Global Private M&A Guide - Limited External Content - Thailand

Common deal structures

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# What are the key private M&A deal structures?

There are four main forms of M&A recognized in Thailand. Mergers and acquisitions can take the following forms:

Amalgamation or a consolidation

Merger

Acquisition of the shares in a target company

Acquisition of assets of the target company

In addition to these four main forms, there are some situations where, for commercial reasons, a combination of acquisitions is necessary. For instance, the transaction may begin with a share acquisition to acquire the target company, and then be followed by an amalgamation, merger or an entire or partial asset acquisition to transfer all or a part of the assets from the target company to the buyer.

An auction process is becoming popular, especially for businesses likely to attract a lot of interest from buyers. Indicative bid process letters are commonly used at the first offer stage.

Merger and amalgamation procedures are considered to be complex and relatively time-consuming, which means that acquisitions of shares or assets are generally more common in Thailand than merger or amalgamation procedures.

Under Thai laws, once two or more companies are amalgamated, the amalgamating companies will lose their legal personality and cease to exist. The new company will be established by operation of law and will inherit all of the assets, liabilities, rights, duties and responsibilities of the amalgamating companies.

In addition, the major drawbacks of an amalgamation are that the new corporation loses the opportunity to treat the tax losses brought forward by the original corporation as an expense when computing net profit for tax purposes, and the transaction may involve several complicated, time-consuming legal procedures.

An amendment to the Thai Civil and Commercial Code (effective as of 7 February 2023) introduced the concept of a "merger" in Thailand. A merger is another method of business integration in addition to the existing concept of an amalgamation. A merger involves a company (Company A) merging with another company (Company B) to become a merged company (either Company A or Company B becomes the surviving company), whereas an amalgamation involves a company (Company A) merging with another company (Company B) to become an entirely new company (Company C). In a merger, one company (the disappearing company) will lose its status as a juristic person and the other company (the surviving company) will receive the disappearing company's assets, liabilities, rights, obligations and responsibilities by operation of law.

Given that the concept of a merger has only recently been introduced, there are not yet any rules or regulations relating to its tax treatment and the Thai Revenue Department has not issued any guidance. It is not yet clear what the tax treatment for this new merger scheme will be.

# Which entity is likely to be the target company (on a share sale) or the seller (on an asset sale)?

The nature and form of limited liability companies in Thailand are essentially the same as in many other jurisdictions. The capital is divided equally and is represented by shares in a designated (par) value. The liability of each shareholder is limited to the unpaid portion of the shares held. Limited liability companies may be either private companies, which are subject to the Civil and Commercial Code of Thailand, or public companies, which are subject to the Public Limited Company Act.

# What are the different types of limited liability companies?

There are two types of limited liability companies: a private limited company and a public limited company.

# Is there a restriction on shareholder numbers?

To establish a private limited company, at least two natural persons (not necessarily Thai citizens) must act as promoters (founders), with each holding at least one share, thereby becoming a shareholder upon incorporation. The par value of a share of a private limited company is at least THB 5 and each share must be at least 25% paid up. There is no maximum number of shareholders. For a public company, there must be at least 15 promoters for the incorporation of a company.

# What are the key features of a share sale and purchase?

In a share acquisition, both the buyer and the acquired entity (the target) survive, but the buyer becomes a shareholder of the acquired entity (the target).

# What are the key features of an asset sale and purchase?

In an asset acquisition, both the acquiring entity (the buyer) and the selling entity (the seller) survive the acquisition. The seller merely divests its assets or business(es) and transfers them to the buyer. After completion of the transaction, whether the seller is dissolved or is maintained to carry out different business activities can be considered separately to the acquisition.

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