

(Draft)

Act on Promotion of Responsible Business Conduct, B.E. ...

His Majesty King Maha Vajiralongkorn Phra Vajiraklaochaoyuhua

Given on the ... Day of ... B.E.;

Being the ... Year of the Present Reign.

His Majesty King Maha Vajiralongkorn Phra Vajiraklaochaoyuhua is graciously pleased to proclaim that:

Whereas it is expedient to have a law on promotion of responsible business conduct in business operations;

Be it, therefore, enacted by the King by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act is called the “Act on Promotion of Responsible Business Conduct, B.E. (....)”.

Section 2. This Act shall come into force after the expiration of one year from the date of its publication in the Government Gazette.

Section 3. In this Act:

“Human rights and environmental due diligence” means the process of identifying and assessing the potential and actual human rights violations and environmental harm in a value chain, implementing effective measures to prevent and mitigate such violations or harm, providing remediation, and communicating the implementation;

“Business enterprise” means a legal entity in the form of a partnership, limited partnership, limited company under the Civil and Commercial Code, or a public limited company under the Public Limited Company Act, B.E. 2535 (1992);

“Large enterprise” means, in accordance with the classification of the Department of Business Development, Ministry of Commerce, a business enterprise engaged in the manufacturing sector with an annual total revenue exceeding 500 million baht, or a business enterprise engaged in wholesale, retail, or service sectors with an annual total revenue exceeding 300 million baht, as determined based on the business activity (business

classification) indicated in its financial statements, or, where financial statements have not yet been submitted, as specified in its certificate of incorporation;

“Medium enterprise” means, in accordance with the classification of the Department of Business Development, Ministry of Commerce, a business enterprise engaged in the manufacturing sector with an annual total revenue exceeding 100 million baht, or a business enterprise engaged in wholesale, retail, or service sectors with an annual total revenue exceeding 50 million baht, as determined based on the business activity (business classification) indicated in its financial statements, or, where financial statements have not yet been submitted, as specified in its certificate of incorporation;

“Small enterprise” means, in accordance with the classification of the Department of Business Development, Ministry of Commerce, a business enterprise engaged in the manufacturing sector with an annual total revenue not exceeding 100 million baht, or a business enterprise engaged in wholesale, retail, or service sectors with an annual total revenue not exceeding 50 million baht, as determined based on the business activity (business classification) indicated in its financial statements, or, where financial statements have not yet been submitted, as specified in its certificate of incorporation;

“Affiliated company” means an enterprise which has the relationship with one or more enterprises as defined in the ministerial regulations of the Ministry of Commerce concerning affiliated companies;

“Parent company” means an enterprise which has control over another affiliated company or other affiliated companies as defined in the ministerial regulations of the Ministry of Commerce concerning affiliated companies;

“Value chain” means the full range of activities necessary to bring a product or service to final consumers, including conception, different phases of production involving a combination of physical transformation and the input of various producer services, and recycling process, whether the activities occur in or outside Thailand;

“Stakeholders” means any person, group of persons, or communities who could be affected by potential violation of human rights or environmental harm associated with the enterprise’s operations, products or services, and, where applicable, their representatives;

“Effective consultation” means good faith consultation which involves adequate exchange of information and dialogue;

“Competent official” means a civil servant appointed by a Minister from among persons possessing the qualifications prescribed in the ministerial regulation, for carrying out duties under this Act;

“Committee” means the Human Rights and Environmental Due Diligence Oversight Committee;

Section 4. The Prime Minister shall have charge and control of the execution of this Act.

The Minister of Justice shall have the power to appoint and remove competent officials and shall have the power to issue ministerial regulations and rules for the execution of this Act.

Chapter I

General Part

Section 5. In conducting its business activities, a business enterprise shall respect human rights and avoid environmental harm by carrying out due diligence. It shall comply with applicable laws, relevant international human rights standards as specified in Schedule 1, annexed to this Act, and international environmental standards as specified in Schedule 2, annexed to this Act.

The addition of international standards in the Annex shall be made by virtue of ministerial regulations to be issued by the Minister of Justice, taking particular account of the treaties to which Thailand is party.

A business enterprise should also consider other international standards that are relevant to its business operation.

Section 6. A large enterprise shall carry out human rights and environmental due diligence across its entire value chain by identifying potential and actual human rights violations and potential and actual environmental harm, taking effective measures to prevent or mitigate them, monitoring the effectiveness of such measures, making appropriate communication, and providing remediation where the violation or harm occurs, in accordance with the rules, conditions, and procedures prescribed under Chapter II and the relevant rules issued by the Committee.

In carrying out the due diligence under paragraph one, a large enterprise shall prioritise the most serious risk of human rights violations and environmental harm. The Committee shall issue the rules on how to assess the risks based on sectors or geographical areas.

Medium and small enterprises which conduct business activities in the value chain of a large enterprise shall cooperate with that enterprise in carrying out its human rights and environmental due diligence. The large enterprise shall provide necessary support and resources to such medium and small enterprises.

Section 7. In carrying out each step of the human rights and environmental due diligence in accordance with the provisions of Chapter II and the relevant rules issued by the Committee, a large enterprise shall engage in effective consultations with stakeholders or their representatives appointed for such purpose, which, at minimum, shall include the stakeholders who are most likely to be affected. It shall also disclose relevant and comprehensive information, necessary for such consultation. The persons participating in the consultation shall be protected in accordance with the Anti-Strategic Litigation against Public Participation Act and relevant laws. Their confidentiality and anonymity shall also be protected.

Where consultation with stakeholders or their appointed representatives is not possible, the large enterprise shall consult with qualified experts who are capable of providing reliable information.

Stakeholders, their appointed representatives, or qualified experts, as the case may be, shall have the right to request the enterprise to disclose information they consider necessary for the purpose of consultation under paragraph one and two.

Effective consultations do not prejudice the rights of employees under labour law.

Actions taken under this section shall not prejudice the rights in respect of trade secrets of business enterprises under the Trade Secrets Act, B.E. 2545 (2002).

Section 8. In case of affiliated companies, a parent company which has the duties in this Act may perform one or all duties on behalf of its subsidiary if that subsidiary also has the duties under this Act.

Where the parent company performs the duties on behalf of its subsidiary pursuant to paragraph one, the parent company and the subsidiary shall:

- (1) provide each other with all the necessary information and cooperate to fulfil the duties under this Act;
- (2) ensure that the subsidiary complies with the parent company's human rights and environmental due diligence policy which may be adapted to accommodate the nature of subsidiary's business;

- (3) ensure that the subsidiary integrates that policy into its management policy or risk management policy, clearly describing the duties to be performed by the parent company;

The performance of duties by the parent company pursuant to this section does not preclude any liability of the subsidiary under this Act or any other laws.

Section 9. A large enterprise whose value chain extends beyond the territory of the Kingdom of Thailand shall also be subject to the duties under this Act.

Section 10. A group of persons or an enterprise of foreign nationality which operates in Thailand without legal personality under Thai law shall also be subject to the duties under this Act if their revenue in Thailand amount to those of large enterprises as defined under this Act.

Section 11. A state enterprise within the meaning of the Supervision and Management of State Enterprise Act, B. E. 2562 (2019) shall be deemed a “large enterprise” for the purposes of this Act and shall have the duties under this Act accordingly.

Chapter II

Human Rights and Environmental Due Diligence Process

Section 12. A large enterprise shall publicly announce a human rights and environmental due diligence policy within one year from the date this Act comes into force, and shall integrate it into its management policy or risk management policy. The policy shall include sufficient and comprehensive details as follows:

- (1) a plan for implementing the human rights and environmental due diligence, which may be divided into short-term, mid-term, and long-term components;
- (2) a code of conduct for conducting business with respect for human rights and the environment;
- (3) methodology for the identification, assessment, and evaluation of the risk of human rights violations and the environmental harm in business operations in the entire value chain;
- (4) the main stakeholders potentially affected by business operations.

If an enterprise becomes a large enterprise after this Act comes into force, it shall publicly announce the policy within one year from the end of its first financial year.

A large enterprise shall consider revising and updating its policy as appropriate and within a reasonable timeframe, and at least once every two years, taking into account any potential changes in the risks of human rights violations and environmental harm and the outcomes of actions taken under section 14.

Section 13. A large enterprise shall identify, assess, and evaluate potential and actual violations of human rights and environmental harm throughout its value chain. These consist of the violations or harm that the enterprise causes or contributes to, and the violations or harm solely caused by business partners in its value chain.

The enterprise shall use quantitative and qualitative data, appropriate resources, reliable external reports, information obtained from business partners in its value chain, information from the relevant stakeholders obtained through effective consultation, and complaints filed by stakeholders or their duly appointed representatives under section 19. It may prioritise requesting information, where reasonable, directly from business partners where the violation or harm is most likely to occur.

In carrying out the step under paragraph one, the enterprise may prioritise the part of its value chain which potentially has the severest and most likely impacts based on the seriousness of the impact, the number of affected persons, the scope of the harm, and the extent to which the impact is irreversible. It shall engage in effective consultation with the stakeholders to determine which part of the value chain to prioritise.

When evaluating potential and actual human rights violations and environmental harm pursuant to this section, the large enterprise shall also specify those issues that have the severest impact and are most likely to occur based on the seriousness of the impact, the number of affected persons, the scope of the harm, and the extent to which the impact is irreversible.

The duties to identify, assess, and evaluate potential and actual human rights violations and environmental harm, and to specify those issues that have the severest impact and are most likely to occur pursuant to this section shall be performed at the latest within one year after the announcement of the human rights and environmental due diligence policy in accordance with section 12. These duties shall be subsequently performed every two years.

Section 14. After conducting the identification, assessment, and evaluation of potential violations of human rights and potential environmental harm under section 13, the large enterprise shall implement effective measures to prevent such violations and harm, or, where complete prevention is not feasible, to mitigate the risk of such violations or harm to the greatest extent possible.

In considering the measures to be taken, due account shall be taken of:

- (1) whether the enterprise causes the risk, or it contributes to the risk, or the risk is directly linked to its business activities in the value chain;
- (2) the extent to which the enterprise has negotiating power over the business partner that may cause or jointly cause the risk;
- (3) the part in the value chain in which the risk occurs.

The large enterprise may consider upgrading its management systems and providing or enabling access to capacity-building, training for its business partners, especially when doing business with small and medium enterprises. Where compliance with the code of conduct or the prevention action plan might jeopardise the viability of the business partner, the large enterprise should consider providing proportionate and targeted financial support to the small and medium enterprises, such as direct financing, low-interest loans, guarantees of continued sourcing, or assistance in securing financing.

The enterprise shall terminate the business relationship as a last resort only where the measures fail to achieve significant risk mitigation. It should assess whether the adverse impacts from terminating the business relationship that can reasonably be expected are severer than the adverse impact that could not be prevented or adequately mitigated. If that is the case, the company is not required to suspend or to terminate the business relationship.

In determining which measures to be taken, the large enterprise shall effectively consult with the stakeholders or their duly appointed representatives.

Where necessary, the large enterprise may consider modifying its production processes, procurement practices, distribution practices, or risk management policies to prevent them from causing or contributing to human rights violations and environmental harm.

The Committee shall issue further guidance on the measures that a large enterprise may take to support medium and small enterprises in their value chain.

Section 15. In implementing the measures prescribed under section 14, where a large enterprise is unable to simultaneously prevent or mitigate all risks, the enterprise shall

prioritise those issues that have the severest impact and are most likely to occur based on the seriousness of the impact, the number of affected persons, the scope of the harm, and the extent to which the impact is irreversible in accordance with Section 13. The measures to address such issues shall be taken without delay after the identification and assessment of the risk. Subsequently, it shall implement further preventive measures to prevent other risks of human rights violations and the environmental harm within a reasonable timeframe.

The Committee shall issue the rules governing how a large enterprise may prioritise which take into account the sector-specific risk and geographical areas. It shall continue to update such rules.

Section 16. A large enterprise shall continuously monitor the effectiveness of the implementation of the measures under sections 14 and 15, and shall establish clearly defined indicators to assess the effectiveness of such measures.

Section 17. If it appears that its business operation has caused human rights violations or environmental harm, the large enterprise shall implement the remediation measure for the affected person. If it contributes to such violations or harm, it shall make contribution to the remediation measure. The Committee shall issue the rules governing the conditions for providing remediation.

The remediation under paragraph one shall seek to restore the affected person, the community, or the environment to the situation before the violation or harm occurred, to the greatest extent possible, whether through financial compensation or non-financial means. It shall include, where applicable, reimbursement of the costs incurred by competent authorities for any remediation measures that the authorities take.

In providing the remediation, the large enterprise shall effectively consult with the affected person or community or their appointed representatives.

Remediation measure under this section shall be provided without delay and is independent from other steps in the process.

In cases where the human rights violation or environmental harm is caused solely by a business partner in its value chain, the large enterprise may also consider providing or contributing to remediation measures and use its negotiating power over that business partner to ensure that it provides remediation.

Section 18. A large enterprise shall prepare a report accurately summarising information on its implementation of the human rights and environmental due diligence. It shall submit it to the Committee within one hundred and eighty days from the end of its financial year. The first report shall be submitted within four years after this Act comes into force.

The details and format of the report shall be as prescribed by the Committee within two years after this Act comes into force, with primary consideration given to the level of risks of human rights violations and environmental harm associated with certain sectors or geographical areas.

Where a large enterprise has already prepared a sustainability report which includes information on human rights and environmental due diligence, it may submit such existing report to the Committee, provided that the report's content is fully consistent with the requirements set out in paragraph two, and only to the extent accepted by the Committee.

The human rights and environmental due diligence report submitted to the Committee shall be made available for public access, inspection, copying, and certification.

The large enterprise shall retain the report and all related records or information concerning the human rights and environmental due diligence for a minimum period of ten years from the date of submission.

Section 19. A large enterprise shall establish properly functioning grievance mechanisms through which a stakeholder or his or her appointed representative may submit a complaint concerning potential or actual human rights violations and environmental harm by the company's own operation, the operation of its subsidiary, or the operation of business partners connected with its activities in the value chain.

The grievance mechanism under paragraph one shall:

- (1) enable trust from stakeholders whose use it is intended;
- (2) accessible to all stakeholders whose use it is intended, with adequate assistance for persons who may have barriers to access;
- (3) publicly provide a clear procedure with an indicative timeframe for each stage;
- (4) seek to ensure that the complainants or their representatives have access to sources of information, advice, and expertise necessary to make a complaint;
- (5) keep the complainants or their representatives informed of the progress and provide sufficient information about the mechanism's performance;

- (6) ensure that the outcomes and remedies consistent with the international standards under section 5.

Where a complaint submitted under paragraph one is found to have merit, the large enterprise shall promptly investigate and implement either appropriate remediation measures for the affected person or effective measures to prevent or mitigate the human rights violation or environmental harm, as the case may be, and shall communicate the outcome directly to the complainant.

The complainant has the right to consult with the enterprise as regards his or her complaint.

The Committee shall issue the rules governing grievance mechanisms under this Section.

Section 20. A large enterprise may enter into a contract that includes a provision requiring compliance with the contracting party's code of conduct relating to business operations conducted with respect for human rights and the environment. Where the contracting party is a medium or small enterprise, such provision shall be fair, reasonable, and shall not constitute unjustified discrimination. The large enterprise shall assess whether the contractual assurances are accompanied by appropriate measures to carry out due diligence.

Where the large enterprise takes the measure to verify compliance by a small or medium enterprise in its value chain, it shall bear the cost of the independent third-party verification. The business partner may share the result of such verification with other enterprises if it pays at least a part of the cost of verification, or if sharing the result has been agreed with the large enterprise.

Actions taken under this section shall not prejudice the rights in respect of trade secrets of business enterprises under the Trade Secrets Act, B. E. 2545 (2002).

Section 21. A large enterprise may carry out any step of the human rights and environmental due diligence process in collaboration with other enterprises through participation in an industry-level initiative, multi-stakeholder initiative, or any other similar collaborative projects. It may also share information with other enterprises necessary for the due diligence.

The collaboration pursuant to paragraph one does not preclude the enterprise's individual liability.

Notwithstanding participation in such a project under paragraph one, each large enterprise shall conduct effective consultation with its own employees.

Section 22. In carrying out human rights and environmental due diligence, a large enterprise may use independent third-party verification services by other enterprises.

The independent third-party verification services by other enterprises shall:

- (1) act with professionalism and complete independence from the enterprise;
- (2) refrain from any conflicts of interest and external influence;
- (3) have experience and expertise in human rights or the environmental matters;
- (4) be accountable for the quality and reliability of the verification.

The use of independent third-party verification services by other enterprises shall not relieve the large enterprise of its liability in the event of a violation under Chapter V.

Chapter III

Human Rights and Environmental Due Diligence Oversight Committee

Section 23. There shall be the Human Rights and Environmental Due Diligence Oversight Committee, consisting of:

- (1) the Minister of Justice, as Chairperson;
- (2) the Minister of Commerce, the Minister of Labour, and the Minister of Natural Resources and Environment, as Vice-Chairpersons;
- (3) five *ex officio* members: the Chairperson of the National Human Rights Commission, the Director-General of the Rights and Liberties Protection Department, the Director-General of the Department of Labour Protection and Welfare, the Director-General of the Department of Business Development, and the Director of the Trade Policy and Strategy Office;
- (4) at least six qualified members, appointed by the Minister of Justice from persons with knowledge, expertise, and experience in the human rights and environmental due diligence process, law, environmental protection, commerce, accounting, or other fields beneficial to the promotion and support of business enterprises in improving their value chain management.

The Director-General of the Rights and Liberties Protection Department shall serve as the Secretary of the Committee.

Section 24. A qualified member shall hold office for a term of five years.

A qualified member whose term has expired may be reappointed but not more than two consecutive terms.

Section 25. In addition to vacating office on the expiration of term, a qualified member vacates office upon:

- (1) death;
- (2) resignation;
- (3) being bankrupt;
- (4) being an incompetent person or a quasi-incompetent person;
- (5) being imprisoned pursuant to a final judgement, except for an offence committed through negligence or a petty offence;
- (6) being absent from three consecutive meetings without justification.

In the case where a qualified member vacates office before the expiration of the term, the Minister of Justice shall appoint a new member possessing the same qualifications to replace the vacating member, and the so appointed person shall hold office for the unexpired term of office of the member whom he or she replaces.

If a qualified member's term of office has expired but a new qualified member has not yet been appointed, the qualified member whose term of office has expired shall continue to perform his or her duties until a new qualified member has been appointed.

Section 26. At a meeting of the Committee, the presence of not less than one-half of all members is required to constitute a quorum.

In the event that the Chairperson does not attend any meeting or is unable to perform the duties, a Vice-Chairperson shall preside over the meeting. If no Vice-Chairperson attends such meeting or no Vice-Chairperson is able to perform the duties, the members present shall elect one among themselves to preside over the meeting.

A resolution of the Committee shall be passed by a majority of votes. In casting a vote, each member shall have one vote. In the case of an equality of votes, the presiding member shall have an additional vote as the casting vote.

The Committee shall convene at least three times per year.

Section 27. The Committee shall have the following powers and duties:

- (1) to consider the human rights and environmental due diligence report;
- (2) to consider and decide upon complaints regarding violations of this Act;
- (3) to establish sub-committees to investigate violations of this Act and to lay down the rules for investigations and inquiries by sub-committees;
- (4) to summon any persons to provide facts, explanations, recommendations, or opinions;
- (5) to determine administrative fines and initiate litigation before the Administrative Court;
- (6) to appoint competent officials to carry out duties under this Act;
- (7) to make recommendations to the Minister of Commerce, the Minister of Justice, the Minister of Labour, or the Minister of Natural Resources and Environment regarding the issuance of Ministerial Regulations under this Act;
- (8) to issue the template of the questionnaires that the enterprise may use in carrying out due diligence in its value chain;
- (9) to appoint a sub-committee with the aim to provide advice and guidance on any actions undertaken by business enterprises in complying with this Act, or any other sub-committees to perform duties or carry out specific tasks as assigned by the Committee.
- (10) to issue rules or notifications for the execution of this Act;

Section 28. The Committee shall appoint one or more investigative sub-committees to examine information contained in the human rights and environmental due diligence reports. The Chairperson of the National Human Rights Commission, or a person designated by the Chairperson of the National Human Rights Commission, shall serve as the Chairperson of each such sub-committee. Each sub-committee shall include members with knowledge and experience in law, environmental protection, commerce, accounting, or other necessary fields, and a competent official shall serve as both an investigative member and secretary.

Each investigative sub-committee shall have the power and duty to investigate violations of this Act relating to information contained in the human rights and environmental diligence reports, and upon conclusion of its investigation, shall submit its findings and case file to the Committee within twelve months from the date of appointment. Where necessary, the period may be extended no more than twice, for a duration not exceeding six months each time, with the reasons for the extension duly recorded in the case file.

The performance of duties, number, qualifications, and disqualifications of the sub-committee members under paragraph one shall be as prescribed by the Committee.

Section 29. Any person may submit the complaint regarding violations of this Act to the Committee in accordance with the rules, conditions, and procedures prescribed the rules issued by the Committee within two years after this Act comes into force. Such persons shall be protected in accordance with the Anti-Strategic Litigation against Public Participation Act and relevant laws.

Where an allegation is made to the Committee that a large enterprise has failed to comply with this Act, the Committee shall consider and decide upon complaints. Where the Committee decides that that enterprise has violated this Act, it shall determine the administrative fine or prescribe an order requiring the enterprise to take appropriate measures, the breach of which is subject to an administrative fine. The decision of the Committee shall be made public.

In cases where an investigation is required, the designated investigative sub-committee shall have the power to promptly proceed to investigate the facts and shall report the progress of the investigation to the Committee.

The enterprise that receives the determination of fines has the right to appeal by submitting the case to the Administrative Court within thirty days from the date of reception of the determination.

Section 30. When an allegation against a large enterprise is made to the Committee, that enterprise may take measures so that it complies with this Act. In that case, such large enterprise may submit a petition to the Committee requesting a determination for an exemption from the compounding of offence (i.e. administrative settlement in lieu of penalties) under this Act.

The Committee shall have the authority to grant such exemption from the compounding of offence (i.e. administrative settlement in lieu of penalties) for the relevant conduct if the investigation establishes that the business enterprise did not act with intent or gross negligence in causing harm to the affected person.

In considering the petition under paragraph one, the Committee may prescribe any conditions that the large enterprise shall comply with this Act. The Committee shall also have the power to conduct an investigation pursuant to this Act to ascertain the relevant facts before making its determination.

The procedure and details for submitting a petition under paragraph one shall be in accordance with the rules and procedures prescribed by the Committee within two years after this Act comes into force.

Where it appears that the large enterprise under paragraph one is subject to civil or criminal proceedings based on the same facts as those forming the basis of the petition, and such proceedings were initiated prior to the submission of the petition under paragraph one, the Committee shall cease its consideration of the request for exemption from the compounding of offence (i.e. administrative settlement in lieu of prosecution), but shall continue to investigate the conduct of the business enterprise pursuant to this Act.

Section 31. Any person who fails to comply with an order of the Committee or fails to provide an explanation of facts as required under section 27 or fails to provide convenience to a competent official shall be liable to an administrative fine not exceeding five hundred thousand baht for each instance of such failure. Such administrative sanction shall not preclude criminal liability under the Criminal Code.

Chapter IV

Measures to Promote and Support Human Rights and Environmental Due Diligence

Section 32. The Committee shall establish a central website where business enterprises can access information necessary to perform the duties under this Act, and shall therein provide FAQs which shall be continuously updated.

The Minister of Justice shall be responsible for maintaining the website under paragraph one.

Section 33. In accordance with section 27, there shall be a sub-committee to provide guidance to business enterprises in carrying out the human rights and environmental due diligence process and respond to inquiries from business enterprises.

Such actions shall be carried out in accordance with the rules prescribed by the Committee.

Section 34. In carrying out human rights and environmental due diligence, a large enterprise may be eligible for promotion and support in the following forms:

- (1) tax incentives in accordance with the Revenue Code or relevant laws;
- (2) benefits under public procurement and supplies administration measures, in accordance with the law on public procurement and supplies administration;
- (3) other benefits as provided under relevant laws.

Rules, procedures, and conditions of promotion and support shall be determined under ministerial regulations.

Section 35. In performing its duties under section 6, paragraph 3, a medium or small enterprise may request financial assistance from the Small and Medium Enterprises Promotion Fund under the Small and Medium Enterprise Promotion Act, B. E. 2543 (2000).

Chapter V

Penalties

Section 36. A large enterprise that fails to comply with section 12 shall be liable to an administrative fine of not exceeding one million baht.

Section 37. A large enterprise that fails to take steps in human rights and environmental due diligence in accordance with sections 13, 14, 15, 16, 17, or 19 shall be liable to an administrative fine of not exceeding five million baht.

Section 38. A large enterprise that fails to submit the report in accordance with section 18 shall be liable to an administrative fine not exceeding one million baht.

Section 39. In determining the penalties, the Committee shall take account of the nature, gravity and duration of the violation, and the severity of the impacts resulting from that violation, any investments made and any targeted support provided to business partners; any collaboration with other enterprises to address the harm concerned, the extent to which the company carried out any remedial action, where relevant, the extent to which prioritisation decisions were made, the financial benefits gained from or losses avoided by the enterprise due to the violation, any relevant previous infringements by the enterprise, any other aggravating or mitigating factors applicable to the circumstances of the case concerned.

Section 40. The penalties under this chapter shall not preclude any liability that an enterprise may incur under the Civil and Commercial Code, the Enhancement and Conservation of National Environmental Quality, B. E. 2535 (1992), or any other laws.

Section 41. This Act shall be reviewed in ten years after this Act comes into force to consider whether medium and small enterprises shall have the duties to conduct human rights and environmental due diligence.

Rationale for the enactment of this Act is as follows:

[for the explanatory report when the bill is submitted to the Council of Ministers and the National Assembly]

Business enterprises play an important part in Thailand's economic growth. They should nevertheless pursue business activities in a way that is sustainable and avoids environmental harm and human rights violations, including any violation of labour rights and the rights of communities. These harms are widespread and severe. Forced labour, child labour, land rights violations, deforestation, and unsafe working conditions remain persistent in global supply chains. Voluntary measures have proved insufficient to address these harms. Relevant Thai laws do not require business enterprises to proactively take preventative measures.

Established authoritative and widely supported international guidelines, including the United Nations Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and OECD Due Diligence Guidance for Responsible Business Conduct, underline that due diligence is the key process for business enterprises to avoid harm and violations, including by proactively taking measures to identify, prevent, and mitigate the risks of human rights violations and environmental harm and by providing remediation when such violation or harm occurs. Furthermore, Thailand, as a party to international human rights treaties, has the duty to protect individuals, and to this end, should enact a law which requires business enterprises to engage in human rights due diligence in its value chain in accordance with General Comment No 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.

Mandatory due diligence has multiple benefits for businesses. A well-known and important one is that it creates a level playing field. Business enterprises that already voluntarily implement due diligence often face higher short-term costs, while competitors gain

unfair advantage by ignoring risks. Mandatory law will ensure that all covered enterprises active in a market meet the same minimum expectations.¹

Although business enterprises may face initial costs to implement due diligence, it also reduces legal, financial and reputational risks for them. Businesses are increasingly held accountable by courts, investors, and civil society. Examples include lawsuits against Shell (for climate change), KiK (for factory fire), and apparel brands (for forced labour). Due diligence lowers litigation and reputational risk, reduces supply chain disruptions, and increases resilience.² The law additionally provides a clear legal basis for government authorities to provide incentives for large enterprises and support for SMEs in this regard.

For the Thai business sector, due diligence will also make it easier to meet investor and consumer expectations, as ESG investors increasingly demand credible human rights and environmental risk management.³ It will additionally improve long-term business performance and resilience, as studies show that enterprises with strong ESG practices enjoy lower capital costs, better operational performance, and stronger employee engagement.⁴

Other well-known benefits of sustainable supply chain management, which is built with mandatory due diligence, include creating trust with stakeholders, attracting talent, and opening access to public procurement markets in other countries, as many governments have added human rights and environmental due diligence criteria. Moreover, Thai businesses will benefit from alignment with EU-wide legal standards when they export to EU-based clients or supply chains of EU companies.

¹ The Council of the OCED, in the Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct, expressly notes ‘the efforts of the international community to promote responsible business conduct globally in order to strengthen and harmonise the implementation of standards for human rights, labour, the environment, and anti-corruption and to support a level playing field for business that takes into account their impacts on society and the environment’. OECD, **OECD Due Diligence Guidance for Responsible Business Conduct** (2018) available at <https://www.oecd.org/en/publications/oecd-due-diligence-guidance-for-responsible-business-conduct_15f5f4b3-en.html>

² The comprehensive study commissioned by the European Commission concludes that the benefits of reduced risk and greater legal certainty outweigh the costs. See, Smit et al, **Study on Due Diligence Requirements through the Supply Chain** (2020) available at <<https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>>.

³ Principles for Responsible Investment (PRI) highlights mandatory due diligence as essential for sustainable finance alignment. See, Principles for Responsible Investment, **Annual Report 2021** (2021) available <<https://www.unpri.org/annual-report-2021>>.

⁴ Friede, Busch & Bassen, ‘ESG and Financial Performance: Aggregated Evidence from More Than 2000 Empirical Studies’ (2015) 5 **Journal of Sustainable Finance & Investment** 210, 210-233.

Annex 1

International Human Rights Standards

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Universal Declaration on the Rights of Indigenous Peoples
- International Labour Organisation Declaration on Fundamental Principles and Rights at Work

Annex 2

International Environmental Standards

- The Rio Declaration on Environment and Development
- The United Nations Framework Convention on Climate Change
- The Paris Agreement
- The Convention on Biological Diversity,
- The Kunming-Montreal Global Biodiversity Framework
- The United Nations Convention to Combat Desertification
- ISO Standard on Environmental Management Systems
- The International Finance Corporation's Environmental and Social Performance Standards
- Strategic Approach to International Chemicals Management (SAICM)