



Corporate M&A 2024

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Thailand

Law and Practice

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Weerawong, Chinnavat & Partners Ltd. () represents purchasers, sellers, advisers, lenders and financial intermediaries in domestic and cross-border M&A, LBOs and divestments. The firm acts for Thai and international clients on corporate transactions of all kinds, including acquisitions of listed companies, private equity investments and M&A of companies engaged in activities across the full breadth of the Thai economy. It also assists Thai companies on their expansion elsewhere in Asia and around the world. The firm advises clients on acquisition financing, regulatory issues, international trade matters, competition law, IP issues, real estate matters, and labour issues that involve complex cross-border M&A. For its many private equity clients, the firm adds value through its extensive experience in structuring bids, negotiating and drafting acquisition and financing documentation, and structuring exit strategies for investors.



▼ 1. Trends

▼ 1.1 M&A Market

Throughout the year 2023, the market witnessed significant growth and concentration in M&A activities within the technology, automotive, and energy sectors, underscored by notable business combinations and joint venture arrangements among major industry players. Recently, financial investors and private equity have played an active role in shaping private M&A transactions in Thailand, particularly in terms of M&A documentation, which is now aligning more closely with international practices. This includes fund flow mechanisms, the scope and qualifications of warranties and indemnities, limitations of liabilities, and the use of warranty and indemnity (W&I) insurance. Moreover, the ability to exit investments through trade sales or IPOs is gaining prominence for buyers venturing into new business realms or experiencing rapid growth, such as in startup ventures. On the other hand, public M&A usually involves Thai conglomerates that are looking to diversify into sectors such as technology, renewable energy, and healthcare to mitigate investment risks and enhance competitiveness in a swiftly evolving economy.

▼ 1.2 Key Trends

In 2023, the technology, automotive, and battery technology sectors exhibited upward trends compared to 2022. This growth was fuelled by a strong emphasis on innovation and sustainability goals within these industries. Notably, there has been growing consumer interest in Thailand towards electric vehicles, including demand for charging stations, contributing to the momentum in the automotive sector and related businesses. The government has introduced various incentive schemes and policies to boost the electric vehicle industry, aiming to expand its presence in the Thai market in the foreseeable future. Moreover, the food and beverage (F&B) 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.

▼ 1.3 Key Industries

In addition to the key trends in 2023 within the technology, automotive, and battery technology sectors, the food and beverage (F&B), entertainment, and energy sectors remained active. Several high-profile deals were concluded in 2023, including:

- The sale of the KFC business in Thailand by Restaurants Development Co. Ltd., a major KFC franchisee with over 280 restaurants and 4,500 employees, to Devyani International DMCC, a subsidiary of India-listed Devyani International Limited, valued at approximately THB4.5 billion (approximately USD128.9 million).
- The acquisition by Universal Music Group, one of the world leaders in music-based entertainment, of a 70% shareholding in a joint venture valued at THB1.6 billion (approximately USD45.5 million) with RS Music, one of Thailand's most successful music and entertainment companies. Following its completion, the joint venture now owns and manages a music catalogue of over 10,000 songs and related content. This includes music videos, lyrics, and compositions, as well as pictures, photographs, and other rights under licence agreements.
- 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), by share acquisition through the combination of the 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% stake in Esso Thailand, with a total deal value of approximately THB3.5 billion (approximately USD95 million).

▼ 2. Overview of Regulatory Field

▼ 2.1 Acquiring a Company

A share acquisition is the primary means of acquiring a company. It is less complicated and has fewer legal implications than asset sales.

▼ 2.2 Primary Regulators

The primary regulator in the acquisition of shares of public companies listed on the Stock Exchange of Thailand (SET) is the Securities and Exchange Commission (SEC). This regulator applies the Securities and Exchange Act (the "SEC Act") and regulations issued under it, as well as the Public Limited Companies Act (PLCA). The PLCA governs both listed and non-listed public companies and stipulates the required corporate actions to be taken prior to engaging in significant matters (eg, obtaining shareholders' approval as a prerequisite for divesting or acquiring a business or material assets). The filing and disclosure obligations for such share acquisitions are outlined in the governing laws and regulations.

With respect to merger control, the Trade Competition Commission (TCC) generally has the authority to oversee and regulate M&A activities in industries that are not governed by specific laws in Thailand.

In addition, M&A activity in certain sectors is regulated by specific authorities; for example, the insurance business is regulated by the Office of the Insurance Commission, banking and finance businesses by the Bank of Thailand (BOT), and the telecommunications business by the National Broadcasting and Telecommunications Commission (NBTC).

▼ 2.3 Restrictions on Foreign Investments

Foreign investment is generally governed by the Foreign Business Act (FBA), international treaties, and privileges granted by the Board of Investment (BOI). Pursuant to the FBA, a foreign entity is prohibited from conducting certain businesses in Thailand unless it obtains a foreign business licence from the Ministry of Commerce (MOC) or qualifies for specific exemptions. For these purposes, a foreign entity includes a Thai-incorporated company with 50% or more of its shares owned by foreigners.

Businesses in sectors such as finance, securities, and insurance, which are licenced or approved by Thai regulators, are exempt from the ownership requirements of the FBA but are subject to foreign ownership restrictions under the specific legislation applicable to them.

Furthermore, pursuant to the Land Code of Thailand, a foreign entity, including a Thai-incorporated company with more than 49% of its shares owned by foreigners or a majority of its shareholders (by headcount) being foreigners, is prohibited from owning land in Thailand unless, among other things, an Investment Promotion Certificate is granted by the BOI.

▼ 2.4 Antitrust Regulations

The 2017 Trade Competition Act BE 2560 (TCA) is currently the primary legislation governing the merger control regime in Thailand. Any merger that meets the criteria under the TCA and relevant subordinate regulations issued thereunder is subject to the merger clearance process as stipulated under the TCA. This legislation also applies to state-owned enterprises and public organisations, but exemptions have been provided for duties specified by law or cabinet resolutions to enhance national security, public benefit or the provision of utilities.

The TCA does not apply to certain industries where merger control is already regulated by specific legislation for that industry (ie, the telecommunications, broadcasting and television, and energy sectors).

An important point to note regarding the merger control rules under the TCA is that it divides regulated mergers into two categories:

- those that require prior approval (pre-merger filing) from the TCC; and
- those that only require TCC notification after closing (post-merger notification).

Essentially, the submission of a pre-merger filing will be required if the merger may result in the creation of a monopoly or a dominant market position. Conversely, if the merger may substantially lessen competition, the merging entity (or entities) must notify the TCC within seven days after the completion of the merger.

▼ 2.5 Labour Law Regulations

The 2019 Labour Protection Act BE 2562 (LPA) stipulates that for the transfer of employees during a merger or amalgamation of businesses, each employee has the right to choose and consent whether he or she would like to transfer employment to the new employer. If the employee does not consent to such a transfer and is no longer employed by the employer, the employment will be deemed terminated, entitling the employee to severance pay.

No employee consent is required for a share acquisition, as the employer remains unchanged.

▼ 2.6 National Security Review

There is no national security review for acquisitions in Thailand.

▼ 3. Recent Legal Developments

▼ 3.1 Significant Court Decisions or Legal Developments

A recent development earlier this year concerns the FBA, with the MOC holding a regulatory hearing on a ministerial regulation that proposes exemptions from the FBA's restrictions for nine types of service businesses and two types of derivatives brokerages. Upon enactment, this would streamline and relax the foreign business licence requirement for derivatives brokerages, software development businesses, telecommunication services, inter-company services (eg, human resource and information technology management and provision of guarantees of debts), oil drilling services, treasury centres under foreign exchange control laws and regulations, and other service businesses under the laws and regulations regarding securities, stock exchanges, and derivatives, among others.

To illustrate, the provision of guarantees of debts in Thailand between qualifying entities, such as an entity holding 50% or more of the capital in another entity, which considered as the service business will be exempt from the foreign business licence requirements.

▼ 3.2 Significant Changes to Takeover Law

There have been no significant changes to takeover law in Thailand in the past 12 months and to our knowledge no takeover legislation is under a review that could result in significant changes in the coming 12 months. The following measures were implemented in the past couple of years to lessen the burden for tender offerors:

- the revocation of the requirements for tender offerors to submit copies of their tender offer documents and relevant documents to the SET and the requirement to publish their tender offers in a local newspaper;
- the additional option for tender offerors to submit documents to shareholders via electronic means; and
- the new requirement for tender offerors to submit relevant reports, applications and documents to the SEC electronically, as paper-based submissions are no longer permitted.

That said, there has been a recent focus-group discussion initiated by the SEC with respect to improvement on certain exemptions from the mandatory tender offer obligation. However, it is in an early stage of development, and any significant changes to the takeover rules are expected in 2024.

▼ 4. Stakebuilding

▼ 4.1 Principal Stakebuilding Strategies

Stakebuilding is commonly employed prior to launching a tender offer; the strategy depends on the level of control the acquirer wishes to attain. A tender offer for all the shares in a listed company is mandatory when 25%, 50% or 75% of the total voting rights in the listed company are acquired.

▼ 4.2 Material Shareholding Disclosure Threshold

If an acquirer reaches or exceeds 5% or a multiple of 5% of the total voting rights of shares in a listed company (whether increasing or decreasing their shareholding), they must disclose such information by submitting a report on the acquisition or disposition of the securities (Form 246-2) to the SEC within three business days after the transition. The holdings of related persons of the acquirer, persons acting in concert with the acquirer, and their related persons, are aggregated for the purposes of determining whether the disclosure requirement is triggered (Section 246 of the SEC Act).

A separate disclosure obligation arises if the acquirer acquires convertible debt securities or warrants and the number of shares they would hold after converting the securities or exercising the warrants exceeds 5%, or a multiple of 5%, of the total voting shares of the target.

Directors, members of management, auditors and certain connected persons, including companies in which they have an interest exceeding 30%, are obliged to disclose details of any acquisition or disposal of shares, securities whose price is linked to shares or listed derivatives (Section 59 of the SEC Act).

Moreover, from 19 February 2024, listed public companies, property funds, infrastructure funds, and investment trusts are required to disclose the list of securities holders holding not less than 0.5% of the paid-up capital; provided that the list must include at least ten securities holders. Such disclosure shall be disclosed within 14 days from the book closing date or the date of the shareholders' meeting, whichever is applicable.

▼ 4.3 Hurdles to Stakebuilding

The reporting thresholds under Thailand's takeover rules apply uniformly to all publicly listed companies. Public companies, whether listed or not, are legally prohibited from restricting the transferability of their shares, although they may impose restrictions necessary to ensure compliance with any applicable foreign ownership restrictions.

▼ 4.4 Dealings in Derivatives

Dealings in derivatives are permitted.

▼ 4.5 Filing/Reporting Obligations

Under securities disclosure laws there is no requirement for disclosure unless the derivative is in the form of a convertible debt security or warrant. In the case of exchange-traded derivatives, any acquisition by directors, management, auditors or persons or entities connected with them requires disclosure.

Currently, there are no specific provisions on derivative transactions for competition purposes. Whether the acquisition of derivatives will be subject to a pre-filing/notification obligation under the TCA depends on the transaction structure. For example, if the closing of a derivatives transaction does not result in any transfer of the underlying shares, such a transaction will not trigger merger clearance in Thailand.

▼ 4.6 Transparency

Shareholders are required to disclose the purpose of their acquisition and their intentions regarding control of the company.

▼ 5. Negotiation Phase

▼ 5.1 Requirement to Disclose a Deal

As a general rule, the SET Information Disclosure Guidelines require the disclosure of a deal only when the deal is confirmed. Therefore, in practice, a listed company should disclose the deal once a definitive agreement is signed. However, there are exceptions where a company may disclose such information prematurely, such as if incorrect information that could affect the stock price is leaked to the public.

▼ 5.2 Market Practice on Timing

Market practice on the timing of disclosure does not differ from the legal requirements.

▼ 5.3 Scope of Due Diligence

Full-scale due diligence – including legal, financial, accounting, tax, HR, and other relevant areas – is generally required, except in certain circumstances where limited scope due diligence may be preferred by the acquirer.

In some cases involving the acquisition of shares in a listed company, the seller may insist that the purchaser simply relies on publicly available information.

▼ 5.4 Standstills or Exclusivity

Generally, standstills and exclusivity agreements are demanded during the negotiation phase.

▼ 5.5 Definitive Agreements

Tender offer terms are not commonly documented in a definitive agreement. If a tender offer is triggered by the acquisition of a controlling shareholding, the terms of the tender offer are purely a matter for the acquirer, as the tender offer will occur after the closing of the sale of the controlling shareholder has occurred.

▼ 6. Structuring

▼ 6.1 Length of Process for Acquisition/Sale

There is no fixed rule for the time it takes to acquire or sell a business in Thailand. A controlling stake may be sold relatively quickly if the selling shareholder is able to dictate the terms on which acquirers purchase its holding, such as by restricting due diligence and offering limited representations and warranties, or setting minimal conditions precedent.

Once the sale of a controlling stake has occurred, if a tender offer is triggered, the tender offer must remain open for between 25 and 45 consecutive business days, although this timetable can be extended if a competing bidder emerges. Conditions can be specified for making a voluntary tender offer (as opposed to a mandatory tender offer), such as requiring regulatory approval, but these conditions must be satisfied within one year of the announcement.

▼ 6.2 Mandatory Offer Threshold

Under securities regulations, an acquirer must make a tender offer for all shares and, subject to certain exceptions, equity-linked securities of a target company upon acquiring 25%, 50%, or 75% of the total voting rights of a listed target company that is a listed company. Acquisitions by the

acquirer, its related persons and its concert parties and their related persons are aggregated for this purpose.

A mandatory tender offer may be triggered not only by acquiring shares in the target but also by acquiring shares in an intermediate or ultimate holding company that controls the target, under the chain principle rule.

▼ 6.3 Consideration

Cash is the most commonly used form of consideration in business combinations. In takeover offers, alternative forms of consideration may be offered, but one must be cash.

▼ 6.4 Common Conditions for a Takeover Offer

There are two types of tender offers. Firstly, there is a “mandatory” tender offer, which is triggered once the acquirer acquires 25%, 50% or 75% of the total voting rights of the target company. The mandatory tender offer must be unconditional as to the level of acceptances and must offer to buy all the remaining shares of the target company. Secondly, there is a “voluntary” tender offer, in which the acquirer may set an acceptance condition, usually a minimum percentage of shares they wish to acquire. In this case, if the acquirer makes the tender offer, but the number of shares falls short of the minimum percentage, the acquirer may withdraw the tender offer.

In the case of any tender offer, an offeror may cancel the offer if an event or action occurs after the offer document has been filed with the SEC but during the offer period, which causes or may cause serious damage to the status or assets of the offeree’s business, and the act or event is not a result of the offeror’s actions or any act for which they are responsible. However, the right to cancel must be explicitly stated in the offer document.

It is common to include a material adverse change condition in a voluntary tender offer.

▼ 6.5 Minimum Acceptance Conditions

The minimum acceptance condition is usually set at a specific percentage of the total voting rights. The relevant control threshold in Thailand is more than 50% of the total voting rights. However, an acceptance condition is only available in a voluntary tender offer.

▼ 6.6 Requirement to Obtain Financing

A privately negotiated transaction may be contingent on the availability of financing. However, a tender offer (whether mandatory or voluntary) cannot be subject to the financing condition, as the tender offer rules require the offeror to provide the SEC with information and evidence related to the sources of funds used by the offeror for the takeover.

▼ 6.7 Types of Deal Security Measures

Security measures such as break-fees, non-solicitation provisions, and non-disclosure and confidentiality provisions are among the most commonly employed measures to ensure deal certainty.

▼ 6.8 Additional Governance Rights

Minority shareholders may protect their position in a shareholders’ agreement. However, care should be taken to ensure that a concert party relationship is not created between the parties to the shareholders’ agreement.

Partial tender offers can only be made with the approval of a shareholders’ resolution of the target and the SEC and must be for less than 50% of a company’s shares.

▼ 6.9 Voting by Proxy

Shareholders may vote by proxy in Thailand.

▼ 6.10 Squeeze-Out Mechanisms

There is no squeeze-out mechanism under Thai law. In practice, after the completion of a tender offer there remains a small number of shareholders who cannot be traced or who have refused to sell. As long as these shareholders still hold shares in the target, delisting may not be possible, and the basic rights of these shareholders must be respected. These rights include receiving notice of, attending, speaking at, and voting in general shareholders’ meetings. If a resolution to delist the

target is passed following the completion of a tender offer, this resolution triggers a mandatory offer to the dissenting minority shareholders. There are statutory provisions which determine the price at which this delisting tender offer must be made.

▼ 6.11 Irrevocable Commitments

It is common for a potential acquirer to enter into an agreement to tender with principal shareholders. Since a squeeze-out mechanism does not exist, the potential acquirer normally commences negotiations and concludes agreements with principal shareholders prior to conducting the tender offer. Once an agreement is entered into, there is no exit mechanism for the shareholders unless the parties agree otherwise. However it is arguable on the enforceability of such an agreement to tender shares, as tender offer regulations allow an accepting shareholder has to withdraw their acceptance within a specified period.

▼ 7. Disclosure

▼ 7.1 Making a Bid Public

A bid must be made public when the acquirer triggers the minimum tender offer thresholds (ie, at 25%, 50% and 75% of total voting rights) by submitting a statement of intention to make a tender offer on Form 247-3 to the SEC within one business day after such triggering.

In the case of a voluntary tender offer, the bidder is required to submit a statement of intention to make a tender offer on Form 247-3 to SEC within three business days after announcing the tender offer. It will be deemed to have announced the tender offer in certain cases including notifying the directors of the target and shareholders holding 10% or more of the shares of the target. If it fails to file the form within this timeframe it will be deemed to have announced an intention not to make a tender offer, meaning that it will be unable to proceed with a tender offer for one year.

▼ 7.2 Type of Disclosure Required

In the case of issuing shares in a business combination to target shareholders, it is necessary to prepare a registration statement and prospectus complying with the requirements of the SEC Act, unless the issuance falls within the scope of private placements. For completeness, it must be noted that in the case of a statutory amalgamation operating as a merger on the basis of A=B+C, no registration statement or prospectus is required.

▼ 7.3 Producing Financial Statements

For the tender offer, the bidder is required to produce and attach to the tender offer form audited financial statements prepared in accordance with Thai Generally Accepted Accounting Principles (GAAP) and consolidated financial statements (if the acquirer has subsidiaries) for the latest fiscal year as evidence to prove that it has sufficient funds to pay for the tendered shares.

▼ 7.4 Transaction Documents

In the process of a tender offer, it is not necessary to disclose the transaction documents in full, Only a summary of the transaction is required.

▼ 8. Duties of Directors

▼ 8.1 Principal Directors' Duties

Directors have fiduciary duties to the company and its shareholders and must perform their duties responsibly, with due care and loyalty. Directors must also comply with all laws, the objectives and articles of association of their company, the resolutions of board of directors' meetings, and the resolutions of shareholders' meetings, in good faith and with care to preserve the interests of the company. A director is liable for any damage to the company resulting from their negligence or failure to perform their functions. Directors do not have duties to a wider class of stakeholders.

In performing their duties with responsibility and due care, directors must act in a manner similar to 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.

▼ 8.2 Special or Ad Hoc Committees

In Thailand, it is not common practice for boards of directors to establish special or ad hoc committees during business combinations, though individual directors are prohibited from voting on matters in which they have a conflict of interest.

▼ 8.3 Business Judgement Rule

When considering an alleged breach of care in relation to a fiduciary duty, courts often apply the “business judgement rule” standard.

▼ 8.4 Independent Outside Advice

Boards of directors commonly seek advice from financial advisers and legal counsellors in business combinations. Decisions made by a board based on the guidance of these professional advisers are considered to be made with due care.

▼ 8.5 Conflicts of Interest

Under Thai corporate law, a shareholder with a special interest in any matter is prohibited from voting on that matter. Although non-compliance with this rule does not invalidate the resolution, it can be challenged in court.

Similarly, a director with an interest in any matter is barred from voting on that matter. Non-compliance does not render the resolution void, but if it results in damages to the company, the company is entitled to seek compensation from the director.

▼ 9. Defensive Measures

▼ 9.1 Hostile Tender Offers

Hostile tender offers are permitted in Thailand. However, due to the prevalence of large family-controlled or insider-controlled shareholdings in most Thai listed companies, the success of a hostile tender offer is unlikely.

▼ 9.2 Directors' Use of Defensive Measures

In the period before a bid is made, there is generally no restriction on a target board taking defensive measures against a hostile takeover.

Once a bid is made, the target is restricted from undertaking certain activities during the takeover period, including:

- offering new shares;
- acquiring or disposing of material assets;
- incurring debt;
- entering into or terminating a material contract not in the normal course of business;
- buying back shares; and
- declaring an extraordinary interim dividend.

▼ 9.3 Common Defensive Measures

Hostile tender offers are very rare and unlikely to succeed due to the prevalence of large family-controlled or insider-controlled shareholdings in most listed Thai companies, so common defensive measures are not typically employed.

▼ 9.4 Directors' Duties

Directors' use of defensive measures must be consistent with their fiduciary duties and the duty to act in the best interests of their company.

▼ 9.5 Directors' Ability to “Just Say No”

Upon receipt of a tender offer, the target's directors are obligated to provide information and a recommendation to shareholders, acting under a general duty to serve the best interests of the company.

The board of the target must:

- notify all known shareholders of the receipt of the offer and its terms;
- provide its opinions on the current status of the company's business and forecast future results of its operations, disclosing the assumptions on which the forecast is based, and the accuracy of the

information concerning the company's business given in the offer;

- disclose any relationships or agreements between any director of the target and the bidder;
- recommend whether shareholders should accept or reject the offer; if the board's recommendation is not unanimous, the recommendation of each director must be provided separately; and
- appoint an independent adviser to advise the shareholders on the terms of the offer and whether to accept or reject it; the adviser is required to give its recommendation "with due care in accordance with professional standards, taking account of the interests of minority shareholders".

▼ 10. Litigation

▼ 10.1 Frequency of Litigation

Litigation is not common in connection with M&A deals, and is essentially unknown in public tender offers. In privately negotiated transactions, litigation may occur over issues such as indemnities, breach of contract, and warranty claims.

▼ 10.2 Stage of Deal

In privately negotiated transactions, litigation generally occurs after the deal has closed.

▼ 10.3 "Broken-Deal" Disputes

No new lessons were learned in 2023.

▼ 11. Activism

▼ 11.1 Shareholder Activism

Shareholder activism is minimal, if at all present, in Thailand.

▼ 11.2 Aims of Activists

This is not applicable in Thailand.

▼ 11.3 Interference With Completion

This is not applicable in Thailand.

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