression of Human Trafficking Act, B.E. 2551 (2008). This new law on human trafficking has become effective since 28 January 2017.

The Human Trafficking (No. 3) Act amended termed in Section 6 of the Human Rights Trafficking Act and redefined the meanings of the acts for the purpose of exploitation as: procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving any person, by means of the threat or use of force, abduction, fraud, deception, abuse of power, illegal exertion of influence over others on account of their physical, psychological, educational or any kind of vulnerability, threat to take the abusive legal action against others, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control; or procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving a child.

In addition, it also adds the definitions of the terms of “exploitation” and “forced labor or service”. The exploitation means the exploitation of the prostitution of others, the production or distribution of pornographic materials, the exploitation of other forms of sexual acts, slavery or practices similar to slavery, begging, removal of organ for commercial purpose, forced labor or services, or any other similar forcible extortion, regardless of such person’s consent. While the term “forced labor or service” is defined as compelling the other to work or provide service through the following means: (1) Threaten to cause injury to life, body, liberty, reputation or property of the person threatened or any other person; (2) Intimidation; (3) Use of force; (4) Retention of identity documents or use the accumulated debt burden incurred by such person or any other person as the unlawful obligation; and (5) Causing such person to be in an irresistible situation.

Furthermore, this Act amends the penalty that the offence of human trafficking committed by both a person and a juristic person in Sections 52, 53 and 53/1 of the Human Trafficking Act. According to this new law, any person who committed the offence shall be liable to the punishment of an imprisonment from four years to twelve years and a fine from four hundred thousand Baht to one million and two hundred thousand Baht. If the offence is committed against a child between fifteen and eighteen years of age, the offender shall be liable to the punishment of an imprisonment from six years to fifteen years and a fine from six hundred thousand Baht to one million and five hundred thousand Baht. But if the offence is committed against a child under fifteen years of age or a person with a physical disability or mental infirmity, the offender shall be liable to the punishment of an imprisonment from eight years to twenty years and a fine from eight hundred thousand Baht to two million Baht.

The offence of human trafficking committed by a juristic person shall be liable to the punishment of a fine from one million Baht to five million Baht. If the offence is committed by a juristic person is caused by an order or an act of any director, managing director, or any person responsible for operation of such juristic person, or in case where the said person has a duty to issue an order or to perform an act refrains from issuing an order or performing an act leading to the commission of offence by such juristic person, such person shall be liable to the punishment of imprisonment from six years to twelve years and a fine from six hundred thousand Baht to one million and two hundred thousand Baht.

If an offence committed by either a person or a juristic person causes a serious injury or infection with a life-threatening serious disease to the victim, this

shall be liable to the imprisonment from eight years to twenty years and a fine from eight hundred thousand Baht to two million Baht or life imprisonment.

Moreover, the Act has added the offence which whoever procures, buys, sells, vends, brings from or sends to, detains or confines, harbors, or receives any person not over fifteen years of age for work or service which is seriously harmful and having an impact on body or mind, growth or development, or by its nature or the circumstances in which it is carried out, is likely to harm the safety or morals of such person, shall be liable to the punishment of imprisonment, not exceeding four years and a fine of not exceeding four hundred thousand Baht. And in the case where the offence has committed an ascendant against his descendant due to the indigency, or after taking into account the offence condition, or other extenuating grounds, the Court may not inflict any punishment upon the offender at all (Section 56/1).