Global Public M&A Guide - Thailand

Effecting a Takeover

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

# 4. Effecting a Takeover

[Last updated: 1 January 2025, unless otherwise noted]

**4.1 Types of tender offers**

In Thailand, takeovers of public companies are conducted via tender offer. Under Thai tender offer rules, there are four types of tender offers:

Mandatory tender offer: when an acquirer acquires shares and reaches the relevant trigger point and is required by law to make a tender offer;

Voluntary tender offer: when an acquirer voluntarily launches a tender offer without being required to do so;

Partial tender offer: when an acquirer launches a tender offer to purchase part of shares in a listed company; and

Delisting tender offer: when an acquirer wishes to launch a tender offer in order to delist the company.

A bidder that intends to launch a takeover bid must prepare tender offer documents to be submitted to the Office of the SEC, as well as proof of funds.

**4.2 Mandatory tender offer**

General rule

The trigger point for launching a mandatory tender offer is reached when a person, either by themselves or with the related person or persons acting in concert, acquires or holds up to or exceeding 25%, 50% or 75% of the total voting rights. Once such trigger point is hit, the acquirer will have to make a tender offer for the purchase of shares and equity linked securities in the listed company.

No creeper rule

The creeper rules generally impose an obligation to make a tender offer when an offeror acquires a certain percentage of shares while already holding shares in a significant percentage, e.g., if the acquirer holds 25%-50% and further acquires an additional 5%, it will be required to make a tender offer (and not only the reporting obligation). However, the concept of creep rules in Thailand has been repealed.

Tender offer price

As a general rule, the tender offer price may be paid in cash or in cash with additional forms of consideration. At least one form of consideration must be in monetary form. Additional forms of consideration must be appraised by a financial advisor. Additionally, the tender offer price must not be lower than the price that (i) the offeror, (ii) related person of the offeror, (iii) a person acting in concert with the offeror, or (iv) related person of (iii), has paid to acquire shares in the 90-day period prior to the launch of a tender offer.

**4.3 Voluntary tender offer**

The tender offeror is free to make the voluntary tender offer but will have to submit the tender offer documents to the Office of the SEC accordingly.

The tender offeror may set out the conditions to the tender offer (such as a minimum acceptance level) and if these conditions are not met, it may cancel its tender offer. For example, if, at the closing of the offer period, the number of shares tendered is less than the specified amount, e.g., 90%, 75% or 51%, the tender offeror can cancel the voluntary tender offer. The tender offeror would have to clearly specify such condition in the offer documents when submitting them to the Office of the SEC.

**4.4 Partial tender offer**

A person can launch a tender offer to purchase part of the shares in a listed company. Upon completion of the partial tender offer, the percentage of shares held by the acquirer would hit the trigger point but the obligation to make a mandatory tender offer would be waived, provided that a shareholders' meeting of the listed company resolves to approve the partial tender offer and other requirements are satisfied.

However, the acquirer cannot hold shares up to 50% or more. In Thailand, there are very few precedent cases of partial tender offers.

**4.5 Delisting tender offer**

The major shareholder who wishes to delist the company will launch the delisting tender offer, which will require the shareholder approval of not less than 75% of the voting share capital of the listed company and there must not be shareholders representing more than 10% of the voting share capital of the listed company objecting to the delisting. In practice, the major shareholder will be the delisting tender offeror. However, legally speaking, any person can be the delisting tender offeror.

Since delisting is a significant item, all shareholders are entitled to vote on the issue and the shareholders will not be considered as having a special interest in the delisting. Therefore, the major shareholder or the shareholder who is an offeror under the delisting tender offer is allowed to cast a vote in the shareholders' meeting to approve the delisting.

Delisting tender offer price

The pricing criteria in a delisting tender offer are different from the pricing criteria in a mandatory tender offer. As for a delisting tender offer, the tender offer price must not be lower than one of the following prices:

the highest acquired price that (i) the offeror, (ii) related person of the offeror, (iii) a person acting in concert with the offeror, or (iv) related person of (iii), has paid to acquire the shares within 90 days before commencement of the tender offer;

the five-business day weighted average market price before the board of directors of the listed company approves the delisting;

the net total asset that is marked to market; and

the fair price appraised by an independent financial adviser.

Implications of having more than 5% of the shares held by a minority after delisting

After delisting, if the minority shareholders hold shares amounting to more than 5% of the total issued share capital of the listed company (excluding the shares held by the offeror, the offeror's concert parties and related persons), the directors and executives of the listed company will still be required to comply with certain fiduciary and other legal duties under the Thai securities law, such as (i) the rules on connected transactions, (ii) the rules on acquisition and disposal of material assets of a listed company and (iii) duties to prepare and submit financial statements and reports to the Office of the SEC concerning the financial conditions and business operation of the listed company.

In practice, an acquirer who intends to delist the company would aim to acquire 95% or more of the shares in the listed company in order to avoid being subject to fiduciary and other legal duties under the Thai securities law. This is a significant issue for a listed company aiming for delisting and it should be further analyzed on a case-by-case basis for a feasible solution.

**4.6 Restriction on repeating tender offers**

An acquirer who has previously made a tender offer cannot make another tender offer for the purpose of taking over the business before a period of 1 year from the closing date of the offer period specified in the previous tender offer for the purchase of shares, unless the intention to delist the company is specified in the previous tender offer and the subsequent tender offer is a delisting tender offer.

**4.7 Opinions of the target business in relation to a tender offer**

When a tender offer is made, the target company must submit its opinion to the Office of the SEC, with copies distributed to the SET and all the shareholders. In delivering the opinion, the listed company must appoint an independent financial adviser and have the opinion of the independent financial adviser delivered along with the opinion of the listed company. Additional opinions must be prepared for any revised offers, unless special circumstances apply. Such circumstances generally relate to the latest offer being more favorable and the independent financial adviser of the company having already expressed an opinion on the issue of acceptance.

©Copyright © 2025 Baker & McKenzie. All rights reserved. **Ownership**: This documentation and content (Content) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms). The Content is protected under international copyright conventions. Use of this Content does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion**: All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites. **Attorney Advertising**: This Content may qualify as “Attorney Advertising” requiring notice in some jurisdictions. To the extent that this Content may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. **Reproduction**: Reproduction or copying of the Content on this Site without express written authorization is strictly prohibited.

**Internal content**: This is internal Content and may be used as a reference. Do not distribute the Content outside the Firm.