

THE STUDY OF REGULATIONS RELATING TO THE PERMISSION OF FACTORY SETUP AND FACTORY OPERATION

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ABSTARCT

This independent study paper to analyse laws in relation to the permission of factory setup and operation, which are obstacles to investment; to study the guideline towards the amendment of laws in relation to the permission of factory setup and operation, which facilitates investment; to study the guideline to codify laws in relation to the permission consideration of factory setup and operation, which facilitates investment.

The independent study paper found that there are three main complications. The first complication is about the laws and regulations prescribing and/or granting power on the permission consideration of factory setup and factory operation. In this case, there are two government agencies who is in control on the execution of the acts: the Minister of Industry under the Factory Act B.E.2535¹, and the Minister of Interior under the Building Control Act B.E.2522.² This is unnecessary and wasting time for persons who are required to request for permission of the factory setup and factory operation. The second complication arises from authorized officials. In this second case, similar to the previous complication, there is obviously the duplication of duties of authorized officials. This even further puts more burden to persons having to

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¹ Section 6, Thai Factory Act B.E. 2535

² Section 5, Building Control Act B.E. 2522

comply with both acts but on the same matters. The last complication is about the joint consideration of the two acts. In this case, while the Factory Act B.E.2535 dedicates a section for this matter³, there not a single on in the Building Control Act B.E. 2522. This illustrates the lack of coherent and systematic laws and regulations. By the study of related laws and regulations of Singapore and the United Kingdom, despite the fact that the power is delegated to various authorities by one authority⁴, and there is more than one legislation, respectively; all of them are consistent to one another. So, there is no problems arising from repetitive laws as same as in Thailand. Thus, the writer suggests that these problems in relation the factory setup and factory operation should be promptly solved by following the models of Singapore and the United Kingdom.

Introduction

Industry is one of the core factors in bringing prosperity to the country's economy and driving the country from an agricultural country to a fully industrialized country. As factory operation is a very crucial factor in industrialization, the transform stated previously could be achieved by ensuring that the factory operation is carried out properly and effectively. Hence, the government plays an important role in this regard by means of the regulation of the factory setup and the factory operation – making sure that nothing goes wrong in factories. There are several laws in relation to the permission of factory setup and factory operation in Thailand.

Currently, laws in connection to the factory setup and factory operation are Factory Act B.E. 2535 with its secondary legislation which are Ministerial Regulation No. 2 B.E. 2535, Ministerial Regulation No. 7, Statement of Ministerial of Industry No. 24 and Statement of Ministry of Industry No. 35. Another related piece of legislation is Building Control Act B.E. 2522 and its secondary legislation which are Ministerial Regulation No. 3, Ministerial Regulation No. 6 and Ministerial Regulation No. 33. Unfortunately, these laws are repetitive that they give power for many different authorities in connection to the permission of the factory setup and factory operation.

³ Section 31, Thai Factory Act B.E. 2535

⁴ Singapore Workplace Safety and Health Act 2006

As a result, these authorities, without any discussion among one another, set a host of different requirements and procedures on the same matters. Not only does this unnecessarily put more burdens to factory operators, manufacturers, or any other persons involved, but also wastes their time and money in order to comply with all of the aforesaid requirements and paying for the fees respectively. In the long run, this problem would discourage the investment from both domestic and overseas sources of fund, as well as destroying the country's reputation in relation to economy and development. Therefore, it is urgent for the government to prevent the long-run negative consequences, and solve the problems.

In other countries like Singapore and the United Kingdom, legislations in relation to the factory setup and factory operation are coherent to one another that there are neither repetitive power of authorities on the same matters, nor contradicting contents leading to misunderstanding among persons being enforced by the laws. On the one hand, in Singapore, there is only one main authority which is Misnistry of ManPower, albeit it delegates its power to other authorities under its control. The main applicable law in Singapore is the Workplace Safety and Health Act 2006 (WSH)(Revised2009) and the Building Control Act 1989 (Revised 1999). On the other hand, in the United Kingdom, although there are various authorities with different requirements prescribed under different pieces of legislation, these requirements on the same matters are consistent to one another - to the extent that providing that, for instance, two authorities are given the same power to regulate the same matter, one of which will state that the compliance of either of these is considered as that of another. The prime legislations in relation to the factory setup and the factory operation in the United Kingdom are the Health and Safety at Work Act 1974 and the Building Control Act 1966.

Therefore, the writer believes that the Thai government could use the models of Singapore and the United Kingdom to help them solve the problems in relation to the permission of factory setup and factory operation promptly and successfully.

The Problem of the Study

By examining the Thai laws regarding the permission of the factory establishment and operation, it shows that the laws are repetitive with repeated responsibilities. This includes the minister, who is in control on the execution of the act, and an authorized official.^{5 6} Even though there is a joint consideration of the law in Section 31 of The Factory Act B.E. 2535, but the laws fail to address on the competent official's authority to exercise its decision on inspection and granting permission.⁷ This can be seen as the section repetitively used the word "may". Moreover, the authority that is given to the competent official under The Factory Act B.E. 2535 does not intend to have joint consideration. The law generally leaves factory operator in confusion and unnecessary responsibility. However, even if the joint consideration is practically enforced and used, there is no proof that this section will provide the best outcome for the competent official and the factory operator.

It can be seen the law repetition can be categorized into two major groups, the laws that lead to other major legal issues and the ones does not contribute to other problems.

The repetitive of law can lead to major legal issues. The location of the factory is not just about the distance of the factory and fence, but about the required space for the factory to be established.⁸ Both acts refer to this matter and cause a confusion to the people that are involved. The Factory Act B.E. 2535 fails to state any regulations about the required space between the factory and the public road or fence. Regulations in Building Control Act B.E. 2522 mentions about the building and also include the factory.⁹ Not only it causes a confusion to the people, but it shows that Thailand fails to categorize the law.

⁵ Section 6, Thai Factory Act B.E. 2535

⁶ Section 5, Building Control Act B.E. 2522

⁷ Section 31, Thai Factory Act B.E. 2535

⁸ Ministerial Regulation No. 2 B.E. 2535

⁹ Ministerial Regulation No. 55 B.E. 2543

Regarding the process of receiving a permission from the government officials, the law in both acts use different vocabulary when referring to the word government official. The Factory Act B.E. 2535 presents the word “license grantor” while the Building Control Act B.E. 2522 refers to the word “local competent official”.¹⁰ This causes a massive controversy on defining who is the official person to grant the permission on factory establishment.

The confusion of law and repetitiveness continues to be appeared. The signboard in the Building Control Act B.E. 2522 does not state that they require factory operator to include the signboard. Signboard acts as one of the elements in Section 4, which explains about the definition of the word “Building”.¹¹ In contrary, The Factory Act B.E. 2535 specifically orders the factory operators to acquire signboard.¹²

In regard to the tall building, The word “tall or mega-size building” in Building Control Act B.E. 2522 can be used as the definition of the word “factory”.¹³ Since the word “factory” in The Factory Act B.E. 2535 fails to mention about the requirement regarding the size of the factory.¹⁴ For the issue concerning electric system, although those two regulations prescribe in different wording, but the its core of the laws are equivalent.

Waste management is crucial in factory. Both The Factory Act B.E. 2535 and The Building Control Act B.E. 2522 state that waste shall be stalled in the designated area. However, The Factory Act B.E. 2535 does not mention any specific statement about the word waste storage.¹⁵ It only states that waste ought to have a proper storage. The confusion arises on the point relating to the word “appropriate” as the law fails to hand a detailed explanation. Building Control Act B.E. 2522 will mostly prescribe law for every building in general, but there are some of the time that factory

¹⁰ Section 18, Thai Factory Act B.E. 2535

¹¹ Section 4, Building Control Act B.E. 2522

¹² Statement of Ministry of Industry No. 24 B.E. 2530

¹³ Ministerial Regulations No. 33

¹⁴ Ministerial Regulation No. 2 B.E. 2535

¹⁵ Ministerial Regulation No. 2 B.E. 2535

is categorized as one of the tall building as described in Building Control Act B.E. 2522.

When referring to ventilation, laws from both act continue to overlap as Building Control Act B.E. 2522 gives an explanation on ventilation in general terms, which can imply that it includes any manufactural factory. The Factory Act B.E. 2535 itself only indicate ventilation law in general as well.¹⁶ Therefore, virtually, government officials enforce the ventilation law in accordance to Building Control Act B.E. 2522 although that property is operated as the factory.¹⁷ The consequence of the above action will generate confusion to the factory owner.

On the other hand, there are repetition of laws that do not lead to any other major issues. Equipment used in factory in both acts express identical pattern. For instance, The Factory Act B.E. 2535 states that the factory shall have ventilation including door, window, and airflow passage. The total ventilation area shall not be less than one-tenth of the total area or the ventilation shall not be conducted less than 0.5 cubic meters per minute for each employee.¹⁸ While The Building Control Act B.E.2522 states that The building and its relating elements will need to acquire a strong stability that it can hold the weight of the building itself and the weight of other things.¹⁹ The number of weight shall not exceed the weight limitation as prescribed in this Ministerial Regulations except if the document that is being submitted present the test of the building's stability, which is guaranteed by the reliable institution. This does not include the amount of weight as described in No.6 of this Ministerial Regulations.

Storing the dangerous substances is referred identically. No. 3 of the Ministerial Regulations along with the The Building Control Act B.E. 2522 addresses that building that stores dangerous substances. For instance, explosive material, flammable material, radioactive material.²⁰ The Factory Act B.E.2535 with the Ministerial Regulations No. 2 B.E.2535 points out that Container that contains

¹⁶ Ministerial Regulations No. 2 B.E. 2535

¹⁷ Ministerial Regulation No. 33

¹⁸ Ministerial Regulations No. 2 B.E.2535

¹⁹ Ministerial Regulations No. 6 B.E. 2527

²⁰ Ministerial Regulations No. 3

explosive material such as flammable material, explosive material, chemical substances, or any other forms of liquid which can cause danger to the people, animal, plant, property, or environment. The container is amounted for at least 25,000 liters with a stable stability and strength and satisfied the government's standard. The factory operator will need to build concrete wall or dam to contain and control those materials.²¹

The law also mentions about the wastewater management to ensure the protection of the health, lives, and property of the people. According to the Ministerial Regulation No. 2 as prescribed in company with Section 15 in The Factory Act B.E. 2535, it states that if wastewater management is generated in association with any chemical, the factory operator must report the chemical usage and include documents or evidences that present the sources of those chemical usage.²²

However, in Building Control Act B.E. 2522, wastewater management can be performed wholly or independently, but the system shall not cause any unwanted sound, smell, or any other substances that may damage lives, health, property, environment, or annoyance to the people who live in the surrounding areas. Wastewater must pass through the designated wastewater system before the water is being dumped. The quality of the water must meet the standards as prescribed in the Office of National Environment Board.²³

Laws from both The Factory Act B.E. 2535 and Building Act B.E. 2522 present resemblance. Both laws project their concern on the regulation that protects the health, lives, and property of the people. This causes lack of understanding to the people, especially the factory operator.

Lastly, the law in both acts refer to the safety of the ones who involve in the factory operation.²⁴ In Ministerial Regulation No. 2 B.E. 2535 as prescribed in company with The Factory Act B.E. 2535, it addresses that factory shall be constructed with stability, strength, and acquire sufficient area for the factory operation.

²¹ Ministerial Regulations No. 2 B.E.2535

²² Section 15, The Factory Act B.E. 2535

²³ Building Control Act B.E. 2522

²⁴ Section 8, Building Control Act B.E. 2522

Correspondingly, Section 8 in Building Control Act B.E. 2522 states that in order to prevent any fire accident, the Minister has the power onto enact the regulation to control the building's stability, strength, safety, durability, weight resistance, gas system installation, electricity installation, water installation and other related materials.²⁵ In continuation from Section 8 in Building Control Act B.E. 2522, the laws proceed to express that the building shall have stability, strength, and durability to carry the weight of the building itself and any other weight without exceeding the amount of force as prescribe in this Ministerial Regulation. Exception applies only if any reliable institution issues an official statement about the building's stability and strength test.

The laws show an overlapping area on the safety of the property. It is essential that the government enforces only one act with the purpose of preventing any further confusion and inappropriation to the law.

Conclusion

The Factory Act B.E.2535 and Building Control Act B.E.2522 of Thailand have the same rationale behind them, that is to promote and enhance the safety and health of all stakeholders of factory, including but not limited to entrepreneur, employer, factory owner, employee, worker, people surrounding the factory area regardless of how they are referred to. This is done by ensuring the strict compliance of all aforesaid persons and the effective enforcement of such legislation.

In regard to the factory setup and factory operation, which is inseparable, a factory operator who, at the same time, is possibly an employer of a factory worker or an employee working together in the same factory or workplace, are regulated and controlled by more than one legislation and government agency which should not be a problem. Unfortunately, since they are inconsistent by not merely referring to the same or similar, or directly related matters, which is or can be consolidated under the same category, in completely different ways; the problems occur.

First, the most crucial legislation regulating safety and health in factory: Factory Act B.E.2535 is under the execution and supervision of the Ministry of Industry, whilst the Building Control Act B.E.2522 is under that of the Ministry of

²⁵ Section 8, Building Control Act B.E. 2522

Interior. This would not be a problem at all providing that the two government agencies discuss about how the regulations to be prescribed by them will and so does their enforcement. That is to say they should work together. This is the case of the United Kingdom where there are a good number of laws, rules, and local regulations sharing the same objective to provide and maintain the high-level standard of workplace safety to everybody engages with the workplace and its surrounding, which are under the execution of different government agencies. However, they all successfully manage to enforce each different piece of legislation, independently but coherently, towards the same way. This achievement is prominent in section 6 of the Building Control Act 1966 as previously mentioned in chapter, in which an exemption of the act serves on the purpose of eliminating repetitive duties to be fulfilled by persons under the act and others being related.

Another problem causing the lack of consistency of legislations and collaboration of government agencies involved is the scatter of authorities over too many government agencies that it becomes difficult or infeasible for these agencies to collaborate. This is the opposite the case of Singapore where all or almost pieces of legislation are under the execution and supervision of only one big authority that is the Ministry of Manpower. In this way, as it is shown, Singapore is less likely to face any difficulty to drive industry forward in the same direction.

In the present, due to the problems above, persons being enforced under the Factory Act B.E.2535 and the Building Act B.E.2522 are now struggling with their obligations to comply with the two acts separately but unnecessarily repetitively, at their own cost – which should not be the case at all. Even worse, the compliance with one could be non-compliance of another or vice versa. Not only does the problems cause confusion, and overcomplication to persons complying with the acts, but discredit to the government agencies being in charge in particular and the country as a whole as well.

Thanks to the Licensing Facilitation Act B.E. 2558, the problems should be promptly and appropriately eradicated. The subject matter of this act, which is a central legislation, is the procedures, requirements, and duration for permission consideration that is consistent regardless of the authority being in charge. Also, the act suggests that there should be a one-stop service centre being ready to provide useful information to the public as well as to receive application, request and

document. This one-stop service centre is proven to be successful by the One-Stop Service of the Board of Investment where it serves and facilitates people from the pre-application stage to post-license stage. The Immigration, Labour Department, and Department of Business Development work under the same roof of the Board of Investment.

Recommendation

1. As stated above, in a situation that the government agencies are assigned in a specific sectors and agencies, whilst their responsibility and assignment require a collaboration, an unsolved problem persists. Government should attempt a governmental system reformation by uniting the government agencies that necessarily need to work together.

2. Although Thailand has enforced Licensing Facilitation Act B.E. 2558, but majority of the government agencies still not comply with this law strictly. This act intends to create a central hub for any legislations, procedures, requirements, and duration for permission consideration. The act will be effective and beneficial if the governmental ministries and agencies would follow this act strictly.

3. It is clear that section 31 under the Factory Act B.E.2535 is in accordance with the Licensing Facilitation Act B.E. 2558, with the aim to facilitate investors or factory operators. Nevertheless, the section, itself, seems to be vague and uncertain as an authority is given a freedom to decide if they want to exercise the power to undertake a joint consideration with other authorities. This is illustrated by the choice of wording used of "may". Therefore, providing that the authority under the Factory Act does not want to undertake such joint consideration, the factory operator is still left with ambiguity and unnecessary burden as if this section does not exist - which is the case. Moreover, even with the exercise of such power by the authority, there is no guarantee that the joint consideration will work for the best interest of the factory operator as there is no real formal framework at all. So, the writers still affirm the urge to eliminate the repetitive legislations in an appropriate manner.

4. In regard to Singapore and United Kingdom legislation, Thailand should follow their footsteps and implement our law in correspondence to their law. Singapore establishes the Ministry of Manpower to execute and supervise any legislation in one

authority. A different approach is conducted in United Kingdom where each agencies and government sectors set the same objective for enacting the law. Those sectors will combine their regulations and enforce the law independently. Therefore, Thailand would need to take a careful consideration when enforcing any new regulation. They would to ensure whether the law that are being enforced does not create any duplication, or if the said law cause confusion or complication.