

## **CHAPTER 3**

# **INDUSTRIAL LICENSING AND REGULATIONS**

## CHAPTER 3: INDUSTRIAL LICENSING AND REGULATIONS

### 1. The Factory Act

The Factory Act of 1992 (which replaces the Factory Act of 1969, 1975 and 1979) stipulates regulations for factory establishment and operation, factory expansion, and safety requirements. The latest revision of the Act also imposes strict controls on industrial pollution. The Act is administered by the Department of Industrial Works of the Ministry of Industry.

A factory is defined as any premise that uses machinery equivalent to five horsepower or more, or that employs seven or more, with or without any machine, for manufacturing, producing, assembling, packing, repairing, maintaining, testing, improving, processing, conveying, storing or destroying anything included in the classes or types of factories presently listed in the Ministerial Regulations.

The Act does not apply to the Government factory run by the Government for the purpose of national security and safety, except that such factories must use the criteria and procedures of the Act as guidelines for their operations.

### 2. Factory License

Factories are divided into three categories:

1. Factories that do not require licenses.
2. Factories that only require notification to officials in advance of the commencement of operations. The operators may commence operations as soon as they receive a receipt form from the Ministry stating that their report has been received.
3. Factories that require license from the Department of Industrial Works, Ministry of Industry, prior to operation. Subject to the Ministry's discretion, the operators may be granted, prior to the license, a certificate allowing them to build parts of the factory.

The operator of a factory in Category 3 must notify the competent authority at least 15 days before a factory test-run commences, and again at least 15 days before actual manufacturing begins.

*Note: In general, the degree of government control required is dependent on the degree of environmental protection deemed necessary. The more likely a factory, based on its output, is to cause pollution, the more that type of factory is regulated.*

The Ministry of Industry has the power to issue regulations for all of the categories regarding:

- Description, category, or type of machinery and equipment to be used in the operation of the factory business;
- Location, environment, interior and description of the factory;
- Requirements for workers who have specific knowledge to carry out any duties in the factory;
- Process of manufacture and provision of equipment to prevent, stop, or alleviate danger, damage or disturbances that may occur to the public or property in the factory or nearby premises;
- Standards and procedures for the control or release of waste, pollution or anything else arising from factory operations which may affect the environment;
- Provision of necessary data and documents by the factory operators to ensure compliance with the law
- Provision of anything that may affect the safety of work operations.

If there is an inspection of a factory or machinery to ensure compliance with the Act, a private body may carry out the inspection and report in place of government officials, provided the private persons follow the regulations concerning the Act as per the Government Gazette.

Licenses granted are valid until the end of the fifth calendar year from the year in which the business starts operations, except in the case of the relocation of the factory or of the dissolution of the operation in the factory business (which also refers to the event that the factory is transferred, leased or subjected to hire purchase). In these cases, the license is regarded as having expired on the date of issuance of a license to the factory's new operators, or on the date of dissolution of factory business.

Applications for renewal of license must be submitted prior to the date of expiration, along with a fee of 100,000 baht. Following submission, renewal is considered to have been extended unless there is a specific order otherwise. If the application is submitted within 60 days of the expiration date, it will be processed normally, but an additional fine of 20,000 baht will be levied. Once the expiry date is reached, an application for a renewal must be made within 60 days. Upon expiration of the sixty-day period, the application will be treated as if it were a new application.

### **3. Factory Operations**

The Ministry of Industry has the power to designate:

- The size and quantity of the type of factory in each category that should be established or expanded or not be established or expanded in any locality in the Kingdom.
- The type, quality, source of origin and ratio of raw materials and/or factors or kinds of energy to be used or produced in a factory.
- The type or quality of products to be manufactured in a factory to be established or expanded.
- The application of the produces from factory being established or expanded in certain types of industry; or the export of all or part of such produces.

If a factory in Category 2 or 3 stops operation consecutively for more than 1 year, the operator must notify the competent authority in writing within 7 days of the date the one-year period has lapsed, and must inform the competent authority of such in writing before restarting the operations. In the case of a factory in Category 3, the operator must first receive written permission from the competent authority before restarting the operations.

If there is an accident that causes death, injury or sickness that incapacitates a worker beyond a 72-hour period, the operator must inform the competent authority of such in writing within 3 days of the date of the death or the lapse of the 72-hour period. If there is an accident that causes the factory to stop operations for more than 7 days, the operator must notify the competent authority of such in writing within 10 days of the date of the accident.

A factory operator must obtain permission from the Permanent Secretary to remove machinery from its original place of installation to another site for temporary operations. The period of permission shall be as per request but shall not be longer than 1 year.

In the case of moving a factory to another site, the operator has to proceed as if establishing a new factory.

Permission must also be obtained to transfer, rent, offer for hire purchase or sell a licensed factory. In these cases, the prior license is considered to have expired, and a new license must be applied for by the transferee, lessee or hire-purchaser within 7 days, although no fee is required. Upon submission of such application, the engagement in a factory business shall be continued pending the receipt of a license as if such applicant were the recipient of the license.

If the licensee dies, the heir or administrator of the estate must submit an application for the transfer of the license within 90 days of the date of death; otherwise, the license shall be deemed to expire. Upon submission of such application, the heir or administrator of the estate engaging in a factory business shall be deemed as if they were the recipient of a license.

#### **4. Factory Expansion**

No factory expansion is allowed unless permission is obtained. There is a fee of 100,000 baht to apply to expand a factory. As defined in the Act, the following undertakings constitute factory expansion:

- An increase in the number of machines, or change or modification of machines to increase its aggregate power by 50% or more in case where the original machines have their aggregate powers of not more than one hundred horse powers or an equivalent thereof of not more than one hundred horse powers or to increase from fifty horse powers or more in case the original machines have their aggregate powers of more than one hundred horse powers or an equivalent thereof of more than one hundred powers.
- The addition to, or alteration of, any part of the factory building which causes any part of the foundation of the factory to bear a load of an additional 500 kilograms or more.

In the case that a licensee:

- Increases the quantity of machines, changes or modifies the machines used for production or generation of power, but by less than 50% of increased aggregate power, or
- Increases the area of the factory building or constructs the new factory building for the direct benefits of the business of such factory rendering the area of the factory building to be increased from 50% or more in case where the area of the factory building does not exceed 200 square meters or to be increase from 100 square meters or more in case where the area of the factory exceeds 200 square meters,

The notification in writing must be filed with the competent authority within 7 days of the date of the change.

A license as to the expanded part shall be valid for the same period as that of the license.

#### **5. Other Provisions**

Any factory that is seriously endangering the public or property in the factory or its vicinity may be ordered to cease operations or to make specified improvements. The Minister has the authority to order removal of all or part of the plant to a location where the public will not be threatened. Officers of the Ministry of Industry have broad powers of inspection, and are authorized to issue written orders requiring a factory to cease operations, modify or repair machinery, or undertake other remedial measures.

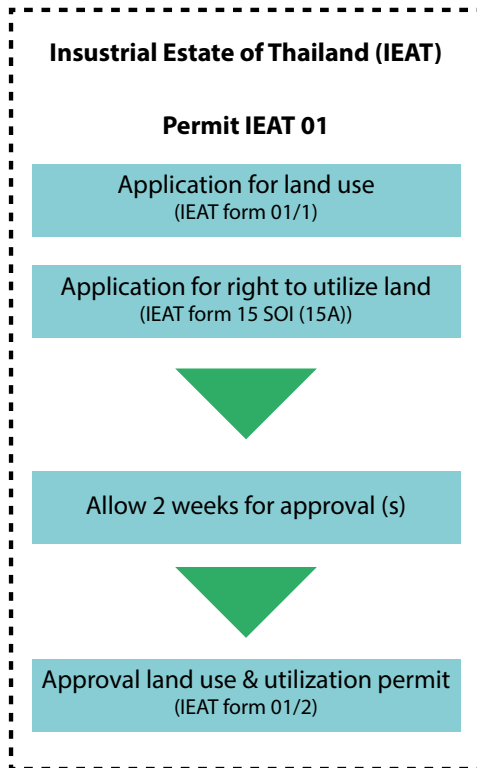
Issuance of either a factory establishment license or a factory operator's license does not exempt the licensee from compliance with other central or local government requirements for carrying out a proposed industrial activity. For example, the factories established to produce and sell food and drugs must also apply for production license from the Ministry of Health.

Licenses may be suspended for violations of the Act or for failure to carry out orders issued under the Act by competent officials.

Violation of certain provisions of the Act may incur penalties in the nature of a fine or imprisonment not exceeding 4 years. A Case Settlement Committee of three legal experts is appointed by the Ministry to carry out penalties for violations of the Act. If the offender is a partnership, company or other juristic entity, the directors, managers or other persons responsible for committing the offense are subject to the same punishment unless it can be proved that the offense was committed without their knowledge or consent.

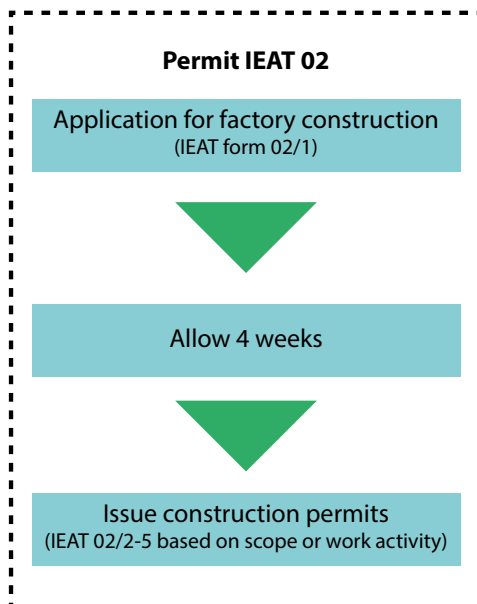
**6. Procedures and Timetable for Factory Permits/License**

**STEP 1**



**Authorization to use land**

**STEP 2**



**Authorization for new factory construction or rental factory renovations**

**IEAT 01 Authorities, document, comments:**

- Applicant / User
- Industrial Estate Authority of Thailand (IEAT) OR - Ministry of Industry (MOI) Provincial Offices (Dept of Ind. Works) as per applicable "Zone", "Park", "Greenfield" rules if not "IEAT"
- (3) copies of application submitted
- 10,000 Thai baht permit fee (excluding VAT may vary on location)

**Supporting documentation required**

***If natural person;***

- Copy of house registration, ID card of the operator / landowner
- Layout of the land plot according to the mater plan
- Copy of land title or right to utilize the land (Ref. IEAT 5 Sor 1)

***If juristic person;***

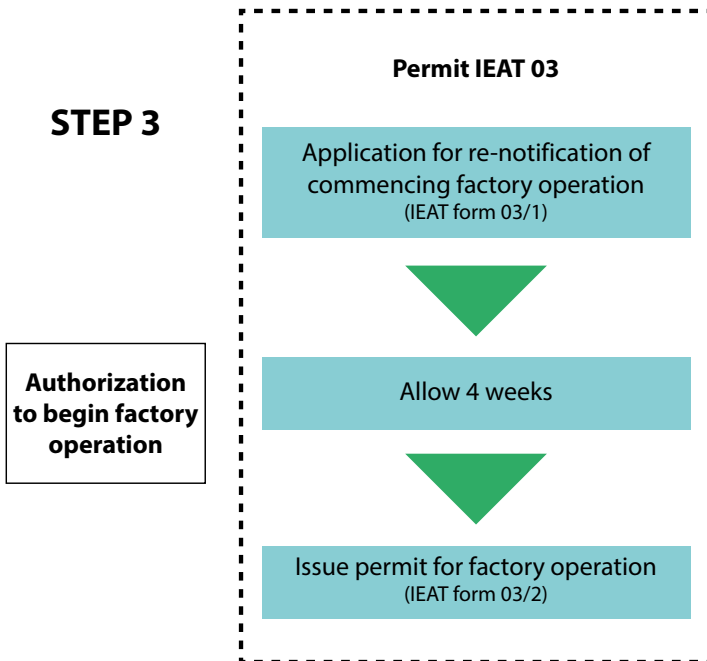
- Copy of company registration (date no over 6 months)
- Shareholder list (date not over 6 months)
- Copy of land title or document indication right to use the land
- Copy of passport of authorized person, or ID card and house registration if local
- All the above with company seal, signature and / or authorized documents

**IEAT 02 Authorities, document, comments:**

- Applicant / User
- Industrial Estate Authority of Thailand (IEAT) OR - Ministry of Industry (MOI) Provincial Offices (Dept of Ind. Works) as per applicable "Zone", "Park", "Greenfield" rules if not "IEAT"
- (3) copies of application submitted
- Permit fee will be set according to land and building size

**Supporting documentation required**

- (3) A1 size copies of plant layout (in correct scale ratio) and (2) in A3 size
- Copy of company registration (date not over 6 moths)
- Shareholder list (date not over 6 months)

**STEP 3**

- Copy of land title or document indication right to use the land
- Copy of passport of authorized person, or ID card and house registration if local
- All the above with company seal, signature and / or authorized documents

**IEAT 03 Authorities, document, comments:**

- Applicant / User
- Industrial Estate Authority of Thailand (IEAT) OR - Ministry of Industry (MOI) Provincial Offices (Dept of Ind. Works) as per applicable "Zone", "Park", "Greenfield" rules if not "IEAT"
- (3) copies of application submitted

**Supporting documentation required**

- (3) copies of machine list with rated horsepower (obtain form from IEAT)
- (3) copies of factory layout (with correct and accurate scale ratio) including machinery and equipment placement
- (3) copies of list of raw material, product and by-products including production process
- (3) copies of land layout showing location of an environment and safety management system
- Copy of company registration (date not over 6 months)
- Shareholder list (date not over 6 months)
- Copy of land title or document indication right to use the land
- Master plan with land plot number
- Copy of passport of authorized person, or ID card and house registration if local

**Notes**

"Export Processing Zones" and "Customs Free Zones" require additional forms at each step. The same applies for Food & Pharmaceutical projects. Request such forms at the zone's Customs Officer or Thai Food & Drug Administration as applicable.

Certain Thailand Industrial "Parks" & "Zones" may have unique permit / licence application procedures in place with the Ministry of Industry. It is recommended one check with both the operator and the local MOI or Department of Industrial Work to confirm forms and per procedure.

Source: Source Thai Co., Ltd ([www.sourcethai.net](http://www.sourcethai.net)), Seri Manop & Doyle ([www.serimanop.com](http://www.serimanop.com))

**7. Environmental Concerns Regarding Sources of Water**

Certain areas, currently some districts in Ayutthaya and Pathum Thani Provinces, have been assigned by the Cabinet to be reserved as sources of water by the Metropolitan Waterworks Authority. In order to control the establishment or expansion of factories in such areas, regulations have been imposed forbidding setting up or expanding factories which release wastewater containing heavy metals or poisonous substances used in agriculture, or other chemicals such as PCBs, cyanide, arsenic, and phenol.

Factories are forbidden to set up and expand in areas reserved for water supply. The only exceptions are factories which release wastewater with a biochemical oxygen demand of less than one kilogram per day or those which are set up in Navanakorn Industrial Estates I and II. Under Ministerial Regulation No. 3, factories specified by Ministry of Industry notifications as severely affecting the environment are required to provide environmental impact studies.

Source: Tilleke&Gibbins' Thailand Legal Handbook

## 8. Environmental and Health Impact Assessments

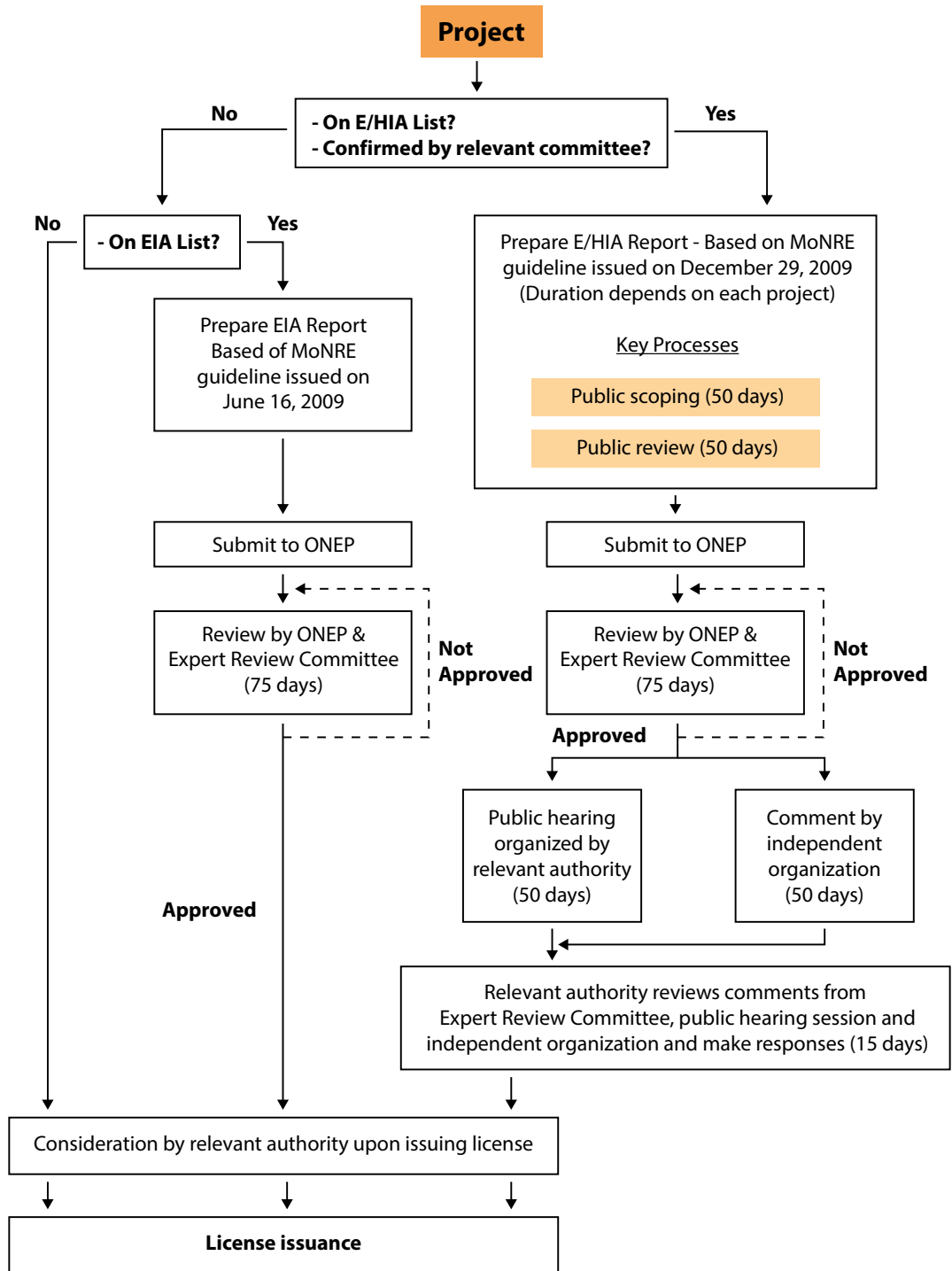
As per paragraph 2 of Article 67 of the Thai Constitution, any project and activity that may seriously affect the quality of the environment, natural resources and biological diversity shall not be permitted, unless its impacts on the quality of the environment and on health of the people in the communities have been studied and evaluated and consultation with the public and interested parties have been organized, and the opinion of an independent organization have been obtained prior to the operation of such project to activity. By virtue of such Article, the Ministry of Natural Resources and Environment by the approval of the Cabinet and the National Environment Board ("NEB") has announced a list of 11 industrial activities that potentially could create severe impact to local communities in terms of natural resources, environment and health and for which environmental and health impact assessments must be conducted.

The following charts contain the NEB list and a simplified flowchart for the process.

### National Environment Board issues list of 11 potentially severe impact projects

|   |
|---|
| 1. Land reclamation projects  |
| 2. Mining, defined by the mineral <ul style="list-style-type: none"> <li>• Underground Mining Method, only the caving method and no backfill</li> <li>• Lead Mining, Zinc Mining or Metal Mining using cyanide or mercury or lead nitrate in lead mining process with arsenopyrite associate material</li> <li>• Coal Mining, specifically coal mineral transportation take out project area by cars</li> <li>• Sea Mining</li> </ul> |
| 3. Industrial Estate as defined by the Industrial Estate Authority of Thailand Act or Project with similar feature  |
| 4. Petrochemical Industry<br>Upstream Petrochemical Industry<br>Intermediate Petrochemical Industry   |
| 5. Mineral Smelting Industry of Metal Industry  |
| 6. Production, disposal, or configuration of radioactive substances   |
| 7. Hazardous waste disposal or incineration plants (except concrete incinerator that use hazardous waste as supplementary material or fuel)   |
| 8. Aviation transport system  |
| 9. Ports  |
| 10. Dams or Reservoirs  |
| 11. Thermal Power Plants <ul style="list-style-type: none"> <li>• Coal-fired Power Plant</li> <li>• Biomass-fired Power Plant</li> <li>• Natural Gas-fired Power Plant</li> <li>• Nuclear Power Plant</li> </ul>  |

## Simplified Flowchart for EIA and E/HIA Process



Notes: For additional details, please consult Office of Natural Resources and Environmental Policy and Planning (ONEP), Ministry of Natural Resources and Environment (MoNRE)