9 Promoting and enabling responsible business conduct

This chapter reflects Thailand's achievements in promoting and enabling responsible business conduct and includes recommendations on how promoting RBC is a strategic choice for upgrading in global supply chains and encouraging the private sector contribution to the SDGs. This chapter is part of a broader project on Responsible Supply Chains in Asia funded by the European Union.

Summary

Promoting and enabling responsible business conduct (RBC) is of central interest to policy-makers wishing to attract and keep investment and ensure that business activity contributes to broader value creation and sustainable development. RBC expectations are prevalent throughout global value chains and refer to the expectation that all businesses – regardless of their legal status, size, ownership structure or sector – avoid and address negative consequences of their operations, while contributing to sustainable development where they operate. RBC is an entry point for any company that wishes to contribute to the Sustainable Development Goals (SDGs) or to achieve specific economic and sustainability outcomes.

The COVID-19 crisis has exposed significant vulnerabilities in company operations in global value chains, including as related to disaster preparedness and supply chain continuity and resilience. Evidence has already shown that companies that are responsible are better able to respond to COVID-19. An RBC lens can help them to make more balanced decisions, while ensuring that they avoid creating further risks to people, planet and society – or contribute to further destabilising supply chains down the line. Promoting and enabling RBC as part of overall COVID-19 policy responses will be essential for ensuring coherence between their government recovery policies and their expectations of how businesses should contribute in this regard. Thailand is a regional leader on RBC. Several initiatives have been implemented over the course of the last few years. Notably, on 29 October 2019, Thailand became the first country in Asia to adopt a standalone *National Action Plan on Business and Human Rights (2019-2022)* (NAP). RBC-related activities in Thailand have also been undertaken by the private sector and civil society. Nevertheless, while the efforts by the Thai government to set RBC policy direction are commendable, the real test will be in implementation. Building on the support for the NAP and the swell of support for RBC, Thailand is in a unique position to promote bold and consistent implementation of RBC principles and standards across the economy.

Policy directions

- Support, enable and promote RBC due diligence among businesses throughout the economy. Explicitly promote broad dissemination and implementation of due diligence in accordance with the OECD *Due Diligence Guidance for RBC*. This includes efforts at the provincial level. The *Guidance* is a practical tool to implement the due diligence expectations as set out in the ILO, OECD and UN instruments.
- Promote due diligence in the activities where the state acts as an economic actor. This includes procurement and activities of state-owned enterprises. Notably, due consideration should be given to how RBC expectations can be reflected in the implementation of the Public Procurement and Supplies Management Act of 2017 and whether amendment is necessary. Additionally, the policy guidance for SOEs should be aligned with the 2015 OECD *Guidelines on Corporate Governance of State-Owned Enterprises* and the specific expectation that SOEs establish and implement due diligence according to international standards should be made clear.
- Provide and communicate clear expectations to businesses on RBC standards for outward Thai investments in the services provided for investors, in collaboration with BOI, Federation of Thai Industries and the Board of Trade, EXIM Thailand and SEC. These services include organising overseas business visits, business seminars and dialogue with business associations of other countries. The information and expectations should also be integrated in BOI’s Thailand Overseas Investment Centre under the Thai Overseas Investment Promotion Division. Assess whether further alignment in risk management policies is necessary and whether specific due diligence requirements should be considered.

- Make RBC due diligence a standard operating procedure in special economic zones and the EEC, including promoting transparency around selection of projects and the establishment and operations of zones, as well as meaningful stakeholder engagement with affected communities.
- Encourage and support implementation of RBC in the financial sector. This includes promoting RBC due diligence in the operations of large institutional investors (such as the Social Security Fund), following the lead of the Thailand Government Pension Fund.
- Consider expanding the labour laws, regulations, and initiatives applied in the context of fisheries to other industrial sectors that have a large migrant worker population.
- Ensure that recent protections for human rights defenders are implemented and consider whether further policy action is necessary. The role of non-judicial grievance mechanisms and alternatives means of dispute resolution should be considered.

Scope and importance of responsible business conduct

Promoting and enabling responsible business conduct (RBC) is of central interest to policy-makers wishing to attract and keep quality investment and ensure that business activity contributes to broader value creation and sustainable development (see also Chapter 4). RBC expectations are prevalent throughout global value chains and are affirmed in the main international instruments on RBC – notably the OECD *Guidelines for Multinational Enterprises* (OECD *Guidelines*), the UN *Guiding Principles on Business and Human Rights* (UN *Guiding Principles*), and the ILO Tripartite *Declaration of Principles concerning Multinational Enterprises and Social Policy* – and increasingly in international trade and investment agreements and national development strategies, laws, and regulations. OECD, UN and ILO instruments are aligned and complement each other (see OECD/OHCHR/ILO, 2019).

RBC principles and standards set out an expectation that all businesses – regardless of their legal status, size, ownership structure or sector – avoid and address negative consequences of their operations, while contributing to sustainable development where they operate. RBC means integrating and considering environmental and social issues within core business activities, including throughout the supply chain and business relationships. A key element is risk-based due diligence – a process through which businesses identify, prevent and mitigate their actual and potential negative impacts and account for how those impacts are addressed. Many businesses also find that responsible business is good business, beyond ensuring respect for human rights and compliance with relevant laws and regulations. Understanding, addressing, and avoiding risks material to business operations in a more comprehensive way – that is, beyond financial risks – can often lead to a competitive advantage.

The term corporate social responsibility (CSR) has historically been used to describe business interactions with society. Over the last years, CSR is increasingly being used alongside RBC and business and human rights (BHR). These concepts reflect the expectation that businesses should consider the impact of their operations and supply chains on people, the planet and society as part of their core business considerations and not as an add-on. These concepts should not be understood to be equivalent to philanthropy (see OECD/OHCHR/ILO, 2019).

The important role of the private sector in delivering and financing the Sustainable Development Goals (SDGs) as well as in various means of SDG implementation, for example, public-private partnerships or blended finance, is explicitly recognised by the Agenda 2030 (see UN A/RES/70/1 which calls "upon all businesses to apply their creativity and innovation to solving sustainable development challenges"). A number of SDGs refer to responsible production patterns, inclusive and sustainable economic growth, employment and decent work for all. The Paris Agreement on climate change also underlines the critical role of business in tackling climate change, including through reducing greenhouse gas emissions and improving environmental performance. Implementing RBC principles and standards can help companies operationalise the SDGs and ensure their most significant impacts are prioritised (for more information, see OECD, 2019c).

From risk to resilience: RBC and COVID-19

The COVID-19 crisis has caused a major disruption to global supply chains and exposed significant vulnerabilities in company operations, including related to disaster preparedness and supply chain continuity and resilience (Chapter 2). In addition to the health impact, entire supply chains have come to a halt and placed millions of companies and workers at economic risk (OECD, 2020a). The crisis has also increased vulnerability of already vulnerable populations such as migrant workers (IOM, 2020).

RBC standards and tools can help governments and companies make decisions that balance environmental, social and governance issues in the crisis, while ensuring that such responses do not create further risks to people, planet and society – or contribute to further destabilising supply chains down the line (e.g. resurgence of forced or child labour in certain strategic sectors). COVID-19 recovery plans will place governments in a particularly strategic position to steer the economy toward long-term value creation (including reduced greenhouse gas emissions, worker skills and benefits and emergency preparedness). Governments should consider in their recovery policies that many companies might not commit of their own accord to an RBC approach in their response to COVID-19, either because of a lack of incentive, capacity, resources or knowledge. This may especially be exacerbated in contexts where awareness of RBC is low. Government support for RBC approach will be essential for ensuring coherence between their own policies in response to the crisis and their expectations of how businesses should act, including as part of industrial policies. Government should ensure that measures do not exacerbate negative impacts of the crisis, but rather incentivise companies to mitigate any potential harms and maximise the positive impacts of their response.

For businesses, RBC should not be seen as an additional burden in lieu of focusing on business continuity, but rather a strategic orientation that can encourage a more systemic and dynamic crisis response, discourage a ‘go-at-it-alone’ position (Barry, 2020), and bring short and long-term benefits to the company as it designs its crisis response. For example, working out contingency plans with workers and suppliers may make more commercial sense than paying the price of disbanding large segments of a workforce that took years to build and train. Furthermore, information from supply chain due diligence (e.g. on origin of raw materials, and other traceability data) when overlaid with risks related to COVID-19 (such as infection rates, government restrictions and associated disruptions in production or distribution channels) can be used to understand short and medium term vulnerabilities in the supply chain, and support continuity planning to manage disruptions. Notably, it can also contribute to disaster preparedness and resilience overall, which is especially useful considering the risks of disruptions by climate change.

Thailand is a regional leader on RBC

Thailand has expressed in numerous public statements and at the highest political levels that it intends to be a regional champion of RBC. Several policy initiatives have been implemented over the course of the last few years, culminating on 29 October 2019 in Thailand becoming the first country in Asia to adopt a standalone *National Action Plan on Business and Human Rights (2019-2022)* (NAP). The process, led by the Rights and Liberties Protection Department of Ministry of Justice, started in 2016 and has been recognised as inclusive and participatory. With this action, Thailand joins the 22 countries which have developed a standalone NAP on RBC or business and human rights, following a recommendation by the UN to do so as part of the state responsibility to disseminate and implement the UN *Guiding Principles*. NAPs are a useful tool for promoting policy coherence within the government, engaging with stakeholders, and demonstrating commitment to RBC. Notably, the Thai NAP references the main international instruments on RBC.

The Thai NAP outlines four key priority areas, namely actions to address 1) labour; 2) community, land, natural resources and environment; 3) human rights defenders; and 4) cross-border investment and multinational enterprises. It also envisions an implementation plan and indicators for monitoring and evaluation. This is a significant achievement to promote RBC in Thailand and among Thai enterprises operating domestically and abroad. The Thai NAP summarises all of the legislative action in this regard.

Thailand has also promoted RBC in other ways. For example, an early promoter of CSR was the Ministry of Industry Department of Industrial Works through CSR awards. The Stock Exchange of Thailand (SET) has initiated sustainability awards since 2006. Thai Institute of Directors Association also promotes sustainability as part of its work programmes and promotion of good corporate governance and offers a Board of the Year Award with sustainability and stakeholder views included in the criteria. The Ministry of Justice Rights and Liberties Protection Department has also initiated the Business and Human Rights Awards.

Additionally, the National Human Rights Commission of Thailand (NHRCT) has played a critical role by raising visibility about the complaints received in the business and human rights field and by organising awareness raising events and workshops. The government has also taken steps to promote RBC among Thai state-owned enterprises (SOEs), including by directing them to follow RBC standards and practices (see section below).

There have also been sector or thematic policy commitments. For example, Thailand was the first country in Asia to ratify the ILO Work in Fishing Convention, 2007 (No.188), which is intended to protect the living and working conditions on board vessels (ILO, 2019). Thailand's significant efforts to prevent human trafficking have resulted in an increase in its rank in 2018 to Tier 2 from Tier 2 Watchlist in the US State Department Trafficking in Persons Report (see US State Department, 2019).

Another example are the efforts by the Securities and Exchange Commission (SEC) which was an early champion of sustainability, notably connecting the topics of corporate governance, ESG, sustainability, and anti-corruption, in the Sustainability Development Roadmap which was adopted as part of the SEC Strategic Plan 2013-2015. The SEC Strategic Plan 2020-2022 addresses the importance of sustainability as one of its 5 priorities. Recent efforts (see section below) focus on raising awareness in the market on the SDGs, diversity, and human rights. In 2019, the SEC and the NHRCT signed an MOU to support listed companies with implementation of the UN *Guiding Principles* (SEC, 2019a). Several events were organised to support these objectives, as well as promotional activities such as letters circulated to companies and financial advisors (see section below).

Thailand is also the first country in Southeast Asia to sign a country programme with the OECD, where promoting/enabling RBC on the basis of the OECD RBC standards is included as a priority area of cooperation. The country programme aligns with Thailand's 20-Year National Strategy (2018-2037) and the 12th National Economic and Social Development Plan (NESDP 2017-2022). RBC activities are supported by the EU-ILO-OECD *Responsible Supply Chains in Asia* Programme.[1]

Notwithstanding the initiatives by the government, RBC-related activities in Thailand have also been undertaken by the private sector and civil society, such as when 15 businesses spearheaded the creation of the Thailand chapter of the UN Global Compact Network in 2016, which as of November 2019 counted 46 members (UN Global Compact, 2019). Businesses and business associations, including the Joint Steering Committee on Commerce, Industry, and Banking (JSCCIB), Federation of Thai Industry, Thai Bankers' Association and Stock Exchange of Thailand organised awareness raising events and workshops to familiarise businesses with international standards on RBC and to engage in the process of developing the Thai NAP. For example, JSCIIB, Royal Thai Government and the OECD organised a dedicated conference for business in 2018 on *Strengthening responsible business conduct through international standards* in the framework of the 2nd Bangkok Business and Human Rights Week. The conference focused specifically on RBC due diligence and featured high-level business representatives and government officials.

Nevertheless, a number of stakeholders consulted as part of this Review felt that more business involvement is needed and that, while awareness is increasing, implementation could be further improved even when policy commitments at the company level exist. Furthermore, efforts are not consistent across sectors and there is still a need for significant awareness raising in certain sectors. The Thai NAP will be an opportunity to promote more consistent implementation of RBC principles and standards across the economy.

The Government should consider promoting the implementation of the 2018 *OECD Due Diligence Guidance for Responsible Business Conduct* in this regard. The *Guidance* promotes a common understanding of RBC due diligence across sectors and has been recognised also by the ILO and the UN Working Group on Business and Human Rights. The UN Working Group on Business & Human Rights underscored the status of the Guidance as an important authority on due diligence and on alignment with the UN *Guiding Principles*. In its report to the UN General Assembly in 2018, the Working Group underlined that "[t]he recently issued OECD *Due Diligence Guidance* […] provides a comprehensive practical tool for supporting implementation of human rights due diligence in line with the *Guiding Principles*, which is based on comprehensive multi-stakeholder inputs and dialogue." (UN, 2018). One particular element that could be useful is cross-sector and cross-thematic learning. Business associations can play a significant role in this regard by disseminating the guidance and tools and ensuring training opportunities for their members.

Translating policy commitments into implementation

The efforts by the Thai government to set RBC policy direction through the NAP, including specific actions and indicators of success are commendable, but the real test will be in implementation. The below sections focus on key areas where implementation of international RBC principles and standards could make a marked difference in the market. The choice of these areas is not meant to be exclusive and is complementary to the Thai NAP.

Leading by example – RBC and the practice of state-owned enterprises

The National Human Rights Commission of Thailand has played a key role in raising awareness of the importance of RBC in the context of SOEs. The NHRCT has reported that a number of complaints have been received over the course of the last few years related to SOEs and state projects, particularly on labour rights and large-scale impacts on environment and communities. The NHRCT has also played a key role when it comes to overseas investments and activities of other enterprises.

It is estimated that the revenue of Thailand's 56 SOEs amounts to 40% of Thailand's GDP and that they employ 425 000 workers. Five are listed on the Stock Exchange of Thailand. The important role of SOEs is also recognised in the Thai NAP. The government has directed Thai SOEs to follow RBC principles and standards. This move has been welcomed by the UN Working Group on Business and Human Rights (UN OHCHR, 2018a). The State Enterprise Policy Office has also reported that it implements the 2005 *OECD Guidelines on Corporate Governance of State-Owned Enterprises*.

The direction that the government has set on RBC for SOEs is an important move in the market, considering the importance of Thai SOEs. This commitment now needs to be followed by swift action on RBC. Not only would this set an example for other enterprises, it would also increase disclosure and transparency, and could help address some concerns in priority sectors such as infrastructure.

The government should align its policy guidance for SOEs with the updated 2015 OECD *Guidelines on Corporate Governance of State-Owned Enterprises*, which recommend that the state ownership policy fully recognises SOE responsibilities towards stakeholders and request that SOEs report on their relations with stakeholders, as well as to make clear any expectations the state has in respect of RBC by SOEs (OECD, 2015). The SOE *Guidelines* further recommend, and rely in this regard on the Board of Directors to the executive management, extensive measures to report on foreseeable risks, including in the areas human rights, labour, the environment, as well as risks related to corruption and taxation.

These expectations are in line with the OECD *Guidelines for Multinational Enterprises* (which apply to all entities within the enterprise in all sectors, whether of private, state or mixed ownership) as well as the UN *Guiding Principles*, which apply to all states and all enterprises. UN Guiding Principle 4 stipulates that states “should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence” (UN, 2011). A 2016 report by the UN Working Group on Business and Human Rights examined the practices with respect to current RBC and business and human rights practices of SOEs and found that there is a general lack of attention to RBC issues and that policies, guidelines and good practices are lacking at both the international and national levels (UN, 2016). The government could direct SOEs to implement the OECD due diligence guidance in the first instance.

For example, the improving the corporate governance practices of SOEs can help remove barriers for private investments, which is particularly important in priority sectors such as infrastructure. Integrating practices like due diligence for environmental and social risks, improving processes related to stakeholder engagement, and promoting disclosure and transparency, could go a long way in mitigating risks.

Supporting and encouraging action in the financial sector

One especially promising aspect for the promotion of RBC in Thailand has been the attention given to RBC in the context of the financial sector. Financial institutions have a key role to play in driving global sustainability through directing financing towards measures to achieve the SDGs and the transition to a low carbon economy (see also Chapter 10).[2] In Thailand, the SEC, the SET, Thai institutional investors, and Thai Bankers Association all have initiatives on RBC. SEC was an early champion of sustainability, notably connecting the topics of corporate governance, environmental, social and governance (ESG) factors, sustainability, and anti-corruption, in the Sustainability Development Roadmap which was adopted as part of the SEC Strategic Plan 2013-2015. The new SEC Strategic Plan 2020-2022 includes sustainability as one of its priorities, to promote alignment with and achievement of the SDGs, and includes a direct reference to promoting business and human rights. The SEC plans to offer capacity building programmes and tools to help companies implement due diligence. Furthermore, a pilot project at the regional level is planned in order to promote due diligence with companies not only in the Bangkok area.

Additionally, the SEC and nine other partners jointly established the Thailand Responsible Business Network in December 2019 which will provide a platform for further development of the capital market towards SDGs by inviting listed companies to initiate or join existing projects. Furthermore, the SEC 2017 Corporate Governance Code integrates the essence of principles and best practices of the G20/OECD *Principles of Corporate Governance* and the SET *Principles of Good Corporate Governance*. It recognises the importance of responsible business and business leadership explicitly and delineates the board roles and responsibilities for the company’s long-term sustainable value creation (SEC, 2017a). Furthermore, the SEC Investment Governance Code 2017 developed for institutional investors explicitly promotes responsible and sustainable investment and investing in companies with good ESG practices (SEC, 2017b; for more information on the history of SEC’s efforts see SEC, 2019b). SEC is planning capacity-building activities under the Thai NAP for listed companies.

The SET maintains a Social Responsibility Centre (originally set up in 2007 as Corporate Social Responsibility Institute) which has a mandate to build a strong foundation for the sustainable growth of the capital market in the long run. The SET publishes a list of Thai companies since 2015 that have a strong performance on ESG and also awards an annual sustainability award. It also provides training and workshops on sustainability reporting, as well as encourages large companies to become participants in the Dow Jones Sustainability Index (see SET, 2019).

The momentum for responsible financial strategies and products is also growing in Thailand, mirroring global trends. Globally, current strategies for responsible investment vary widely in terms of objectives, scope of application, and prevalence of use amongst institutional investors.[3] Box 8.1 provides an overview of approaches with respect to responsible investment.

The Government Pension Fund (GPF) been at the forefront of aligning its practices with international RBC practices (see Economist, 2019). The OECD and GPF are working together to align GPF's strategies and policies with 2017 OECD *Responsible Business Conduct for Institutional Investors*, which sets out key considerations for institutional investors in carrying out due diligence to identify and respond to environmental and social risks within their portfolios. This publication was developed with the support of leading asset owners and investment managers and has been formally endorsed by 49 governments (OECD, 2017b). GPF has also organised a number of conferences and technical workshops and, in August 2019, GPF and 32 securities companies signed a collaborative agreement to engage and develop negative list guidelines as part of efforts on ESG (ThaiPBS World, 2019). The OECD, World Bank, and GPF will continue working together in 2020 in this regard.

In order to level the playing field and encourage industry laggards to perform better, the Thai government can define minimum expectations and actively promote responsible investment with other practitioners, building on and promoting existing standards, as well as existing experience to foster a common understanding of responsible investment in the economy. This will be especially relevant in COVID-19 recovery. Risk aversion in the financial markets due to COVID-19 has reached levels not seen since the global financial crisis. Stock markets have declined over 30% and volatility has spiked to crisis levels (OECD, 2020b). Good news, however, is that early reports already suggest that interest in RBC has significantly increased and that RBC is being seen in the market as a marker for long-term performance of companies. ESG funds have already outperformed traditional funds during the crisis, in line with existing evidence on the business case for RBC.[4]

Box 9.1. Responsible investment strategies

A variety of approaches exist with respect to responsible investment. While there is no formal definition of these different approaches the below terminology has been associated with the described strategies.

Responsible Investing - often used as a catch all term that may encompass various strategies which take into account environmental and social issues in the context of investment decision making.

Environmental, Social, Governance (ESG) Integration - defined by the *Principles for Responsible Investment* as "the explicit and systematic inclusion of ESG issues in investment analysis and investment decisions." ESG criteria may be used primarily to identify financial risks posed by real or potential ESG impacts.

Impact investment - products or strategies that seek to generate positive social or environmental impacts alongside a financial return.

Ethical investment – products or strategies that are dictated by certain ethical or moral considerations. For example, exclusionary or screening processes which exclude investment in certain industries (e.g. tobacco).

For more information, see OECD, 2019a.

Furthermore, efforts in the banking sector have also been undertaken recently. The Bank of Thailand in collaboration with the Thai Bankers Association has established the *Sustainable Banking Guidelines on Responsible Lending* in August 2019. This can help promote RBC among Thai banks and foreign banks operating in Thailand; although it would be advisable to also consider swift implementation. A recent report by the World Wildlife Fund on sustainable banking in ASEAN showed that, while Thai banks in general have developed sustainability strategies and have engaged with stakeholder, implementation could still be improved. According to the report, most ASEAN banks have not adequately mitigated risks from their clients and may not be aware of the extent of their risk-exposure. It could be useful to consider whether alignment with the OECD *Due Diligence for Responsible Corporate Lending and Securities Underwriting* can be useful in this regard, particularly when it comes to implementation of the Thai responsible banking and lending guidelines. The OECD paper, which was published in October 2019, provides a common global framework for financial institutions to identify, respond to and publicly communicate on environmental and social risks associated with their clients. The report helps banks and other financial institutions implement the due diligence recommendations of the OECD *Guidelines for Multinational Enterprises* in the context of their corporate lending and underwriting activities.

Removing barriers to implementation

These efforts should be encouraged and supported as a priority, as well as reinforced among other key financial institutions in Thailand, including other large institutional investors such as the Social Security Fund. A growing body of empirical evidence suggests that investments which take ESG factors into account can add value and lead to higher risk-adjusted returns net of expenses. RBC factors appear to have, at best a positive relationship with corporate financial performance and at worst a neutral relationship (OECD, 2017).

Nevertheless, investors and other stakeholders have identified various challenges to integrating ESG factors in the activities of financial sector practitioners. Among these challenges are poor understanding of ESG risks and lack of standardised approaches to ESG risk management (see for example State Street Global Advisors, 2018); governance frameworks which are not explicitly compatible with ESG strategies; and lack of quality data and comparative metrics on ESG issues (see Morgan Stanley, 2018).

Thai financial institutions and policy makers have been proactive in responding to some of these challenges and may draw further inspiration from experience of other governments and practitioners. When it comes to interpretation and design of existing governance frameworks, some investors continue to perceive legal barriers between the responsibility to protect the financial interests of beneficiaries and consideration of ESG factors, even when these do not exist in practice. OECD research has found that this is partially because investment governance regulatory frameworks and risk-based controls generally do not explicitly refer to ESG factors. This gap has meant that investors and other financial institutions have had to interpret for themselves the extent to which responsible investment strategies are possible or permitted (OECD, 2017a).

In this respect, Thailand has taken important steps to explicitly recognise the importance of taking into account long-term value drivers like environmental and social risks in investment governance through corporate governance or investor stewardship codes. SEC efforts are notable in this regard. Further promoting alignment and being explicit on what RBC due diligence means in practice in line with international principles and standards can further introduce clarity in the market and position Thai market as a leader in the region.

Another challenge is the tension between ESG objectives (which are viewed as important to long-term value creation) and the investment horizons (which seek to maximise shareholder value in the short-term). In a survey by State Street, 47% of asset owners and 43% of asset managers indicated that they believe that the proper timeframe for expecting responsible investment strategies to outperform is five years or more, but only 10%-20% use these time frames for actually evaluating performance. Investment performance is still generally measured and reported on a 1, 3 and 5-year horizons (Cappucci, 2017).

Nevertheless, it is possible for regulators to promote long-termism even when taking this context into account. The market, by its nature, is unlikely to deliver such a change. Moving from the current mind-set to a longer-term investment environment requires a new "investment culture". Further analysis and recommendations on how regulators can promote long-termism by institutional investors are available in OECD brief on *Promoting Longer-Term Investment by Institutional Investors: Selected Issues and Policies* (OECD, 2011). Thai regulators may wish to assess and analyse to what degree the current framework allows for long-termism.

Finally, lack of quality data when it comes to responsible investment strategies and measuring the financial performance of such strategies has also been raised by Thai practitioners as a central challenge, mirroring experience globally. For example, 68% of asset owners surveyed in a Morgan Stanley study noted that a lack of availability of quality ESG data is the leading challenge to responsible investment (Morgan Stanley, 2018).

Many investors currently rely on ESG data providers and raters; however, a lack of agreed sustainability disclosure metrics at an international level has resulted in a high level of subjectivity in ESG scoring that hinders the ability to assess performance and risk. These issues are compounded by issues with quality, comparability and availability of ESG data, and the lack of standardised disclosures on ESG data by ESG data providers and issuers.

Resolving challenges with ESG data will be an ongoing process that requires collaboration across policymakers, investment practitioners, ESG data providers and corporates. However, policy makers in Thailand can take certain steps to facilitate improved ESG data disclosure. The role of SET's Social Responsibility Centre is relevant in this regard. Thai policy makers can further encourage quality data and reporting through mandating reporting against widely used and recognised frameworks, such as those developed by the Task Force on Climate Related Disclosures, Global Reporting Initiative (GRI), Sustainability Accounting Standards Board and OECD due diligence reporting recommendations. Establishing classification and benchmarking systems for sustainability factors, e.g. GHG emissions and climate performance, should also be considered. For example, such efforts are underway in the EU as part of the EU Sustainable Finance Action Plan which includes establishing an EU classification system for sustainable activities (Action 1); creating standards and labels for green financial products (Action 2); developing and harmonising sustainability benchmarks related to carbon (Action 5); and strengthening sustainability disclosure and accounting rule-making (Action 9). The EU has recently introduced a taxonomy to reflect commonly agreed principles and metrics for assessing whether economic activities can be considered environmentally sustainable for investment purposes.

An additional emerging issue with existing ESG reporting and rating frameworks is ambiguity around the materiality of the data provided. Currently, lack of clarity exists on two aspects: how ESG products reflect environmental and social performance and impacts and how financial materiality related to ESG factors is assessed. Ensuring that ratings agencies and reporting frameworks be explicit about whether they are focused on (only) ESG issues which create a financial risk for the company or actual ESG performance (and whether they report information related to these issues separately) will be critical for brining clarity to the market. Relevant actors in Thailand should assess whether this clarification is needed in Thailand.

Thai regulators have already been attempting to address these issues in several ways. For example, since 2013, the SEC requires issuing companies and listed companies to comply with disclosure requirements under Notification of the Capital Market Supervisory Board 44/2556 *Re: Rules, Conditions and Procedures for Disclosure regarding Financial and Non-financial Information of Securities Issuers* under chapter 3 clause 29. The SEC has recommended that companies should follow the SET's 2012 *Guidelines for Sustainability Reporting* or international standards. For example, companies can consider Global Reporting Initiative (GRI) format in the One Report from 2022 onwards. The SEC has reported to the OECD as part of this Review that it is also planning to issue several manuals in 2020, for example on One Report, as well as to introduce listed companies to the SDGs and to promote impact measurement and management and links with RBC. The SEC is also considering how to promote climate-related issues through the disclosure of carbon emissions information as part of the One Report on a comply or explain basis. Further development on climate-related disclosure are being considered as well for the next phase.

Thailand as a regional leader on RBC in the financial sector

Thailand's ambitions to be a regional leader could be particularly impactful in the context of this sector. Overall, in Asia, the importance of the financial sector is significant and increasing. According to the 2019 OECD Equity Market Review of Asia, the average annual amount of equity capital raised by Asian companies increased from USD 46 billion (2000-08) to USD 67 billion (2009-18). The opposite trend holds in the US and Europe, with the respective numbers at USD 78 billion (2000-08) to USD 51 billion (2009-18). Additionally, and contrary to the trends in the US and Europe, there is an increasing number of new listings by Asian companies. While these developments are largely due to companies from large Asia markets like China, India, Korea, and Japan, a closer look at the regional IPO activity also reveals that several emerging markets, such as Viet Nam, Thailand, Indonesia and Malaysia, rank higher in terms of IPOs than most advanced economies.

Another finding from the OECD review is that stock markets are increasingly integrated. A growing share of public equity investments are being made across borders, plus companies are also taking advantage of foreign equity markets to raise capital. At the end of 2018, 510 Asian companies were listed on a market other than the domestic market, without having a domestic listing, and 120 Asian companies were cross-listed on the domestic and foreign markets.

This interdependence can mean that dealing with different legal and regulatory frameworks (including also when it comes to RBC) can be a challenging prospect. Having an example from the region which considers RBC in the sector in a holistic way and aligned with international principles and standards can serve as a concrete example of how broader policy efforts on RBC can be implemented at the sector level. Additionally, alignment with international practice can also be useful for integrating the sector further in the global markets. For example, the recommendations outlined in the OECD paper on Responsible Business Conduct for Institutional Investors have been endorsed by leading investment managers[5], pension funds,[6] and recently referenced in an *EU Regulation for Sustainable Disclosure,* which calls on the EU institutional investors and other financial market participants to report on their due diligence processes. The new regulation sets out how financial market participants and financial advisors must integrate ESG risks and opportunities in their processes, including reporting on adherence to internationally recognised standards for due diligence. The recital to the regulation calls on financial market participants and advisors to report on due diligence processes "to take into account the due diligence guidance for responsible business conduct developed by the [OECD]."[7]

As Thailand embarks on Thailand 4.0, increasing awareness, capacity and uptake of due diligence approaches in the financial sector; promoting cohesive, streamlined and internationally-aligned approaches to sustainable finance amongst practitioners and policy makers; and addressing existing challenges and facilitating RBC for the financial sector, will both support future development and help ensure that it does not come at a social or environmental detriment.

Protecting human rights defenders

One issue that warrants a specific mention, as also recognised in the Thai NAP, is the protection of human rights defenders. There have been a number of high-profile Strategic Litigation Against Public Participation (SLAPP) lawsuits in Thailand. The ability of stakeholders to raise issues and engage in the due diligence process without fear of retribution is a key component of due diligence. SLAPP lawsuits not only have a chilling effect on dialogue, but also affect the quality of the business environment and the perception of the country risk for investors.

They also limit the opportunities to address persistent RBC challenges that defy a solution by one single actor. Practical experience shows that a multi-stakeholder approach is one of the best ways to address complex and systemic challenges that may lead to human rights, labour, environmental and other negative impacts of business operations. Getting the buy-in from a variety of actors enables a constructive and problem-solving mind-set and helps move away from finger-pointing toward building a consensus on how best to implement and promote RBC principles and standards. If workers, trade unions, civil society or whistle blowers cannot meaningfully engage, that has a chilling effect on such processes and solutions. The importance of meaningful stakeholder engagement is recognised by international RBC principles and standards.

Attacks on human rights defenders when they seek to expose human rights abuses related to business activity is growing globally (UN, 2017). It is important in this context that governments protect the public interest. The UN Special Rapporteur on the rights to freedom peaceful assembly and of association recommended that states consider enacting anti-SLAPP legislation (allowing an early dismissal with an award of costs of such suits and the use of measures to penalise abuse); that all state actors – legislative, judiciary, executive, regulatory – at any level should work towards facilitating an environment where criticism is part of a healthy debate on any issues of public or societal relevance; and from private companies to refrain from the use of civil lawsuits as a means of shutting down public participation and critical advocacy (UN OHCHR, 2017).

UN experts have recommended that Thailand decriminalise defamation and revise its civil and criminal laws as well as prosecution processes to prevent misuse of defamation legislation by companies (UN OHCHR, 2018b). In this regard, the Rights and Liberties Protection Department of the Thai Ministry of Justice has highlighted the efforts by the Office of Court of Justice in 2019 on a new section 161/1 of the Criminal Procedure Code which is meant to provide the courts with the power to dismiss any criminal cases that appear to be driven by SLAPP. The Department also highlighted the ongoing efforts to include human rights defenders and media in the draft of the 4th National Human Rights Plan as a new target group for special protection and the establishment of a committee for developing and advancing measures in protecting human rights defenders at risk at the Ministry of Justice. Additionally, the Department highlighted the ongoing amendment of the Witness Protection Act. The Department is also working on awareness raising, including for example by publishing a handbook for human rights defenders to distribute to human rights defenders across the country.

Government can also promote change by convening dialogues and peer learnings, which could feature examples of how contentious issues have been solved in other contexts. Finally, Thailand could consider strengthening non-judicial grievance mechanisms and providing alternative forms of conflict resolution that could be considered in a staggered context. The Mediation Act adopted in 2019 can be useful in this regard.

Extending protections across sectors based on experience from the seafood sector

Following the international attention focused on labour issues and migrant workers in the fishing and seafood industry in Thailand, the government introduced major reforms in the legal framework for labour and migrant workers. The EU recognised the substantial progress made by Thailand in this area and, on 14 October 2019, the EU Foreign Affairs Council reiterated the EU's readiness to broaden its engagement with Thailand and stressed the importance of taking steps towards the resumption of negotiations on a Free Trade Agreement with Thailand (EU, 2019). Nevertheless, the picture is not so clear-cut when it comes to other trading partners. That same month, on 25 October 2019, the Office of the United States Trade Representative announced the suspension of USD 1.3 billion in trade preferences for Thailand under the Generalized System of Preferences (GSP) "based on its failure to adequately provide internationally-recognized worker rights", highlighting longstanding worker rights issues in the seafood and shipping industries (USTR, 2019).

These different actions can likely be attributed to the fact that despite significant efforts by all stakeholders in Thailand in the sector, challenges persist and can also be exacerbated by the practices throughout the supply chain. For example, a December 2019 report by Humanity United and The Freedom Fund cautioned that, while recognising the remarkable achievements in the sector over the last few years, pricing and purchasing practices in the sector still present a significant barrier for meaningful change (Praxis Labs, 2019). Similar findings are echoed in the ILO *Endline research findings on fishers and seafood workers in Thailand,* published in March 2020 in the context of the ILO Ship-to-Shore project. ILO found that, while there have been significant gains since 2017 and there is no doubt that practices in the sector have seen improvements (particularly when it comes to efforts by the government to strengthen the legal framework and elaborate a more comprehensive legal framework to manage labour migration), abuses in the fishing and seafood sectors persist, including circumstances of involuntary work and coercion, which are elements leading to forced labour.

No straightforward or easy solutions exist in this regard, as evidenced by the ILO recommendations in the report. Considering how alignment of existing initiatives with global market standards such as the UN *Guiding Principles* and the OECD *Guidelines*, could be useful. They provide a common framework for discussion and delineation of responsibilities. For example, the various OECD RBC due diligence guidances recognise and recommend that businesses align their internal incentives and purchasing practices to avoid facilitating or incentivising their suppliers to cause adverse impacts on people, planet and society. The ILO recommends mandating monthly meetings between officials, unions, civil society to accelerate and focus enforcement actions. Buyers could be brought into these dialogues as well. Multi-stakeholder solution on issues like compliance costs and pricing will be needed to move the dial forward.

Learnings from other sectors could also be useful. Some characteristics of the seafood supply chain can be similar to other supply chains. Promoting better business practices broadly and encouraging cross-sectoral learning, as mentioned in the previous section, can be beneficial. For example, the garment and footwear sector has struggled with addressing persistent issues with wages and labour issues. The OECD *Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* recognises that purchasing practices of retailers, brands and their buying intermediaries have been demonstrated to contribute to harmful impacts – such as excessive and forced overtime and low wages – in some cases. While the primary responsibility for compliance with the law does not shift, the guidance highlights that considerations around purchasing practices and price setting should be included in the assessment of the enterprise's own operations as an important element of due diligence. The guidance sets out recommendations for 1) assessing whether purchasing practices are contributing to harm, 2) control measures to prevent contribution to harm, and 3) creating red-flag systems, and developing procedures for purchasing teams to follow in instances in which practices could contribute to harm is a part of due diligence process.

The guidance also addresses pricing, noting that "The enterprise should develop pricing models that account for the cost of wages, benefits and investments in decent work. The above considerations should be reflected in freight on board (FOB) prices together with traditional pricing considerations such as quantities being purchased, cost of materials, skill requirements, etc." It recognises that an enterprise's price negotiations may contribute to cost-cutting and therefore labour, human rights or environmental impacts and recommends the enterprise to strengthen its management systems to prevent contributing to harm through its purchasing practices (see OECD, 2018).

It is also important to highlight that labour issues also concern other sectors of the economy. Labour measures used in the fisheries sector could be applied to other industrial sectors, such as agriculture and construction, which have a large number of migrant workers. Businesses should conduct RBC due diligence and report on their efforts publicly in order to promote transparency. Expanding the laws, regulations, and initiatives applied in the context of fisheries to other industrial sectors that have a large migrant worker population would be warranted.

The government should also consider the role of public procurement as a strategic tool for promoting responsible business practices. The buying power of governments is a lever for promoting RBC. Governments are expected to lead by example by incorporating RBC standards in their purchasing policies, to safeguard the public interest and ensure the accountability of public spending. While there are increasing international commitments to link public procurement and RBC, there is a lack of practical implementation.[8] In particular, Thailand should consider how RBC expectations could be reflected in the implementation of the *Public Procurement and Supplies Management Act of 2017* and whether amendment is necessary.

Addressing increasing pressures on the environment and natural resources

An important policy objective by the government is to enhance investment in green technologies and renewable energy (see Chapter 10). Impacts of climate change need to be considered as a matter of priority. Thailand is likely to be severely affected by climate change, due to its extensive coastline, rural communities dependent on agriculture, and heavily populated urban areas located on flood prone areas. The agriculture sectors (including forestry, livestock, and fisheries) employ 30% of Thailand's workforce in 2018 and contributed to 8% of GDP (UNDP/FAO, 2019). As mentioned earlier in this report, food is by far the largest manufacturing sector in Thailand, both in terms of value added (19%) and employment (22%), followed by motor vehicles with 12% of total value added and, in terms of employment, fabricated metals with just 7%. Trends in revealed comparative advantages identify food processing as the most dynamic sector in Thailand (see Chapter 3).

Enterprises involved in agricultural supply chains can create employment, raise labour standards and bring the technology to increase agricultural production or reduce pollution. But their activities can also contribute to food insecurity by leading to the eviction of local communities from their lands. Child labour and abuses of migrant workers and women are reported. The production of some agricultural commodities leads to soil degradation, water resource depletion and deforestation. OECD estimates that by 2050 over 40% of the world's population are likely to be living in river basins under severe water stress. Overall water demand is projected to increase by 55%. Surface water quality outside the OECD is expected to deteriorate in the coming decades, through nutrient flows from agriculture and poor wastewater treatment. The consequences will be increased eutrophication, biodiversity loss and disease. Micro-pollutants (medicines, cosmetics, cleaning agents, and biocide residues) are an emerging concern in many countries (OECD, 2012). At the same time, while negative impacts are serious, agriculture can also positively affect the environment, for instance by trapping greenhouse gases within crops and soils, or mitigating flood risks through the adoption of certain farming practices (OECD, 2019d).

Businesses have a responsibility to prevent and address negative impacts of their actions on the environment. Experience from the pilot project with companies in Southeast Asia to implement the OECD-FAO *Guidance for Responsible Agricultural Supply Chains* shows that many companies do have existing issue-specific policies and practices, including technical environmental standards; however, cross-cutting issues that enable responsible business across all areas of company operations are less common. This insight comes from a diverse group of Southeast Asian agribusiness companies operating across the supply chain, with 82% of companies involved in cross-border trade, and it is particularly relevant to consider in the context of addressing cumulative impact of company operations and climate change. It is widely accepted that the business responsibility to respect human rights and environmental rights includes the responsibility to identify, prevent, mitigate, and account for impacts related to climate change, in line with the UN Guiding Principles and the OECD *Guidelines*. It is important to have both an issue-specific perspective but also cross-cutting topics rooted in risk-based due diligence and overall company policies (see OECD, 2020c). This means ambitious mitigation action to reduce emissions and to strengthen their climate resilience in order to address and adapt to the physical and transition risks of climate change on their direct operations and supply chains – including impacts on workers, local communities and the natural environment. Companies which are able to increase mitigation and adaptation responses to climate change risks and impacts are better able to meet investor and consumer expectations, maintain a social licence to operate, mitigate reputational damage, increase competitiveness and protect their bottom line. Similarly, the Thai government should assess whether its own business activities, including activities conducted in partnership with the private sector, contribute to mitigating climate change while respecting human rights, and ensuring effective remedies for climate and human rights harms.

Ensuring future growth does not exacerbate existing challenges

Environmental and social risks and impacts are not only connected to low value-added industries. This is of particular relevance to Thailand in the context of efforts to promote Thailand 4.0 and higher value-added industries. Thailand 4.0 focuses on five existing industrial sectors with the aim to add value through advanced technologies: agriculture and biotechnology; smart electronics; affluent medical and wellness tourism; next-generation automotive; and food for the future. The second group includes five additional growth engines: biofuels and biochemical; digital economy; medical and healthcare; automation and robotics; and aviation and logistics.

As discussed in Chapter 5, several modalities for growing these industries have been identified by the government, notably the promotion of investment in special economic zones (SEZs) and the development of the Eastern Economic Corridor (EEC). The EEC strategy aims to promote mainly investments in targeted core technologies, high-impact and strategic investments. These include important infrastructure projects such as the dual-track railway, high-speed train, extensions of ports and upgrading of the U-Tapao international airport.

The government should ensure that international RBC principles and standards are promoted in the context of SEZs and the EEC, including promoting transparency around selection of projects and the establishment and operations of zones, as well as meaningful stakeholder engagement with affected communities. RBC due diligence should be promoted as a standard operating procedure as a way to identify and address more significant impacts on the communities and the environment. The NHRCT found that among complaints received about business-related adverse impacts from 2001 to 2018, the three most frequent complaints were environmental pollution on human health, forced evictions of communities with no or inadequate compensation, and lack of or inadequate public consultations with communities affected by large-scale development projects (ASEAN Post, 2019).

Furthermore, when it comes to development of next generation industries, it is important to integrate a consideration of environmental and social impacts right from the start. For example, international organisations and academics have expressed concerns about the understudied environmental and occupational health and safety impacts associated with high-tech and the electronics industry. Concerns permeate the entire supply chain and include everything from worker exposure to hazardous and toxic chemicals during the production process to the associated risks with an ever-increasing volume of industrial and hazardous waste (such as electrical and electronic waste). For example, a recent epidemiologic review published in the International Journal of Occupational and Environmental Health looked at health impacts of semiconductor production. Most evidence suggests reproductive risks (e.g. congenital malformation and reduced fertility) from fabrication jobs, while noting that, although chemicals are suspected as causal agents, knowledge about the likely contributions from specific exposures is still limited. The study also looked at available studies of cancer risks and did not necessarily find a causal relationship, but nevertheless cautioned that available studies had serious limitations, such as information bias, that could be associated with underestimation of the risks (Kim et al, 2014). The implementation of international RBC standards across sectors and not in silos will be important.

Promoting and enabling RBC in outward investment

As discussed in Chapter 11, Thailand's presence in ASEAN as an outward investor has been steadily rising in recent years, accounting for a third of outward FDI and increasingly concentrated in Cambodia, Lao PDR, Myanmar and Viet Nam (CLMV). Myanmar and Viet Nam received 70% of CLMV investment. Investment projects are mostly concentrated in mining and energy, the food industry, and in construction and real estate development projects. Additionally, as CLMV countries grow, their need for infrastructure investments increases – a market opportunity that Thai firms have actively ventured in to.

Actively promoting and enabling RBC in outward investment is essential both for reinforcing Thailand's regional leadership aspirations, and also for ensuring that Thai businesses do not contribute to negative environmental and social impacts across ASEAN. As ASEAN integrates further, negative impacts in Thailand's neighbouring countries, including for example negative spill-over effects from climate change and environmental degradation, will also have an impact on Thailand itself. Businesses have an independent responsibility to address their negative impacts, irrespective of how developed regulatory frameworks in host economies are.

Challenges with Thai investments abroad have been identified and documented in a number of sectors, although it should be noted that this is not the case solely for Thai companies. RBC issues are a challenge for many sectors and jurisdictions. Nevertheless, for example, a few high-profile cases have been examined by the NHRCT concerning Thai investments in Cambodia and Myanmar and the significant impacts on the local population. These impacts can also spill over and affect the perceptions of investors that are considering Thailand as an investment destination on its own. In September 2019, the UK National Contact Point for Responsible Business Conduct, a government agency in charge of implementing the OECD *Guidelines for Multinational Enterprises*, decided that a complaint submitted against a multi-stakeholder membership organisation working as a global sugarcane platform merited further examination. The allegation is that the organisation failed to conduct adequate due diligence and apply leverage to its Thai member as related to alleged human rights violations in Cambodia. The complainants also allege that the organisation does not have in place adequate human rights policy commitments and an effective grievance mechanism in line with the OECD *Guidelines* (UK, 2019). The case is ongoing. It is important to note that the acceptance of the case at this stage means that the UK NCP will offer mediation/conciliation and does not indicate any determination of the case. The activities in Cambodia have also been examined by NHRCT and are the subject of an ongoing case in the Thai courts (see Bangkok Post, 2019).

Chapter 11 outlines the sectoral composition of Thai outward investment by type of investments (greenfield FDI vs. cross-border M&A). Greenfield projects occur predominantly in infrastructure and manufacturing. The composition of M&A deals ranges from manufacturing (mainly food and beverage) and mining to services (particularly finance) (see Figure 11.4). It is important for Thai investors to have a full and comprehensive picture of the impacts of their business operations as well as their risk exposure, and to ensure that social and environmental risks are considered in the overall risk management calculus.

Social risks in the infrastructure sector are notable. Globally, construction ranks second only to domestic work for prevalence of forced labour, at 18% and 24% respectively (ILO and Walk Free Foundation, 2017). Transparency International estimates that corruption is a bigger problem in construction than mining, real estate, energy or the arms market. Furthermore, the environmental and social impacts of concrete – a major input – are well-documented. Among materials, only coal, oil and gas are a greater source of greenhouse gases; and mining of sand, without which concrete cannot be made, is reportedly increasingly controlled by organised crime groups (see The Guardian, 2019). Equally, environmental aspects are significant. For example, the International Transport Forum (ITF) estimates that CO_2 emissions from transport (e.g. roads, rail, aviation, maritime, freight/logistics) could increase 60% by 2050, despite the significant technological progress already assumed in baseline modelling scenarios (OECD/ITF, 2017).

A 2019 report by the UN Office of the High Commissioner for Human Rights and the Heinrich Boell Foundation surveyed human rights risks and opportunities in the energy, transport and water sectors at the macro-, meso- and project levels and published the results in a joint report entitled *The Other Infrastructure Gap: Sustainability: Human Rights and Environmental Dimensions*. The research showed that large infrastructure projects have been associated with serious and sometimes irreparable harm to people and the environment. In many cases, human rights risks were ignored or downplayed in the project risk calculus, and were repeated in future projects. OHCHR has cautioned that without explicitly and systematically acknowledging and addressing human rights in infrastructure policy frameworks and practices, at best the enormous potential of infrastructure as a facilitator for the SDGs will not be realised, and at worst infrastructure development will actually undermine the SDGs. One of the main recommendations of the report was that those implementing and financing large infrastructure projects carry out explicit due diligence on human rights (see UN OHCHR-hbs, 2019).

It is imperative that Thai investors aboard are aware of the expectations of the Thai government when it comes to RBC at an early stage. Clear information on the UN Guiding Principles and the OECD *Guidelines* should be communicated as part of the services that the Federation of Thai Industries and the Board of Trade provide for outward investments. These services include organising overseas business visits, business seminars and dialogue with business associations of other countries. This information and expectations should also be integrated in BOI’s Thailand Overseas Investment Centre under the Thai Overseas Investment Promotion Division (see also Chapter 11). Activities by BOI include in-depth studies on investment prospects in ASEAN, seminars on laws and regulations for doing business overseas, and identifying opportunities in growth industries. Thailand’s Export-Import Bank, EXIM Thailand, also provides support for creating investment opportunities in new frontier markets. In 2017, EXIM Thailand set out a CSR policy in 2017 reviewed against the ISO 26000 standard. It covers major RBC themes such as human rights and labour rights, and makes further commitments toward promotion of financial products and services for sustainable consumption and capacity building of staff. It would be worthwhile however to assess whether its current risk management and due diligence processes are aligned with international RBC standards like the OECD due diligences guidance and provisions in the UN *Guiding Principles*. The added benefit of doing so would be in connecting these risk management efforts to the ongoing efforts to improve corporate governance as the bank already uses existing OECD standards in that regard. Additionally, SEC has an important role to raise awareness of RBC in this context. The capacity building programme by SEC planned to implement the Thai NAP is expected to cover the issue of Thai investments abroad.

The government is already pursuing a range of different initiatives that seek to address these problems but further progress in implementation would improve overall confidence and give affected communities a venue for raising issues. Thai overseas investment is a topic in the Thai NAP.

Pursuing integration of RBC in regional trade and investment initiatives

Regional efforts to boost connectivity, trade and investment are key ingredients for Thailand’s ability to implement its ambitious national development plans. The ASEAN Economic Community (AEC) has been a catalyst for, and will continue to support, intra-regional investment. Increasingly strong political ties with China and concrete infrastructure development plans could help Thailand become a regional logistics hub and lower related costs. Strong cooperation with China is also strengthening Thailand’s role in the implementation of the Master Plan on ASEAN Connectivity 2025.

Thailand’s ambitions to be a regional leader could be particularly impactful in the context of integrating RBC considerations in the various regional trade and investment agreements and initiatives. The OECD Policy Framework on Investment recognises that societies can benefit from investment in many ways, but the relationship between the volume of investment and the benefit from that investment is not necessarily linear. More investment does not automatically lead to productivity growth, more competitive local firms or a more inclusive workforce. In certain cases, particularly when there are largescale negative impacts associated with projects, investment can make host economies worse off. The need to balance economic growth objectives with environmental and social considerations becomes even more important in a context where policy and legal frameworks are still evolving. An integral part of establishing policy coherence and alignment on RBC means including references to expectations on RBC in international economic instruments (e.g. trade and investment policy, export credit agreements, official development assistance), as well as clearly communicating those expectations.

Thailand is well-positioned to build on the outcomes of its 2019 ASEAN Presidency, in line also with its national strategic objectives on RBC, and to advocate for integration of international RBC instruments and tools in this context. It would be particularly important to integrate RBC in the discussions related to the Regional Comprehensive Economic Partnership (RCEP) agreement and its various implementation plans. While the RCEP text was not available as of November 2019, the Joint Leader’s Statement recognises the intention for RCEP to benefit businesses, as well as workers, producers, and consumers (RCEP, 2019). Nevertheless, concerns have been raised by civil society throughout the years about the lack of specific environmental and social protection provisions in the text of the agreement as well as the lack of comprehensive impact assessments.[9] For example, the agreement is not expected to include dedicated chapters on labour and the environment. At the June 2019 meeting of the ASEAN Inter-governmental Commission on Human Rights (AICHR) *Interregional Dialogue: Sharing Good Practices on Business and Human Rights,* AICHR representatives noted the relevance/intersectionality of RBC for more sustainable and impactful free trade agreements during a discussion focused on RCEP and AEC (AICHR, 2019).

Explicitly integrating RBC in this context would be in line with international trends. For example, the EU trade strategy *Trade for all: Towards a more responsible trade and investment policy* uses RBC as a pillar. Specific references to RBC have been integrated in the recent EU agreements. For example, the EU Free Trade Agreement (EU FTA) includes specific language on RBC, CSR and sustainable development, following dominant treaty practice globally in recent years. It refers to the promotion and co-operation on CSR in the Trade and Sustainable Development chapter (art. 9 and 14), with the OECD *Guidelines* specifically mentioned in art. 9 as the relevant international standard. Provisions related to RBC are also included in the chapter on state-owned enterprises (SOEs) (art. 5), which underlines co-operation efforts to ensure that SOEs observe internationally recognised standards of corporate governance (EU, 2016a). The EU published additional analysis of human rights and sustainable development considerations of the FTA in 2016 that elaborated on the implementation and monitoring of the relevant provisions, including as related to RBC (EU, 2016b).

Investment protection and promotion of RBC are not mutually exclusive goals. A new emphasis in recent investment treaty-making has been on sustainable development and RBC considerations (see also discussion in Chapter 8). OECD research shows that three out of four international investment agreements concluded in 2008-13 include language on RBC (mainly free trade agreements with investment protection provisions) and virtually all of the investment treaties concluded in 2012-13 include such language (Gordon et al., 2014). The research shows that the major functions of such treaty language are, in the order of prevalence: (i) to establish the context and purpose of the treaty and set forth basic RBC principles through preamble language; (ii) to preserve policy space to enact public policies dealing with responsible business conduct concerns; and (iii) to avoid lowering standards, in particular relaxing environmental and labour standards for the purpose of attracting investment.

Some of these innovations are also found in ASEAN. Out of the 16 RCEP partners, ASEAN policymakers have already recognised the importance of RBC in certain policy areas. This is true both at the regional level, as seen by the inclusion of RBC expectations in various ASEAN Blueprints, but also at the national level, even if specific government actions vary widely across the region. A promising trend has been the inclusion of RBC provisions in a recent wave of new investment strategies and laws. Australia, Japan, Korea, and New Zealand are adherents to the OECD *Guidelines for Multinational Enterprises*. China and India have also recognised importance of RBC. China is working with the OECD on RBC and India has worked with the OECD in the context of the garment and footwear sector work. RBC expectations can also be a legal requirement for investors. For example, Australian investors are subject to the Australian Modern Slavery Act.

Several objectives envisioned for the integrated ASEAN Economic Community will depend in large part on improving the business environment beyond investment liberalisation. While the export-oriented investment strategy implemented so far has made ASEAN one of the premier investment destinations in the world, it has not always led to lasting local capabilities. As ASEAN policymakers continue to build a more resilient, inclusive, people-oriented and people-centred community, one integrated with the global economy, RBC can play a role in increasing absorptive capacity and participation in global value chains (GVCs), while contributing to meeting the future competitiveness and skills challenges head on (for more analysis in this regard, see OECD, 2019a).

References

AICHR (2019), *AICHR Background Note on Human Rights Cooperation*, https://www.ohchr.org/Documents/Countries/Cooperation/2019/Geneva/Amara_Pongsapich.pdf.

AIMA (2018), *ESG Integration on the Rise: And how to implement it in your portfolio*, www.aima.org/journal/aima-journal-edition-114/article/esg-integration-on-the-rise-and-how-to-implement-it-in-your-portfolio.html.

ASEAN Post (2019), *Are Thailand's investments abroad sustainable?*, 6 November 2019, https://theaseanpost.com/article/are-thailands-investments-abroad-sustainable

Bangkok Post (2019), *Cambodians to appeal ruling in Mitr Phol case*, 5 July 2019, https://www.bangkokpost.com/thailand/general/1707662/cambodians-continue-battle-with-mitr-phol.

Barry M. (2020) "Shaping a sustainable post-COVID-19 world: five lessons for business", 27 March 2020, *Ethical Corporation*, http://www.ethicalcorp.com/shaping-sustainable-post-COVID-19-world-five-lessons-business?utm_campaign=ETH%2003APR20%20Newsletter%20Database&utm_medium=email&utm_source=Eloqua&elqTrackId=bc93f1101bc74ea380a342a7df89e199&elq=bb2b08a80eec4e58a8067731b9238d61&elqaid=52689&elqat=1&elqCampaignId=33277

Cappucci, M. T. (2017), *The ESG Integration Paradox*, Harvard Management Company, https://corpgov.law.harvard.edu/2017/07/26/the-esg-integration-paradox/

The Economist (2019), *Sustainable and Actionable: A study of asset-owner priorities for ESG investing in Asia,* The Economist Intelligence Unit, https://eiuperspectives.economist.com/sites/default/files/amundi_sustainable_and_actionable_0.pdf

EU (2019), *Thailand: EU to broaden its engagement following elections*, Press Release, 14 October 2019, https://www.consilium.europa.eu/en/press/press-releases/2019/10/14/thailand-eu-to-broaden-its-engagement-following-elections/

EU (2016a), *EU-Vietnam Free Trade Agreement: Agreed text as of January 2016*, European Commission, http://trade.ec.europa.eu/doclib/press/index.cfm?id=1437 [Accessed 01 March 2016].

EU (2016b), *Human Rights and Sustainable Development in the EU-Vietnam Relations with specific regard to the EU-Vietnam Free Trade Agreement*, European Commission, http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc_154189.pdf

EXIM Thailand (2018), *Annual Report 2018*, https://www.exim.go.th/getattachment/Annual-Reports/aaa/EXIM_Annual_Report_2018_Eng.pdf.aspx

G20 (2017), *G20 Hamburg Climate and Energy Action Plan for Growth*, http://unepinquiry.org/wp-content/uploads/2017/07/Climate_and_Energy_Action_Plan_for_Growth.pdf

Gordon, K., J. Pohl and M. Bouchard (2014), "Investment Treaty Law, Sustainable Development and Responsible Business Conduct: A Fact Finding Survey", *OECD Working Papers on International Investment*, 2014/01, OECD Publishing, Paris, http://dx.doi.org/10.1787/5jz0xvgx1zlt-en.

The Guardian (2019), *Concrete: the most destructive material on Earth*, 25 February 2019, https://www.theguardian.com/cities/2019/feb/25/concrete-the-most-destructive-material-on-earth.

ILO (2020), *Endline research findings on fishers and seafood workers in Thailand,* 10 March 2020, https://www.ilo.org/asia/publications/WCMS_738042/lang--en/index.htm

ILO (2019), *Thailand ratifies Work in Fishing Convention*, Press Release, 30 January 2019, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_666581/lang--en/index.htm.

ILO and Walk Free Foundation (2017), *Global estimates of modern slavery: forced labour and forced marriage*, https://www.ilo.org/global/publications/books/WCMS_575479/lang--en/index.htm.

IOM (2020), *COVID-19 places migrant workers in highly vulnerable situations*, 26 March 2020, https://crest.iom.int/news/COVID-19-places-migrant-workers-highly-vulnerable-situations%C2%A0.

Kim Myoung-Hee, Hyunjoo Kim and Domyung Paek (2014), "The health impacts of semiconductor production: an epidemiologic review"*, International Journal Of Occupational And Environmental Health*, Volume 20, Issue: 2, Pages: 95-114, Published: APR-JUN 2014; DOI: 10.1179/2049396713Y.0000000050.

Morgan Stanley (2018), *Sustainable Signals*, www.morganstanley.com/assets/pdfs/sustainable-signals-asset-owners-2018-survey.pdf

OECD (2020a), *COVID-19 and Responsible Business Conduct*, https://read.oecd-ilibrary.org/view/?ref=129_129619-6upr496iui&title=COVID-19-and-Responsible-Business-Conduct.

OECD (2020b), *Global Financial Markets Policy Responses to COVID-19*, https://read.oecd-ilibrary.org/view/?ref=127_127003-tvl9kqbfy9&title=Global-Financial-Markets-Policy-Responses-to-COVID-19

OECD (2020c), *OECD Pilot Project on Responsible Agricultural Supply Chains in Southeast Asia: Baseline Report*, http://mneguidelines.oecd.org/Pilot-on-Responsible-Agricultural-Supply-Chains-in-SEA-Baseline-Report.pdf

OECD (2019a), *OECD Business and Finance Outlook 2019: Strengthening Trust in Business*, OECD Publishing, Paris, https://doi.org/10.1787/af784794-en

OECD (2019b), *Equity Market Review of Asia 2019, OECD Capital Market Series*, http://www.oecd.org/daf/ca/oecd-equity-market-review-asia.htm

OECD (2019c), *Responsible Business Conduct and the Sustainable Development Goals*, https://mneguidelines.oecd.org/RBC-and-the-sustainable-development-goals.pdf

OECD (2019d), *Better policies to improve the environmental performance of the agriculture sector,* https://www.oecd.org/agriculture/topics/agriculture-and-the-environment/

OECD (2019e), *FDI Qualities Indicators: Measuring the sustainable development impacts of investment*, https://www.oecd.org/fr/investissement/fdi-qualities-indicators.htm.

OECD (2018), *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector*, OECD Publishing, Paris, https://doi.org/10.1787/9789264290587-en.

OECD (2017a), *Investment Governance and the Integration of Environmental, Social and Governance Factors*, www.oecd.org/finance/Investment-Governance-Integration-ESG-Factors.pdf

OECD (2017b) *Responsible Business Conduct for Institutional Investors*, http://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf

OECD (2015), *OECD Guidelines on Corporate Governance of State- Owned Enterprises*, 2015 Edition, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264244160-en

OECD (2012), *OECD Environmental Outlook to 2050: The Consequences of Inaction*, OECD Publishing, Paris, https://doi.org/10.1787/9789264122246-en.

OECD (2011), *Promoting Longer-Term Investment by Institutional Investors: Selected Issues and Policies*, discussion note prepared for the Eurofi high-level seminar on the benefits and challenges of a long-term perspective in financial activities, held in Paris on 17 February 2011.

OECD/FAO (2019), *OECD-FAO Pilot project on the implementation of the OECD-FAO Guidance for Responsible Agricultural Supply Chains: Final Report*, http://mneguidelines.oecd.org/Pilot-project-on-the-implementation-of-the-OECD-FAO-Guidance-for-Responsible-Agricultural-Supply-Chains-FINAL-REPORT.pdf.

OECD/ITF (2017), *ITF Transport Outlook 2017*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789282108000-en.

OECD/OHCHR/ILO (2019), *Responsible Business: Key Messages From International Instruments*, https://mneguidelines.oecd.org/Brochure-responsible-business-key-messages-from-international-instruments.pdf.

Praxis Labs (2019), *Tracking Progress: Assessing Business Responses to Forced Labour and Human Trafficking in the Thai Seafood Industry, Humanity United and Freedom Fund*, http://www.praxis-labs.com/uploads/2/9/7/0/29709145/09_hu_report_final.pdf.

PRI (2018), *Financial Performance of ESG Integration in US Investing*, www.unpri.org/download?ac=4218

RCEP (2019), Joint Leaders' Statement On The Regional Comprehensive Economic Partnership, 4 November 2019,https://asean.org/storage/2019/11/FINAL-RCEP-Joint-Leaders-Statement-for-3rd-RCEP-Summit.pdf.

SEC (2019a), *SEC and NHRC sign MOU designating cooperation for adoption of guiding principles on business and human rights to promote listed company competitiveness and sustainable growth*, https://www.sec.or.th/EN/Pages/News_Detail.aspx?SECID=7497&NewsNo=64&NewsYear=2019&Lang=EN.

SEC (2019b), *Overview of Corporate Governance and Sustainable Development Initiatives*, https://www.sec.or.th/cgthailand/EN/Pages/OVERVIEW/CGANDSUSTAINABLEBUSINESSDEVELOPMENT.aspx.

SEC (2017a), *Corporate Governance Code for Listed-Companies 2017*, Securities and Exchange Commission, https://www.sec.or.th/cgthailand/TH/Documents/Regulation/CGCode.pdf

SEC (2017b), *Investment Governance Code for Institutional Investors (I Code)* 2017, Securities and Exchange Commission, https://www.sec.or.th/cgthailand/EN/Pages/RulesRegulation/ICodeII.aspx.

SET (2019), About SR Centre website, https://www.set.or.th/sustainable_dev/en/sr/about/about_p1.html (accessed 19 November 2019).

ShareAction (2018), *Pensions in a Changing Climate*, https://aodproject.net/wp-content/uploads/2019/01/AODP-PensionsChangingClimate.pdf.

State Street Global Advisors (2018), *ESG Institutional Investor Survey*, www.ssga.com/investment-topics/environmental-social-governance/2018/04/esg-institutional-investor-survey.pdf

TBA (2019), *Sustainable Banking Guidelines Responsible Lending by The Thai Bankers' Association*, https://www.tba.or.th/wp-content/uploads/2019/08/Guidelines-ResponsibleLending.pdf

ThaiPBS World (2019), *GPF signs Collaborative Engagement Declaration with 32 institutional investors, August 19 2019*, https://www.thaipbsworld.com/gpf-signs-collaborative-engagement-declaration-with-32-institutional-investors/.

UK (2019), *Initial assessment by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: complaint from IDI, EC and LICADHO against Bonsucro Ltd,* Decision, 25 September 2019, https://www.gov.uk/government/publications/uk-ncp-initial-assessment-complaint-from-idi-ec-and-licadho-against-bonsucro-ltd/initial-assessment-by-the-uk-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises-complaint-from-idi-ec-and-licadho-against

UN (2018), *The report of the Working Group on the issue of human rights and transnational corporations and other business enterprises,* 16 July 2018, General Assembly, A/73/163, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/163

UN (2017), *Situation of human rights defenders, Report by the Special Rapporteur on the situation of human rights defenders*, 19 July 2017, General Assembly, A/72/170, http://undocs.org/a/72/170

UN (2016), *Human Rights Council, Thirty-second session, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, A/HRC/32/45, 4 May 2016, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/091/71/PDF/G1609171.pdf?OpenElement

UN (2015), *Transforming our world: the 2030 Agenda for Sustainable Development,* 25 September 2015, General Assembly, A/RES/70/1, https://undocs.org/A/RES/70/1

UN (2011), *Guiding Principles on Business and Human Rights*, HR/PUB/11/04. www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

UNDP/FAO (2019), *Integrating Agriculture in National Adaptation Plans: Thailand Case Study*, UNDP, Bangkok, www.adaptation-undp.org/naps-agriculture.

UN Global Compact (2019), *Active list of members* website, https://www.unglobalcompact.org/engage-locally/asia/thailand (accessed 21 November 2019).

UN OHCHR-hbs (2019), *The Other Infrastructure Gap: Sustainability Human Rights and Environmental Perspectives*, https://www.ohchr.org/documents/Publications/TheOtherInfrastructureGap_FullLength.pdf

UN OHCHR (2018a), *Statement at the end of visit to Thailand by the United Nations Working Group on Business and Human Rights,* 4 April 2018, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22915&LangID=E

UN OHCHR (2018b), *Thailand: UN experts condemn use of defamation laws to silence human rights defender Andy Hall*, 17 May 2018, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23095&LangID=E

UN OHCHR (2017), *InfoNote on SLAPPs and FoAA rights by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/FAssociation/InfoNoteSLAPPsFoAA.docx&action=default&DefaultItemOpen=1.

US State Department (2019), *Trafficking in Persons Report, June 2019*, https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf.

USTR (2019), *USTR Announces GSP Enforcement Actions and Successes for Seven Countries,* Press Release, 25 October 2019, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/october/ustr-announces-gsp-enforcement

WWF (2019), *Sustainable Banking in ASEAN*, https://susba.org/pdfs/report-2019-compressed.pdf

Notes

[1] Several activities have taken place in this context over the course of 2018 and 2019. Notably, Thailand hosted the first-ever OECD Global Forum on RBC outside of Paris on 12-13 June 2019. The event took place as the *Responsible Business and Human Rights Forum* and was co-organised by the Royal Thai Government, OECD, UNDP, UN ESCAP, ILO and ASEAN Intergovernmental Commission on Human Rights Thailand, with the participation of the Working Group on Business and Human Rights. The Forum took place in the framework of the *Bangkok Business and Human Rights Week*, which also included the ASEAN Interregional Dialogue on Business and Human Rights (10-11 June 2019) and the ASEAN Institutional Investors Forum (14 June 2019). For more information, see the Summary Report.

[2] Governments are also increasingly inclined to exploit the scale of assets and leverage of financial institutions to support global sustainability objectives. See for example 2017 G20 Hamburg Climate and Energy Action Plan for Growth which highlights the need to align financial flows (from both public and private institutions) to promote environmental goals and achieve the objectives of the SDGs.

[3] For example, a 2018 survey by the Alternative Investment Management Association (AIMA) of 582 institutional investors worldwide showed that out of those who reported implementing an “ESG strategy”, 47% use exclusionary strategies, while only 21% practice full integration of ESG risk factors. Moreover, many financial institutions do not have any meaningful strategy in place for responding to significant environmental and social risks. In this respect, a 2018 ShareAction study of the world’s 100 largest pension funds found that 60% of funds have little or no approach to environmental risks.

[4] According to research from Bloomberg Intelligence, “so far in 2020, 59% of U.S. ESG ETFs are doing better than the S&P 500 Index while 60% of European ESG ETFs have beat the MSCI Europe Index”. See Claire Ballentine (31 March 2020), “ESG Stock Resilience Is Paving the Way for a Surge in Popularity” *Bloomberg* https://www.bloomberg.com/news/articles/2020-03-31/esg-stock-resilance-is-paving-the-way-for-a-surge-in-popularity. See also Saijel Kishan and Emily Chasan (13 March 2020), “Older ESG Funds Outperform Their Newer Rivals in Market Tumult”, *Bloomberg* https://www.bloomberg.com/news/articles/2020-03-13/older-esg-funds-outperform-their-newer-rivals-in-market-tumult?sref=wingcnxe and Jon Hale (16 March 2020), “Sustainable Equity Funds are Outperforming in Bear Market”, *Morningstar* https://www.morningstar.com/articles/972475/sustainable-equity-funds-are-outperforming-in-bear-market

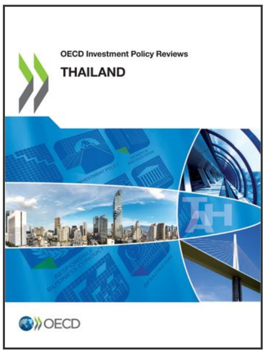
[5] For example, Blackrock, NBIM, APG were key partners in developing the paper. Additionally, investors representing USD 1.9 trillion in AUM have also released a formal statement endorsing the recommendations in the paper as best practice. See https://investorsforhumanrights.org/sites/default/files/attachments/2019-04/IAHR_Making%20Finance%20Work%20for%20People%20and%20Planet_FINAL.pdf

[6] In 2018 the Federation of the Dutch Pension Funds, non-governmental organisations (NGOs), trade unions and the Dutch government signed a Responsible Business Conduct Agreement on responsible investment by Pension Funds rooted in the recommendations of the paper. See: https://www.imvoconvenanten.nl/pensioenfondsen?sc_lang=en

[7] See https://data.consilium.europa.eu/doc/document/ST-7571-2019-ADD-1/en/pdf

[8] For more information, see the new OECD project on RBC and public procurement http://www.oecd.org/governance/public-procurement/procurement-and-rbc/.

[9] See for example an analysis in the Diplomat (https://thediplomat.com/2017/10/5-hidden-costs-of-the-rcep-to-people-and-planet/) or in the Manila Times (https://www.manilatimes.net/2018/08/03/opinion/analysis/asias-evolving-free-trade-deal-may-not-benefit-workers/426159/426159/)



From:
OECD Investment Policy Reviews: Thailand

Access the complete publication at:
https://doi.org/10.1787/c4eeee1c-en

Please cite this chapter as:

OECD (2021), “Promoting and enabling responsible business conduct”, in *OECD Investment Policy Reviews: Thailand*, OECD Publishing, Paris.

DOI: https://doi.org/10.1787/88ea72d9-en