

# Private Mergers and Acquisitions in Thailand: Overview

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Q&A guide to private mergers and acquisitions law in Thailand.

The Q&A gives a high-level overview of key issues including corporate entities and acquisition methods, preliminary agreements, due diligence, acquisition agreements and main documents, warranties and indemnities, acquisition financing, signing and closing, tax, employees, pensions, regulatory approvals, and environmental issues.

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## Corporate Entities

1. What are the main corporate entities commonly involved in private acquisitions?

Private limited companies are almost invariably the target for private acquisitions in Thailand. These corporate entities are preferred primarily because (among others):

- Shareholders in a private limited company have limited liability, so that their personal assets are generally protected from the company's debts and liabilities and their liability is limited to the amount of their unpaid shares in the company (if any).
- A private limited company:
  - offers flexibility in structuring ownership since the capital is divided into shares that are easily transferable, providing a level of flexibility for shareholders to buy or sell their ownership interests;
  - offers flexibility in management, as shareholders can act as directors or appoint individuals to manage day-to-day operations; and
  - is considered a separate legal entity that allows the company to enter into contracts, own property, and incur obligations in its own name, ensuring business continuity in the event of a share sale transaction.

## Ways to Acquire a Private Company

2. How are private acquisitions commonly structured and what factors apply to the choice of structure?

Share purchases are often preferred in private M&A transactions, as the process is much simpler and quicker than for asset purchases. However, the liabilities of the target company may impact the transaction structure, as they will be assumed by the buyer from the date of acquisition. As a result, an asset acquisition is sometimes considered instead of a share acquisition.

For an overview of cross-border acquisition structures, see [Acquisition Structures Toolkit \(International\)](#).

## Share Purchases and Asset Purchases

3. What are the main advantages and disadvantages of a share purchase (compared to an asset purchase)?

### Transfer of Assets/Liabilities

The main advantage of a share purchase is that all assets and liabilities of the target company are automatically transferred to the buyer, providing a comprehensive acquisition of the entire business. This facilitates a smooth transition of ownership and ongoing operations, including commercial contracts, licences, employment, and intellectual property rights. The share purchase transaction offers a quick and easy completion process. However, a notable disadvantage is that the buyer also inherits all existing liabilities, including potential legal issues of the target company.

In contrast, an asset purchase allows the parties to selectively choose which assets and liabilities to include in the transaction. This capability provides flexibility, enabling the buyer to avoid assuming certain liabilities or acquiring specific assets. Although asset acquisitions, including entire business transfers and partial business transfers, are also common, they tend to be cumbersome.

### Complexity of the Transaction

A share purchase typically involves fewer documents compared to an asset purchase because all assets and liabilities of the target company are automatically transferred to the buyer through the transfer of shares. However, buyers often request a comprehensive list of warranty and indemnity protections to minimise their risk in the acquisition.

Conversely, an asset purchase increases complexity due to the need to identify each specific asset and contract to be transferred. This process involves more extensive documentation, for example, assignments, novation agreements, and consents from relevant contractual counterparties or approval from the relevant authority for the transfer of licences.

### Tax Considerations

Sellers and buyers often prefer a share sale transaction because it generally incurs a single tax charge on the sale of shares, unless the transaction can be structured to qualified for specific tax exemptions within the entire business transfer scheme.

## Other Factors

In situations where a target company holds specific licences or has entered into particular contracts, a share purchase transaction can be more advantageous for the buyer than an asset purchase. This approach eliminates the need to secure new licences or renegotiate contracts, allowing for the continuity of business operations without interruption.

## Share Purchases: Advantages/Asset Purchases: Disadvantages

Share purchases offer a straightforward process, reducing the complexity often associated with asset transactions. The buyer can acquire the company by simply signing a share purchase agreement and the relevant share transfer instruments with the seller, recording the transfer of shares in the company's share register book, and obtaining the relevant share certificates. This transaction can be completed in a comparatively short period because it involves the transfer of ownership of the entire entity without the need to separately acquire each asset. The seller may also benefit from tax efficiency.

In an asset purchase, the buyer must acquire each asset separately, leading to a complex and time-consuming process, especially for the transfer of land and buildings, contracts, employees, permits and/or licences, and other assets. Asset sales involving real property will also be subject to transfer tax and, in some cases, special business tax.

## Share Purchases: Disadvantages/Asset Purchases: Advantages

Buyers in share purchases assume all existing liabilities, including potential litigation claims of the target company, which may include undisclosed obligations and potential risks. Because buyers cannot "cherry-pick" specific assets and liabilities in a share purchase transaction, it may lead to the acquisition of unwanted elements.

In contrast, an asset purchase allows buyers to selectively acquire specific assets and liabilities. The unacquired assets and liabilities remain with the seller, providing flexibility for buyers in structuring the transaction.

## Auctions

4.Are sales of companies by auction common? What is the typical procedure and what regulations (if any) apply?

A sale of companies through a bidding process is not uncommon in Thailand, particularly prevalent when sellers include private equity investors seeking to court international buyers or secure competitive pricing.

The customary procedure begins with the distribution of a preliminary "teaser" to prospective buyers, succeeded by the execution of non-disclosure agreements to grant access to detailed information memoranda. Following the receipt of indicative bids, chosen bidders are invited to perform comprehensive due diligence and present a final binding offer.

Thailand lacks specific regulations governing the bidding sale process for private companies, allowing for flexibility in transaction implementation.

For an international overview of the auction sale process for a share or asset sale, see [Practice Note, Auction Sales: Overview \(International\)](#).

## Foreign Ownership Restrictions

5. Are there any restrictions on acquisitions by foreign buyers?

Two primary laws must be considered in relation to acquisitions by foreign buyers. These are the:

- Foreign Business Act B.E. 2542 (1999) (FBA). The FBA defines "foreigners" for purposes of the FBA and specifies lists the businesses that foreign nationals are prohibited from operating.
- Land Code B.E. 2497 (1954) (Land Code). The Land Code generally prohibits foreign nationals from owning land.

**FBA.** Specifically, the FBA prohibits foreign nationals from engaging in certain types of restricted/prohibited businesses in Thailand, unless an exemption applies. Including where:

- The foreign national is exempted under a specific law, such as:
  - obtaining an investment promotion from the Board of Investment of Thailand.
  - an exception is provided under a bilateral treaty.
- Permission has been obtained from the Thai Cabinet (for businesses prohibited under List 2 of the FBA) or the Director-General of the Department of Business Development, Ministry of Commerce (for businesses prohibited under List 3 of the FBA).
- Under the FBA, a "foreigner" is defined as a:
  - Natural person who is not a Thai national.
  - Juristic person (legal entity) not incorporated in Thailand.
- One of the following types of legal entities:
  - one incorporated in Thailand, but half or more of their share capital is held by individuals or legal entities under the first two above points;
  - one having investors from the first two above points holding half or more of the total capital investment;
  - a limited partnership or registered ordinary partnership managed by non-Thai national persons; or

- one registered in Thailand, where half or more of its share capital is controlled by entities mentioned in the above three points, or where these entities hold half or more of its total capital.

Under the FBA, "foreigners" (as defined) are:

- Prohibited from participating in businesses specified in List 1 of the FBA, which includes broadcasting, rice farming, plantations, crop cultivation, forestry, and land trading;
- Restricted from participating in businesses specified in List 2 of the FBA, unless they obtain approval from the Thai Cabinet. List 2 includes:
  - activities related to national safety and security; or
  - activities that impact Thai art and culture, customs, folk handicrafts, natural resources, or the environment, for example, transportation, mining, weapons manufacturing, and antiques trading.

Based on the authors' experience, approval from the Thai Cabinet is unlikely to be granted.

- Restricted from participating in businesses specified in List 3 of the FBA, unless they obtain a Foreign Business Licence from the Director-General of the Department of Business Development, Ministry of Commerce. List 3 includes 21 categories of restricted businesses, including accountancy, engineering, construction (with certain exceptions), retailing and wholesaling (with certain exceptions), advertising, hotel operation (excluding hotel management), tour guiding, sale of food and beverages, and the catch-all category "other services" (except as permitted from time to time).

**Land Code.** Under the Land Code, foreign nationals or entities as defined in that Code (*see below*) are prohibited from owning land in Thailand, unless an exemption applies or relevant permission has been obtained (for example, an investment promotion from the Board of Investment of Thailand or if the business is located in an industrial estate area). The definition of "foreigners" differs slightly from that under the FBA.

Under the Land Code, a "foreigner" is defined as:

- A natural person not of Thai nationality.
- A juristic person (legal entity) not incorporated in Thailand.
- A legal entity incorporated in Thailand with more than 49% of its share capital held by:
  - a natural person not of Thai nationality;
  - a legal entity not incorporated in Thailand; or
  - a legal entity incorporated in Thailand with more than 49% of its share capital held by a natural person not of Thai nationality or a legal entity not incorporated in Thailand; or with a majority of its shareholders (by headcount) being foreigners (as defined).

There are no restrictions on foreigners leasing land or owning buildings in Thailand, except for leasing land for agricultural businesses.

## Preliminary Agreements

6. What preliminary agreements are commonly made between the buyer and the seller before negotiating or executing the primary acquisition documents?

### Letters of Intent

Letters of Intent (LOI) are commonly established between the buyer and the seller as preliminary agreements before negotiating or executing the transaction agreements.

The LOI outlines the key terms and conditions of the proposed transaction and provides a framework for further negotiations. Typically, the LOI covers aspects such as the proposed structure of the transaction, purchase price, and any conditions that must be met for the deal to proceed.

While an LOI is generally considered a non-binding document, the parties can agree to make the LOI, or specific provisions of it such as confidentiality or exclusivity clauses, binding.

### Exclusivity Agreements

Exclusivity agreements are contractual arrangements that grant exclusive negotiating rights to one party, typically the potential buyer, for a specified duration. The other party, typically the seller, commits not to engage with any other potential buyers during this exclusivity period.

For enforceability, the terms and conditions of the exclusivity agreement must be explicit, especially regarding each party's obligations and the exclusivity period.

Remedies for breach typically include:

- Monetary damages to compensate for losses incurred due to the breach.
- Specific performance to compel a party to adhere to the exclusivity provisions.
- Injunctive relief to prevent a party from engaging with any other third parties.

### Non-Disclosure Agreements

Non-Disclosure Agreements (NDA) are contractual documents entered into between the parties to safeguard confidential information shared during negotiations from unauthorised disclosure.

Under Thai law, there is no specific formality for the NDA to be enforceable. However, the NDA should explicitly agree on the definition of confidential information, the obligations of the parties, and the duration of the non-disclosure period.

Remedies for breach typically involve monetary damages to compensate for losses incurred due to the breach, specific performance to compel a party to adhere to the NDA, and injunctive relief to prevent a party from disclosing any confidential information.

See also *Preliminary Agreements (Private Company Acquisitions) Toolkit (International):Confidentiality Agreements*.

## Due Diligence

7. How is due diligence typically carried out and what main areas does it usually cover?

Due diligence is mostly carried out on a "high-level/by exceptions" basis. This generally covers only material/red-flag issues that could adversely and materially impact the proposed transaction or the value of the business of the target within a materiality threshold agreed with the client), covering areas such as:

- Share capital and corporate structure.
- Key licences and permits.
- Material agreements.
- Indebtedness and borrowings.
- Real property.
- Employment.
- Related party transactions.
- Intellectual property.
- Litigation and disputes.
- Data protection.
- Environment (normally covered by specialised advisor).
- Finance and tax (normally covered by accounting and tax advisors).

In many transactions, the following are usually performed as part of the due diligence process:

- Customary corporate searches.
- Business security searches.
- Real property searches.



- Intellectual property searches.
- Litigation and bankruptcy searches.

See also *Due Diligence in M&A Transactions and Joint Ventures Toolkit (International)*.

## Consents and Approvals

8. What are the main consents and approvals typically required for an acquisition?

### Corporate Approvals

In a share sale, the law does not require board approval from the target company for the transfer of shares by its shareholders. Despite this, the articles of the association of the target company may require the approval of a board of directors or shareholders for a share transfer.

In an asset sale, the transfer of assets and/or business can be categorised as a reserved matter under the company's articles of association, which may require a special resolution from the board of directors and/or shareholders. If so, approval from the board of directors and/or shareholders, in accordance with the requirements stipulated in the company's constitutional documents, is required.

In any case, as part of the completion deliverables, it is quite common for a board resolution to be obtained to approve the transaction including the sale of the shares or material assets of the target company.

### Shareholder Approval

Under Thai law, there are no statutory restrictions on the transfer of shares in a private company, unless restricted under the company's constitutional documents. Most leading private companies in Thailand often incorporate share transfer restriction provisions, including drag-along/tag-along rights provisions, in their constitutional documents or the shareholders' agreement. In such cases, shareholder approval is required to enable the transfer of shares and to waive the corresponding drag-along/tag-along rights.

### Contractual Consents

In general, there is no obligation to notify or obtain consent from all the seller's creditors or the contractual parties in an asset sale or share sale, unless a specific restriction (such as a change of control provision) applies. Notification and/or consent may be necessary under the terms of a contract to transfer rights (and obligations) from the seller to the buyer as part of an asset sale.

### Regulatory Approval

If the transaction falls within an ambit of anti-trust/merger control approval requirements, the primary regulatory approval will be anti-trust approval (see [Question 33](#).) If the acquisition does not fall within the scope of general anti-trust approval, regulatory approval from other regulators overseeing specifically regulated businesses may be required. These include:

- The Bank of Thailand for financial institutions.
- The Office of the Securities and Exchange Commission for securities companies and digital asset business operators.
- The Office of the Insurance Commission for insurance companies.
- The National Broadcasting and Telecommunications Commission for broadcasting and telecom businesses.

See also [Share Acquisition Documents Toolkit \(International\)](#).

## Main Documents

9. What are the main documents in an acquisition and who generally prepares the first draft?

In share purchase transactions, the main document is the share purchase agreement (SPA), and in partial share purchase transactions, the shareholders' agreement.

For asset purchases, the primary document is the asset purchase agreement (APA), which may encompass an entire or partial business transfer.

The key difference between the SPA and APA is that the SPA focuses on the transfer of ownership of shares, while the APA focuses on the transfer of specific assets, including contracts and/or employees. The first draft of these documents is typically prepared by the party taking the lead in the transaction, often the buyer.

For an overview of the key provisions in a share purchase agreement and related documents on the cross-border acquisition of a private company, see [Share Acquisition Documents Toolkit \(International\)](#).

## Acquisition Agreements

10. What are the main substantive clauses in an acquisition agreement?

The main substantive clauses in SPA and APA generally include:

- The sale and purchased shares or assets.
- Purchase price.
- Conditions precedent.
- Pre-closing covenants.
- Closing.
- Post-closing obligations.
- Warranties and indemnities.
- Tax and other specific indemnities.
- Limitations of liability.
- Non-competition and non-solicitation.
- Confidentiality and announcements.
- Governing law/dispute resolution.

A significant difference between SPA and APA is the post-closing obligations clause. Under APA, the seller might be obliged to register some documents with government officials or perfect the transfers of any related licenses, employees, or properties.

## Warranties and Indemnities

11. Are seller warranties/indemnities typically included in acquisition agreements and what main areas do they cover?

Seller warranties and indemnities are generally included in acquisition agreements, providing assurances to the buyer regarding the condition of the target company. In a share sale, seller warranties often cover a broader area than in an asset sale, including compliance with laws, contractual obligations, and overall operations of the company.

In contrast, in an asset sale, the scope of warranties is often more specific and tailored to the assets being sold. For example, seller warranties typically do not extend to liabilities related to tax payable by the seller or any pending litigation against the seller.

Seller warranties and indemnities typically cover a wide range of areas, usually including:

- Seller's capacity and due authorisation.
- Ownership of and absence of encumbrances over the sale shares or target assets.
- Completion and accuracy of information provided to the buyer.

- Accuracy of financial information and absence of other liabilities.
- Compliance with applicable laws, including those related to data privacy, anti-bribery and corruption, and anti-money laundering.
- Maintenance of statutory books and records.
- Possession of all necessary permits and licences.
- Title to and adequacy of assets.
- Material contracts.
- Intellectual property and IT.
- Absence of litigation.
- Solvency.
- Environmental issues.
- Tax.
- Employees.
- Insurance.
- Financial indebtedness and contingent liabilities.
- Possible specific indemnities for any issues arising during due diligence, for example, non-compliance with law, outstanding litigation, and pre-closing tax liabilities.

12. What are the main limitations on warranties?

## Limitations on Warranties

Limitations on warranties in acquisition agreements generally provide a framework for managing potential breaches of warranties, usually including:

- **De minimis limitation:** This disregards minor claims by establishing a threshold below which the buyer cannot claim a breach of warranty.
- **Basket provision:** This allows claims only if they exceed a specified threshold, at which point the seller's liability is triggered.
- **Cap on total liability:** This sets a maximum amount for which the seller can be held liable. Different caps may apply to fundamental, commercial, and tax warranties.

- Time limit for bringing claims: This specifies the period within which the buyer must bring claims for breaches of warranties against the seller; different periods may apply to fundamental, commercial, and tax warranties.

## Qualifying Warranties by Disclosure

Warranties in acquisition agreements are typically subject to disclosure made fairly by the seller, usually during the due diligence process. This encompasses documents provided in the data room, publicly available information, and items explicitly specified in a disclosure letter.

13. What are the remedies for breach of a warranty? What are the time limits for bringing claims under warranties?

## Remedies

Remedies for a breach of warranty in an acquisition agreement include seeking damages for the breach of contract. In the case of a breach, the buyer may seek compensation for the actual loss incurred due to a decrease in the value of the acquired shares as a result of the breach. Under Thai law, the buyer bears the burden of demonstrating that the loss stemmed from the breach of warranty.

## Time Limits for Claims Under Warranties

Time limits for bringing claims are generally subject to a specific period, with varying durations applicable to fundamental, commercial, and tax warranties, as agreed by the parties. However, this period generally does not exceed a statutory prescription period of ten years from the date of the breach of warranty if claimed as a breach of contract.

## Signing and Closing

### Conditions Precedent

14. What common conditions precedent are typically included in a private acquisition agreement?

Common conditions precedent in a private acquisition agreement serve as requirements that must be fulfilled before the parties are obligated to proceed with the completion of the transaction. Some typical conditions precedent in share sale agreements include:

- Anti-trust clearance (if required).
- Regulatory approvals (if required for specifically regulated businesses).
- Shareholder approval from the buyer or seller (if it is a listed company and the transaction is of a certain size that triggers the relevant requirements).
- No breach of the seller's representations and warranties.
- Consents from relevant third parties, such as the target company's lenders and counterparties.
- No material adverse change affecting the target company.

## Main Steps at Signing and Closing

15. What are the main steps at signing and closing in a private share sale and asset sale? What main documents are commonly produced and executed?

### Signing

The main document required to be produced and executed at signing meetings is the SPA for a share sale and the APA for an asset sale. If required, a disclosure letter in respect of the warranties is usually delivered at signing.

If there is a gap between signing and closing, the share purchase agreement/asset purchase agreement will include pre-closing covenants or gap controls, subject to customary exceptions.

### Closing

In share sale transactions, the documents commonly required to be produced and executed at closing meetings include:

- Executed share transfer instruments for the shares being sold under the share purchase agreement (original and duplicate copies).
- Original share certificates representing the sale shares in the seller's name for cancellation.
- Original share certificates representing the sale shares in the buyer's name.
- The share register book of the target company, with the buyer recorded as the holder of the sale shares.
- The updated list of shareholders (Boj 5) to be submitted to the department of business development, ministry of commerce.
- Corporate seals of the target company, if any.

- Letters of resignation for any directors of the target company specified by the seller.
- Applications for registration of the relevant corporate changes (such as change of directors and authorised directors, or articles of association) with the department of business development, ministry of commerce.

In contrast, asset sale transactions do not require all of the above documents to be produced and executed, only the asset purchase agreement. To the extent relevant, additional documents for the completion of an asset sale include documents to be registered with government officials for certain types of assets, applications for the transfer of certain licences, and consent letters for the transfer of employees and contracts.

For an overview of the mechanics of signing and closing and key provisions of opinion letters in cross-border acquisitions, see [Signing, Closing, and Opinions Toolkit \(International\)](#).

## Execution of Documents

16. How are documents executed by companies in your jurisdiction? Are there specific formalities to execute certain types of documents?

In the context of Thailand, unlike other jurisdictions, there is no special form of execution required.

A document can be executed by a Thai company in accordance with instructions specified in the company's affidavit registered with the Department of Business Development, Ministry of Commerce. For example, it may require two authorised directors to jointly sign with the company seal affixed. In most cases, the company affidavit is requested as a supporting document.

Additionally, any person can execute documents under a power of attorney, which is executed in accordance with the instructions specified in the company affidavit. In this case, a power of attorney will be requested as an additional supporting document.

If there are specific requirements in the company's articles of association, such as a reserved matter concerning the transfer of a significant part of the business, necessitating a resolution from the board of directors and/or shareholders, a minutes of the board of directors and/or shareholders meeting is also necessary.

The formalities for the execution of documents by foreign companies must be in accordance with the requirements of the relevant foreign jurisdiction. In some cases, a legal opinion from a local law firm may be necessary to confirm the company's authorisation. If the document is to be submitted to a Thai government agency, it may be required to be notarised and/or legalised, as applicable.

Further, while electronic signatures are generally recognised under Thai law, they are not widely used in commercial transactions. The Thai authorities still require the use of wet-ink signatures for official documents, and there are insufficient court rulings on the use of electronic signatures. However, there has been an increasing trend, especially in cross-border deals, towards the use of electronic signatures, with documents signed via trusted software that can verify the identity of the signer through a secure system.

## Transferring Title to Shares

17. What formalities are required to transfer title to shares in a private company?

Generally, shares in a private company are transferable without the consent of the company or the other shareholders, unless otherwise specified in the company's articles of association.

The share transfer instrument, detailing the number of shares to be transferred, must be made in writing and signed by the transferor and transferee, along with the signature of at least one witness for each transferor and transferee. For the transfer to be effective against the company and third parties, it must also be recorded in the company's share register book.

As a side note, shares are not transferred by the submission of a shareholders list (Boj. 5) with the Department of Business Development, Ministry of Commerce.

## Seller's Title and Liability

18. Are there any terms implied by law as to the seller's title to the shares in a share sale? Is any specific wording necessary and do buyers normally impose a higher standard than is implied by law?

There are no statutory implied warranties concerning the seller's title to the shares being sold, although a breach of contract is recognised if the shares cannot be transferred to the buyer. Generally, the buyer can request standard representations and warranties regarding the seller's ownership of the sale shares and any encumbrances over the sale shares.

19. Can a seller and its advisers be liable for pre-contractual misrepresentation, misleading statements, or similar matters?

## Seller

According to Thai law, a transaction may be voidable if a declaration of intention made by the buyer is induced by fraud. In such instances, the buyer typically holds the right to annul the voidable transaction and seek damages.



A transaction might also be declared void or voidable due to a bona fide mistake, provided that the buyer can establish either of the following:

- A mistake (not attributable to the buyer's fault) concerning an essential element of the legal act, such as the parties involved or the property that is the subject of the legal act. In these instances, the transaction is considered void, and the parties are returned to their pre-transaction positions; for example, the seller is refunded the purchase price, and the buyer returns the shares to the seller.
- A mistake concerning the quality or characteristics of the counterparty or the property involved in the transaction, considered essential in ordinary dealings and without which the transaction would not have occurred. In this scenario, the transaction is voidable, allowing the buyer the option to annul the transaction and receive a refund of the purchase price.

### **Advisers**

- While the liability in respect of the void or voidable transaction does not automatically extend to the seller's advisers, the buyer has the option to file a tort claim against them. This is possible if the buyer can prove that those advisers intentionally or negligently performed a wrongful act resulting in harm to the buyer.

## **Governing Law and Arbitration**

20. Can a share purchase agreement provide for a foreign governing law? Is an arbitration provision usually included in private M&A documents?

### **Choice of Law**

In a transaction involving a non-Thai party (seller, buyer, or target company), a share purchase agreement can stipulate a foreign governing law. However, if the agreement is enforced in Thailand, the court can, at its discretion, refuse to enforce any provision of a contract governed by foreign law that is prohibited by Thai law or deemed contrary to public order or good morals in Thailand.

### **Arbitration**

In Thailand, it is quite common to incorporate arbitration clauses into private M&A documents, and these clauses are enforceable under the Arbitration Act B.E. 2545 (2002). Local courts in Thailand duly honour the chosen jurisdiction specified in arbitration clauses.

Arbitration institutions in Thailand include the Thailand Arbitration Center (THAC) and the Thai Arbitration Institute (TAI). Typically, private M&A disputes involving a non-Thai party are resolved through arbitration, while transactions involving only Thai parties are resolved in the court system.

## Consideration and Acquisition Financing

### Forms of Consideration

21. What forms of consideration are commonly offered in a share sale?

### Forms of Consideration

Cash is the most frequently used form of consideration.

### Factors in Choice of Consideration

The choice of consideration in a share sale is influenced by several factors, including the financial standing of the buyer, the transaction's structure, risk assessment and so on.

For an overview of the main issues to consider when structuring consideration and finance (debt and or equity or a combination of the two) for a cross-border acquisition, see *Consideration and Acquisition Finance Toolkit (International)*.

### Price Adjustments and Deferred Consideration

22. How is the price typically assessed and agreed? Is the price commonly adjusted?

The most common consideration mechanisms in Thailand are fixed prices and completion accounts. While the adoption of locked-box mechanisms has shown an upward trend in recent years, they remain less common compared to other purchase price mechanisms. Earn-out mechanisms find occasional use, particularly in situations where founders or executives commit to staying with the company for an extended period following closing.

See also *Earn-Out, Locked Box, and Retention Toolkit (International)*.

23. Do buyers typically pay the price in full on closing, or is deferred consideration common?

In Thailand, the majority of deals involve the payment of the purchase price in full at closing. Deferred consideration is less common in Thai transactions. Similarly, retention of part of the purchase price and escrow arrangements are not as commonly used in the Thai market as completing the payment in full on closing.

### **Financial Assistance**

24. Can a company give financial assistance to a potential buyer of shares in that company?

### **Restrictions**

Under Thai law, a company is prohibited from owning its own shares or accepting the pledging of its own shares. However, there is no specific prohibition on providing financial assistance to a potential buyer for the acquisition of shares in the company, although this is unusual in M&A transactions in Thailand.

### **Exemptions**

See above, *Restrictions*.

### **Tax**

#### **Transfer Tax**

25. What transfer taxes are payable on a share sale and an asset sale?

### **Share Sale**

For a share sale, stamp duty is payable on the original share transfer instrument, together with a payment for any duplicates.

## Asset Sale

The sale of a company's assets is considered a sale of property, which can be divided into immovable property and movable property.

The sale of immovable property is subject to:

- Special business tax. If the seller is an individual who has owned the property for a certain period, the sale is not subject to special business tax but is subject to stamp duty.
- Land transfer fees.

Sales of movable property may be subject to value added tax (VAT).

Tax exemptions are available for entire business transfers and partial business transfers that meet the criteria imposed by the Thai tax authority.

26. What are the main transfer tax exemptions and reliefs in a share sale and an asset sale? Are there any common ways used to mitigate transfer tax liability?

## Share Sale

In a share sale, the stamp duty can be deferred if the share transfer instrument is executed and kept outside of Thailand. The stamp duty will be triggered if such original copy is later brought into Thailand. In this case, the first holder of the share transfer instrument in Thailand is obliged to pay the stamp duty within 30 days from the date of receipt of such instruments.

In addition, a transfer of shares in a listed company is exempt from the stamp duty requirement.

## Asset Sale

In an asset sale, if the following conditions for an entire business transfer are satisfied, certain transfer tax exemptions in relation to VAT, special business tax, and stamp duty apply:

- It must be an entire business transfer done between companies incorporated under Thai law.
- The transferee company must submit a list of shareholders, the number of shares, and the value of the shares (as set out in the share register book) of the transferor and transferee to the Director General of the Revenue Department within 30 days from the date of registration of the transfer.
- The transferor and the transferee must not have any unpaid taxes outstanding at the date of the transfer unless a bank guarantee or other security has been provided to the Revenue Department.

- The transferor must register its dissolution resolution with the Department of Business Development, Ministry of Commerce and commence the liquidation process within the same financial period as the transfer of the business.

## Corporate Taxes

27. What corporate taxes are payable on a share sale and an asset sale?

### Share Sale

In a share sale, any profit incurred by the seller is included in the seller's annual net profit.

### Asset Sale

The same applies to an asset sale; any profit incurred by the seller is included in the seller's annual net profit.

28. What are the main corporate tax exemptions and reliefs in a share sale and an asset sale? Are there any common ways used to mitigate corporate tax liability?

### Share Sale

For a sale of shares in a listed company, capital gains tax is not payable where the seller is a natural person.

### Asset Sale

For an asset sale meeting the conditions of an entire business transfer (see [Question 26](#)), the transferor benefits from an exemption from corporate income tax.

## Other Taxes

29. Are other taxes potentially payable on a share sale and an asset sale?

In addition to paying corporate taxes, a buyer may be required to withhold tax in certain cases. However, if the buyer withholds tax when the seller is not a company incorporated in Thailand, the withholding tax can be waived or reduced if the seller is a company incorporated in a jurisdiction with a double tax treaty with Thailand.

For an overview of key tax issues relating to the structure and tax costs after closing of a cross-border acquisition, see [Tax \(Private Company Acquisitions\) Toolkit \(International\)](#).

## Employees

### Information and Consultation

30. Are there obligations to inform or consult employees or their representatives or obtain employee consent to a share sale or asset sale?

### Asset Sale

Consent from employees is necessary for a change of employer. In the event that an employee disagrees with the change and their employment is terminated, they are entitled to rights and benefits arising from the termination, such as severance pay, and the employment will not be transferred from the seller to the buyer.

### Share Sale

A share sale is not categorised as a change of employer, as the target company remains the employer. Therefore, employees' consents are not required unless otherwise stipulated in a contractual arrangement with the employees, particularly regarding the change of control provision.

### Transfer in a Business Sale and Other Protections

31. Are employees automatically transferred to the buyer in a business sale? What other protection do employees have against dismissal in the context of a share sale or asset sale?

## Transfer on a Business Sale

In a business sale, the buyer has the discretion to decide whether to retain or terminate existing employees. Employees are not automatically transferred to the buyer in a business sale (see [Question 30](#)).

## Other Protections

In both an asset sale and a share sale, in the event of dismissal, employees are entitled to certain rights and benefits as stipulated by Thai labour laws, which may include, but are not limited to:

- Severance pay based on their length of service, as prescribed by Thai labour laws.
- The right to challenge dismissals that are deemed unfair or not in compliance with labour laws.
- The specific rights and benefits of employees can vary based on contractual arrangements, such as change of control or "golden parachute" provisions.
- For an overview of key employment law issues to consider in any acquisition between two parties in a cross-border context, see [Employees \(Private Company Acquisitions\) Toolkit \(International\)](#).

## Pensions

32. Do employees commonly participate in private pension schemes established by their employer? If an employee is transferred as part of a business acquisition, is the transferee obliged to honour existing pension rights or provide equivalent rights?

### Private Pension Schemes

Private pension schemes are not common in Thailand.

### Pensions on a Business Transfer

For provident funds in a business transfer, transferring employees are considered as resigning from the transferor. They are eligible to receive a payment from the transferor's provident fund, subject to the relevant provident fund's rules.

## Competition/Anti-Trust Issues

33. Do private acquisitions have to be notified to a competition law regulator in certain circumstances?

## Notification and Regulatory Authorities

The Trade Competition Commission (TCC) is the regulator under the Trade Competition Act B.E. 2560 (2017) (TCA). It issues regulations on merger control, reviews and makes decisions on pre-merger filings and post-merger notifications, and imposes fines and sanctions.

The Office of the Trade Competition Commission (TCCT) carries out the administrative functions of the TCC.

If a pre-merger filing is required, the merger transaction must not be completed until approval from the TCC is obtained. The TCC has 90 days (plus a possible extension of 15 days) from the date of submission to issue its decision.

A post-merger notification must be submitted within seven days after the transaction has been completed.

## Substantive Test

The substantive test for reviewing a pre-merger filing is whether the merger is all of the following:

- Reasonably necessary for the business.
- Beneficial to business promotion.
- Poses no serious harm to the Thai economy as a whole.
- Has no material effect on the due interests of consumers in general.

See also [Merger Control Quick Compare Chart: Thailand](#).

## Environment

34. Who is liable for clean-up of contaminated land? In what circumstances can a buyer inherit and a seller retain liability in an asset sale and a share sale?



Under Thai law, there is no specific requirement for a factory operator to clean up contaminated land on the sale of an asset or business. However, a factory operator must comply with applicable environmental laws applicable to its business and is liable for any breach of such laws.

The main applicable environmental laws for factory operators are the:

- Factories Act B.E. 2535 (1992).
- Public Health Act B.E. 2535 (1992).
- Promotion and Conservation of National Environmental Quality Act B.E. 2535 (1992).

Generally, a factory operator is exposed to liability with respect to a breach of or non-compliance with the relevant environmental laws or factory-related laws when the competent official investigates the factory and discovers the breach or non-compliance.

Where a factory operator fails to comply with applicable environmental laws, the factory operator can be:

- Asked by the competent official to cease and rectify the violating act within a specified period of time.
- Obligated to temporarily cease all or part of the factory operations by order of the Permanent Secretary or the person entrusted by the Permanent Secretary. If the factory operator violates this order, it will be subject to a fine and/or imprisonment.
- Obligated to permanently close the factory by order of the Permanent Secretary or their representative if the factory operator fails to rectify or improve the factory or comply with the order.

In an asset sale, legal liability remains with the seller if a factory operator fails to comply with environmental laws, even after the seller sells the factory to the buyer.

In a share sale, liability for failing to comply with environmental laws remains with the target company as the factory operator. Penalties can extend to directors, managers, or any person responsible for the operation of the factory.

If after the acquisition, the buyer (in the case of an asset sale) or the target company (in the case of a share sale) fails to comply with environmental laws, the buyer or the target company (as the factory operator) will also be liable for its non-compliance from the time of acquisition.

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