

CHANDLER MHM

Newsletter

NEW ANNOUNCEMENT ON THE LIST OF FACTORY CATEGORIES

Following the Factory Act No. 2 becoming effective on 27 October 2019 ([see our newsletter](#)), the long-awaited amended list of factory categories has been enacted.

The Ministerial Regulation Prescribing Categories, Types and Sizes of Factory, B.E. 2563 (2020) (the “**Ministerial Regulation**”) was published in the Royal Gazette on 5 August 2020. This regulation repeals and replaces the previous list of factory categories as last amended in 2015.

The current list compared with the previous list

Prior to the issuance of this Ministerial Regulation, the definition of “factory” under the Factory Act, B.E. 2535 (1992) had been amended by the Factory Act No. 2 to increase the capacity of machinery and manpower to include only factories with operations using 50-horsepower machinery or more, or having at least 50 workers. This resulted in many small-scale factory operators (i.e. operators having an operation with a capacity of less than 50-horsepower machinery and less than 50 workers) no longer being classified as a “factory”. Consequently, the list classifying 107-types of factories into 3 categories (depending on the horsepower and number of workers) had to be amended to reflect such amendment to the definition.

Given the above, the new list attached to the Ministerial Regulation made major changes to the criteria on the capacity of machinery and number of workers for category-2 and category-3 factories. The thresholds for horsepower and number of workers for category-2 factories have been increased from “not exceeding 50 horsepower” to “not exceeding 75 horsepower” and/or from “not exceeding 50 workers” to “not exceeding 75 workers”. The thresholds for horsepower and number of workers for category-3 factories have been increased from “exceeding 50 horsepower” to “exceeding 75 horsepower” and/or from “exceeding 50 workers” to “exceeding 75 workers”.

Thresholds for factory operations under the previous list compared to the current list		
	Previous List	Current List
Category-2 Factories		
Machinery Capacity	≤ 50 horsepower	≤ 75 horsepower
Manpower	≤ 50 workers	≤ 75 workers
Category-3 Factories		
Machinery Capacity	> 50 horsepower	> 75 horsepower
Manpower	> 50 workers	> 75 workers

Effect of the enactment on the Ministerial Regulation

It is important to note that an operator of a category-3 factory under the Factory Act requires a factory license (Ror.Ngor.4), while the operator of category-2 factory, is subject to a less stringent requirement. The operator of a category-2 factory is only required to make a notification of commencement of operation to a competent officer prior to its operation.

As a result of the enactment of the Ministerial Regulation, certain types of factories with machinery having capacity of more than 50 but not over 75 horsepower and/or more than 50 but not over 75 workers (which were

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formerly categorized as category-3 factories) would become category-2 factories. As a result, these factories would not require a factory license and are exempt from certain requirements under the Factory Act.

Transitory provision under the Ministerial Regulation

In connection with this, the Ministerial Regulation stipulates a transition provision for any category-3 factory which now becomes a category-2 factory as a result of this Ministerial Regulation. A category-3 factory which now becomes a category-2 factory is exempt from the prior notification requirement as required for a category-2 factory under the Factory Act. A previously obtained factory license shall be deemed as a notification letter for a category-2 factory from the date the Ministerial Regulation came into effect (i.e. 5 August 2020). In addition, even if it is not clearly specified in the Ministerial Regulation, the duty to give notice of the cessation of operation in the event that a category-3 factory operator wishes to change the operation into category-2 factory, pursuant to section 28/1 of the Factory Act (as amended by Factory Act No. 2), will not apply to the factories that fall under the remit of such transition provision under the Ministerial Regulation.

If you would like to discuss the legal issues raised in this article further or related issues, please contact the authors listed in the right-hand column.

This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited. If you should have any inquiries about the publications, or would like more information about Chandler MHM Limited, please contact bd@mhm-global.com.