DOING BUSINESS IN Thailand

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**Business Structures:**
What types of business structures are permitted?

Foreign investors doing business in Thailand can establish, own and carry on business using a variety of business forms. The following types of Thai juristic person may be registered in Thailand:

- Representative Office;
- Branch of an overseas company;
- Private/ Public Limited Company;
- Regional Office;
- Regional Operation Headquarters; and
- International Headquarter.

**Taxation:**
Briefly explain the country's tax regime including rates and how rates differ based on business structures.

The principal tax law of Thailand is the Revenue Code, and five main forms of taxation imposed under it are:

(a) Corporate Income Tax ("CIT") - CIT applies to companies (including branches of overseas companies), registered ordinary partnerships, limited partnerships, and unincorporated joint ventures between two or more companies or partnerships and etc. Moreover, certain payments, such as dividends, capital gains, and remittance of profits to non-residents (including overseas companies not conducting business in Thailand) are generally subject to withholding tax. In general, all companies as registered partnership are subject to a CIT at a flat rate of 20% of net profit.

(b) Personal Income Tax – Every person, resident or non-resident, who derives taxable income from employment or business conducted in Thailand, is subject to personal income tax, whether such income is paid in or outside of Thailand. An individual who is present in Thailand for at least 180 days in any tax year (calendar year) is treated as a tax resident of Thailand. Tax residents are also subject to income tax on any foreign-sourced income they bring into Thailand in the year the income is earned. Current rate of personal income tax is calculated on a sliding scale from 5% to 35% of the assessable income, after deduction of standard expenses and allowances.

(c) Value Added Tax ("VAT") – VAT is charged on every purchase of goods or services; however, certain types of business are exempt from paying such VAT. VAT is applied at the rate of 7%. In our context, the services provided by the Company to Thai individuals or Thai corporations would carry VAT at 7%, while the qualifying export of services is subject to VAT at 0%.

(d) Specific Business Tax ("SBT") – SBT is charged on certain types of business as specified in the Revenue Code, such as banking, securities, insurance, real estate, etc. SBT is charged at a rate of 0.01% to 3% according to the nature of the services provided.

(e) Stamp Duty – A stamp duty is levied on the execution or importation of a certain dutiable document listed in the Stamp Duty Schedule of the Revenue Code. There are currently 28 kinds of instruments subject to stamp duty. Rates of stamp duty vary depending on the type of instrument. There are also a number of specific revenue-collecting statues that impose taxes such as:

- Customs Tax;
- Excise Tax;
- Property and Land Taxes; and
- Petroleum Income Tax.
### Immigration:

Summarize immigration laws, including visas available for foreign employees.

A foreigner wishing to work in Thailand must obtain a work permit by submitting an application to the Department of Employment of the Ministry of Labour. A foreigner applying for a work permit must already either be permitted to stay temporarily in Thailand (non-immigrant visa) or have residence in Thailand according to the Immigration Act B.E. 2522 (1979).

There are a number of criteria that the Department of Employment takes into consideration before granting a work permit, e.g. the employer’s financial status, the number of the Thai employees hired by the employer and the gross income of the applicant. At present, to obtain a work permit, the minimum paid-up registered capital of a Thai company employer must be THB2 million per one foreign employee and the employer must have four Thai employees per one foreign employee. These criteria are subject to change from time to time.

Non-immigrant visas

A foreigner who intends to work in Thailand must obtain a Non-Immigrant “B” visa outside Thailand before entering the country. Non-working family members normally obtain a Non-Immigrant “O” visa covering the same period. Non-Immigrant B and non-Immigrant O visas entitle a foreigner to stay temporarily in Thailand for a period of not more than 90 days.

### Foreign Investment Review and Issues:

Does the government review and approve foreign investments? What factors are considered?

The main legislation governing foreign business activities is the Foreign Business Act, B.E. 2542 (1999) ("FBA"). The FBA limits the right of foreigners to engage in certain business activities in Thailand; it also defines the term “foreigner” and categorizes restricted activities into three lists as follows.

(a) List 1 – Business activities on this list are absolutely prohibited to foreigners without exception. Such activities include, for example, land trading, rice farming, forestry and timber processing from a natural forest, extraction of Thai medicine herbs.

(b) List 2 – Business activities on this list are prohibited to foreigners, unless permission is granted by the Minister of Commerce with approval of a Cabinet resolution, or foreigners are granted an investment promotion from the Board of Investment ("BOI") or are permitted to operate industrial or export trade by the Industrial Estate Authority of Thailand ("IEAT").

Business activities on List 2 relate to national safety or security, to matters of culture, traditions and customs, and to national resources and the environment, and include, for example, the production, distribution and/or maintenance of firearms, ammunition, explosives, aircraft and other vehicles for military use, trading in antiques, the production of wood carvings, silverware, bronze ware or lacquerware, the production of sugar from sugar cane, mining, and timber processing for production of furniture and utensils.

(c) List 3 – Activities on this list are considered those in which Thai nationals are not yet ready to compete with foreigners. Therefore, foreigners are restricted from engaging in such activities unless permission is granted by the Director-General of the Company Registration Office of the Ministry of Commerce with the approval of the Foreign Business Committee, or foreigners are granted an investment promotion from the BOI or are permitted to operate an industrial or export trade by the IEAT. Business activities under List 3 include, for example, wholesale of all types (with minimum capital of each store being less than THB100 million), retail sale of goods of all types (with total minimum capital being less than THB100 million or with minimum capital of each store being less than THB20 million), legal services, accounting services, rice milling, brokerage
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<th><strong>Dealing with the Government:</strong> Identify major issues when dealing with local and federal governments.</th>
<th>There are no regulations, specific requirements or other guidelines that should be observed when dealing with the Thai government agencies. Having said this in practice the policy interpretation of laws and their enforcement by relevant state agencies is not always consistently applied over time or may depend on an individual officer’s discretion of such state agency in making decision on case by case basis. The degree of reliance and certainty that can be placed on dealings with Thai government agencies means that expectations as to outcomes should be managed accordingly. We would also refer to the heading below “Foreign Corrupt Practices” for details relating to ant-bribery laws in Thailand</th>
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| **Dispute Resolution and Court Systems:** Summarize the court system, including the use of juries and arbitration. | **Court of Justice in Thailand**
The Thai judiciary has a three-tier system with the Supreme Court being the court of final appeal, followed by the Appeal Courts and the Courts of First Instance. Appeals against Court of First Instance judgments are required to be filed with the Court of Appeals, subject to certain restrictions. The Supreme Court has jurisdiction over cases appealed from the Court of Appeal. The Court of First Instance consists of many courts located throughout the country, each of which has separate geographical jurisdiction to rule various types of litigation cases. As a general rule, a civil complaint has to be submitted to the court within which the defendant is domiciled, or to the court within which the cause of action arose, regardless of whether the defendant has domicile within the country or not. There are also a number of specialized courts that fall within the category of the Court of First Instance: the Labour Court, the Tax Court, the Intellectual Property and International Trade Court, and the Bankruptcy Court. All these courts were established under their own enacting legislation, which also established their specialized procedures. As part of the 1997 Constitution, the Administrative Court was established and has jurisdiction over disputes among government agencies and state enterprises, as well as between officials of those agencies and their employers. The Administrative Court is also responsible for administrative contracts entered into by the state and the private sector. **Arbitration** Under Thai law, arbitration can be in court and out of court. Arbitration in court can only take place where the case is brought into the Court of Justice and before the Court of First Instance delivers its judgment. Arbitration out of court is governed by the Arbitration Act B.E. 2545 (2002). Under the Arbitration Act, an arbitration agreement is enforceable only if made in writing and signed by both parties, or if it appears in correspondence or other documents or data interchange with electronic signatures between both parties agreeing on an arbitration clause. The parties can choose the place of arbitration and govern the process for ad hoc arbitrations or select institutional rules to govern the arbitration. |
Thai laws dealing with corruption include the following:

**Penal Code**
The Thai Penal Code primarily imposes criminal penalties on parties paying or offering to pay bribes to public officials, intermediaries involved in the payment of a bribe and public officials who require, solicit or receive bribes. The Penal Code does not provide a definition of ‘public official’. However, the Thai Supreme Court, through a series of rulings, has held that a person will be regarded as a public official if he or she is appointed by the Thai government to perform governmental functions. Additionally, some special laws specifically provide that some positions in certain organizations are considered as public officials and subject to the Thai Penal Code’s prohibitions on bribery.

**Organic Act on Counter Corruption**
The Organic Act on Counter Corruption, B.E. 2542 (the “Anti-Corruption Act”) prohibits any party from offering bribes to state officials, foreign and public international officials or “intermediaries” to solicit to use personal power to unlawfully perform their duties. The Anti-Corruption Act also prohibits state, foreign and public international officials from soliciting corrupt payments to perform their duties. These prohibitions also apply to officials of political parties. There are amendments were adopted providing that fines can be imposed on companies when a related party to such company engages in corrupt acts even if the offense is committed without the knowledge of the directors of the company, unless the company can establish its had ‘appropriate internal control measure to prevent’ the corrupt act. Further, the Anti-Corruption Act also add provisions that make it illegal to bribe or attempt to bribe a foreign official and criminalize a foreign official’s request for or acceptance of a bribe.

Under the Anti-Corruption Act, there is a notification issued by the National Anti-Corruption Commission (the “NACC”) regarding the rule prohibits state officials from receiving property or any other benefit from any person other than a relative if the price or value of such property or benefit received from each person and on each occasions exceeds THB 3,000. The violation of this rule constitutes a dishonest discharge or non-discharge of duties (a bribe) under the Penal Code as well.

The NACC has also issued the notification that requires private parties with a contract with a state agency or state owned enterprise to submit an income and expense statement with the NACC if that contract has a value of THB 2 million or more.

Lastly, the Anti-Corruption Act empowers the NACC to issue notifications prohibiting certain state officials and their spouses from participating in commercial activities with the government.

**Other laws such as:**
The State Staff Act B.E. 2502 imposes criminal penalties on state organization staff that requires, solicit or receive bribes as well as convert state organization’s property for themselves or to others unlawfully.

The Anti-Money Laundering Act B.E. 2542 is the main Thai law aimed at the laundering of money or property derived from the commission of “predicate offenses”, which include crimes relating to narcotics, public corruption and terrorism. The Civil Service Act B.E. 2551 generally prohibits public officials from acting as a managing director, manager, or equivalent position in a company or partnership or improperly performing or refraining to perform official duties.

The Management of Partnership States and Shares of Minister Act B.E. 2543 generally prohibits ministers from holding shares or any kind of interest exceeding five percent of capital in any type of profit-making entity. The Act Governing Liability for Wrongful Acts of Competent Officers B.E. 2539 imposes penalties on government entity and public officials who tolerate corruption. The Accounting Act B.E. 2543 (the “Accounting Act”) requires
Thai private limited companies to keep accounts, and those accounts must be accurate and in comply with the accounting standards of the Accounting Act. Failure to comply with the requirement shall be liable to imprisonment or to a fine, or to both. Penalties for violation of Thailand’s anti-corruption laws are strong. They include substantial fines, imprisonment and the death penalty. The death penalty can be imposed against Thai state, foreign and international public officials who receive bribes.

**Types of transaction: How may businesses combine?**

**Private Limited Company**

There are various types and forms of merger and acquisitions available under Thai laws, including a typical share or asset purchase and amalgamation. There are certain key requirement under the Civil and Commercial Code of Thailand (the “CCC”) in respect of each type of the mergers.

(a) Share Purchase: Subject to by-laws or articles of association of the relevant companies, a sale or transfer of shares may simply be done by an execution of a share transfer instrument stating number of shares to be transferred, and signed by a transferor and a transferee with at least one witness.

Following which, the parties shall request the company to record such transfer in its share register and arrange to pay stamp duty at the rate of THB1 per every THB1,000, calculated from the purchase price or par value of the shares, whichever is higher.

(b) Assets Purchase: There is no particular formality or requirement in respect of an entry into an asset purchase agreement, except for those involving land, building, car and machinery which may need be registered or complied with their permits or licenses. Care must be taken for consideration on applicable tax, stamp duty, and transfer and registration fees.

(c) Merger: According to the CCC, key steps to be taken by companies for amalgamation may be summarized as follows:

- Hold their respective shareholders meetings to approve their amalgamation with a special resolution;
- Publish at least once in a local newspaper and send a written notice to all creditors stating the proposed amalgamation and that any objection thereto shall be raised within 60 days from receipt of the notice; and
- File for registration with the DBD for dissolution of both companies and incorporation of a new company as a result of amalgamation within 14 days from the shareholders’ meetings.

Section 1243 of the CCC provides that the amalgamated company duly registered shall be entitled to all assets, liabilities, rights, duties, and responsibilities of the former companies.

**Public Company**

A public company is another type of business organization in Thailand which may be formed by virtue of the Public Limited Companies Act B.E. 2535 (1992) (“PLCA”) (as amended). Given their primarily objectives to raise funds, a form of public company which may be newly established or converted from a private company will be selected as a vehicle for listing on the SET or the Market for Alternative Investment (“MAI”).
Mergers and acquisitions of publicly listed companies are principally governed by the PLCA, Securities and Exchange Act B.E. 2535 (1992) ("SEC Act") (as amended) and the rules and regulations issued by the SEC, the SET and the Notification of the Capital Market Supervisory Board ("CMSB"), particularly the Takeover Rules.

While the PLCA deals with general corporate matters (including requisite voting requirements), the SEC Act and the rules and regulations issued under it (including those issued by the SEC, the SET or the CMSB) generally govern tender offers, business takeovers and disclosure requirements.

**Competition Law: How do laws impact competition?**

1. The Trade Competition Act is the main piece of legislation governing competitive interactions among business operators in Thailand. The Trade Competition Act was effective on 5 October 2017. It applies to all business sectors, except certain types of business or activity which is specifically exempted (such as the activity of a state-owned enterprise carried out in accordance with the law or resolution of the Cabinet for the purpose of national security or public benefit) and the sectors that have already been regulated by specific laws on trade competition matters. There are five trade practices prohibited under the Act, described in the following:
   - (a) Abuses of Dominance – Market dominant business operators are prohibited from taking certain actions which would result in abuse of their dominant positions, such as unfair pricing, limiting production, attaching compulsory conditions to purchases, etc.;
   - (b) Merger Control – There is legitimate concern that a merger or acquisition of a business may create a monopoly or result in unfair competition in the market. Where this is likely to occur, the merger or acquisition will be prohibited unless prior permission is obtained from the trade competition commission;
   - (c) Anti-competition Co-arrangement – The Trade Competition Act prohibits business operators from colluding with each other or jointly conducting certain activities which create a monopoly or limit competition in the market;
   - (d) Preventing the purchase of goods or services directly from overseas – restricts any business operator from taking any action with an overseas business operator with which it has a business relationship by way of contract, policy, partnership, shareholding or otherwise in order to prevent customers from buying goods or services directly from the overseas business operator; and
   - (e) Unfair competition action causing damage to other business operators – Business operators are prohibited from taking any action which prevents free and fair competition and which causes destruction, damage, obstruction, impediment or restriction to another's business operation. A breach of provisions of the Trade Competition Act can result in a maximum fine of THB6 million and three years imprisonment. Sanctions may be imposed against responsible officers or representatives of a company.

2. The Prices of Goods and Services Act, B.E. 2542 (1999) established the Central Prices of Goods and Services Committee, whose function is to prevent price fixing and unfair pricing practices with respect to designated goods and services. The Act only applies to goods or services designated by the Committee. That is, the Committee has the power, with the Cabinet’s approval, to announce its control measure over any goods or services to prevent price fixing or unfair
Employment Relations:

Briefly summarize major laws impacting employment and employee relations.

<table>
<thead>
<tr>
<th>Basic rights for employers and employees are regulated in the Civil and Commercial Code as well as the Labour Protection Act B.E. 2541 (1998), which is the main legislation that prescribes protection for employees.</th>
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<tr>
<td>Under the Worker Compensation Act B.E. 2537 (1994), every employer must make a contribution to the Worker Compensation Fund. The contributions are assessed on the total wages paid and the type of business, with a rate not exceeding 5% of the total wages paid by the company.</td>
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<tr>
<td>Employee associations and labour unions can be established. Labour registered with the Ministry of Labour and Social Welfare in order to deal with employers regarding disputes in relation to employment, on behalf of the employees.</td>
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<tr>
<td>Specialized labour courts have the authority to decide any dispute concerning labour protection law, labour relations law and employment contracts.</td>
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<td>An employer with at least 10 employees is required to establish written work rules covering work performance and such things as working days, holidays and disciplinary actions. Such work rules must be written in Thai and displayed for employees in the work place. Furthermore, the employer is required to submit a copy of the rules to the Director-General of the Department of Labour Protection and Welfare or the relevant district office having jurisdiction over the employer.</td>
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<tr>
<td>Pursuant to the Social Security Act B.E. 2533 (1990), every employer is obliged to register with the Social Security Fund. Under the Social Security Act, the government, the employer and the employee jointly contribute to the Social</td>
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</table>
Statutes and regulations: What are the main laws and regulations governing business combinations?

Security Fund every time wages are paid. The rate of contribution is currently 3% of an employee's income but it is subject to change from time to time by Ministerial Regulations. The maximum contribution of each employee is THB750 per month. An employee who is a member of the Social Security Fund is entitled to receive compensation benefits in non-work-related cases such as illness, disablement, death, child welfare, childbirth and unemployment as well as old-age benefits.

Generally, the Trade Competition Commission (the “TCC”) has the authority to oversee and regulate Merger and Acquisition (“M&A”) activities in any market in Thailand. Any acquisition which might result in a monopoly or unfair competition is prohibited unless approval from the TCC is obtained. However, the related regulations regarding M&A control have not yet been promulgated so, currently, M&A activities are not subject to general competition regulations.

The primary regulator in the acquisition of shares of public companies listed on the SET is the SEC. The filing and disclosure obligations for such share acquisitions are outlined in the governing laws and regulations.

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

Governing Law: What law typically governs the transaction agreements?

The law of Thailand.

Filings & Fees: Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees payable in connection with a business combination?

A merger of business is subject to the application of the Trade Competition Act, unless it is regulated by a specific law (e.g. telecommunications business operators).

In general, the parties to the transaction are responsible. However, currently there are no notifications specifying who must file. Filing responsibilities are subject to notifications to be issued within 365 days from the effective date of the Trade Competition Act (October 2018) in accordance with sections 51 and 52 of the Trade Competition Act.

However, there are other fees to be considered on the business combination transaction such as:

(a) Acquisition of shares of a listed company or a private limited company: The rate of stamp duty on a transfer of shares is calculated at 0.1% of the greater of the selling price and the paid up value, of the shares. If share transfer instruments are executed and kept outside of Thailand, stamp duty is not payable, unless the share transfer instruments are subsequently brought into Thailand. In the case of the acquisition of shares of a listed company, and where the sale of shares involves a tender offer transaction, the acquirer who makes a tender offer is subject to payment of fees to the SEC.
Information to be Disclosed:
What information must be made public in a business combination? Does this depend on the structure used?

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

For an acquisition or merger of a listed company, in addition to a share/asset sale and purchase agreement as well as the relevant documents relating to corporate approvals and the disclosure documents as required by the Public Limited Companies Act (1992) as amended, the Notification of the Capital Market Supervisory Board No. TorChor 20/2008 re: Rules on Entering into Material Transactions Deemed as Acquisition or Disposal of Assets as amended, the Notification on the Board of Governors of the SET re: Disclosure of Information and Other Acts of Listed Companies Concerning the Acquisition and Disposition of Assets, 2004, and other relevant regulations, the documentation required to implement the transaction includes:

(a) In the case of a share acquisition
Report on Acquisition of Securities (Form 246-2)
Pursuant to Section 246 of the SEC Act, if an acquisition of securities, including shares, of a listed company increase the aggregate number of

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<th>Rate of Fees (THB)</th>
<th>Value of Tender Offer (THB)</th>
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<tr>
<td>50,000</td>
<td>&lt; 10 Million</td>
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<tr>
<td>100,000</td>
<td>&gt; 10 Million but &lt; 100 Million</td>
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<td>2,000,000</td>
<td>&gt; 5 Billion</td>
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*the value of Tender Offer is determined by the offer price multiplied by the maximum number of securities as indicated in the offer.

(b) Acquisition of Assets of a listed company or a private limited company: The government charges/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% of the appraised value of property of the Land Department. Please note that the transfer of land is also subject to a specific business tax, stamp duty and/or withholding tax (as the case may be).
securities held by the acquirer and its concert parties as well as their related persons to a number which reaches any multiple of 5% of the total number of voting rights of the listed company so acquired, e.g. 5%, 10%, 15%, 20%, and so on, the acquirer of such securities must submit a report on acquisition of the securities (Form 246-2) to the Office of the SEC.

Documentation for Tender Offer If the acquisition of securities, including shares, of a listed company results in the aggregate number of securities held by the acquirer and its concert parties as well as their related persons reaching or exceeding the thresholds of 25%, 50% or 75% of the total number of voting rights of the listed company so acquired, a mandatory tender offer must be made to other securities holders to purchase all of their securities. The acquirer must comply with Sections 247 of the SEC Act and the Capital Market Supervisory Board’s Notification No. ThorJor 12/2011 concerning Business Takeovers, for which the following key documentation is required to be submitted to the SEC:

(i) Form 247-3, a statement of intent to make a tender offer;
(ii) Form 247-4, an offer to purchase securities (prepared by a financial advisor approved by the SEC);
(iii) Proof of funds, a letter or statement issued by any commercial bank to prove that the acquirer has sufficient funds to make a tender offer;
(iv) Form 247-6 Gor, a report on the preliminary result of tender offer; and
(v) Form 256-2, a report on the result of tender offer.

Please note that the acquirer may make other categories of tender offer, i.e. voluntary or partial tender offer, as well as apply for a waiver of tender offer subject to the details of the transaction and business arrangement of the acquirer. The documentation required for other types of tender offer or in the case of a waiver will be different.

(b) In the case of an asset acquisition

- Documentation relating to the transfer of licenses related to the transferred assets (if transferable);
- Documentation relating to the registration of the transfer of ownership of the assets to the acquirer with the relevant authorities (if required); and
- Novation agreement or assignment agreement in relation to certain agreements related to the transferred assets (if required).

For an acquisition or merger of a private limited company, a sale or asset purchase agreement and, depending on the level of investment, a shareholders’ agreement will be executed.

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

Limited Companies
Directors must manage the business of a limited company: (i) under the control of shareholders acting through general meetings of the company; and (ii) in accordance with the regulations of the company as prescribed in its memorandum and articles of association.

Directors must, in their conduct of the business of the company, apply the diligence of a careful business person. In particular, the directors are jointly responsible for:

- Payment for shares by shareholders being made;
- Existence and regular keeping of books and documents prescribed by law;
- Proper distribution of dividends or interests as prescribed by law; and
- Proper enforcement of the resolutions of general meetings (subject to the
Approval and appraisal rights: What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?

A seller of shares is not required to obtain either board or shareholder approval but common practice, as a matter of good corporate governance, is to obtain at least board approval. That being said, one must also look to the articles of association of a company as these may contain restrictions on the transfer of shares that would need to be complied with.

Most housekeeping matters resulting from an acquisition require board and/or shareholder approval. For example, changing the company auditor, company name or fiscal year will all require approval from the shareholders. A few matters require a special resolution to be passed by the shareholders, which requires 75% of the votes present and entitled to vote to pass the resolution, and which are relevant in the context of an M&A transaction. Those matters include:

(i) amendments to the memorandum of association;
(ii) amendments to the articles of association;
(iii) an increase or decrease of the registered capital of the company; and
(iv) converting a limited company to a public company.

Hostile transactions: What are the special considerations for unsolicited transactions?

While hostile bids are not prohibited under Thai law, they are very rare, principally due to the “family owned” shareholding structure of the majority of Thai publicly listed companies and the public’s negative perception of hostile bids. Unless an agreement is reached between the bidder and major shareholders of the target company, the bid is rarely successful.

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 company’s ability to protect deals from third-party bidders?

The parties can agree to break fees, non-solicitation and nondisclosure provisions. Break fees can be unilateral or bi-lateral depending on the cause of the termination; however, break fees payable by the target company in return of deposit made by the acquirer are more common.
### Government influence:

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

As a general rule, no significant restrictions are applicable by government agencies to business combinations other than competition regulations and specific industries where special regulations apply and depending on the particular circumstances of the transaction previous authorization or notification can be required from government agencies.

Under the Trade Competition Act, mergers and acquisitions of a business that may result in a monopoly or unfair competition require prior approval from the TCC, which is empowered to regulate mergers control and prescribe notifications regarding conditions (such as minimum threshold of total market share, total sales, amount of capital, number of shares or aggregated amount of assets post-merger) for a merger that requires examination or pre-merger approval. Further, the legal basis for exchange control in Thailand is derived from the Exchange Control Act B.E. 2485 (the “ECA”) and Ministerial Regulation No. 13 B.E. 2497 issued under the ECA. These laws set out the principles of controls under which Notifications of the Ministry of Finance and Notices of the Competent Officer are issued.

In terms of exchange control, there is generally no restriction on remittance of foreign currency into Thailand, but any purchase and outward remittance of foreign currency requires prior approval from the Bank of Thailand through commercial banks acting as its authorized agents. While no limitation is imposed on the amount of outward remittance of dividends or profit, any purchase of a significant amount of foreign currency for the foregoing purposes generally requires supporting documents evidencing such underlying transactions, such as documents evidencing an ownership of shares or money to be repatriated or a notice of declaration of dividends.

### Conditional offers:

What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

The principal legislation governing public takeovers in Thailand is the SEC Act and the CMSB No. ThorJor. 12/2554 Re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers (“CMSB Notification”).

For foreign investor, there should not be any unusual characteristics under the SEC Act, nor any unique notifications and regulations on takeovers. Thailand has adopted laws and regulations mainly from the US and other similarly developed financial markets.

According to the CMSB Notification, only shares of a public company listed on the SET are subject to the tender offer process.

The most common method for obtaining control of a public company in Thailand is through an acquisition of its equity interest, which can be done either off-exchange or on-exchange (that is, through the SET or the MAI). For a publicly listed company, an acquisition of a majority stake in the company is required under Thai securities law to be by way of a tender offer unless certain exemptions apply. While the tender offer can be conducted on a voluntary basis, if any acquirer’s interest in the target company reaches or exceeds certain thresholds stipulated under applicable laws (that is, 25%, 50% or 75% of its the total voting rights at the end of any trading day (Trigger Points)), the acquirer will be required to conduct a mandatory tender offer to purchase all the shares and equity-linked securities of that company.

In addition, a potential acquirer who does not wish to obtain absolute but only partial control can apply for a waiver from the SEC to make a “partial” tender offer. The waiver may be granted if, among other things:
| Financing: If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer’s financing? | -A requisite approval from the target company’s shareholders is given.  
-The aggregate number of shares held by the acquirer, its concert parties and their related persons prior to receiving a waiver and shares to be acquired by way of the partial tender offer, does not exceed 50% voting rights of the target company.  

Once the waiver is granted, the acquirer will not be required to make a mandatory tender offer but must make an offer to acquire not less than 10% of the target company’s total issued and outstanding shares of the same type but not more than the amount specified in the partial tender offer document.  

Further, there are also voluntary tender offers which are an offer made voluntarily by an acquirer who does not hold any shares of the target company that triggers the tender offer threshold, but wishes to control such target company. In doing so, the acquirer must tender for the entire share capital of the target company. |
| Minority squeeze-out: May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process? | There are no significant restrictions are applicable by government agencies to financing for a transaction. There are also no typical obligations of the seller to assist in the buyer’s financing.  

However, there is a requirement under the SEC in case of the share acquisition in the listed company that the buyer is required to submit a letter or statement issued by any commercial bank to prove that the buyer has sufficient funds to make a tender offer.  

There is no squeeze out mechanism under Thai law. In practice, after completion of a tender offer, there is typically 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 achieved and the basic rights of these shareholders (including notice to attend, speak and vote at general shareholders meetings) must be respected. If a resolution to delist the target is passed following completion of a tender offer, this resolution triggers the making of a mandatory offer to the dissenting minority shareholders. |
| Cross-border transactions: How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions? | This is not applicable under Thai law, and such conditions are generally found in industry-specific legislation.  

For example, in the oil and gas industry, transfer of concession rights requires both Ministerial approval and cabinet approval. |
| 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? | Industry-specific rules may vary widely depending on the relevant industry. |
### Sector-specific rules: Are companies in specific industries subject to additional regulations and statutes?

This is not applicable under Thai law, and such conditions are generally found in industry-specific legislation.

### Tax issues: What basic tax issues are involved in business combinations?

The acquisition of a Thailand limited company has no tax consequences on the acquirer except for the payment of stamp duty on a share transfer instrument. The rate of stamp duty on a transfer of shares is calculated at 0.1% of the greater of the selling price and the paid-up value, of the shares. If share transfer instruments are executed and kept outside of Thailand, stamp duty is not payable, unless the share transfer instruments are subsequently brought into Thailand.

The target company will continue to be liable for corporate income tax on the same basis as before the sale. The current corporate income tax rate in 2013 is 20%. The utilization of tax losses is not affected by a change in shareholding.

Post-closing acquirers should be aware that repatriation of profits to a foreign company not carrying on business in Thailand through dividends, interest or service fees are subject to a 15% withholding tax, except for dividends which are subject to a 10% withholding tax. All dividends are subject to a 10% withholding tax. Thailand has entered into a number of bilateral agreements to resolve the issue of double taxation which, in some cases, reduces the rate of withholding tax.

### Labor and employee benefits: What is the basic regulatory framework governing labour and employee benefits in a business combination?

Unlike in other jurisdictions, parties to M&A transactions in Thailand are not required to obtain the consent of employees, except in situations where employees may be transferred to a new company (e.g. where an amalgamation is part of the deal structure, in which case employee consent must be obtained in writing).

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

In Thailand, the Bankruptcy Act B.E. 2483 as amended (the "BA") is the law governing bankruptcy matters. In the BA, there are also sections that directly deal with reorganization matters. Bankruptcy and reorganization procedural matters are stipulated in the BA; the Establishment of and Procedures for Bankruptcy Court Act B.E. 2542; and Regulations for Bankruptcy Cases B.E. 2549. The test of insolvency is mainly whether a debtor has debt greater than his or her assets. In addition, under the BA, there are presumptions as to whether a debtor is insolvent.

After the insolvency proceedings are commenced by or against the corporation, the directors and officers are not prohibited from exercising the powers in connection with the management of assets or business of the corporation. However, as prescribed by section 24 of the BA, once the court has ordered the debtor to be under receivership, the powers of the directors in connection with their corporation’s asset or business will cease and are, by virtue of law, transferred to the
official receiver. Pursuant to section 826 of the CCC, the powers of the officers empowered by the directors to act as their agent shall also terminate once the debtor becomes bankrupt. Nonetheless, the officers (agents) are obligated to take all necessary steps to protect the interests entrusted to them until the representatives of the principle can protect such interests.

In bankruptcy proceedings, under section 24 of the BA, after the rendering of the court’s receivership order, the debtor is prohibited from engaging in any activity involving his assets, including sale of the assets. The official receiver is the only person permitted under the BA to sell the assets of the debtor. The sale of assets will be conducted through auction or other selling methods proved to be the most convenient and for the best interests of all creditors as stipulated in section 123 of the BA. The claims and liabilities can be passed with assets depending on the terms and conditions of the sale. In reorganization proceedings, under section 90/12(9) of the BA, the debtor is also prohibited from selling the assets out of the ordinary course of business throughout the process, unless it is provided otherwise in the plan approved by the court. ‘Stalking horse’ bids and credit bidding are not specifically prescribed under Thai law.

**Anti-corruption and sanctions:** What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?

Please see the question on the Foreign Corrupt Practices mentioned above.