

Thailand issues two amendments to the Factories Act

by

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Introduction: In April 2019, Thailand issued two amendments to the Factories Act of 1992. The general intention of the first (Factories Act Amendment No.2) is to exclude certain types of business operation from the ambit of the Act, and therefore the rights of inspectors to carry out inspections, the obligation to apply for annual renewal of a factory licence, and the penalties applicable to breaches of duties imposed under the Act. It also includes provisions for factory inspectors to be appointed from the private sector subject to training and certification as such. The second (Factories Act Amendment No.3) deals with formalities only and is not reviewed in this article.

Both amendments will come into effect in October 2019.

Certain establishments will no longer be “factories”: Subject to a regulation to be issued, the following shall no longer be “factories” subject to the Act:

- (1) government owned factories
- (2) factories for study and research.
- (3) factories owned by an educational institution for the purpose of training.
- (4) factories that are household businesses.
- (5) factories engaged in necessary activities and connected with a business which is not a factory and located within the same compound.

Revised definition of factory: “factory” means a building, place, or vehicle using machinery exceeding 50 h.p., or using more than 50 employees, whether using machinery or not, for factory operations, subject to further definition in regulations.

“establishment of factory” means an installation of machinery for factory business operation in a building, a place, or a vehicle, which is to be used for factory business operation, or an engagement of workers in a factory business operation in the case no machinery is used.”

“private inspector” means a person who is licensed to inspect or certify factories.”

Types of factory:

- The definition of a type 1 factory remains the same namely a factory of such type, kind and size as is capable of factory operations immediately.
- A type 2 factory means a factory of a category, type, and size which is required to be reported to the Ministry.
- The definition of a type 2 factory remains the same, namely a factory of such type, kind and size as requires a licence prior to its commencing operations.

8. The provisions of Section 9 of the Factory Act B.E. 2535 (1992) shall be repealed and replaced by the following:

Private inspectors may now inspect factories: A private inspector may inspect a factory. Private inspectors must be licenced. Their activities will be defined in future regulations to be issued. They must have engineering or scientific or technological qualifications and training and not less than five years relevant experience. Companies offering inspection or certification services are also subject to requirements. Licences are valid for three years renewable.

There is a right of appeal against refusal to issue a license, refusal to approve factory expansion, refusal to issue or renew an inspection or certification license, or suspension or revocation of an inspection or certification license, exercisable within 30 days of such a decision.

Expansion of factories: No factory license holder may expand his/her factory unless permitted. Expansion means:

- (1) An increase in the number, or changes or modifications of machinery to increase the total power for existing operations or operations related to existing operations as follows:
 - (a) An increase from 50 hp upwards, where the existing machinery has total power not exceeding 100 hp. .
 - (b) An increase from 100 to 500 hp.
 - (c) An increase from 200 hp upwards, where the existing machinery exceeds 500 hp but does not exceed 1,000 hp.
 - (d) An increase from 300 hp upwards, where the existing machinery exceeds 1,000 hp but does not exceed 2,000 hp.

(e) An increase from 400 hp upwards, where the existing machinery exceeds 2,000 hp but does not exceed 3,000 hp.

(f) An increase from 500 hp upwards, where the existing machinery exceeds 3,000 hp
This is unless an application under (1) is made on a new plot of land adjacent to the existing factory location or land previously permitted for factory expansion.

The granting of permission to expand factory shall be regarded as a part of the license.

Section 12 and Section 13 shall apply to the application for factory expansion and the granting of permission to expand factory mutatis mutandis.”

Where no need to apply for licence for expansion: No licence need be applied for in the following cases:

- (1) for pollution treatment or improvement of existing treatment of pollution.
- (2) To adopt measures preventing or reducing nuisances.
- (3) To modify existing machinery to be more efficient or to reduce environmental impact.
- (4) To modify existing machinery energy to be more efficient.

30 days advance notice shall be given of any of these intentions

Increase in number of machines or changing machinery: When a licensee increases the number of, changes, or modifies machinery, machinery used as prime mover, or related to treatment of pollution or measures preventing nuisances or machinery energy changes, to an extent that the machinery's combined HP changes, or increases the factory's building area, or constructs additional factory buildings relating to the existing business, which results in an increase of the factory area

- from 500 square metres upwards,
- or from 2,000 square metres,
- or from 1,000 square metres upwards where the factory's area is more than 2,000 square metres,

the licensee shall give notice of such expansion within 30 days.

An increase of the number, changes, or modification of machinery, must be carried out in the existing factory or on existing land permitted for factory use or permitted for factory expansion, subject to regulations to be issued.

Increase of category or type of factory: When a licensee wishes to increase a category or a type of factory, not less than 15 days notice must be given.

Inability to commence factory operations: Where a licensee is unable to establish a factory, or is unable to commence his business after obtaining a license, the licensee may transfer the license. Upon submitting the application, while awaiting consideration and permission, it shall be regarded as if the applicant was the licensee, and that the existing licensee is no longer the licensee as from the date of transfer of license, the date of leasing the factory, the date of hire-purchase of the factory or the date of sale of the factory.

Where the licensee transfers the factory operation, leases the factory, hire-purchases the factory, or sells the factory, it shall be deemed that the said person has ceased factory operations as from the date of such action.

The transferee in any of the above cases, shall submit an application for acceptance of transfer of license within 30 days from the date that the factory operation has deemed to cease. Having submitted such application, while awaiting the consideration and permission, the factory operations may be continued, and it shall be deemed that the said applicant was the licensee.

There are further rules that apply where the licence holder dies, or the factory ceases operations.

A licence holder may be given notice to prevent damage or nuisance to persons, property, or the environment nearby.

Change of licence category: New rules apply where a licensee wishes to change category 3 factory to a category 1 or 2 factory. Where category 2 or 3 factories cease operations for more than one year, this must be notified. There is a procedure to renew a licence in such circumstances.

Offences: There are various offences under the new Act carrying fines, daily fines, or in some cases imprisonment.

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