

-Unofficial Translation-

FACTORY ACT (NO. 2)

B.E. 2562 (2019)

Section 1 This Act is called the “Factory Act (No. 2) B.E. 2562”

Section 2 This Act shall come into force after the expiration of one hundred and eighty days from the date of its publication in the Government Gazette.

Section 3 The following provisions shall be added as Section 4/1 of the Factory Act B.E. 2535;

“Section 4/1 The Minister, with an approval of the Cabinet, shall have the power to prescribe to exempt the following factories from being complied with some provisions of this Act under rules, procedures and conditions set forth:

(1) Factory belong to state agency except factory exempted under Section 4;

(2) Factory having a purpose of research;

(3) Factory belong to educational institutes having a purpose of training;

(4) Factory having its operation as a household industry;

(5) Factory which its operation is necessary and connecting to other business that is not factory according to this Act and that is established in the same area”

Section 4 Definitions of “Factory” and “Establishing a factory” specified in Section 5 of the Factory Act B.E. 2535 shall be revoked and replaced by followings:

“Factory” means buildings, premises, or vehicles using machine with total power from 50 horsepower or equivalent of 50 horsepower or more or which employ 50 workers or more with or without machinery to engage in factory operation in accordance with the type or kind of factory as prescribed in the Ministerial Regulations.

“Establishing a factory” means installation of machinery for engaging in factory operation in the buildings, premises, or vehicles meant for factory operation or employment of workers for engaging in factory operation in case where machinery is not used”.

Section 5 Definition of “Third-party auditor” shall be added between the definitions of “License” and “Competent official” in Section 5 of the Factory Act B.E. 2535.

“Third-party auditor” means a person who has a license for inspection or verification under this Act”.

Section 6 Section 6 of the Factory Act B.E. 2535 shall be revoked and replaced as followings:

“Section 6 Minister of Industry shall have charge and control in the execution of this Act and shall have power to appoint the competent official and issue the ministerial rules prescribing rates of fee to be not exceeding the rates annexed with this Act, reduction or exemption fee, determining other business and issuance of notifications for the executions under this Act.

In issuance of ministerial rules prescribing rates of fee according to paragraph one, the rates of fee may be different according to type, kind or size of the factory.

Ministerial rules and notifications, after published in the Government Gazette, shall be effective”.

Section 7 Texts prescribed in (2) of Section 7 of the Factory Act B.E. 2535 shall be revoked and replaced by followings:

“(2) Category 2 factory is a factory of the type, kind, and size, which requires a notification to the competent official prior to its operation”

Section 8 Texts in Section 9 of the Factory Act B.E. 2535 shall be revoked and replaced by the followings.

“Section 9 In case where any provisions in this Act prescribe the inspection of factory or machinery or any other related performance is required, it may assign a third-party auditor to carry out the inspection and produce the inspection report on behalf of the competent official under regulations prescribed by the Minister which are published in the Government Gazette.

In case where any provisions in this Act requires a factory operator to carry out any duties, the factory operator is required to report the result of such performances that has been verified by the third-party auditor to the competent official.

The third-party auditor specified in paragraph one and paragraph two shall have a license for inspection or for verification issued by a license grantor.

Applying for and granting a license for inspection or verification, inspection methods, inspection period, preparation of the inspection report, reporting and reporting scheduling of the result of performances carried out by the factory operator as well as verification and determination of rates of inspection or verification services shall be in accordance with rules, procedures and conditions prescribed in Ministerial Regulations”.

Section 9 Following texts shall be added as Section 9/1, Section 9/2, Section 9/3, Section 9/4, Section 9/5 and Section 9/6 of the Factory Act B.E. 2535:

“Section 9/1 A person applying for a license for inspection or verification who is an ordinary person shall have following qualifications and shall not be under the following prohibitions:

a. Qualifications

(1) being a Thai national;

(2) having a license for professional practice according to the Engineer Act or a license for professional practice according to the Promotion of Scientific and Technological Professions Act and work experience at least 5 years relating to environment, safety, chemical substances, electric, energy, mechanical, civil or any other related to industrial fields. In counting work experience, experience in each field can be summed up;

(3) having passed a training and testing on factory or machinery inspection or verification according to rules and procedures prescribed by the Minister and published in the Government Gazette;

b. Prohibitions

(1) being bankrupt or having been dishonestly bankrupt or being under receivership;

(2) being insane or mentally disabled person, an incompetent person or quasi-incompetent person;

(3) having been imprisoned by final sentence of imprisonment for an offence under the Factory Act, unless having been discharged for a period of not less than five years prior to the date of the application for the license for inspection or verification;

(4) being sentenced by a judgement to imprisonment and imprisoned by a warrant of the Court;

(5) being under temporary suspension or withdrawal of a license for professional practice according to the Engineer Act or a license for professional practice according to the Promotion of Scientific and Technological Professions Act;

(6) having been punished by discharge, dismissal or expulsion from government agencies, state agencies or state enterprises for gross breaches of discipline;

Section 9/2 A person applying for a license for inspection or verification that is a juristic person shall have following qualifications and shall not be under the following prohibitions:

a. Qualifications

(1) being a juristic person under Thai law with the objective for business operation or service providing on factory or machinery inspection or verification and with a registered capital or paid-up capital not less than one million baht;

(2) managing partners, directors or executives of a juristic person, at least one, shall have qualifications and not be under the prohibitions according to Section 9/1;

(3) having a permanent third-party auditor, in a number prescribed by the Minister, that has qualifications and is not under the prohibitions according to Section 9/1 working in such juristic person;

(4) being accredited for the standards related to inspection or verification unit in the areas of environment, safety, chemical substances, electric, energy, mechanical, civil or other related to industrial works;

b. Prohibitions

(1) being bankrupt or having been dishonestly bankrupt or being under receivership or reorganization;

(2) having been final sentenced as an offender under the Factory Act with an exception that the offence is liable to a fine penalty only;

(3) being under the prohibitions according to Section 9/1 b (5)

Section 9/3 License for inspection or verification according to Section 9 shall be valid until the end of the third calendar year as from the insurance date of the license.

Third-party auditor wishing to renew a license for inspection or verification shall apply for renewal not less than 45 days prior to the expiration date and a license grantor shall consider and complete the renewal within 15 days as from receiving the application.

Application for and approval of renewal of license for inspection or verification shall be carried out under rules, procedures and conditions prescribed by the Ministerial Regulations.

Section 9/4 In case where a license for inspection or verification has been lost, significantly damaged or destroyed, the third-party auditor shall apply for a substitution of license to the license grantor within 15 days as from being acknowledged of such loss, damage or destroy.

Application for and approval of a substitution of license shall be carried out under rules, procedures and conditions prescribed by the Ministerial Regulations.

Section 9/5 License grantor shall have a power to suspend a license for inspection or verification when it appears that any third-party auditor has been with any of the following circumstances:

(1) violate or fail to comply with this Act despite being warned in writing by a license grantor to perform in compliance with the Act within a specific period but fail to do so in such period;

(2) mistakenly report the results of inspection or verification and consequently the competent official must issue the order under Section 37 and Section 39;

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Suspension of license for inspection or verification according to paragraph one shall not exceed 90 days per one suspension order and during the suspension period, an application for a new license is not allowed.

Issuance of a written warning and suspension of a license for inspection or verification shall be carried out under rules, procedures and conditions prescribed by the Ministerial Regulations.

Section 9/6 License grantor shall have a power to withdraw a license for inspection or verification when it appears that such third-party auditor:

(1) is not qualified or is under the prohibitions according to Section 9/1 or Section 9/2;

(2) has been suspended from using a license for inspection or verification in total of 3 times within 2 years;

(3) has produced a false inspection or verification report under Section 9

Third-party auditor whose license for inspection or verification has been withdrawn in pursuant to paragraph one is not allowed to apply for a new license until a period of 2 years since receiving the order has elapsed.

Withdrawal of a license for inspection or verification shall be carried out under rules, procedures and conditions prescribed by the Ministerial Regulations.”

Section 10 Section 14 and Section 15 of the Factory Act B.E. 2535 shall be revoked.

Section 11 Section 16, Section 17 and Section 18 of the Factory Act B.E. 2535 shall be revoked and replaced by followings:

Section 16 *The order refusing to grant a license, the order refusing to permit an expansion of a factory, the order refusing to grant or renew a license for inspection or verification or the order to temporary suspend or withdraw a license for inspection or verification thereof be appealed by the applicant within 30 days as from the date of receipt of the order.*

The decision of the Minister shall be final.

Section 17 *Any factory for which a person engaging in a factory operation has been granted a license, if it appears thereafter that such factory uses the machines of lower than fifty horse powers or employs less than fifty workers, such factory shall be deemed to be the factory under this Act until notice of dissolution of the factory business is given.*

Section 18 *A license grantee may not expand the factory unless permitted by the license grantor.*

Expansion of the factory in paragraph one is:

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(1) an increase of number, change or alteration of the machines for engaging in the existing factory business or in the business of a kind or type connecting with the existing factory business operation resulting in an increase of aggregate power as following:

(a) an increase of 50 horsepower or more in case where the original machines have an aggregate power less than 100 horsepower;

(b) an increase of 100 horsepower or more in case where the original machines have an aggregate power more than 100 horsepower but not exceeding 500 horsepower;

(c) an increase of 200 horsepower or more in case where the original machines have an aggregate power more than 500 horsepower but not exceeding 1,000 horsepower;

(d) an increase of 300 horsepower or more in case where the original machines have an aggregate power more than 1,000 horsepower but not exceeding 2,000 horsepower;

(e) an increase of 400 horsepower or more in case where the original machines have an aggregate power more than 2,000 horsepower but not exceeding 3,000 horsepower;

(f) an increase of 500 horsepower or more in case where the original machines have an aggregate power of 3,000 horsepower or more.

(2) Executions under (1) that are carried out on a new plot of land that is connecting with the existing factory or a land that has been permitted for factory expansion.

Permission for factory expansion shall be deemed as a part of a license.

Section 12 and Section 13 shall be applied to an application and a grant of permit for factory expansion mutatis mutandis."

Section 12 Following texts shall be added as Section 18/1 of the Factory Act B.E. 2535;

"Section 18/1 Expansion of factory according to Section 18 only for the following purposes shall be exempted from applying for a license:

(1) for pollution treatment or for improvement of pollution treatment to be more efficient;

(2) for prevention or minimization of nuisance;

(3) for modification of existing machines used as power unit to be more efficient or less impact to environment;

(4) for improvement of energy efficiency of the machines

A licensee shall notify the license grantor prior to the execution under paragraph one at least 30 days and shall comply with the Ministerial Regulations issued under Section 8 and the Ministerial Notifications issued under Section 32.

A notification according to paragraph two shall comply with rules, procedures and conditions prescribed in the Ministerial Regulations.

Machines employed for the purposes prescribed in this Section shall be regarded as the machines used for the factory operation.”

Section 13 Section 19 of the Factory Act B.E. 2535 shall be revoked and replaced by the followings:

“Section 19 When the licensee increases a number of, changes or modifies the machines used for production, machines used as power unit, machines used for pollution treatment or nuisance prevention or minimization, or energy of the machines to other forms that results in a decrease or increase of aggregate horsepower but not tantamount to an expansion of factory or an increase of the factory building space or a construction of new building for directly benefiting such factory operation that may expand the factory area from 500 m² or more in case that the existing factory area is less than 2,000 m² or that may expand the factory area from 1,000 m² or more in case that the existing factory area exceeds 2,000 m², such licensee shall notify in writing the competent official within 30 days as from commencing such performance.

Executions under paragraph one that is an increase of a number, a change or modification of the machines shall be carried out in the existing factory or land that has been permitted for factory operation or factory expansion and shall comply with rules and procedures prescribed by the Minister.

Notification under paragraph one shall be complied with rules and procedures prescribed in the Ministerial Regulations.

Machines employed from the execution of this Section shall be regarded as the machines used for the factory operation”.

Section 14 Following texts shall be added as Section 19/1 of the Factory Act B.E. 2535:

“Section 19/1 When a licensee wishes to add type or kind of the factory operation in connecting with the existing factory operation, a licensee shall notify in writing the competent official at least 15 days prior to execution.

Execution under paragraph one shall be carried out in the existing factory or land that has been permitted for factory operation or factory expansion and shall comply with rules and procedures prescribed by the Minister.

Notification under paragraph one shall be complied with rules and procedures prescribed in the Ministerial Regulations.

Section 15 Section 21 of the Factory Act B.E. 2535 shall be revoked and replaced by the followings:

“Section 21 In the case where the licensee fails to establish a factory or has established a factory but failed to commence a factory operation after granted a license, such licensee may transfer a license. In this respect, a transferee shall apply to a license grantor for such transfer within 30 days as from

a date of license transfer, rental or hire purchase of a factory, or selling factory. In this meantime, it shall be deemed that such applicant is a licensee and that a former licensee is no longer a licensee as from a date of license transfer, factory rental or hire purchase or selling factory.

In the event that a licensee has transferred a factory operation license, rented or hire purchased a factory or sold a factory, it shall be deemed that such licensee has ceased a factory operation business as from a date of such transfer, rental, hire purchase or selling a factory.

Transferee of a factory operation, renter or hire purchaser of a factory, or buyer of a factory stipulated in paragraph two shall apply to a transfer of license to a license grantor within 30 days as from the date of ceasing mentioned in paragraph two and after submitting the application and waiting for consideration and approval from a license grantor, factory operation may continue and the applicant shall be deemed as a licensee.

Application for being a transferee of a license and approval of a transfer of a license under paragraph one and paragraph three shall be complied with rules, procedures and conditions prescribed in the Ministerial Regulations, where they must specify processing time of the consideration and approval.”

Section 16 Section 22 of the Factory Act B.E. 2535 shall be revoked and replaced by followings:

“Section 22 In case of a licensee’s decease, a legal heir or estate administrator shall apply for a transfer of license to a license grantor within 90 days as from the date of decease or within a period decided by a license grantor as deemed necessary. If a legal heir or estate administrator fails to apply for a transfer of license within a specified period and such person wishes to continue a factory operation, he or she shall apply for a new license”.

Section 17 Section 28 of the Factory Act B.E. 2535 shall be revoked and replaced by followings:

“Section 28 Any licensee wishing to cease a factory operation business, he or she shall notify in writing a license grantor at least 30 days prior to a date of ceasing.

If a license grantor considers that a factory under paragraph one may cause any damage or nuisance to individuals, properties or environment in its surrounding areas, a license grantor may notify the competent official to order such licensee to improve the factory within a specific period and shall be deemed that such licensee is a factory operator until the order has been complied.

If a licensee fails to comply with the order of the competent official as mentioned in paragraph two, Section 42 shall be applied mutatis mutandis.

Notification of a cease of factory operation under paragraph one shall be complied with rules and procedures prescribed in the Ministerial Regulations”.

Section 18 Following texts shall be added as Section 28/1 of the Factory Act B.E. 2535:

“Section 28/1 A licensee wishing to change a factory category from category 3 to category 1 or category 2, as the case maybe, shall notify a cease of factory operation according to rules and

procedures prescribed in the Ministerial Regulations and to further a factory operation, a licensee shall comply with the provisions prescribed in this Act for the operation of such factory category.”

Section 19 Section 33 of the Factory Act B.E. 2535 shall be revoked and replaced with followings:

“Section 33 If the category 2 or category 3 factory cease their operation consecutively for more than one year, a factory business operator of group 2 factory or a licensee for the business of group 3 factory as the case may be must notify in writing the competent official within seven days as from the day following the last date of one year.

If the factory business operator under paragraph one wishing to continue the engagement in the factory business, such person shall perform as the case maybe as followings:

(1) category 2 factory business operator shall notify in writing the competent official prior to commencement of factory operation;

(2) category 3 factory business operator must obtain permission from a license grantor prior to a continuation of factory business.

In granting permission to continue the operation of category 3 factory, if the inspection result conducted by the competent official shows that the factory and the machines comply with Section 8, the Ministerial Notifications issued under the Ministerial Regulations issued under Section 8 and the Ministerial Notifications issued under Section 32 and conditions specified in a license, a license grantor shall grant permission for continuation of factory business operation. If the inspection result shows that the factory and the machines do not comply with such Section, the competent official shall order the factory business operator to make corrections within a specified period. Once the corrections are made, the competent official shall make order to allow the continuation of the factory business operation.

Section 16 shall be applied to an appeal against the order of the license grantor mutatis mutandis.”

Section 20 Section 47 of the Factory Act B.E. 2535 shall be revoked and replaced with followings:

“Section 47 Any person conducting an inspection or verification or producing an inspection or verification report without a license for inspection or verification according to Section 9 shall be liable to an imprisonment in a term of not exceeding two years or a fine of not exceeding two hundred thousand baht, or to both.

Any third-party auditor producing a false inspection or verification report or producing an inspection or verification report while being suspended of their license for inspection or verification shall be liable to the same penalty as a person conducting an inspection or verification or producing an inspection or verification report without a license.”

Section 21 Following texts shall be added as Section 47/1 and Section 47/2 of the Factory Act B.E. 2535:

“Section 47/1 Any factory business operator failing to comply with Section 9 paragraph two shall be liable to a fine of not exceeding fifty thousand baht.

Section 47/2 Any third-party auditor failing to comply with Section 9/4 paragraph one shall be liable to a fine of not exceeding five thousand baht.”

Section 22 Section 51 of the Factory Act B.E. 2535 shall be revoked and replaced by the followings:

“Section 51 Any licensee failing to comply with Section 13 paragraph one or paragraph two, Section 18/1 paragraph two, Section 19 paragraph one or paragraph two, Section 19/1 paragraph one or paragraph two, Section 28 paragraph one, Section 28/1 or Section 33 paragraph one or paragraph two shall be liable to a fine of not exceeding twenty thousand baht.”

Section 23 Section 57 of the Factory Act B.E. 2535 shall be revoked and replaced by the followings:

“Section 57 Any person failing to comply with the order of the competent official issued under Section 28 paragraph two or Section 37 paragraph one shall be liable to an imprisonment in a term of not exceeding one year or to a fine of not exceeding one hundred thousand baht, or to both, and to a fine of not exceeding five thousand baht per day throughout a period of being a noncompliance”.

Section 24 Rates of Fees annexed with the Factory Act B.E. 2535 shall be revoked and replaced with the Rates of Fees annexed with this Act.

Section 25 All Ministerial Regulations, Rules and Notifications issued under the Factory Act B.E. 2535 being enforced prior to the enforcement of this Act shall remain in force insofar as they are not contrary to the Factory Act B.E. 2535 amended by this Act until the Ministerial Regulations, Rules or Notifications amended by this Act come into force.

The issuance the Ministerial Regulations, Rules and Notifications under paragraph one shall be completed within one year as from the date when this Act has come into force, otherwise the Minister shall report reasons of such failure to the Cabinet for acknowledgement.

Section 26 License for factory operation issued pursuant to the Factory Act B.E. 2535 prior to the enforcement of this Act shall remain valid as a license for factory operation under the Factory Act B.E. 2535 amended by this Act until ceasing of factory operation or the license is withdrawn.

Section 27 Any applications submitted or notifications notified prior to the enforcement of this Act and are still being considered shall be deemed as the applications or notifications under the Factory Act B.E. 2535 amended by this Act and the consideration shall be continued in accordance with the Factory Act B.E. 2535 amended by this Act. If such applications or notifications have any different points from the applications or notifications under the Factory Act B.E. 2535 amended by this Act, the license grantor or the

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competent official, as the case maybe, shall have the power to order a revision of the applications or the notifications to be complied with the Factory Act B.E. 2535 amended by this Act.

Section 28 The Minister of Industry shall have control and charge for the execution of this Act.

Countersigned by

Gen. Prayuth Chan-o-cha

Prime Minister

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Rates of Fees

(1) Application fee	100 baht each
(2) License (factory operation)	300,000 baht each
(3) License for factory expansion shall be in accordance with the rate in (2)	
(4) Transfer of license	5,000 baht each
(5) Issuance of a substitution of a license	5,000 baht each
(6) Notification in case where the exemption of factory expansion is granted or in case where an increase or decrease of machines is not entitled to the factory expansion case, or in case where an expansion of factory building areas or a construction of the additional factory buildings has been undertaken.	15,000 baht per each notification
(7) License for inspection or verification	5,000 baht each
(8) Renewal of a license for inspection or verification shall be in accordance with the rate in (7)	
(9) A substitute for a license for inspection or verification license	500 baht each
(10) Fee for factory operation	100,000 baht per year