PANORAMIC

PUBLIC M&A

Thailand

Public M&A

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STRUCTURES AND APPLICABLE LAW

Types of transaction
How may publicly listed businesses combine?

Publicly listed companies in Thailand can be combined through several types of structures. The most typical structures used in the Thai market are share acquisitions and asset acquisitions. One of the most notable share acquisitions in 2023 involved the business combination of two major players in the petroleum industry: Esso (Thailand) Public Company Limited (Esso Thailand) and Bangchak Corporation Public Company Limited (Bangchak) through a combination of a purchase of secondary shares by Bangchak from ExxonMobil and a tender offer. The deal, officially completed in October 2023, resulted in Bangchak holding a 76.34 per cent stake in Esso Thailand, with a total deal value of approximately 35 billion baht.

Although amalgamations are less common in public M&A transactions, the recent merger between True Corporation Public Company Limited and Total Access Communication Public Company Limited showed that amalgamation has occurred in the telecommunications sector. This merger was announced as having been successfully completed on 1 March 2023, after Thailand's telecommunications regulator, the National Broadcasting and Telecommunications Commission (NBTC), approved the merger in 2022.

Law stated - 20 March 2024

Statutes and regulations
What are the main laws and regulations governing business combinations and acquisitions of publicly listed companies?

The primary pieces of legislation governing business combinations and acquisitions of publicly listed companies are:

- the Public Limited Companies Act BE 2535 (1992), as amended (PLCA); and
- the Securities and Exchange Act BE 2535 (1992), as amended (SEA).

The PLCA governs both listed and non-listed public companies, and stipulates the required corporate actions to be taken prior to engaging in crucial matters (eg, obtaining shareholders' approval as a prerequisite for divesting or acquiring a business or material assets). The SEA, through the Securities and Exchange Commission of Thailand (SEC) and the Stock Exchange of Thailand (SET), governs disclosure and reporting requirements, public offerings, and business takeovers of listed public companies.

Under the SEA, the SEC and the SET are empowered to issue subordinate regulations and orders focusing on the acquisition of businesses, such as:

- Notification of the Capital Market Supervisory Board No. TorJor 12/2554 Re: Rules, Conditions, and Procedures for the Acquisition of Securities for Business Takeovers;
- Notification of the Capital Market Supervisory Board No. TorJor 20/2551 Re: Rules on Entering into Material Transactions Deemed as Acquisition or Disposal of Assets,

and the Notification of the Board of Governors of the Stock Exchange of Thailand Re: Disclosure of Information and Other Acts of Listed Companies Concerning the Acquisition and Disposition of Assets BE 2547 (2004); and

- the Stock Exchange of Thailand's Regulations Re: Listing of Securities of Companies Formed by Amalgamation of Companies BE 2542 (1999).

In addition, the Trade Competition Act BE 2560 (2017) (TCA) is a key piece of legislation encompassing merger control (including acquisition of business) and regulates behaviours that may affect competition, unless the merger has been regulated by legislation governing specific sectors (eg, telecommunications, broadcasting, television and energy). Under the TCA, there are two filing obligations:

- pre-merger filing (requiring approval); and
- post-merger notification.

A pre-merger filing with the Trade Competition Commission (TCC) is required if a merger results in a monopoly or if a business operator with dominant market power is involved. A post-merger notification will be required if a merger may substantially lessen competition in any relevant market, in which case the merging entity (or entities) must notify the TCC within seven days of the merger.

Another primary regulation concerning foreign investment in Thailand is the Foreign Business Act BE 2542 (1999), as amended (FBA). Under the FBA, foreigners (ie, foreign entities or Thai entities with 50 per cent or more of their registered capital owned by foreigners) are generally restricted from conducting certain businesses, including any type of service business, unless:

- approval from the Ministry of Commerce is granted prior to conducting any such business; or
- certain exemptions apply (eg, investment promotion certificate from the Board of Investment (BOI) or, if the majority of the shares in the target company are held by US individuals or entities, the target company may be eligible for exemptions available under the US–Thai Treaty of Amity).

Also, under the Land Code of Thailand, similar restrictions apply to foreign individuals or corporations in relation to land ownership in Thailand, unless a special exemption is available under BOI incentives, attainable under specific laws, or if the business is located in the Eastern Special Development Zone or an industrial estate area.

Law stated - 20 March 2024

Cross-border transactions

How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

Cross-border transactions are almost invariably structured as share acquisitions while observing the foreign investment restrictions for the business activity of the target at hand,

as certain business activities are subject to foreign shareholding restrictions under the FBA or legislation imposed on specific industries (eg, telecommunications, transportation, financial services). This is because a cross-border deal could eventually result in the target becoming majority-owned by the foreign investor. In such a case, any acquisition vehicle would need to be structured to adhere to the FBA and the relevant regulations for specific industries, particularly when the target owns immovable assets and is subject to the foreign shareholding limitation under the Land Code.

A recent development concerning the FBA occurred early in 2024, when the Ministry of Commerce held a regulatory hearing on a ministerial regulation that proposed exemptions for nine types of businesses from the FBA's restrictions. If enacted, this would streamline and relax the foreign business licence requirement for software development businesses, telecommunication services, inter-company services, oil drilling services and securities services, among others.

Law stated - 20 March 2024

Sector-specific rules

Are companies in specific industries subject to additional regulations and statutes?

Apart from the FBA, certain industries are subject to separate and additional foreign shareholding restrictions and requirements under their specific legal regimes. This is evident mostly in highly regulated and preserved industries in Thailand, such as financial institutions, insurance, telecommunications, transportation and schools. These legal requirements may extend beyond foreign shareholding limitations, such as specifying the nationality requirement of the companies' directors.

For example, a foreigner is restricted from holding more than 25 per cent of the total voting rights in a financial institution or an insurance company. However, the Minister of Finance, on the recommendation of the Bank of Thailand (in the case of a commercial bank, finance company or credit foncier (real estate mortgage lending) company) or the Office of Insurance Commission (in the case of an insurance company), may allow non-Thai nationals to hold more than 49 per cent if the company is in financial distress, or a higher foreign shareholding will strengthen the stability of that company or the overall business system.

A foreign-owned company incorporated under Thai law wishing to operate a telecommunications business must have less than 50 per cent of its total issued shares with voting rights owned by foreign entities to qualify to apply for a licence to provide certain types of services in the telecommunications business from the NBTC.

A company incorporated under Thai law engaging in a transportation business must have at least 51 percent of its total issued shares owned by Thais to qualify to apply for a transportation business license from the Department of Land Transport. Also, there is a restriction on foreign directors of transportation companies; half of the total number of directors must be Thai.

In addition to the foreign shareholding limitation, there are other specific laws and regulations. For example, M&A activities in the telecommunications, broadcasting and television, and energy sectors are governed by the Act on the Organisation to Assign Radio

Frequency and to Regulate the Broadcasting and Telecommunications Services BE 2553 (2010) and the Energy Industry Act BE 2550 (2007), respectively.

Law stated - 20 March 2024

Transaction agreements

Are transaction agreements typically concluded when publicly listed companies are acquired? What law typically governs the agreements?

It is customary to enter into transaction agreements for the acquisition of a block of shares, a controlling interest in or assets of publicly listed companies. Share purchase agreements or share subscription agreements (if the acquisition is of newly issued shares) are generally entered into in share acquisition deals, while asset purchase agreements (often called business transfer agreements) are typically concluded in asset acquisitions. For an amalgamation in which at least two companies are dissolved and their assets, liabilities, rights and obligations automatically transfer to a newly established company by operation of law, no agreements are required to combine the targeted companies. In numerous deals, ancillary agreements such as standstills, exclusivity agreements and confidentiality agreements may also be entered into between parties.

In this context, the Civil and Commercial Code of Thailand serves as the primary law governing contractual obligations in general. Specific laws and regulations may apply and supplement the subject matter contemplated under the agreements; for example, the transfer of certain types of assets – such as land, aircraft and registered machinery – must adhere to registration with the relevant governmental authorities or the transaction could be unenforceable and void. However, in relation to an amalgamation, the PLCA and the relevant SET regulations apply as the laws governing publicly listed companies.

Law stated - 20 March 2024

FILINGS AND DISCLOSURE

Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination or acquisition of a public company? Are there stamp taxes or other government fees in connection with completing these transactions?

If an acquisition is of shares in a publicly listed company, it will require:

- within three business days of the acquisition, filing an online report (Form 246-2) with the Office of the Securities and Exchange Commission of Thailand (SEC) pursuant to section 246 of the Securities and Exchange Act BE 2535 (1992), as amended (SEA) if an acquisition or disposal of securities, including shares, of a listed company results in an increase or decrease of the aggregate number of securities held by the shareholder and its concert parties, as well as their related persons, to a number that is or exceeds any multiple of 5 per cent of the total number of voting rights of the target company so acquired or disposed (eg, 5 per cent, 10 per cent, 15 per cent);

- depending on the size or materiality of the transaction to the acquirer, and whether the transaction is a connected transaction for the acquirer under the Stock Exchange of Thailand (SET) rules, notification by the acquirer of a listed company to the SET promptly after the acquirer decides to enter into the transaction, which is when the board resolution approving the transaction is passed. Such notification must be given normally on the same day the board has passed the relevant resolution or by 9am of the following business day at the latest;
- filing Form 247-3 if the acquisition of shares reaches or passes a mandatory tender offer threshold of 25 per cent, 50 per cent or 75 per cent of the total voting rights of the target company, including Form 247-4, being the tender offer document itself;
- a pre-merger filing or post-merger notification under the Trade Competition Act (if applicable); and
- various corporate filings in the case of an amalgamation and the notification of the amalgamation by the listed company to the SET promptly after the board of the listed company approves the transaction.

Stamp duty at the rate of 0.1 per cent of the greater of the purchase price and the paid-up value of the shares is generally imposed on the transfer of shares, although stamp duty will be exempted for the transfers of registered or approved securities for which Thailand Securities Depository Co, Ltd (TSD) acts as registrar (ie, transfer of shares of a listed company).

Further, the Cabinet of Thailand has passed a draft Royal Decree imposing specific business tax (SBT) on the sale of securities traded on the stock exchange. Despite a 31-year exemption period, the Decree was anticipated to take effect in 2023 after being published in the Royal Gazette. However, the Ministry of Finance has delayed the implementation of this tax scheme due to the government's current economic policies.

In addition to taxes, if the sale of shares involves a tender offer, the acquirer making a tender offer is subject to payment of the following fees to the SEC:

Rate of Fee (THB)	Value of tender offer (THB)*
50,000	< 10 million
100,000	≥ 10 million but < 100 million
500,000	≥ 100 million but < 500 million
1 million	≥ 500 million but < 1 billion
1.5 million	≥1 billion but < 5 billion
2 million	≥ 5 billion

* The value of the tender offer is determined by the offer price multiplied by the maximum number of securities as indicated in the offer.

For an asset acquisition, the government charges or fees related to an acquisition or merger of assets of a listed company or a private limited company are subject to the assets transferred. For example, in the case of the acquisition of land, the registration fee for the transfer of ownership of land is imposed at the normal rate of 2 per cent of the appraised

value of the property by the Land Department. Depending on the nature of the transaction, the transfer of land by the company may also be subject to:

- SBT: 3.3 per cent of the higher of the valuation and sales price;
- stamp duty: 0.5 per cent of the higher of the valuation and sales price, but if specific business tax is paid, stamp duty is not payable; and
- withholding tax: 1 per cent of the higher of the valuation and sales price.

In an amalgamation, a registration fee of 10,000 baht must be paid to the Department of Business Development, Ministry of Commerce.

In deals involving pre-merger filing with the Trade Competition Commission, the fee for filing a request for permission to conduct a merger is 250,000 baht. There is no fee imposed on post-merger notifications.

Law stated - 20 March 2024

Information to be disclosed

What information needs to be made public in a business combination or an acquisition of a public company? Does this depend on what type of structure is used?

The need for mandatory disclosure depends on the deal structure, deal size and parties involved in the transaction. The disclosure regulations issued under the SEA by the SEC or SET compel the publicly listed company to make a disclosure when the acquisition or disposal:

- is above a certain size relative to the acquiring or disposing company;
- involves persons connected to the acquiring or disposing company; or
- is otherwise material to investors.

This is to ensure that investors are equally and fully informed of the material events and to provide them with relevant information that may affect their investment decisions. Additionally, the characteristics and materiality of the transaction could necessitate further corporate approval and measures under the Public Limited Companies Act BE 2535 (1992), as amended. Shareholders' approval may be required if a public company purchases or accepts the transfer of the business from other companies or private entities.

A listed company must promptly notify the SET once it decides to enter into the transaction, typically upon the board's resolution approving the transaction. This notification must normally be given on the same day the board has passed the relevant resolution or by 9am of the following business day at the latest. Generally, according to the regulations of the SET, the disclosure of the transaction must only be made once the transaction is certain (eg, when the definitive documentation is signed or conditions precedent are fulfilled). Therefore, the listed company is not compelled to disclose the transaction immediately if it remains tentative and unsettled. Examples of information that must be disclosed include, among others:

- the date of the transaction;

- the counterparty and their relation to the listed company;
- details of the assets to be acquired or disposed;
- the total value of the consideration;
- the payment method;
- key conditions of the transaction;
- the value of assets acquired or disposed;
- indemnities and their limitations;
- benefits for the listed company; and
- source of funds.

The disclosure requirement depends on the size of the transaction relative to the company concerned, calculated on the basis of certain criteria specified in the relevant regulation. If the size of the transaction is small (less than 15 per cent), no disclosure is necessary, unless the acquisition or disposal is material for other reasons.

The same timing requirements apply to the disclosure of connected transactions. Examples of the information to be disclosed include, among others:

- the date of the transaction and the name of the counterparty;
- a description of the assets, services and financial assistance provided or received;
- the total value and the measurement of total value;
- the total transaction value or payment method; and
- source of funds.

The disclosure requirement depends on the relative size of the transaction calculated on the basis of the criteria specified in the relevant regulation. If the size of the transaction is small (less than 0.03 per cent of the net tangible assets or equal to or less than 1 million baht, whichever is greater), then no disclosure is necessary.

In an amalgamation, upon the board's approval, the listed company must disclose significant information, such as the names of the companies to be amalgamated and provisional information of the business, the objectives of the business, the benefits expected to be received, and the steps, conditions, time frame and procedures for the amalgamation, together with material content regarding the amalgamation – for example, the share allocation in the new company, the number of allocated shares, the ratio and the price per share.

In addition, once the shareholders' meeting approves the amalgamation, information on the new company must be disclosed, including the name, details of the share allocation to shareholders, capital, a list of directors and independent directors and their powers, etc.

Law stated - 20 March 2024

Disclosure of substantial shareholdings

What are the disclosure requirements for owners of large shareholdings in a public company? Are the requirements affected if the company is a party to a business combination?

Pursuant to section 246 of the SEA, if an acquisition or disposal of securities, including shares, of a listed company results in an increase or decrease of the aggregate number of securities held by the shareholder and its concert parties, as well as their related persons, to a number that reaches any multiple of 5 per cent of the total number of voting rights of the listed company so acquired or disposed, the shareholder of the listed company is required to submit a report on the acquisition or disposal of the securities (Form 246-2) to the SEC within three business days of the date of the share acquisition or disposition. Currently, Form 246-2 must be filed exclusively via the SEC online system.

This form includes information such as the name of the shareholder and its concert parties and related persons, the types and numbers of securities held by the shareholder and its concert parties and related persons, the date and means of the acquisition, and the highest price paid by the shareholder (or its concert parties and related persons) to acquire those securities during a period of 90 days prior to that acquisition.

The requirements are not affected if the company is a party to a business combination (except that, in an amalgamation, the acquisition of shares in the newly merged company does not result in filing Form 246-2).

In addition, there has been a recent development on the disclosure rules for securities holders. As of 19 February 2024, listed public companies, property funds, infrastructure funds and investment trusts are required to disclose the list of securities holders who hold not less than 0.5 per cent of the paid-up capital, provided that the list includes at least 10 securities holders. Such a disclosure shall be made within 14 days of the book closing date or the date of the shareholders' meeting, as applicable.

Law stated - 20 March 2024

DIRECTORS' AND SHAREHOLDERS' DUTIES AND RIGHTS

Duties of directors and controlling shareholders

What duties do the directors or managers of a publicly traded company owe to the company's shareholders, creditors and other stakeholders in connection with a business combination or sale? Do controlling shareholders have similar duties?

When conducting the business of the company, including the consideration of or decision-making in relation to a business combination or sale, directors have fiduciary duties to the company and must perform their duties with responsibility, due care and loyalty. Directors must also adhere to all laws as well as the company's objectives, its articles of association and the resolutions passed at board of directors' and shareholders' meetings, in good faith and with care to preserve the interests of the company.

In performing their duties with responsibility and due care, directors must act in a manner similar to that of an ordinary person undertaking business under similar circumstances. Directors are presumed to have performed with responsibility and due care if the decision was made:

- with the honest belief and on reasonable grounds that it was in the best interests of the company;
- with reliance on information honestly believed to be sufficient; and
- without personal interest, whether directly or indirectly, in such matters.

Additionally, in the tender offer process, the board is required to:

- appoint an independent financial adviser to provide an opinion on the tender offer to the shareholders of the target company (eg, the appropriateness of the tender offer price, reasons to accept or refuse the tender offer, benefits or impact from the plans and policies of the target company as specified in the tender offer documents by the acquirer); and
- consider and give its opinion on the tender offer (eg, reasons to accept or refuse the tender offer, and benefits or impacts from the plans and policies in relation to the target company as specified in the tender offer documents by the acquirer).

The opinions provided by the independent financial adviser and the board of the target company must be submitted to the Securities and Exchange Commission of Thailand and the shareholders of the target company within 15 business days of the date on which the target company has received the tender offer documents from the acquirer.

Law stated - 20 March 2024

Approval and appraisal rights

What approval rights do shareholders have over business combinations or sales of a public company? Do shareholders have appraisal or similar rights in these transactions?

Under the Public Limited Companies Act BE 2535 (1992), as amended (PLCA), the following matters must be approved by the shareholders' meeting with the votes of not less than three-quarters of the total votes of the shareholders who attend the meeting and have the right to vote, provided that shareholders who have a special interest in the proposed transaction are barred from voting on such matters:

- sales or transfers of the business of the public company, in whole or in essential part, to other persons;
- purchases or acceptances of transfers of the business of other public companies or private companies by the public company; and
- amalgamations.

Even if the asset acquisition or disposal by the listed company does not fall within the criteria for shareholder approval of the PLCA, shareholder approval is still required if the transaction constitutes:

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an acquisition or disposal of assets where, on the basis of criteria specified in the regulations, the assets or revenues being acquired or disposed of amount to 50 per cent or more of the assets or revenues of the acquiring or disposing company; or

- a connected party transaction, where on the basis of criteria specified in the regulations, the net tangible assets being acquired or disposed of are more than 3 per cent of the net tangible assets of the acquiring or disposing company or 20 million baht or more, whichever is greater.

Such transactions must be approved by shareholders by a vote of not less than three-quarters of the total votes of the shareholders who attend the meeting and have the right to vote, excluding the votes of interested shareholders.

Law stated - 20 March 2024

COMPLETING THE TRANSACTION

Hostile transactions
What are the special considerations for unsolicited transactions for public companies?

Unsolicited transactions for public companies are very rare in Thailand. This is because most public companies have control or a substantial shareholding vested in a family or group of shareholders, or government authorities, who will need to agree the terms for the transaction to be successful. Thus, a tender offer without a price being negotiated with the major or controlling shareholders in advance is likely to fail. In addition, there is no minority squeeze-out mechanism in Thailand.

A hostile acquisition could, in theory, be structured as a mandatory tender offer. If the acquirer obtains 25 per cent, 50 per cent or 75 per cent or more of the total voting rights of the target company, the acquirer will be required to make a mandatory offer for all the securities of the target company. Alternatively, the acquirer can make a voluntary tender offer for all shares of the target company.

Law stated - 20 March 2024

Break-up fees – frustration of additional bidders
Which types of break-up and reverse break-up fees are allowed? What are the limitations on a public company's ability to protect deals from third-party bidders?

Break-up fees, although permitted under Thai law, are not as common as other deal protection mechanisms, such as non-refundable deposits or exclusivity undertakings. These techniques are typically used to protect the bidder rather than the target company, as the target company is already protected under the tender offer rules via the bidder's limited rights to cancel the tender offer.

In addition, Thai courts award damages only if the actual damage suffered by the non-breaching party as a result of a breach can be proved to the satisfaction of the court.

The court may, at its discretion, adjust the amount of the break-up fee agreed by the parties if such a fee is deemed to be disproportionately high.

On the other hand, a non-refundable deposit is not considered a stipulated penalty; therefore, the court is not empowered to adjust the amount of the non-refundable deposit, despite its disproportionately high amount. However, if the non-breaching party makes a claim for further damages, the non-refundable deposit retained by the non-breaching party will be taken into account when considering the damages award.

Other protection mechanisms include an exclusivity arrangement between the acquirer and the major shareholder of the target or the seller, and a lock-up agreement requiring major shareholders to tender their shares to the acquirer.

Law stated - 20 March 2024

Government influence

Other than through relevant competition regulations, or in specific industries in which business combinations or acquisitions are regulated, may government agencies influence or restrict the completion of such transactions, including for reasons of national security?

No.

Law stated - 20 March 2024

Conditional offers

What conditions to a tender offer, exchange offer, merger, plan or scheme of arrangement or other form of business combination are allowed? In a cash transaction, may the financing be conditional? Can the commencement of a tender offer or exchange offer for a public company be subject to conditions?

A conditional tender offer is allowed only in the case of a voluntary tender offer, whereby the acquirer may commence the process of a tender offer once all conditions precedent specified by the acquirer are fulfilled, provided that these conditions are announced to the public at the earliest opportunity; for example, if an approval from a regulatory authority or the shareholders of the acquirer or financing for the tender offer must be obtained before conducting the tender offer.

In any tender offer scenario, the offeror may cancel the offer if an event or action occurs after the offer document has been filed with the Securities and Exchange Commission of Thailand (SEC) but during the offer period that causes or may cause serious damage to the target's business, and the act or event does not result from an action of the offeror or an act for which it is responsible. In addition, a voluntary tender offeror may cancel the tender offer if, upon the c of the closure of a specified offer period, the number of shares tendered is lower than the number of shares specified as a condition for the tender offer. The offeror must clearly specify the conditions and the cancellation events in the tender offer document.

Law stated - 20 March 2024

Financing

If a buyer needs to obtain financing for a transaction involving a public company, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer's financing?

The acquisition financing obtained through capital is not always detailed in the transaction documents unless the financing materially affects the certainty of the transaction. In such cases, it is customary to stipulate the successful acquisition of financing – typically the bank's approval of the loan – as one of the condition precedents or undertakings in the transactional agreement, depending on the dynamics of the transaction.

There is no particular requirement with respect to financing for buyers, except for the tender offer rules that require the offeror to provide the SEC with the information and evidence in relation to sources of funds used by the offeror for the takeover. A seller's obligation to assist in the buyer's financing is not typical.

Law stated - 20 March 2024

Minority squeeze-out

May minority stockholders of a public company be squeezed out? If so, what steps must be taken and what is the time frame for the process?

There is no minority squeeze-out mechanism under Thai law.

Law stated - 20 March 2024

Waiting or notification periods

Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations or acquisitions involving public companies?

There are no requirements for waiting periods for completing business transactions.

Notification may be required according to the licences or contracts of the target company.

Law stated - 20 March 2024

OTHER CONSIDERATIONS

Tax issues

What are the basic tax issues involved in business combinations or acquisitions involving public companies?

A corporate seller, either Thai or foreign, that does business in Thailand is subject to corporate income tax on capital gains arising from the sale of shares in a listed company or a company incorporated in Thailand, or on the sale of its assets, at a rate of 20 per cent

of the net profit arising on the sale. No withholding tax is required to be withheld by the buyer on a sale by such a corporate seller. However, a 15 per cent withholding tax is required to be withheld from any gains made by a foreign investor that does not conduct business in Thailand, unless this tax is otherwise exempted or reduced under an applicable double taxation treaty. Also, a share transfer instrument is subject to a stamp duty of 0.1 per cent of the purchase price or the paid-up amount, whichever is higher.

Capital gains arising on the sale of shares listed on the Stock Exchange of Thailand (SET) by an individual (either Thai or non-Thai) are exempted from income tax. Although no value added tax (VAT), specific business tax (SBT) or stamp duty is levied on the sale of shares, a 7 per cent VAT on service fees and commissions is levied (eg, tender offer agent fees, which are usually charged by the tender offer agent). Note that, following a lengthy exemption period, the Cabinet of Thailand has passed a draft Royal Decree to impose SBT on the sale of securities traded on the SET, which had been anticipated to take effect in 2023. However, the implementation of this tax regime has been delayed due to the government's current economic policies.

SBT, stamp duty and VAT are imposed on sales of assets in addition to corporate income tax. The rate of SBT and stamp duty vary depending on the asset; for example, a transfer of land is not subject to VAT but is subject to a SBT of 3.3 per cent, while a sale of inventories may only be subject to VAT.

If the asset purchase or share purchase qualifies as an entire business transfer under the tax regime and satisfies the criteria set in the relevant regulations, exemptions from income tax, VAT, SBT and stamp duty will apply.

In amalgamations, income tax, VAT, SBT and stamp duty are exempted.

Law stated - 20 March 2024

Labour and employee benefits

What is the basic regulatory framework governing labour and employee benefits in a business combination or acquisition involving a public company?

Under Thai labour laws, prior consent from an employee is a prerequisite for an employee transfer. In an asset acquisition deal where the employees constitute one of the transferred assets, the consent, typically advised to be made in writing, of each transferring employee must be obtained as the transaction will result in a transfer of the employee from the seller (as the transferor of employees) to the acquirer (as the transferee of the employees). Nevertheless, no consent is required from an employee in a share acquisition as the employer remains unchanged.

In relation to the transfer of employees, the terms and conditions of employment offered to the employees by the new employer must not be less favourable than those being enjoyed by the relevant employee with the current employer and the length of employment must be recognised by the new employer in calculating any benefits, including any termination benefits.

The same principles that apply to asset acquisitions also apply to amalgamations as there is a change of employer.

Law stated - 20 March 2024

Restructuring, bankruptcy or receivership

What are the special considerations for business combinations or acquisitions involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

When acquiring or combining with any company in receivership or bankruptcy, under the Bankruptcy Act BE 2483 (1940), any sales of the assets of the entity in bankruptcy, without the creditors' approval, must be made by way of a sale by public auction. A negotiated sale may be difficult in practice, as sales of a bankrupt company's assets by means other than a public auction are not wholly supported by the internal regulations of the Official Receiver.

Under the same law, if the target is in the process of business reorganisation, during the period of the automatic stay, the company is not allowed to transfer assets, unless the transactions are in the ordinary course of business. Once the bankruptcy court has approved the target's reorganisation plan, the plan must be scrutinised to ensure whether the plan permits any transfers of the assets (including shares) for takeover or acquisition purposes.

On share purchase deals, the shareholders of an insolvent target (whether in a bankruptcy or business reorganisation process) are not prohibited from transferring or trading their shares. However, trading of this kind of share on the stock exchange is invariably suspended or halted. In addition, in a bankruptcy process, share purchases are usually accompanied by the purchase of debts of the target company to allow the company to exit the bankruptcy process by way of a composition.

In practice, owing to these lengthy and convoluted procedures, takeovers or business combinations in these situations are rarely seen in the Thai M&A market.

Law stated - 20 March 2024

Anti-corruption and sanctions

What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations with, or acquisitions of, a public company?

There is no specific law on anti-corruption matters that directly governs M&A activity in Thailand, with the exception of the law concerning public bidding processes. Fraud and offences against money or property are governed by the Criminal Code of Thailand.

That said, the Anti-Money Laundering Act BE 2542 (1999) (AMLA) obliges certain business operators (including financial institutes and financial advisers under the Securities and Exchange Act BE 2535 (1992), as amended) to notify the Anti-Money Laundering Office (AMLO) of transactions involving any use of cash that triggers the reporting threshold specified in the AMLA. Similarly, the Land Offices (under the Department of Lands of Thailand) must also inform the AMLO of transactions focused on immovable property.

Law stated - 20 March 2024

UPDATE AND TRENDS

Key developments

What are the current trends in public mergers and acquisitions in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory framework governing M&A or the financial sector in a way that could affect business combinations with, or acquisitions of, a public company?

In 2023, the Thai market underwent significant growth and concentration in M&A activities within the technology, telecommunications and energy sectors, underscored by notable business combinations between major industry players. The food and beverage, and entertainment sectors have emerged as prominent players in the M&A landscape over the past year, with several noteworthy M&A transactions concluded in Thailand in 2023.

In addition to these trends, it is important to highlight the growing interest among consumers in Thailand towards electric vehicles, including the demand for charging stations. This has further propelled the automotive sector and related businesses into action. The government has introduced various incentive schemes and policies to support the electric vehicle industry, with a view to expanding its presence in the Thai market over the coming years.

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