

Newsletter

LICENSING OF A CATEGORY-3 FACTORY USING ELECTRONIC SYSTEM

Following the amendment of the Factory Act in 2019 ([see our newsletter](#)) and the amendment to the list of factory categories in 2020 ([see our newsletter](#)), three Ministerial Regulations in relation to the licensing of a category-3 factory¹ have been issued by the Ministry of Industry under the Factory Act, B.E. 2535 (1992) as amended (the “**Factory Act**”). This was published in the Government Gazette and took effect on 5 April 2021. The Ministerial Regulations are listed below.

- (1) Ministerial Regulation re: Application and licensing in relation to a category-3 factory, B.E. 2564 (2021);
- (2) Ministerial Regulation re: Notification of the cessation of a category-3 factory business to change its type to a category-1 factory or category-2 factory, B.E. 2564 (2021); and
- (3) Ministerial Regulation re: Notification of the cessation of a category-3 factory business, B.E. 2564 (2021)

(Individually the “Ministerial Regulation” and collectively the “Ministerial Regulations”)

The key takeaways from these Ministerial Regulations are as follows:

A. Application and licensing procedures in relation to a category-3 factory

This Ministerial Regulation outlines the procedure for making an application for obtaining (including by transfer of) a category-3 factory license. This is to be principally conducted electronically through the electronic system as developed by the Department of Industrial Works or relevant Provincial Industry Office.

(a) Factory license application

By this Ministerial Regulation, the business operator who wishes to apply for a factory license shall submit the application together with the required supporting documents to the relevant authority mainly through the electronic system.

Upon receipt of the application, the competent officer will conduct an inspection at the factory, including but not limited to, buildings, machinery, equipment, factory workers, waste control and safety management, and prepare an audit report for the licensor within 30 days from the date receiving the full application.

The licensing consideration process will be completed within 7 days from the receipt of the audit report. The result of such consideration (whether approved or not approved) will be notified to the business operator within 7 days from the completion of the consideration process.

Once the licensing fee is paid within the specified time (i.e., within 7 days from the notification date), the licensor will issue the factory license to the applicant (or so-called the licensee).

Nevertheless, it should be noted that the timeline above is subject to the application being correct and excludes (i) any period required for the applicant to rectify an incomplete application; (ii) any period of the approval requirement involving other government offices; or (iii) the period for an objection to the establishment of the factory.

(b) Transfer of factory license

The factory license can be transferred by submitting a transfer application together with the required supporting documents through the electronic system. The period for consideration may be up to 30 days upon the receipt

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¹ A category-3 factory is a factory of a category, type and size which may be established only after a license has been issued.

of the application. The timeline for the application process in (a) above will apply to the transfer application process to the extent it is applicable.

However, if the application process above cannot be processed through the electronic system, the business operator may process the application at Department of Industrial Works (for those factories located in Bangkok) or relevant Provincial Industry Office (for those factories located in other provinces).

This Ministerial Regulation will also apply to applications submitted before the effective date of this Ministerial Regulation and which are still being considered.

B. Notification of the cessation of category-3 factory business to change its type to category-1 factory or category-2 factory

Due to the redefinition of a Factory under the Factory Act, various factories are no longer defined as a category-3 factory. They may be considered as a category-1 factory² or category-2 factory³, as the case may be.

In relation to this, if the licensee wishes to change its factory to a category-1 factory or category-2 factory, it must give notice of the cessation of the category-3 factory business as well as return the original factory license to the licensor.

The notification of such cessation and the issuance of the cessation certificate must be conducted by electronic means through the electronic system. The licensee must return the original factory license to relevant industry office within 15 days from the notification date otherwise this notification will not be effective.

In a case where the aforesaid notification cannot be completed electronically, the licensee shall submit such notification at the relevant industry office.

Once the cessation certificate has been issued, the person giving notice must comply with the requirements under the Factory Act for a category-1 factory or category-2 factory, as the case may be.

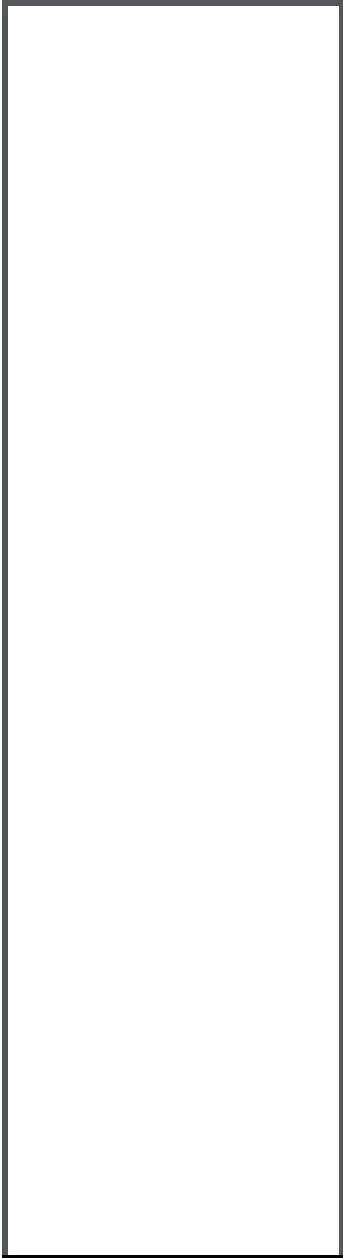
C. Notification of the cessation of a category-3 factory business

Any licensee who wishes to cease to operate a category-3 factory business shall give notice of and submit the relevant documents evidencing such cessation to the relevant industry office no less than 30 days prior to the date of the cessation.

Similar to the above procedure, the notification of such cessation and the issuance of a receipt of the aforesaid notification shall be carried out electronically through the electronic system.

In a case where the aforesaid notification cannot be completed electronically, the licensee shall submit such notification at the relevant industry office.

If you have questions on the category-3 factory licensing requirements, please contact the contact person(s) 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.

² A category-1 factory is a factory of a category, type and size which may operate as a factory as soon as the business operator wishes.

³ A category-2 factory is a factory of a category, type and size where the business operator must inform a competent official before operating the factory.