

SPI Newsletter

RECENT AND FORTHCOMING AMENDMENTS TO THE FACTORY ACT IN THAILAND

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On 30 April 2019, two important Acts were published in the Royal Government Gazette which amend the Factory Act B.E. 2535 (1992) (“**Factory Act**”), namely: the Factory Act B.E. 2562 (2019) No.2 (“**Factory Act No.2**”) and the Factory Act B.E. 2562 (2019) No.3 (“**Factory Act No.3**”). The amendments introduced by these two Acts are expected to have a positive impact on the ease of setting up factories and on certain administrative aspects of operating a factory in Thailand. Factory Act No.2 is set to come into force on 27 October 2019 and Factory Act No.3 came into force on 1 May 2019.

The significant amendments to the Factory Act introduced by Factory Act No.2 and Factory Act No.3 are summarized below.



Amended definition of “factory”

Under section 4 of Factory Act No.2, a “factory” means a place, building or vehicle using machinery with 50 horsepower or more, or having 50 workers or more using or not using machinery in its operations. Under the previous Factory Act, the definition of factory only required machinery with 5 horsepower or more or 7 workers or more. When the amended definition of “factory” comes into effect, a number of businesses across Thailand that were previously categorized as a “factory” will no longer be categorized as such, provided that the horsepower of their machinery and size of their workforce fall below the threshold requirements in the revised definition. Accordingly, these businesses will be categorized as other business and will not require a factory license. However, such businesses must still comply with all applicable laws and will generally be under the supervision of the relevant Provincial Administrative Organization.

Further categories of exemption

Section 4/1 of Factory Act No.2 lists the following types of factories that will be eligible for partial exemptions from compliance with certain provisions of the Factory Act:

- 1) Factory of a governmental institution or authority.
- 2) Factory with the main objectives of study or research.
- 3) Factory of an educational institute with the main objective of training.
- 4) Factory that is operated by a family.
- 5) Factory necessary for or related to a non-factory business located in the same area.

Amended definition of “factory set up”

Under section 4 of Factory Act No.2, “factory set up” broadly means installing machinery in a building, place or vehicle in which the factory operations will take place. Under the previous Factory Act, the definition of factory set up also included the words “construction of buildings”, meaning that under the previous definition, a factory license was required to be obtained for factory set up in order to commence construction. When the revised definition comes into effect, it should assist operators in the ease of construction process as a factory license will not be required for the construction phase. However, an operator must obtain a factory license prior to installation of machinery.

Removal of factory license renewal requirement

Under the previous Factory Act, factory licenses had to be renewed every five years. However, under the amendments introduced by Factory Act No.2, a factory license will no longer need to be renewed, and will not expire unless the factory ceases operations.

Private Inspector

Under the amendments introduced by section 9 of Factory Act No.2, a private inspector (juristic person or individual) who holds a factory and machinery inspection license from the Department of Industrial Works may perform factory and machinery inspections. This should facilitate the ease of setting up factories, as under the previous Factory Act, factory and machinery inspections were required to be performed by a competent official of the Department of Industrial Works.

Local Administrative Organizations

Under the amendment introduced by section 11/1 of Factory Act No.3, officers of the relevant Local Administrative Organizations shall now supervise category 1 and 2 factories which are located in their respective areas. Under the previous Factory Act, category 1 and 2 factories were under the supervision of the competent official of the Department of Industrial Works. This should facilitate the ease of giving notice with respect to setting up category 2 factories, as notices shall now be given to the relevant Local Administrative Organization.

Rate of fees for factory operations

With the changes to the definition of “factory” being introduced by Factory Act No.2 capturing only a larger size of industrial operations than under the previous Factory Act, the fees for obtaining a factory license have increased, from 100,000 Baht to 300,000 Baht. Furthermore, the annual fees for factory operations have also increased.

Factory Act No.2 also sets out the fees for transferring a factory license, whereas under the previous Factory Act, there were no such fees imposed.

Expansion of Factory

Section 19 of Factory Act No.2 stipulates a new ratio regarding increasing a factory’s size which will not be classified as an expansion of a factory.

In addition, section 18/1 of Factory Act No.2 provides that expansion of a factory for a “special purpose” (e.g. expansion for decreasing pollution or for implementing a factory’s protection measures to reduce nuisance caused by the factory) shall not require the permission of the license grantor.

Conclusion

The amendments to the Factory Act introduced by Factory Act No.2 and Factory Act No.3 have the objective to improve certain aspects of the previous Factory Act which reflect the increased size of factory operations and the changing economic conditions in Thailand. It is hoped that these amendments will help facilitate business operators with setting up and operating factories in Thailand.

