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Contributing Editor
Frank Aquila
Sullivan & Cromwell LLP

THAILAND

Law and Practice

Contributed by:
Wittaya Kaewkungsadan, Chumpicha Vivitasevi, Siregran Sakuliampaiboon and Nontachai Hemaratpitak
Weerawong, Chinnavat & Partners Ltd.

Contents

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Authors

Wittaya Kaewkungsadan is a partner at Weerawong, Chinnavat & Partners Ltd. with over 20 years' experience advising on the law relating to public companies in Thailand, including tender offers and debt and equity market transactions, including major initial public offerings, capital increases and bond offerings. He is the author of several publications on public company transactions in Thailand.

Chumpicha Vivitasevi is a partner in the competition and antitrust practice at Weerawong, Chinnavat & Partners Ltd. With extensive experience, she advises both domestic and international clients on merger control, abuse of dominance, and unfair trade practices. She serves as a trusted partner to key clients across diverse industries, including consumer products, retail, telecommunications, logistics, and digital platforms. Her expertise extends to M&A, infrastructure projects, capital markets, and dispute resolution. Recognised as a Band 1 practitioner by Chambers and Partners, Chumpicha is highly regarded for her problem-solving skills and practical legal guidance. She has played a key role in shaping competition law in Thailand, contributing to legislative developments and lecturing at renowned law faculties at leading universities in Thailand.

Siregran Sakuliampaiboon is a partner in the corporate M&A practice at Weerawong, Chinnavat & Partners Ltd., specialising in cross-border M&A transactions, corporate structuring, and business establishment in Thailand. With experience at leading international law firms in Thailand, she oversees mergers and acquisitions transactions and drafts and negotiates commercial contracts. Siregran advises key clients across various sectors, including food and beverage, education, energy, healthcare, manufacturing, and media and entertainment. She has an extensive track record of advising both Thai and foreign enterprises, as well as major corporations, on significant M&A transactions. Her expertise extends to working in foreign jurisdictions such as Japan, Australia, and the Philippines.

Nontachai Hemaratpitak is an associate in the corporate M&A practice at Weerawong, Chinnavat & Partners Ltd. He specialises in corporate transactions across diverse industries, including food and beverage, real estate, and retail. He advises both domestic and international clients on high-stakes mergers and acquisitions, with expertise spanning capital markets and regulatory compliance.

Weerawong, Chinnavat & Partners Ltd.

1 Park Silom Tower
39th Floor
Convent Road
Silom, Bangrak
Bangkok 10500
Thailand

Tel: +662 264 8000
Fax: +662 657 2222
Email: wcpbd@weerawongcp.com
Web: www.weerawongcp.com

WEERAWONG C&P
WEERAWONG, CHINNAVAT & PARTNERS LTD.

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1. Trends

1.1 M&A Market

While the Thai stock market index in 2024 has declined significantly overall compared to the same period in 2023 due to domestic factors and global economic trends, the Thai M&A market has remained resilient. Throughout 2024, M&A transactions by both foreign and domestic investors have increased in value, particularly in the TMT, energy, financial services, healthcare, and real estate sectors. Public M&A has served both as a strategic tool for Thai conglomerates to mitigate investment risks and as a means of financial restructuring. Several public companies have entered into joint ventures to manage risks associated with new projects, while others have divested subsidiaries to optimise their financial positions.

1.2 Key Trends

As lending by financial institutions has remained significantly challenging in 2024, it has become common practice for businesses, particularly those in the real estate sector developing residential properties such as houses and condominiums, to secure strategic partners by establishing new joint ventures with foreign investors. These partnerships help mitigate risk and improve cash flow for new projects.

Additionally, share acquisitions and the formation of joint ventures for existing projects have been increasingly pursued as a means of raising funds. Furthermore, certain asset sales, including entire business transfers, have occasionally taken place due to limitations on transferable liabilities inherent in share deals, as well as tax benefits.

The TMT and education sectors have also emerged as key players in the M&A landscape with significant transactions concluded and ongoing negotiations shaping Thailand's market (see **1.3 Key Industries** for more details).

1.3 Key Industries

In addition to the key M&A trends in 2024 within the TMT, energy, healthcare and real estate sectors, the education and construction sectors have also remained active.

Several high-profile deals were initiated and/or concluded throughout 2024, including:

- Amalgamation of Two Major Players in the Energy and Telecommunications Sectors: Under this deal, Gulf Energy Development Public Company Limited (GULF) and Intouch Holdings Public Company Limited (INTUCH) will form a new public company limited. The new company will assume all assets, liabilities, rights, duties, and responsibilities of GULF and INTUCH, including their shareholdings in all subsidiaries. The deal was officially announced in July 2024, with a total transaction value of approximately USD32 billion.
- Joint Venture Between Dymon Asia Private Equity and the Ourairat Family: This deal involves, inter alia, the full business transfer of the Satit Bilingual School of Rangsit University and the British International School, Phuket, along with the acquisition of shares in the Satit International Bilingual School of Rangsit University, Chiangmai, and SBS International Bangkok, which is recognised as one of Thailand's most prestigious private schools.
- Acquisition by Universal Music Group (UMG) of Iconic Back Catalogue of RS Public Company Limited (RS): This acquisition was made through a transfer of music assets to RS UMG Company Limited, followed by the first and second tranches of a share acquisition in

RS UMG Company Limited. This two-stage strategic acquisition spanned over two years and successfully granted UMG full control over RS's back catalogue, comprising over 10,000 songs and related content, including music videos, lyrics, compositions, pictures, photographs, and licensed rights, spanning 1981 to 2022. The catalogue features work by more than 960 well-known artists. The acquisition was valued at over USD65 million. This deal underscores the increasing number of acquisition transactions within the entertainment and media industry, and the growing value of intellectual property in M&A activity.
- BYD's Acquisition of a 20% Stake in Rever Automotive, its Local Thai Distributor: While the deal's value was not publicly disclosed, this investment highlights Thailand's growing importance as a regional hub for EV production and distribution. The move aligns with BYD's broader Southeast Asian strategy, particularly as it establishes its first regional manufacturing plant in Thailand. This transaction is expected to drive further foreign direct investment in the country's EV supply chain.
- The final deal is the sale of a 46.64% stake held by Italian-Thai Development Public Company Limited (ITD) in ITD Cementation India Limited, a subsidiary of ITD and a listed company in India, to RENEW EXIM DMCC, one of the leading business conglomerates in India, with a total deal value of approximately THB11.8 billion (USD351 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, much quicker 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 (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 (ie, the telecommunications, broadcasting and television, and energy sectors).

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, 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 or foreign business certificate 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.

Certain businesses in sectors regulated by specific Thai authorities, such as finance, securities, and insurance, are typically exempt from the ownership requirements of the FBA while remaining subject to foreign ownership restrictions under the specific legislation applicable to them. In 2024, the MOC held a regulatory hearing to propose additional exemptions from the FBA's restrictions for certain types of businesses already regulated by specific Thai authorities, such as the NBTC and the SEC, but the exemptions have yet to become effective (see **3.1 Significant Court Decisions or Legal Developments** for more details).

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.

Please note that the TCA, including the entire merger control regime, is undergoing review and revision by both the TCC itself and by the Parliament through various parliamentary subcommittees. These changes could take place as late as 2026 and, as a result, there will be no substantive updates or clarifications to the merger control regime until the changes come into effect.

2.5 Labour Law Regulations

The most significant recent development in Thailand's labour laws as it relates to M&A activities is the 2019 Labour Protection Act BE 2562, which 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.

Conversely, in the case of a share acquisition, no employee consent is required, as the legal 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 legal development earlier this year concerns the FBA, which held a regulatory hearing with the MOC on a ministerial regulation proposing exemptions from the FBA's restrictions for nine types of service businesses and two types of derivatives brokerages, some of which are already regulated by specific Thai authorities. The underlying objective is to reduce redundancy in the licensing process for businesses already regulated by other Thai authorities.

Upon enactment, this regulation would streamline and relax the foreign business licence requirements for derivatives brokerages, software development businesses, telecommunications services, inter-company services (eg, human resources, information technology management, and the provision of debt guarantees), oil drilling services, treasury centres under foreign exchange control laws and regulations, and other service businesses governed by laws and regulations related to securities, stock exchanges, and derivatives, among others.

To illustrate, the provision of guarantees of debts in Thailand between qualifying entities, such as a lending entity holding 50% or more of the capital in another entity, which is considered a service business, will be exempt from foreign business licence requirements under the proposed regulation. The regulatory hearing concluded in 2024, with the majority supporting the proposed exemptions from the FBA's restrictions. However, the regulation has not yet been officially enacted. As the timeline for the enactment of the exemptions under the FBA remains uncertain, players involved in cross-border M&A transactions in Thailand should monitor these developments closely, as they could significantly affect Thailand's regulatory compliance and investment strategies.

Additionally, following the new amalgamation and merger scheme under Thai law, which became effective in February 2023, the Revenue Department issued a tax ruling in 2024 to clarify the tax implications of this change, stating that taxes shall be treated in the same manner as those applicable to an entire business transfer transaction.

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, this is in an early stage of development and any significant changes to the takeover rules are expected between 2025 and 2026.

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

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

Generally, disclosure of derivative transactions is not required under securities disclosure laws. However, exceptions apply in cases where the derivative is based on the shares of a listed company. In such instances, any acquisition or disposal by directors, management, auditors, or individuals or entities connected to them must be disclosed.

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 rely 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. 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 *"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 *"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 that 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, the enforceability of these agreements remains debatable, as tender offer regulations allow an accepting shareholder 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. A tender offer will be deemed to have been announced in certain circumstances, such as when the bidder notifies the directors of the target company or shareholders holding 10% or more of the target's shares. 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 the 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 to ensure the transparency and regulatory compliance of the transactions.

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 may be challenged in court and subsequently revoked.

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 financial 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 commonly seen in Thai M&A transactions and is not widely reported in public tender offers. In privately negotiated deals, disputes may arise over indemnities, breaches of contract, or warranty claims, but litigation remains rare. This is largely due to the widespread inclusion of arbitration clauses, which parties favour over court proceedings for their confidentiality, specialised adjudication, and efficiency. Moreover, the growing use of warranty and indemnity (W&I) insurance by foreign investors in Thai M&A transactions is expected to further reduce litigation risks.

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 2024.

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.