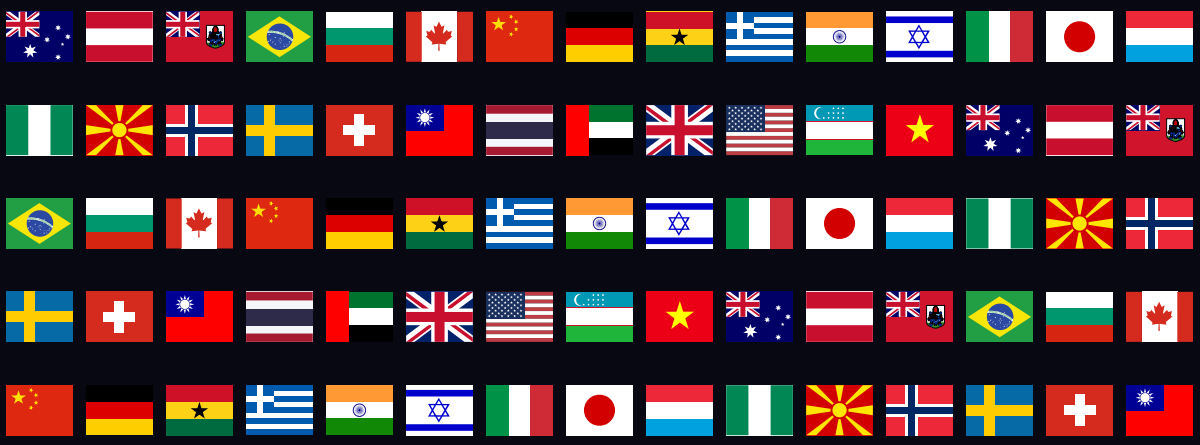
PUBLIC M&A

Thailand



LEXOLOGY
Getting The Deal Through

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Public M&A

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Quick reference guide enabling side-by-side comparison of local insights into public M&A issues worldwide, including types of business combination; principal laws and regulations; cross-border and sector-specific considerations; governing laws; filing and disclosure requirements; duties of directors and controlling shareholders; shareholder approval and appraisal rights; hostile transactions; break-up fees and frustration of additional bidders; government influence; conditional offers; financing; minority squeeze-outs; waiting and notification periods; tax; labour and employee benefits; restructuring, bankruptcy or receivership; anti-bribery, anti-corruption and sanctions issues; and recent trends.

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STRUCTURES AND APPLICABLE LAW

Types of transaction

How may publicly listed businesses combine?

There are several types of businesses combination in Thailand, namely share acquisitions, asset acquisitions and amalgamations. Among these, share acquisitions and asset acquisitions are most commonly used in the Thai market. Recently, amalgamation has also been a choice in the telecommunications sector, for example, the merger between True Corporation Public Company Limited (True) and Total Access Communication Public Company Limited (Dtac), approved by the shareholders of both companies in April 2022. The merger will be subject to customary regulatory approvals.

Law stated - 25 May 2022

Statutes and regulations

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

The main laws and regulations governing business combinations and acquisitions of publicly listed companies are:

- the Public Limited Companies Act BE 2535 (1992) (PLCA): the PLCA stipulates the required corporate actions for listed and non-listed public companies to be taken prior to engaging in important matters (eg, the shareholders' approval as a prerequisite for divesting or acquiring the business); and
- the Securities and Exchange Act BE 2535 (1992) (SEA):
- under the SEA, the Securities and Exchange Commission of Thailand (SEC) and the Stock Exchange of Thailand (SET) are the authorities that regulate day-to-day operations (eg, disclosure and reporting requirements) and public offerings, including business takeovers of listed public companies, by issuing, as empowered by the SEA, subordinate regulations and orders, for instance:
- the Notification of the Capital Markets Supervisory Board TorJor No. 12/2554 Re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers;
- the Notification of the Capital Markets Supervisory Board TorChor No. 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 the Company Formed by Amalgamation of Companies BE 2542 (1999).

In addition, merger control in Thailand is governed by the Trade Competition Act BE 2560 (2017) (TCA). The TCA regulates mergers (including acquisition of business) and behaviours that may affect competition. The TCA does not apply to businesses already regulated by specific legislation governing competition issues (examples of sectors with specific legislation governing competition issues include: telecommunications, broadcasting and television and energy). Under the TCA, there are two filing obligations (1) pre-merger filing (requiring approval) and (2) post-merger notification. Business operators conducting a merger may be subject to one of the two filing obligations. A pre-merger filing with the Trade Competition Commission (TCC) will be required if a merger results in a monopoly or a business operator with dominant market power. A post-merger notification will be required if a merger may substantially lessen competition in any relevant market. For the latter, the merging entity (or merging entities) must notify the TCC within

seven days of the merger.

Thai foreign ownership legislation is also relevant. In Thailand, foreign companies are restricted from conducting certain restricted businesses under the Foreign Business Act BE 2542 (1999) (FBA). The FBA limits foreign participation in certain business activities, including any type of service business (including leasing). Certain specific business areas are subject to their own laws, but generally foreign individuals or entities (and Thai entities owned as to more than 49.99 per cent by foreign individuals or corporations) are prohibited from holding more than 49.99 per cent of the shares of any company engaging in these restricted businesses unless an approval of the Ministry of Commerce is granted prior to conducting any such business. Such approval may not be forthcoming. Foreign ownership restrictions may be exempted if the target company has the benefit of an 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, similar restrictions apply to foreign individuals or corporations in relation to land ownership in Thailand, unless a special exemption is obtained from the BOI or pursuant to specific laws such as the Eastern Special Development Zone Act BE 2561 (2018) .

Law stated - 25 May 2022

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. Any acquisition vehicle will need to be structured to comply with the FBA, the Land Code and foreign ownership restrictions under legislation relating to specific industries (eg, telecommunications, transportation and finance).

Law stated - 25 May 2022

Sector-specific rules

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

Certain industries have specific regulations that may have separate requirements in different respects. For example, in relation to the foreign shareholding limitation, in addition to the foreign shareholding restriction prescribed under the FBA, there are other specific foreign ownership restrictions for some highly regulated industries in Thailand (such as financial institutions, insurance and telecommunications).

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. There are also restrictions on the number of non-Thai directors.

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 in order to be qualified to apply for a licence to provide certain types of services in the telecommunications business from the National Telecommunications Commission. However, there is no restriction on foreign directors of telecommunications companies.

A company incorporated under Thai law engaging in a transportation business must have at least 51 per cent of its

total issued shares owned by Thais in order to be qualified to apply for a transportation business licence from the Central Land Transport Control Commission. 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 Organisation to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services Act BE 2553 (2010) and the Energy Industry Act BE 2550 (2007), respectively.

Law stated - 25 May 2022

Transaction agreements

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

Transaction agreements are typically entered into for the acquisition of a block of shares or a controlling interest in or assets of publicly listed companies. For share acquisition deals, share purchase agreements (or share subscription agreements if the acquisition is of newly issued shares) are generally entered into, while asset purchase agreements (often called business transfer agreements) are typically used in asset acquisitions. However, subject to the procedures specified in the PLCA, an amalgamation – where at least two companies are dissolved and their assets and liabilities, rights and obligations are automatically transferred to a newly established company by operation of law – does not require any agreements to combine the targeted companies. In numerous deals, certain ancillary agreements are also entered into before entering into the definitive agreements – for instance, standstills and exclusivity agreements and confidentiality agreements.

The main law governing contractual obligations is the Civil and Commercial Code. In asset purchase transactions, the transfer of certain types of assets, such as land, aircraft and registered machinery, is subject to registration with the relevant government agency, otherwise the transaction may be void.

Law stated - 25 May 2022

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 a report (Form 246-2) with the Office of the Securities and Exchange Commission of Thailand pursuant to section 246 of the Securities and Exchange Act (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 and so on);
- depending on the size or materiality of the transaction to the acquirer, and whether the transaction is a connected transaction for the acquirer under 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;
- the filing of Form 247-3 if a mandatory tender offer is triggered (ie, reaching or exceeding 25 per cent, 50 per cent or 75 per cent of the total voting rights of the target company) and the filing of Form 247-4, being the tender offer document itself;
- a pre-merger filing or post-merger notification under the Trade Competition Act; and
- various corporate filings in the case of an amalgamation.

For the transfer of shares, the rate of stamp duty is calculated at 0.1 per cent of the greater of the selling price and the paid-up value of the shares. If the share transfer instrument is executed and kept outside Thailand, stamp duty is not payable, unless the share transfer instrument is subsequently brought into Thailand.

However, in a transfer of shares of a listed company, stamp duty will be exempted in the following circumstances:

- transfers of registered or approved securities for which Thailand Securities Depository Co, Ltd acts as registrar; and
- transfers of shares in the trading market under the law governing the securities and the SET.

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 Office of the Securities and Exchange Commission of Thailand (SEC):

Rate of fees (baht)	Value of tender offer (baht)*
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.	

In the case of a pre-merger filing with the Trade and Competition Commission, the fee for the filing of a request for a permission to conduct a merger is 250,000 baht per request. There is no fee imposed on post-merger notification.

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 property of the Land Department. Depending on the nature of the transaction, the transfer of land

may also be subject to:

- specific business tax: 3.3 per cent of the higher of valuation and sales price;
- stamp duty: 0.5 per cent of the higher of 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 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.

Law stated - 25 May 2022

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?

This depends on the structure used, the size of the transaction and the parties.

If the acquisition or disposal is above a certain size relative to the acquiring or disposing company, or a transaction with persons connected to the acquiring or disposing company, or is otherwise material to investors, disclosure regulations issued under the Securities and Exchange Act or by the SET may apply.

A listed company must notify the SET promptly when the company decides to enter into the transaction, which is when the board resolution approving the transaction is passed. Notice 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. Generally, according to the regulations of the SET, the disclosure of the transaction must only be made once the transaction is certain (eg, the definitive documentation is signed). Therefore, the listed company may not need to disclose the transaction immediately if the transaction is still uncertain. Examples of the information to be disclosed are; date of the transaction; the counterparty and relation with the listed company, details of assets to be acquired or disposed; total value of consideration; payment method; other key conditions of the transaction, value of assets acquired or disposed of; benefits that the listed company will obtain from the transaction; and the source of funds.

The requirement for disclosure 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 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 are: the date of the transaction and the name of counterparty; a description of the assets, services and financial assistance to be provided or received; the total value and the measurement of the total value; the total transaction value or payment method; and the source of funds.

In this case too, 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 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 tentative information about the business; the objectives of the business; the benefits expected to be received; the steps, conditions, time frame and procedures for the amalgamation; and 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.

Law stated - 25 May 2022

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 (eg, 5 per cent, 10 per cent, 15 per cent and so on), the shareholder of the listed company is required to submit a report on acquisition or disposal of the securities (Form 246-2) to the Office of the SEC within three business days of the date of share acquisition or disposition. Currently, the filing of Form 246-2 must be done via the SEC online system only.

This form includes information such as: the name of the shareholder and its concert parties and related persons; the type and number of securities held by the shareholder, together with its related persons and persons acting in concert; the date and means of the acquisition; and the highest price paid by the shareholder (or its related persons or persons acting in concert) 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 new merged company does not result in filing of the Form 246-2).

Law stated - 25 May 2022

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 comply with all laws, the objectives and articles of association, the resolutions of the board of directors' meetings and the resolutions of the 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 similar manner to an ordinary person undertaking business under similar circumstances. Directors are deemed to have performed with responsibility and due care if the decision was made:

- with the honest belief and on reasonable grounds that it was for 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 matter.

With respect to the duties of the board of the target company 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, 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 SEC 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.

The directors or managers do not owe any duties to the company's creditors or other stakeholders in connection with a business combination or sale.

Controlling shareholders have no duties in this area.

Law stated - 25 May 2022

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 (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 the shareholder who has special interest in the proposed transaction is not allowed to vote on such matter:

- sales or transfers of business of the public company, in whole or in essential part, to other persons;
- purchases or acceptances of transfers of 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, the shareholder approval is still required if the transaction constitutes:

- 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 shareholders who have conflicts of interest.

Law stated - 25 May 2022

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. This means 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 or voluntary 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 - 25 May 2022

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?

Breakup fees, though 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 will award damages based on the actual damage suffered by the non-breaching party as a result of a breach, and it is at their discretion to adjust the amount of the break fee agreed by the parties if the courts deem it to be disproportionately high.

A non-refundable deposit is not considered a stipulated penalty; therefore, the court is unable to adjust the amount of the non-refundable deposit, even if it is disproportionately high. 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 award of the damages.

The other mechanisms that protect the deal shall 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 - 25 May 2022

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 - 25 May 2022

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?

The conditional tender offer is allowed only in 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 must be obtained before conducting the tender offer. The financing can be conditional; however, if the offeror is unable to terminate the tender offer (a financing condition is not permitted in the tender offer), it has the potential liability to accept target shareholders if it does not have sufficient funds to settle on the closing of the tender offer. In recent years, the loan documentation has included 'certain funds' provisions on certain transactions.

In the case of any tender offer, 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 the 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 closing of the specified offer period, the number of shares tendered is less 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 - 25 May 2022

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?

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

Law stated - 25 May 2022

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 - 25 May 2022

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 competing business transactions.

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

Law stated - 25 May 2022

OTHER CONSIDERATIONS

Tax issues

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

The 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. 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.

Capital gains arising out of selling shares on the Stock Exchange of Thailand by an individual (either Thai or non-Thai) are exempted from income tax. Although no VAT, specific business tax (SBT) or stamp duty is levied on the sale of shares, 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).

On a sale of assets, SBT, stamp duty and VAT are imposed 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 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 criteria as set in the relevant regulations, exemptions from income tax, VAT, SBT and stamp duty apply.

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

Law stated - 25 May 2022

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, in a share acquisition, the employer remains unchanged, while in an asset acquisition, the employer will be changed from the seller (as the transferor of employees) to the acquirer (as the transferee of the employees). No consent is required from employees on a share transfer, but on an asset transfer the employees will be transferred to a new employer. To transfer the employees, the consent of each transferring employee must be obtained (it is advisable that this consent is made in writing). In addition, 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 also be recognised by the new employer in calculating any benefits, including any termination benefits.

The position on amalgamations is the same as on asset acquisitions, as there is a change of employer.

Law stated - 25 May 2022

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 internal regulations of the Official Receiver.

Under the same law, if the target is in the process of business reorganisation, during the period of 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 check whether it 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 - 25 May 2022

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 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.

However, under the Anti-Money Laundering Act BE 2542 (1999) (AMLA), it is required that some businesses (including financial advisers under the Securities and Exchange Act) notify the Anti-Money Laundering Office (AMLO) of their transactions involving any use of cash that is more than the amount set in the AMLA. Similarly, the Land Offices (under the Department of Land of Thailand) must also notify the AMLO of certain transactions regarding immovable property.

Law stated - 25 May 2022

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?

The M&A market is still recovering from the impact of the covid-19 pandemic. Recently, public M&A activity has increased in various sectors, including telecommunications and financial services.

Through its Thailand 4.0 Economic Plan, the Thai government has encouraged investments in projects relating to infrastructure and energy, as well as technology innovation through investment incentives and tax incentives.

The Eastern Economic Corridor (EEC) aims to be a new important hub for trade, investment, regional transportation and a strategic gateway for Asia, and will promote large-scale investments. The Thai government has launched a pilot project in three provinces of Thailand, namely Chachoengsao, Chonburi and Rayong. Thus far, eight programmes have been implemented for EEC regional development, including infrastructure development, targeted industries development, and business and finance development. At present, 21 zones for targeted industries have been promoted. Also, the Board of Investment published Announcement of the Board of Investment No. 2/2563 (2020) to promote the targeted activities in the EEC and to specify the rights and incentives granted to investment in this area. The Public-Private Partnership Act BE 2562 (2019) (PPPA) was promulgated to facilitate and promote joint investments between the public and private sectors. The EEC, together with the PPPA, will play an important role in promoting not only the economic growth of Thailand, but also its M&A market.

In addition, the Personal Data Protection Act BE 2562 (2019) (PDPA) finally entered into force on 1 June 2022, having been postponed due to the covid-19 outbreak. Upon the full enforcement of the PDPA, companies providing goods or services to Thai residents or tracking their behavior, regardless of the location of their headquarters, must be aware of issues surrounding personal data processing and certain requirements under the PDPA, including but not limited to, having legal bases for processing personal data, informing data subjects of certain information specified in in the PDPA (eg, purpose of processing, personal data to be collected, retention period, rights of data subjects) and appointing a data protection officer.]

Law stated - 25 May 2022

Jurisdictions

Australia	Squire Patton Boggs
Austria	Wolf Theiss
Bermuda	BeesMont Law Limited
Brazil	Loeser e Hadad Advogados
Bulgaria	Kambourov & Partners, Attorneys at Law
Canada	Bennett Jones LLP
China	HJM Asia Law & Co LLC
Germany	GSK Stockmann
Ghana	Kimathi & Partners Corporate Attorneys
Greece	Karatzas & Partners Law Firm
India	Khaitan & Co
Israel	Barnea Jaffa Lande
Italy	Nunziante Magrone
Japan	Hibiya-Nakata
Luxembourg	Bonn & Schmitt
Nigeria	G Elias
North Macedonia	Debarliev Dameski & Kelesoska
Norway	Aabø-Evensen & Co
Sweden	Advokatfirman Hammarskiöld
Switzerland	Homburger
Taiwan	Lee and Li Attorneys at Law
Thailand	Weerawong, Chinnavat & Partners Ltd
United Arab Emirates	IN'P Ibrahim & Partners
United Kingdom	Herbert Smith Freehills LLP
USA	Simpson Thacher & Bartlett LLP

Vietnam	Bizconsult Law Firm