



Timely Newsletter

Amendments to the Factory Act Published

INTRODUCTION

The Factory Act No.2 (“**Act No.2**”) and Factory Act No.3 (“**Act No. 3**”) will make a number of significant changes to the Factory Act, B.E. 2535 (1992) (the “**Factory Act**”), which has been in place since 1992 as described below. Act No.2 and Act No. 3 were published in the Royal Gazette on 30 April 2019. Act No. 2 will take effect after 180 days from the date of publication, i.e. on 27 October 2019, while Act No.3 will come into effect the day after publication, i.e. 1 May 2019.

Act No. 2

This Act changes key aspects of the original Factory Act; exempts certain factories from regulation, adds a new definition of factories, provides more details on licensed private inspectors, permanent factory licenses, factory expansion, factory transfers, closures of factory operations, and changes the maximum official fees.

Detailed conditions, processes, and criteria to supplement the Act will be provided later in subordinate regulations, which are to be promulgated within one year from the effective date of this Act. If this cannot be accomplished, the Minister of Industry, who is in charge of this law, shall be required to report to the Cabinet.

Key aspects of this Act include the following:

A. Exempt Factories

In addition to factories operated by official government authorities for the benefit of the security or safety of the country, exempt under Section 4 of the original Factory Act, the following factories will now be exempt from enforcement under the Factory Act:

1. other state-owned factories apart from those exempt;

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2. factories with purposes of research and study;
3. factories of educational institutions with training purposes;
4. factories operated in the nature of a family business; and
5. factories that operate businesses that are necessary and connected with a business that is not a 'factory' under the Factory Act and located within the same compound.

These exemptions and their respective criteria will be defined by subordinated laws.

B. Redefinition of a Factory

Factories regulated by the Act will be any operation that uses 50-horsepower machinery or more, or having at least 50 workers. The new definition increases the capacity and manpower from the old definition under the original Factory Act, i.e. 5-horsepower machinery or more, or 7 workers or more.

This change now regulates large-scale operations specifically: category-3 factories¹. A current Ministerial Regulation prescribing 'Categories of Factory List' should also be amended to be consistent with this amendment.

C. Licensed Private Inspectors

This concept is included in the original Factory Act but more details and conditions are provided under this Act. A licensed private inspector can be an individual or a juristic person with key qualifications as prescribed under this Act.

Any inspection of a factory or machinery under the Factory Act can be performed by a licensed private inspector. Reports prepared by the private inspector will be reviewed by the authorities in respect of factory licensing. The license to perform factory inspections and certifications expires on the 31 December, three years following its date of issuance.

D. Permanence of Factory License

Under this Act, a factory license will no longer have an expiration date. When this Act comes into force, a factory operator will hold a permanent factory license that will be granted once with an indefinite term. However, annual fees will still apply to factory operators.

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.

E. Factory Expansion and Related Exemptions

Specified increases of machinery capacities will result in factory expansions that are subject to prior approval. This will be calculated based on the proportion of the current machinery capacity to the increased capacity. In addition, the specified increases of machinery capacity on land adjacent to current operations are also subject to prior approval. This concept remains the same as in the original Factory Act, with more details provided in this Act.

In certain cases, factories may expand without seeking approval from the authorities, with only a requirement to notify the authorities. These exemptions include the following:

1. an expansion of a factory for the following purposes:
 - installation or enhancement of the effectiveness of environmental treatment units;
 - prevention or reduction of nuisances; and
 - change/replacement of machinery to increase efficiency or result in a lower environmental impact.
2. changes or increases of machinery or operating areas that will not amount to the expansion of the factory that requires approval; and
3. additions that relate to the current operations of the factory.

Even if a factory expansion is not subject to a prior approval, alterations or increases to machinery may affect the official fees owed by the factory operator.

F. Closure of Factory Operations

The Act also adopts environmental conservation measures which are a factory operator's responsibility when closing a factory. If the authority finds that the closure results in a condition that may cause danger, damage, and/or harm to the environment and/or nearby operations, the authority may order the factory operator to cure or mitigate the harmful conditions within a prescribed time period.

The following situations are also treated as a closure of factory operations that requires a factory operator to notify the authorities:

1. a change in operations where a category-3 factory becomes a category-2² or category-1 factory³; and

² A **category-2 factory** is a factory of a category, type and size wherein a manufacturer must inform a competent official before operating the factory.

³ A **category-1 factory** is a factory of a category, type and size which may operate as a factory as soon as a manufacturer wishes.

2. the suspension of operations for a period of more than one year in cases of category-3 and category-2 factories. If a category-2 factory operator wishes to resume operations, it will be required to notify the authorities; a category-3 factory operator will require approval from the authorities to resume operations.

G. Official Fees

The Act imposes changes to the ceiling of official fees. Applicable rates of official fees will be announced at a later date, as the Minister of Industry is empowered to determine, reduce, and exempt official fees under this Act. Below is a comparison of the official fee ceilings between the original Factory Act and this Act.

No.	Item	Act No. 2		Original Factory Act	
		THB	Per copy	THB	Per copy
1.	Application	THB 100	Per copy	THB 100	Per copy
2.	Factory license or approval for factory expansion	THB 300,000	Per copy	THB 100,000	Per copy
3.	Transfer of license	THB 5,000	Per copy	-	-
4.	Substitute license	THB 5,000	Per copy	THB 1,000	Per copy
5.	Renewal of factory license	-	-	THB 100,000	Per copy
6.	Notification for change or increase of machinery or operating area that will not amount to expansion the factory that requires approval	THB 15,000	Per time	-	-
7.	License to perform factory inspection and certification, and its renewal	THB 5,000	Per copy	-	-
8.	substitute license to perform factory inspection and certification	THB 500	Per copy	-	-
9.	Annual fee for factory operation	THB 100,000	Per year	THB 30,000	Per year

H. Transitory Provisions

Subordinate legislation issued under the original Factory Act shall remain in force so long as it does not conflict with this Act, and until new subordinate laws are enacted.

Existing factory licenses issued before the effective date of this Act shall be deemed licenses issued under the two new Acts and will remain valid until the closure of a factory or the revocation of the factory license.

Pending factory license applications filed before the effective date of this Act can be revised in accordance with the requirements under this Act, upon request to the authorities.

Act No. 3

Under this Act, the law allows local administrative bodies to regulate category-1 and category-2 factories in their area, and to also promote decentralization of governance systems. Official fees in respect of category-1 and category-2 factories will be paid to local administrative bodies.

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 person(s) at Mori Hamada & Matsumoto or Chandler MHM Limited, or any of the Key Contacts listed in the far-right column.