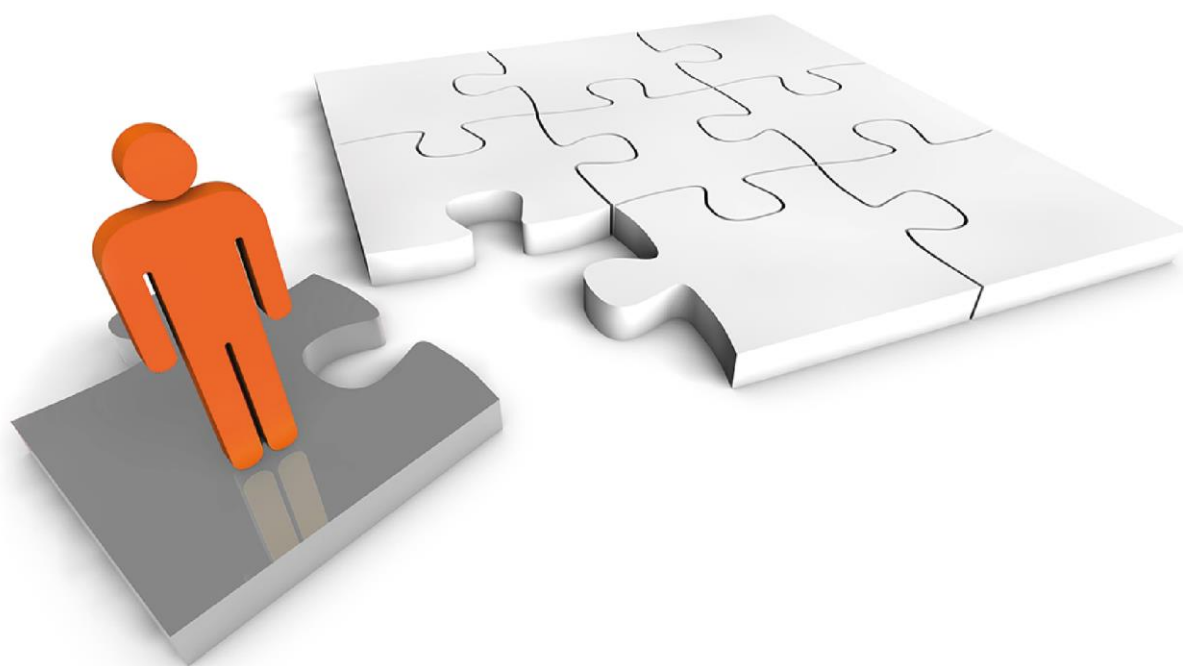


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A GUIDE TO  
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# CONTENTS

Foreword	3
Asia Market Entry – A Comparative Analysis	5
Cambodia	15
China	18
Indonesia	21
Lao PDR	25
Malaysia	27
Myanmar	30
Philippines	33
Singapore	36
Thailand	39
Vietnam	42
Asia Market Entry – Merger Control Issues	46
Key Contacts	57
Our Regional Contacts	60
Disclaimer	61

# FOREWORD



This guide gives a brief comparative overview of certain key regulatory requirements relating to mergers and acquisitions of private companies in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Also included is a section summarising the key merger control issues in some of these jurisdictions.

Our Mergers & Acquisitions ("**M&A**") Practice Group services a diverse array of clients. No client is too big or too small. We act for multinationals, financial institutions, accounting firms, investment banks, listed and unlisted groups including government-linked groups, funds, private equity investors, high net-worth individuals, SMEs, principals and their advisers.

Across all our offices, we work together as one highly rated team with in-depth and extensive experience having dealt with the most significant cross-border M&A transactions, both public and private, including high-profile, complex and challenging deals in Asia and beyond. Our M&A partners are valued by clients for their wealth of industry insights and their ability to present sound, innovative and commercial solutions in challenging M&A transactions. Many of our M&A partners in the region are recognised as leading practitioners in this field by various international publications and they have garnered numerous accolades in the public and private M&A space.

A key pillar to our strength in cross-border transactions is our Rajah & Tann Asia network with offices in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam, as well as dedicated desks focusing on Brunei, Japan and South Asia. With the most extensive legal network in Asia, our lawyers have a tight grasp of the local culture, business practices and language not just within their own home countries, but within the other markets in which they frequently conduct cross-border deals as well. Our depth of transactional and regulatory experience allows us to advise clients strategically and creatively, from structuring to eventual execution and implementation of the transaction.

This gives us an unparalleled edge over our competitors in presenting and pursuing solutions that are both practical and cost-effective. It provides our clients with the "home advantage" in any competitive M&A bids or tenders.

Our team draws on the expertise of our other practice groups to provide specialist advice on the different facets of the transaction, such as cross-border issues, regulatory compliance, competition and antitrust issues, tax structuring as well as industry-specific issues.

Our regional network enables our offices to work together closely to provide seamless "one-stop shop" service to our clients to meet their needs in cross-border M&A transactions, from advising on antitrust and other market access restrictions, obtaining local regulatory approvals to conducting legal due diligence across the region and providing a seamless legal due diligence report.

This publication is up to date as of July 2020.

# ASIA MARKET ENTRY – A COMPARATIVE ANALYSIS

## GOVERNING LEGISLATION

<b>CAMBODIA</b>	<ul style="list-style-type: none"> <li>• Law on Commercial Enterprise</li> <li>• Law on Commercial Registration Rules and Commercial Register 1995 (as amended in 1999)</li> <li>• Law on Investment (as amended in 2003)</li> </ul>	<ul style="list-style-type: none"> <li>• Civil Code</li> </ul>
<b>CHINA</b>	<ul style="list-style-type: none"> <li>• PRC Company Law</li> <li>• PRC Contract Law</li> <li>• PRC Foreign Investment Law (w.e.f. 1 January 2020)</li> </ul>	<ul style="list-style-type: none"> <li>• Provisions on the Merger and Acquisitions of Domestic Enterprises by Foreign Investors</li> </ul>
<b>INDONESIA</b>	<ul style="list-style-type: none"> <li>• Law No. 40 of 2007 on Limited Liability Companies</li> <li>• Law No. 25 of 2007 on Investment</li> <li>• Government Regulation No. 24 of 2018 on Electronic Integrated Business Licence Services ("<b>GR No. 24/2018</b>")</li> <li>• Presidential Regulation No. 44/2016 on List of Business Fields Closed to Investment and Business Fields Open with Conditions to Investment ("<b>Negative Investment List</b>")</li> <li>• Minister of Trade Regulation No. 10/M-DAG/PER/3/2006 on Trade Representative Offices of Foreign Companies (as amended in 2020)</li> <li>• Presidential Decree No. 90 Year 2000 on Representative Offices of Foreign Companies</li> </ul>	<ul style="list-style-type: none"> <li>• Head of the Indonesian Central Agency of Statistics Regulation No. 95 of 2015 on Indonesian Standard Industrial Classification (Klasifikasi Baku Lapangan Indusri or "<b>KBLI</b>")</li> <li>• Investment Coordinating Board ("<b>BKPM</b>")<sup>1</sup> Regulation No. 6 of 2018 on Guidelines and Procedures for Investment Licensing and Facilities (as amended in 2019) ("<b>BKPM No. 6/2018</b>")</li> <li>• BKPM Regulation No. 7 of 2018 on Guidelines and Procedures to Monitor the Implementation of Investment</li> <li>• BKPM Regulation No. 1 of 2020 on Guidelines for the Implementation of Electronic Integrated Business Licence Services ("<b>BKPM No. 1/2020</b>")</li> </ul>
<b>LAO PDR</b>	<ul style="list-style-type: none"> <li>• Law on Enterprises No. 46/NA dated 26 December 2013</li> <li>• Law on Investment Promotion No. 14/NA dated 17 November 2016</li> <li>• Decree on Special Economic Zone No. 188/GOL dated 7 June 2018</li> </ul>	
<b>MALAYSIA</b>	<ul style="list-style-type: none"> <li>• Companies Act 2016</li> <li>• Promotion of Investments Act 1986</li> <li>• Limited Liability Partnerships Act 2012</li> </ul>	<ul style="list-style-type: none"> <li>• Registration of Businesses Act 1956</li> <li>• Industrial Co-ordination Act 1975</li> </ul>

<sup>1</sup> On 21 June 2018, the Government of the Republic of Indonesia issued GR No. 24/2018. One of the mandates is to establish the Online Single Submission ("**OSS**") portal, an online platform that integrates the multiple regulatory permissions in one place to facilitate easy approvals

<b>MYANMAR</b>	<ul style="list-style-type: none"> <li>Myanmar Companies Law 2017</li> <li>Special Company Act 1950</li> <li>State-Owned Economic Enterprises Law 1989</li> </ul>	<ul style="list-style-type: none"> <li>Myanmar Investment Law 2016</li> <li>Special Economic Zone 2014</li> </ul>
<b>PHILIPPINES</b>	<ul style="list-style-type: none"> <li>Revised Corporation Code of the Philippines</li> <li>Securities Regulation Code</li> <li>Foreign Investments Act of 1991</li> </ul>	<ul style="list-style-type: none"> <li>Omnibus Investments Code of 1987</li> <li>Special Economic Zone Act of 1995</li> </ul>
<b>SINGAPORE</b>	<ul style="list-style-type: none"> <li>Companies Act</li> <li>Business Names Registration Act 2014</li> <li>Limited Liability Partnerships Act</li> </ul>	<ul style="list-style-type: none"> <li>Limited Partnerships Act</li> <li>Partnership Act</li> <li>Competition Act</li> </ul>
<b>THAILAND</b>	<ul style="list-style-type: none"> <li>Civil and Commercial Code</li> <li>Public Limited Companies Act B.E. 2535</li> <li>Foreign Business Act B.E. 2542</li> </ul>	<ul style="list-style-type: none"> <li>Investment Promotion Act B.E. 2520</li> <li>Securities and Exchange Act B.E. 2535</li> </ul>
<b>VIETNAM</b>	<ul style="list-style-type: none"> <li>Law on Enterprises No. 59/2020/QH14, effective from 1 January 2021, and its related implementing regulations</li> <li>Law on Investment No. 61/2020/QH14, effective from 1 January 2021, and its related implementing regulations</li> </ul>	<ul style="list-style-type: none"> <li>Law on Securities No. 54/2019/QH14, effective from 1 January 2021, and its related implementing regulations</li> <li>Law on Competition No. 23/2018/QH14, effective from 1 July 2019, and its related implementing regulations</li> </ul>
<b>REGULATING BODY</b>		
<b>CAMBODIA</b>	<ul style="list-style-type: none"> <li>Ministry of Commerce</li> <li>General Department of Taxation</li> <li>Council for the Development of Cambodia</li> </ul>	<ul style="list-style-type: none"> <li>National Bank of Cambodia</li> <li>Ministry of Economy and Finance</li> <li>Securities and Exchange Commission of Cambodia</li> </ul>
<b>CHINA</b>	<ul style="list-style-type: none"> <li>Ministry of Commerce ("<b>MOFCOM</b>")</li> <li>State Administration for Market Regulation ("<b>SAMR</b>")</li> <li>State Administration of Foreign Exchange ("<b>SAFE</b>")</li> </ul>	<ul style="list-style-type: none"> <li>National Development and Reform Commission</li> <li>State-owned Assets Supervision and Administration Commission</li> <li>Other industry regulatory authorities</li> </ul>

<b>INDONESIA</b>	<ul style="list-style-type: none"> <li>Ministry of Law and Human Rights</li> <li>Ministry of Trade</li> <li>BKPM/ Online Single Submission Management and Organising Body (Lembaga Pengelola dan Penyelenggara Online Single Submission / “<b>OSS Body</b>”)<sup>2</sup></li> </ul>	<ul style="list-style-type: none"> <li>Indonesia Competition Commission (<i>Komisi Pengawas Persaingan Usaha</i> / “<b>KPPU</b>”)</li> </ul>
<b>LAO PDR</b>	<ul style="list-style-type: none"> <li>Ministry of Industry and Commerce</li> <li>Ministry of Planning and Investment</li> <li>Special Economic Zone Management Committee</li> </ul>	
<b>MALAYSIA</b>	<ul style="list-style-type: none"> <li>Companies Commission of Malaysia</li> <li>Malaysian Investment Development Authority</li> <li>Economic Planning Unit</li> </ul>	<ul style="list-style-type: none"> <li>Malaysian Ministry of International Trade and Industry</li> </ul>
<b>MYANMAR</b>	<ul style="list-style-type: none"> <li>Company Registration Office</li> <li>Directorate of Investment and Company Administration</li> <li>Myanmar Investment Commission</li> </ul>	<ul style="list-style-type: none"> <li>Special Economic Zone Management Committees</li> </ul>
<b>PHILIPPINES</b>	<ul style="list-style-type: none"> <li>Securities and Exchange Commission</li> <li>Department of Trade and Industry (Board of Investments)</li> <li>Philippine Economic Zone Authority</li> </ul>	
<b>SINGAPORE</b>	<ul style="list-style-type: none"> <li>Accounting and Corporate Regulatory Authority</li> <li>Economic Development Board</li> <li>Competition and Consumer Commission of Singapore</li> </ul>	
<b>THAILAND</b>	<ul style="list-style-type: none"> <li>Ministry of Commerce</li> <li>Board of Investment</li> <li>Foreign Business Committee</li> </ul>	<ul style="list-style-type: none"> <li>Securities and Exchange Commission</li> </ul>
<b>VIETNAM</b>	<ul style="list-style-type: none"> <li>Provincial’s Department of Planning and Investment</li> <li>Provincial’s Management Board of Industrial Zones</li> <li>Vietnam Competition Commission (“<b>VCC</b>”) / Ministry of Industry and Trade (“<b>MOIT</b>”)</li> </ul>	<ul style="list-style-type: none"> <li>Other authorities involved in the appraisal process</li> </ul>

<sup>2</sup> Based on the definition provided in BKPM No. 6/2018 and BKPM No. 1/2020, the OSS Body is the BKPM.

## MINIMUM SHARE CAPITAL REQUIREMENTS FOR COMPANIES

CAMBODIA	<ul style="list-style-type: none"> <li>Minimum share capital of KHR 4 million</li> </ul>
CHINA	<ul style="list-style-type: none"> <li>Except for certain industries, no minimum share capital requirement but the registered capital shall be compatible with the business scale of the company</li> </ul>
INDONESIA	<ul style="list-style-type: none"> <li>Minimum issued and paid-up capital of IDR 2.5 billion</li> <li>An investment plan to be submitted to BKPM for a quantum exceeding IDR 10 billion, excluding land and building, per KBLI<sup>3</sup> number and per project location</li> </ul>
LAO PDR	<ul style="list-style-type: none"> <li>Generally, no minimum registered capital requirement</li> <li>Certain businesses as prescribed under Announcement No. 1327/MOIC dated 13 July 2015 on List of Conditional Business for Foreign Investment issued by the Ministry of Industry and Commerce require minimum Lao shareholding and/or minimum registered capital</li> </ul>
MALAYSIA	<ul style="list-style-type: none"> <li>Generally, no minimum share capital requirement but at least one subscriber is required for incorporation</li> <li>Minimum share capital requirements may apply to certain regulated sectors or industries</li> </ul>
MYANMAR	<ul style="list-style-type: none"> <li>No minimum share capital, but at least one share must be issued, excluding companies/ investments established under Special Economic Zone Law 2014 where the minimum paid up capital varies from US\$300,000 to US\$10 million</li> </ul>
PHILIPPINES	<ul style="list-style-type: none"> <li>No minimum share capital, but at least one share must be issued</li> <li>A corporation with foreign equity in excess of 40% and is considered a domestic market enterprise<sup>4</sup> must have a minimum paid-up capital of US\$100,000 or US\$200,000 depending on certain conditions; except that an export enterprise, even with more than 40% foreign equity, is not subject to a minimum paid-up capital.<sup>5</sup></li> </ul>

<sup>3</sup> KBLI is a standard classification for economic activities published by the Indonesian Central Agency of Statistics. Each company in Indonesia must choose at least one KBLI number (with five digits) that is suitable with its business activity.

<sup>4</sup> A “domestic market enterprise” means “an enterprise which produces goods for sale, renders service, or otherwise engages in any business in the Philippines.” See Implementing Rules and Regulations of the Foreign Investment Act of 1991, as amended, s1(k).

<sup>5</sup> An “export enterprise” means “an enterprise wherein a manufacturer, processor or service (including tourism) enterprise exports sixty percent (60%) or more of its output, or wherein a trader purchases products domestically and exports 60% or more of such purchases.” See *id.* s1(g).

<b>SINGAPORE</b>	<ul style="list-style-type: none"> <li>No minimum share capital, but at least one share must be issued</li> </ul>
<b>THAILAND</b>	<ul style="list-style-type: none"> <li>At least three shareholders holding one share each, with minimum par value of THB 5</li> <li>Any registration of initial capital exceeding THB 5 million, or increase of registered capital to an amount exceeding THB 5 million, will require additional compliance</li> <li>Minimum capital requirement for a foreigner to operate business in Thailand is THB 2 million per business. If the business falls within the lists annexed to the Foreign Business Act B.E. 2542, the minimum capital requirement is THB 3 million</li> </ul>
<b>VIETNAM</b>	<ul style="list-style-type: none"> <li>No minimum capital contributions except for certain sectors</li> </ul>
<b>FOREIGN OWNERSHIP RESTRICTION FOR COMPANIES</b>	
<b>CAMBODIA</b>	<ul style="list-style-type: none"> <li>Generally, no foreign ownership restrictions save for certain prescribed sectors such as cigarette manufacturing, movie production, gemstone mining and traditional media industries</li> </ul>
<b>CHINA</b>	<ul style="list-style-type: none"> <li>The Foreign Investment Law has introduced the pre-establishment national treatment plus negative list system for foreign ownership restrictions.</li> <li>Generally speaking, foreign ownership restrictions in various sectors are governed by (a) the respective Negative Lists applied outside and inside the free-trade zones of China; and (b) other PRC laws and regulations</li> </ul>
<b>INDONESIA</b>	<ul style="list-style-type: none"> <li>Foreign ownership restrictions in various sectors are governed by the Negative Investment List and the laws and regulations governing the relevant business sector ("<b>Sectoral Laws and Regulations</b>")</li> <li>Unless a particular business sector is specifically subject to foreign ownership restrictions under the Negative Investment List and Sectoral Laws and Regulations, a business sector should not be subject to any foreign ownership restrictions. However, BKPM may nevertheless impose foreign ownership restrictions at its discretion<sup>6</sup></li> </ul>
<b>LAO PDR</b>	<ul style="list-style-type: none"> <li>Generally, no foreign ownership restrictions save for certain prescribed industries which are deemed by the Lao government to be detrimental to affect national security, health or traditions, or have a negative impact on the natural environment</li> </ul>
<b>MALAYSIA</b>	<ul style="list-style-type: none"> <li>Generally, no foreign ownership restrictions save for certain regulated industries such as financial services, broadcasting, electricity, oil and gas, insurance and maritime and logistics industries</li> </ul>

<sup>6</sup> This will remain subject to any OSS regulations or guidelines (if any).

<b>MYANMAR</b>	<ul style="list-style-type: none"> <li>• Certain prescribed industries are reserved for the government under the State-Owned Economic Enterprises Law and no foreign ownership is allowed, but exceptions are available for joint ventures with the government in these industries and sectors</li> <li>• Under the Foreign Investment Law, there are three further categories of restricted activities: (a) wholly prohibited activities; (b) restricted activities permitted only with joint venture with Myanmar nationals; and (c) restricted activities permitted where specific conditions are satisfied</li> </ul>	<ul style="list-style-type: none"> <li>• Generally, save for the above, there are no foreign ownership restrictions. However, foreign ownership restrictions may be administered as a matter of policy, for example, courier activities cannot be undertaken by foreign companies in Myanmar</li> </ul>
<b>PHILIPPINES</b>	<ul style="list-style-type: none"> <li>• Generally, no foreign ownership restrictions save for certain prescribed industries where foreign ownership is prohibited such as mass media, private security and other prescribed industries which have foreign ownership caps of 0% to 60% such as recruitment, advertising, education, and financing companies</li> </ul>	
<b>SINGAPORE</b>	<ul style="list-style-type: none"> <li>• Generally, no foreign ownership or investment restrictions in most industries save for certain prescribed sectors generally perceived to be critical to national interests, i.e. banking, finance, insurance, domestic news media and broadcasting</li> </ul>	
<b>THAILAND</b>	<ul style="list-style-type: none"> <li>• Generally, no foreign ownership restrictions save for three prescribed categories of restricted activities under the Foreign Business Act B.E. 2542: (a) wholly prohibited activities (no foreign ownership allowed); (b) activities permitted with license from the Ministry of Commerce and are at least 40% Thai-owned (may be reduced to 25%) and two-fifths of directors must be Thai nationals; and (c) activities permitted with license from the Ministry of Commerce (Director General) and approval from the Foreign Business Committee</li> </ul>	
<b>VIETNAM</b>	<ul style="list-style-type: none"> <li>• 100% foreign ownership generally permitted, except for certain prescribed industries such as banking, telecommunication, civil aviation, publishing and news media industries</li> </ul>	<ul style="list-style-type: none"> <li>• For certain sectors, foreign investors must meet “conditions for market approach applicable to foreign investors” which will be prescribed in guidance of Government to be issued later</li> </ul>

## TIME REQUIRED TO SET UP A COMPANY

<b>CAMBODIA</b>	<ul style="list-style-type: none"> <li>Five to 10 working days (for new setup applicable to online portal) but excluding any specific licenses or Qualified Investment Project (QIP) status approval for investment incentives and guarantees)</li> </ul>
<b>CHINA</b>	<ul style="list-style-type: none"> <li>Around three to 12 weeks (assuming no industry-specific approval or pre-approval is required)</li> </ul>
<b>INDONESIA</b>	<ul style="list-style-type: none"> <li>Two to three working days (assuming all documentation is in order)</li> </ul>
<b>LAO PDR</b>	<ul style="list-style-type: none"> <li>40 to 60 days from submission of complete documents</li> </ul>
<b>MALAYSIA</b>	<ul style="list-style-type: none"> <li>Two to three working days (assuming all documentation is in order)</li> </ul>
<b>MYANMAR</b>	<ul style="list-style-type: none"> <li>14 to 21 days from the date of complete filing</li> </ul>
<b>PHILIPPINES</b>	<ul style="list-style-type: none"> <li>Four to five weeks from submission of complete documents<sup>7</sup></li> </ul>
<b>SINGAPORE</b>	<ul style="list-style-type: none"> <li>One to three days (assuming all documentation is in order and no regulatory approvals are required)</li> </ul>
<b>THAILAND</b>	<ul style="list-style-type: none"> <li>28 days. An application for a foreign business licence from the Ministry of Commerce or a BOI certificate from Thailand Board of Investment (for a foreign majority/wholly owned company) will take approximately 90 days</li> </ul>

<sup>7</sup> Due to COVID-19 and the community quarantine imposed by the government, which have affected the operations of the Securities and Exchange Commission, the period required to set up a company has increased from the pre-COVID period of 10 to 20 working days to 4 to 5 weeks. The period excludes processing time for the application for a secondary license that may be required in regulated sectors, and post-incorporation requirements such as registration with tax authorities.

<b>VIETNAM</b>	<ul style="list-style-type: none"> <li>10 working days from submission of complete documents to obtain Enterprise Registration Certificate for incorporation of a domestic company, or 21 working days from submission of complete documents to obtain Investment Registration Certificate and Enterprise Registration Certificate for incorporation of a foreign-invested company (assuming that the company is engaging in business sectors or particular projects that do not require investment policy approvals of the National Assembly, Prime Minister, or provincial People's Committees)</li> </ul>
<b>DIRECTOR REQUIREMENTS FOR COMPANIES</b>	
<b>CAMBODIA</b>	<ul style="list-style-type: none"> <li>At least one director</li> <li>No requirement as to nationality or residency</li> <li>Director must be at least 18 years old</li> <li>Corporate director is not allowed</li> </ul>
<b>CHINA</b>	<ul style="list-style-type: none"> <li>Usually there are three to 13 directors in a private limited liability company</li> <li>If the company is small, there shall be at least one executive director</li> <li>No requirement as to nationality, subject to certain exceptions in some industries</li> </ul>
<b>INDONESIA</b>	<ul style="list-style-type: none"> <li>At least one director and one commissioner</li> <li>No requirement as to nationality but must be natural persons. However, the position of the director who is responsible for human resources matters must be an Indonesian</li> <li>At least one director must hold a tax identity number</li> <li>A higher number may be required for companies in certain sectors</li> </ul>
<b>LAO PDR</b>	<ul style="list-style-type: none"> <li>At least one director. Where the company's assets is greater than LAK 50 billion, the minimum requirement is to have at least two directors and board of directors must be formed</li> <li>Certain industries, for example banking and insurance, may have different requirements</li> </ul>
<b>MALAYSIA</b>	<ul style="list-style-type: none"> <li>At least one director for a private company and at least two directors for a public company, who ordinarily reside in Malaysia by having a principal place of residence in Malaysia</li> <li>Director must be a natural person who is at least 18 years old</li> </ul>

<b>MYANMAR</b>	<ul style="list-style-type: none"> <li>At least three directors for public companies and one of them must be a Myanmar citizen who is ordinarily resident in Myanmar</li> </ul>	<ul style="list-style-type: none"> <li>One resident director, save for public companies</li> </ul>
<b>PHILIPPINES</b>	<ul style="list-style-type: none"> <li>At least one (for one person corporations) but not more than 15, with no residency requirement</li> <li>If a company is subject to foreign ownership restrictions, the citizenship of the members of the board of directors is also be subject to the same foreign ownership restrictions</li> </ul>	<ul style="list-style-type: none"> <li>Independent directors constituting 20% of the board are required of companies vested with public interest such as listed companies, banks, insurance companies and other financial intermediaries</li> </ul>
<b>SINGAPORE</b>	<ul style="list-style-type: none"> <li>At least one director who is ordinarily resident in Singapore</li> </ul>	
<b>THAILAND</b>	<ul style="list-style-type: none"> <li>At least one director for a private limited company with no requirement as to nationality or residency</li> <li>There are more stringent requirements for a public limited company</li> </ul>	
<b>VIETNAM</b>	<ul style="list-style-type: none"> <li>A company may have more than one legal representative (which may be the director or other position), and at least one legal representative must reside in Vietnam</li> </ul>	<ul style="list-style-type: none"> <li>Depending on the type of company, a company can have a board of management, members' council or president. Vietnam laws do not require board members to be Vietnamese, but they must meet certain criteria to hold managerial positions in a company subject to the company's business</li> </ul>

### "ANTITRUST"/COMPETITION LAW ISSUES

<b>CAMBODIA</b>	NA	
<b>CHINA</b>	<ul style="list-style-type: none"> <li>The SAMR is the body which is in charge of the merger control in China.</li> <li>If certain thresholds have been met, the relevant parties shall file with, or obtain the approval of, the SAMR after the transaction documents have been signed but before the completion of the transaction</li> </ul>	
<b>INDONESIA</b>	<ul style="list-style-type: none"> <li>KPPU has the power to assess any merger, shares acquisition, asset acquisition, or consolidation, including foreign-to-foreign M&amp;A. Any M&amp;A that meets certain thresholds and criteria shall be notified to KPPU within 30 business days from the date of the transaction becomes legally effective (mandatory post-closing notification, known as Notification)</li> </ul>	<ul style="list-style-type: none"> <li>Aside from mandatory post-closing regime, Government Regulation No. 57 of 2010 adopts a voluntary pre-closing regime which allows parties to voluntarily notify the proposed M&amp;A that meets the same thresholds and criteria to KPPU before it is completed (voluntary pre-closing, known as "<b>Written Consultation</b>"). It is important to note that even when the M&amp;A has been notified under the Written Consultation, it still has to be notified to KPPU within 30 working days from the completion of the transaction date, so as to meet the statutory obligation</li> </ul>

<b>LAO PDR</b>	<ul style="list-style-type: none"> <li>Law governing competition is set out in Law on Competition No. 60/NA dated 14 July 2015</li> </ul>	
<b>MALAYSIA</b>	<ul style="list-style-type: none"> <li>Malaysian competition law does not have an economy-wide merger control regime</li> </ul>	<ul style="list-style-type: none"> <li>However, there are merger controls within the telecommunications and aviation sectors. Antitrust clearances from the Malaysian Communications and the Multimedia Commission or the Malaysian Aviation Commission may be necessary if the M&amp;A transaction triggers merger control filings</li> </ul>
<b>MYANMAR</b>	<ul style="list-style-type: none"> <li>Myanmar has not prescribed any merger control regulations pursuant to its Competition Law</li> </ul>	
<b>PHILIPPINES</b>	<ul style="list-style-type: none"> <li>The Philippine Competition Act of 2015 penalizes anti-competitive agreements and abuses of dominance</li> <li>M&amp;A deal that meets the size of party and value of transaction thresholds are required to notify and seek clearance from the Philippine Competition Commission (“PCC”)</li> </ul>	<ul style="list-style-type: none"> <li>The parties cannot consummate the notifiable M&amp;A deal until it is approved or deemed approved by the PCC</li> <li>PCC may impose financial penalties for failure to notify</li> </ul>
<b>SINGAPORE</b>	<ul style="list-style-type: none"> <li>The M&amp;A should be notified to the Competition and Consumer Commission of Singapore (“CCCS”) if it is expected to result in a substantial lessening of competition in Singapore (“SLC”). Whilst notification to CCCS is voluntary, CCCS has a merger monitoring unit which studies transactions which may not have been notified and may, as appropriate, investigate transactions which it is of the view have resulted or would result in a SLC</li> </ul>	<ul style="list-style-type: none"> <li>Further, CCCS may impose financial penalties on the parties and/or direct divestiture if it concludes that a SLC has or is likely to occur. Separately, when notifying an M&amp;A, parties should highlight in the notification, any agreements, arrangements or provisions which are “directly related and necessary to the implementation of the merger” (e.g. non-compete clauses of a limited duration). Such ancillary restrictions will be reviewed by CCCS together with the M&amp;A and will be covered by the non-opposition decision issued by CCCS</li> </ul>
<b>THAILAND</b>	<ul style="list-style-type: none"> <li>The Trade Competition Act regulates anti-competitive practices in mergers, amalgamations or acquisitions of shares/assets</li> <li>The Trade Competition Commission (“TCC”) enforces the competition law in all sectors</li> </ul>	
<b>VIETNAM</b>	<ul style="list-style-type: none"> <li>Enterprises engaging in an M&amp;A shall file an economic concentration notification dossier to the Vietnam Competition Commission before initiating economic concentration if the M&amp;A reaches the notification threshold</li> </ul>	<ul style="list-style-type: none"> <li>Notification thresholds shall be determined based on several aspects, such as the total assets or total turnover in Vietnam market of the companies involved in the merger, the combined market shares of those companies in the relevant market or the value of the M&amp;A transaction</li> </ul>

# CAMBODIA



## How are Private M&A deals commonly done in Cambodia?

In Cambodia, Private M&A deals are commonly done by way of (a) share acquisition, which can be in the form of a transfer of existing shares or issuance and subscription for new shares; and (b) business and assets acquisition.

## What are the regulatory approvals required in a Private M&A deal?

### Approvals from the authorities

Depending on the industry and the sector of the target company as well as the type of the company, approvals may be required from the industry/sector regulators such as the National Bank of Cambodia, the Ministry of Economy and Finance, the Securities and Exchange Commission of Cambodia, Ministry of Mines and Energies etc. If the target company is also an investment company with the qualified investment project status, approval is also required from the Council for the Development of Cambodia in addition to the Ministry of Commerce ("**MOC**") and the General Department of Taxation.

### Approvals from the internal managerial body of the parties

Resolutions of shareholders and board of directors adopted in accordance with the articles of the company in compliance with the law on commercial enterprise are usually required. Notwithstanding any requirement otherwise stated in the articles of the company or in the relevant laws, it is a practice that the Council for the Development of Cambodia and MOC require a unanimous consent of all the shareholders for any changes of the articles of the company including the share transfer or issuance and subscription of new shares.

## What are the rights and liabilities that are automatically transferred in a Private M&A deal?

### Share acquisition

All rights and liabilities attached to the shares are effectively transferred to the new owners, which include rights to receive dividends, rights to attend and vote in the shareholders meeting, rights to nominate any board members etc, and liability for the losses incurred by the target company (limited to the amount already contributed

as per the shareholding). The rights and liabilities of the target company do not change.

### Business and assets acquisition

Registration of the transfer of the business and assets of a company will be required or the agreement to transfer such business and assets will be entered into as may be applicable and relevant. As such, the rights and liabilities pertaining to such assets will ordinarily be passed on to the purchaser.

### What transfer taxes are payable on a share sale and an asset sale?

Share and asset transfers are subject to varying rates of stamp duties:

#### 1. Share transfer

Stamp duty is payable at the rate of 0.1% of the value of the transferred shares.

#### 2. Asset transfer

##### a. Movables:

In relation to transfer taxes on an asset sale, most movable properties are not subject to transfer tax, save for vehicles. Transfer of vehicles is subject to stamp duty at the rate of 4% of the value of the property.

##### b. Immovables:

Transfer of immovable properties is subject to stamp duty at the rate of 4% of the value of the transaction or the market value of the property, whichever is higher.

### What consultation or approval rights do employees have in a Private M&A deal? Are employee contracts automatically transferred in a Private M&A deal?

The Labour Law is silent on the right to consultation or consent of the employee in the event that the employer decides to enter into a share acquisition or business and assets acquisition.

### Share transfer

In a share transfer, whether or not there is a change in control of the target company, which is the employer, such transfer does not affect the employment relationship between the corporate employer and the existing employees.

### Asset transfer

In an asset transfer, the employees of the business are not automatically transferred to the buyer.

The employment contracts of such employees must first be terminated by the seller or transferred through a contractual arrangement with the consent of the employees by and among the seller, the buyer and the employees. The termination and re-employment must comply with contractual and labour regulation requirements and procedures.

### Can an agreement relating to the purchase of shares or assets provide for a foreign governing law? If so, are there any local laws that would still automatically apply to the Private M&A deal?

Cambodian law does not prohibit the parties to a contract from selecting a foreign law as the governing law of the contract. This is the case even if both parties to the contract are Cambodian companies.

However, the Cambodian court does not hear or apply foreign law, so if a foreign law is chosen, it will be necessary to use a foreign court or commercial arbitration as a competent dispute resolution jurisdiction. Nonetheless, for a foreign court judgment to be recognised and enforceable in Cambodia, the country of such foreign court judgment will need to enter into an agreement for the reciprocal recognition of judgments with Cambodia, among other conditions. Cambodia has not signed such an agreement with any country with the exception of Vietnam (with practical enforcement remaining to be tested) and therefore no other foreign court judgment will be enforceable in Cambodia. Therefore, the commonly used dispute resolution mechanism, if a foreign law is used as the governing law, is a commercial arbitration.

The procedures for the M&A transaction (e.g. procedures for registration of the share transfer/subscription for new shares) and related tax obligations as provided under the prevailing laws and regulations still automatically apply.

Are arbitration awards enforceable in your jurisdiction?

Yes, foreign arbitral awards are enforceable in Cambodia.

As Cambodia is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**"), it is possible to enforce a foreign arbitral award in Cambodia. Prior to enforcing a foreign arbitral award, the award must be endorsed by the Cambodian appeal court

# CHINA



## How are Private M&A deals commonly done in China?

In China<sup>8</sup>, Private M&A deals are commonly done by way of (a) share acquisition, which can be in the form of a transfer of existing shares or issuance and subscription for new shares; and (b) business and assets acquisition.

Mergers between two PRC-incorporated companies are also recognised by PRC laws, but less common in practice.

Considering the high tax rate involved in a transfer of business and assets in China, Private M&A deals are usually done by way of share transfer.

## What are the regulatory approvals required in a Private M&A deal?

### Approvals from the authorities

Cross-border M&A transactions used to be subject to the approval by, or filing with, MOFCOM. Since 1 January 2020 when the PRC Foreign Investment Law came into effect, the SAMR and its local agencies, being the registration authority in China, has now started to review whether the investment is within the negative lists or not during the registration process. Instead, the MOFCOM is now in charge of the foreign investment information reporting system which had been implemented simultaneously along with the Foreign Investment Law. Generally speaking, foreign investment into industries not on the negative lists will not be subject to approval. However, foreign investment into industries on the negative lists will be subject to approval from the industry regulators instead of MOFCOM now.

The National Development and Reform Commission and MOFCOM undertake the responsibility to review national security for foreign investment in sensitive areas or sectors (if necessary and applicable).

To the extent that an M&A transaction triggers merger control filings, SAMR is the authority that approves clearance filed by the affected parties.

Other approvals which are required include (a) approval from industrial regulatory bodies, e.g. the banking and

<sup>8</sup> "China" or "PRC" used in this guide refers to the People's Republic of China, excluding Hong Kong Special Administrative Region, Macau Special Administrative Region and Taiwan.

insurance regulatory commission or the health and family planning authority if acquiring companies in those industries; and/or (b) the State-owned Assets Supervision and Administration Commission or its local agency if the target company is a state-owned company.

Registration with the relevant authorities is also required, including registration with SAMR, the tax authority, SAFE (through the foreign exchange designated banks, where applicable), and, where applicable, the customs authority and other relevant authorities.

#### Approvals from the internal managerial body of the parties

Resolutions of shareholders and board of directors adopted in accordance with the articles of association of the target company will be required.

#### Approvals from other third parties

Prior consent from the relevant counterparty in an agreement to which the target company is a party may be required if relevant change in control clauses are included in the agreement.

### **What are the rights and liabilities that are automatically transferred in a Private M&A deal?**

#### Share transfer

All rights, assets and liabilities of the target entity will be automatically transferred to the buyer in a share acquisition.

Exceptions may apply, e.g. when there is a change in control clause in the relevant agreements entered into by the target. Such agreements may be terminated by the counter party.

#### Asset transfer

The rights and liabilities (such as the employees, the contracts, etc.) of the target company will not automatically pass on to the buyer. Generally speaking, the assets and liabilities transferred depend on the parties' contractual arrangement.

### **What transfer taxes are payable on a share sale and an asset sale?**

#### Share transfer

Stamp duty of 0.05% of the amount recorded on the share transfer agreement shall be paid by each party.

If the seller is a domestic company, the amount of the transferred shares shall be included in the income of the seller and company income tax of 25% will apply to the seller's net income amount.

If the seller is a foreign company, withholding income tax of 20% or 10% (if there is tax treaty between China and the country where the foreign company is incorporated) will be applied to the profit of the share transfer.

#### Asset transfer

The taxes for asset transfer include stamp duty, and where applicable, value-added tax for movable assets, deed tax for immovable assets and value-added tax for the land and property. Detailed tax rates will depend on several factors such as the types of assets, status of the taxpayer, whether the value-added tax for the target asset has already been deducted.

An exception will be applied when the final receiver of assets and employees is the same entity during a re-organisation of a company in an M&A procedure in which the company sells all or part of its assets and business (including the transfer of employees) as a whole through a series of transactions. In such a case, the value-added tax will not apply to the series of transactions in relation to the asset transfer, subject to the review and approval of the relevant tax authorities.

Generally speaking, the relevant tax for asset transfers are much higher than share transfers - especially when transfers of land and/or properties are involved.

### **What consultation or approval rights do employees have in a Private M&A deal? Are employee contracts automatically transferred in a Private M&A deal?**

#### Share transfer

In a share transfer, employees' employment relationship with the target company will remain unchanged and therefore employee contracts will be transferred automatically, unless the buyer wishes to terminate the

employment contracts with the employees in the target company.

In China, employees are typically not accorded with consultation or approval rights for M&A deals by way of share transfer.

#### Asset transfer

In an asset transfer, the employees of the target company/business are not automatically transferred to the buyer.

In such cases, the employment contracts (with the employee's consent) will first be terminated by the seller or transferred through a contractual arrangement by and among the seller, the buyer and the employees. The termination and re-employment must comply with contractual and labour regulation requirements and procedures.

**Can an agreement relating to the purchase of shares or assets provide for a foreign governing law? If so, are there any local laws that would still automatically apply to the Private M&A deal?**

#### Share transfer

For target companies which are domestic companies, a 2006 MOFCOM regulation stipulates that the share transfer agreements/capital increase agreements shall be governed by PRC laws.

For target companies which are foreign-invested companies, the parties may agree to use foreign laws as the governing law for the share transfer agreement/capital increase agreement. However, in practice, local approval / company registration authorities in some cities may require such agreements to be governed by PRC laws.

#### Asset transfer

For movable assets, PRC law does not prohibit the parties from selecting a foreign law as the governing law, provided there is a foreign element involved in such transaction.

For immovable assets, the governing law shall be PRC laws.

**Are arbitration awards enforceable in your jurisdiction?**

Yes. Foreign arbitral awards are enforceable in China as China is a party to the New York Convention. However, the enforcement is subject to the New York Convention and PRC laws.

# INDONESIA



## How are Private M&A deals commonly done in Indonesia?

In Indonesia, Private M&A deals are commonly done by way of (a) share acquisition, which can be in the form of a transfer of existing shares or issuance and subscription for new shares; and (b) business and assets acquisition.

## What are the regulatory approvals required in a Private M&A deal?

### Approvals from the internal managerial bodies of the parties

Where a sale of shares/business by the seller (in the form of limited liability company) constitutes disposal of more than 50% of the seller's net assets, prior approval of the seller's shareholders in a general meeting of shareholders ("**GMS**") must be obtained. Subject to the provisions of its articles of association, corporate approval from the buyer's **GMS**, board of directors and/or board of commissioners may also be required. For subscription of shares, a **GMS** of the target company must be obtained, whilst a **GMS**, board of directors and/or board of commissioners of the investor may only be required if provided in its articles of association.

### Approval from spouse

If the seller is a natural person (and if the person is married and there is no prenuptial agreement), the sale of shares/business must be approved by the spouse.

### Approvals from the relevant parties

In the context of share acquisition of a target company, should the share acquisition cause a change of control in the target company, the target company shall announce the acquisition plan (a) in writing to its employees and (b) in one daily newspaper with national circulation, not less than 30 days prior to the date of invitation to convene **GMS** of the target company (to approve the proposed share acquisition). This is to protect the interests of any third parties (employees or creditors).

### Approvals from the authorities

Upon the issuance of GR No. 24/2018 and BKPM No. 6/2018, BKPM is no longer authorised to issue any investment-related licences and/or approvals to an Indonesian company. Hence, BKPM approval for the change of shareholding composition is no longer required.

Please note, however, that the notification to or approval from the Ministry of Law and Human Rights for the changes of shareholding composition is still required whereby such actions shall be carried out by the notary.

Further, it is also worth noting that certain sectors which are highly regulated, for example bank, mining, financial institution, may require pre-approval from or notification to the relevant government authority for any changes to the shareholding composition in the relevant Indonesian company.

### What are the rights and liabilities that are automatically transferred in a Private M&A deal?

The rights and liabilities that may be automatically transferred in Private M&A deals are different depending on the specific type of transaction chosen by the parties in practice.

#### Share transfer

All rights and liabilities attached to the shares are effectively transferred, which include rights to receive dividends, rights to attend and vote in a GMS, and liability for the losses incurred by the target company (limited to the shareholding proportion).

#### Asset transfer

Usually the parties will novate the rights and obligations of the seller under contractual arrangement to the purchaser. As such, the rights and liabilities will ordinarily be passed on to the purchaser.

### What transfer taxes are payable on a share sale and an asset sale?

#### Share transfer of an Indonesian non-listed company

If the seller or shareholder is an Indonesian tax resident, any capital gains received will be taxable, as follows:

- a. For a corporate shareholder, the capital gains will be subject to the corporate income tax at 22% (the rate of 22% is for fiscal years 2020-2021 and will be reduced to 20% for fiscal year 2022 onwards) from taxable business profit.
- b. For an individual shareholder, the capital gains will be subject to the personal income tax with rates ranging from 5% to 30% from taxable income.

If the seller is a non-Indonesian resident, the seller will be subject to 5% withholding tax on the transaction price. The 5% withholding tax payable by the non-resident seller may be exempted under an applicable tax treaty between Indonesia and the country where the non-Indonesian resident seller is domiciled or established.

#### Asset transfer

If the seller is an Indonesian tax resident, the following are the tax implications on asset transfer:

#### *Income Tax*

Sales of a company's assets (other than land and building) may result in capital gains or losses, calculated as the difference between the sales proceeds and the acquisition cost of the assets. The capital gains are subject to income tax at 22% for fiscal years 2020-2021 and 20% for fiscal year 2022 onwards for corporate sellers or at the rates ranging from 5% to 30% for individual sellers.

#### *Value Added Tax ("VAT")*

VAT is due on the transfer of VAT-able goods within the Indonesian Customs Area. If the seller is registered as a VAT-able undertaking or Pengusaha Kena Pajak and the asset is VAT-able goods, the asset transfer will be subject to 10% VAT. However, asset transfer for the purpose of business merger, consolidation, expansion or acquisition is not subject to VAT.

#### *Tax on Transfer of Land and/or Building*

- Final income tax at 2.5% from transfer value, applicable to the seller or the transferor.
- Duty on the acquisition of land and building rights (Bea Perolehan Hak atas Tanah dan Bangunan or "BPHTB") at 5% on transfer value or Tax Object Acquisition Value (Nilai Jual Objek Pajak or NJOP), whichever is higher, after deducting non-taxable threshold. BPHTB is applicable to the buyer or the transferee.

### What consultation or approval rights do employees have in a Private M&A Deal? Are employee contracts automatically transferred in a Private M&A Deal?

The consultation/approval rights employees have in Private M&A deals, and the automatic transfer of

employee contracts, are different depending on the specific type of transaction chosen by the parties in practice.

#### Share transfer

The contracts of the employees with the target company would still be valid, unless the employees opt to terminate the employment due to change of ownership in the target company resulting from the share acquisition.

In the case where the employees opt to terminate, the employees are entitled to a statutory termination formula of 1x severance pay, 1x long-time service pay and 1x compensation of rights pay as provided under the Indonesian Manpower Law. The total statutory termination formula will depend on each employee's years of service.

We set out each classification of the statutory termination formula as follows:

#### 1. Severance pay:

Period of Employment	Severance Payment
Less than 1 year	1 month's salary
1 - < 2 years	2 months' salary
2 - < 3 years	3 months' salary
3 - < 4 years	4 months' salary
4 - < 5 years	5 months' salary
5 - < 6 years	6 months' salary
6 - < 7 years	7 months' salary
7 - < 8 years	8 months' salary
above 8 years	9 months' salary

#### 2. Long service pay:

Period of Employment	Severance Payment
3 - < 6 years	2 months' salary
6 - < 9 years	3 months salary
9 - < 12 years	4 months' salary
12 - < 15 years	5 months' salary
15 - < 18 years	6 months' salary
18 - < 21 years	7 months' salary
21 - < 24 years	8 months' salary
above 24 years	10 months' salary

#### 3. Compensation:

The components to be considered when calculating the amount of the compensation right pay are as follows:

- replacement of unused annual leave;
- reimbursement of transportation costs for employees and their families to new working place for a new employer;
- reimbursement for the housing and medical expenses equal to 15% of the severance pay and/or long service pay that the employee is entitled to; and
- other provisions that are provided and agreed upon in the relevant employment agreement, or collective labour agreement or company regulations.

#### Asset transfer

In an asset transfer, the contracts of the employees would typically be novated by the seller to the purchaser as opposed to the termination of the employments by the seller.

**Can an agreement relating to the purchase of shares or assets provide for a foreign governing law? If so, are there any local laws that would still automatically apply to the Private M&A deal?**

Yes, parties may provide for the agreement to be governed by foreign law. Under Indonesian law, parties to an agreement are free to choose the law which governs their agreement provided that the law chosen has sufficient relationship with the agreement and provided that the choice of law is not contrary to public order in Indonesia.

The procedures for the M&A transaction (e.g. procedures for share transfer/subsorption for new shares) as provided under the prevailing laws and regulations still automatically apply.

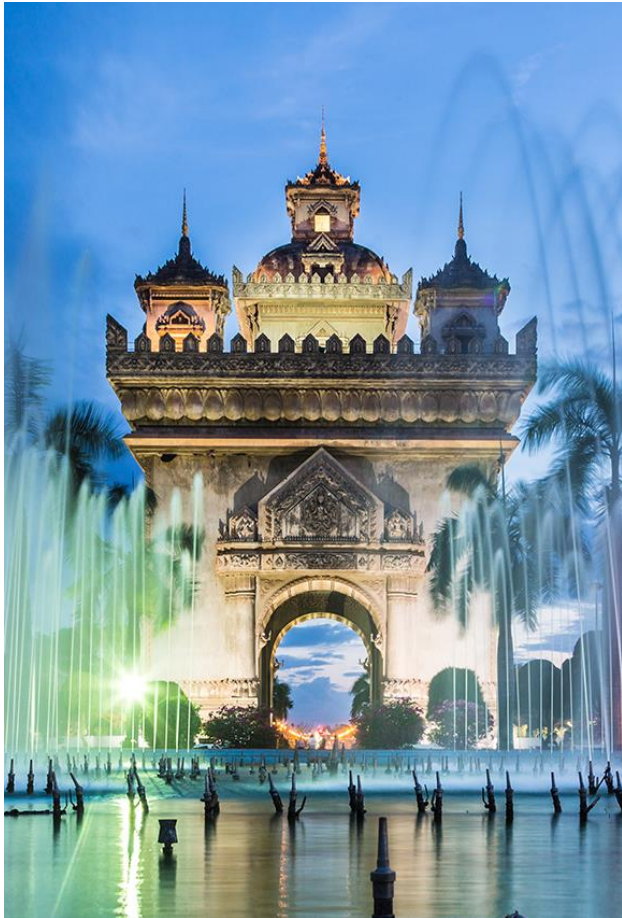
**Are arbitration awards enforceable in your jurisdiction?**

Yes, arbitration awards are enforceable in Indonesia, subject to requirements.

Specifically, on foreign arbitration awards, Indonesia is a party to the New York Convention, as evidenced by the enactment of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolutions ("**Law No. 30/1999**"). Law No. 30/1999 provides requirements to enforce such awards, i.e.:

- (a) the award is rendered by an arbitration body or an arbitrator in a country which is bilaterally bound to Indonesia or jointly bound with Indonesia by an international convention on the recognition and enforcement of foreign arbitration awards. Its enforcement is based on the principle of reciprocity;
- (b) the foreign arbitration awards are only limited to awards which, according to the laws Indonesia, fall within the scope of its commercial law;
- (c) the foreign arbitration awards do not contravene the public order in Indonesia; and
- (d) foreign arbitration award may be enforced in Indonesia after an exequatur (writ of execution) has been obtained from the Chairman of the Central Jakarta District Court.

# LAO PDR



## How are Private M&A deals commonly carried out in Lao PDR?

In Lao PDR, Private M&A deals are commonly done by way of (a) share transfer; and (b) acquisition of assets.

## What are the regulatory approvals required for a Private M&A deal?

If all or any part of the shares of a company or the assets of the company are transferred to another person, the following regulatory approvals are required:

### Approval from the shareholders

If the company sells or transfers all the business of the company, or if there is a sale of a substantial part of the registered share capital of the company to another person, the shareholders of the company must approve the transaction by way of a special resolution.

### Approval from the authorities

The company shall notify the transfer of the shares to the Ministry of Industry and Commerce, unless the company falls within the purview of the Ministry of Planning and Investment.

For a concession business which is governed by a concession agreement entered into between the company and the State, represented by the Ministry of Planning and Investment, transfer of shares in the company, must be approved by the Ministry of Planning and Investment, as this is usually a term in the concession agreement.

### Prohibition on foreign shareholding

The Announcement No. 1328/MOIC dated 13 July 2015 issued by the Ministry of Industry and Commerce provides a List of Reserved Businesses for Lao Citizens or the prohibition on foreign shareholding. The businesses set out in this list may only be undertaken by Lao citizens.

### Conditional businesses

The Announcement No. 1327/MOIC dated 13 July 2015 issued by the Ministry of Industry and Commerce provides a List of Conditional Business for Foreign Investment which foreign investors can participate, but may require minimum Lao shareholding or minimum registered capital.

## What are the rights and liabilities that are automatically transferred in a Private M&A deal?

### Share transfer

If a majority of the shares is transferred, the transferee takes control of the company. All rights and obligations of the company, including rights and obligations under contract, remain with the company.

### Asset transfer

Ownership of the asset is transferred, subject to encumbrances unless such encumbrances are discharged prior to completion.

## What transfer taxes are payable on a share sale and an asset sale?

The transfer taxes levied on Private M&A deals are different depending on the specific type of transaction chosen by the parties.

### Share transfer

2% income tax of total proceeds is payable by the transferor on the share transfer.

### Asset transfer

1. No tax on the transfer of land use rights, buildings, or land with buildings, which have been recorded in the balance sheet of a business unit that pays taxes in accordance with the accounting system.
2. For transfer of the assets other than the land and building, income tax at the rate of 10% of acquisition price is payable.

## What consultation or approval rights do employees have in a Private M&A deal? Are employee contracts automatically transferred in a Private M&A deal?

Generally local employment legislation does not provide employees with consultation or approval rights for M&A deals.

However, in the sale of a business, Lao labour law imposes an obligation on the former employer to give written notice to all employees that will be transferred. In addition, the former and new employers shall determine

their respective responsibilities to ensure that the employees' interests are protected under the law.

## Can an agreement relating to the purchase of shares or assets provide for a foreign governing law? If so, are there any local laws that would still automatically apply to the Private M&A deal?

Parties to a contract may provide for their rights and obligations thereunder to be governed by foreign laws.

However, Lao enterprise law and tax law will still automatically apply to the transaction.

## Are arbitration awards enforceable in your jurisdiction?

Lao PDR is a party to the New York Convention. Hence, arbitration awards issued in countries that are also parties to the Convention will be enforceable under the Law on Resolution of Economic Disputes (2018).

# MALAYSIA



## How are Private M&A deals commonly done in Malaysia?

In Malaysia, Private M&A deals are commonly done by way of:

### Share transfer

Generally, a share sale is the more common form of a private M&A transaction in Malaysia as there is no disruption to the business.

However, in a share sale, the acquirer will generally inherit all the assets and liabilities owned by the target company.

### Asset transfer

The advantage of an asset transfer is that the acquirer may pick and choose the assets (or liabilities) he wishes to acquire, as compared to the share sale approach.

One of the disadvantages of an asset transfer is that every asset and liability will have to be individually transferred to the acquirer, a process which may be subject to third party approvals or which takes time and/or may cost more in terms of stamp duty payable on the asset transfer.

Additionally, a separate entity will need to be set up to acquire the assets and liability to be acquired. Malaysia also has prescriptive employment laws, which favour employees earning below RM2,000/month ("**EA Employees**"), that regulate the transfer of employees in an asset sale.

## What are the regulatory approvals required in a Private M&A deal?

### Approval from the authorities

Generally, a regulator's approval is not required to be obtained in a Private M&A deal, except for:

### Regulated sectors

When the target to be acquired operates in a regulated sector, regulatory approval is required. For instance, an acquisition of a company in the financial services or insurance sector is subject to Bank Negara Malaysia's approval.

### Licenses requiring regulator's approval

The target may have been issued with a licence which requires the target to obtain a regulator's approval before a change in its shareholders is permitted, failing which the licence issued could be revoked, e.g. telecommunication licences.

### Some asset sales:

In an asset sale, the type of regulatory approvals required would depend on the specific asset transferred. For example, the prior approval of the State Authority may be required for foreigners to acquire any real property.

Additionally, since most regulatory licences issued are non-transferable, an acquirer via an asset sale would have to apply for new licences from the relevant authorities before it may carry on any regulated business activities.

### **What are the rights and liabilities that are automatically transferred in a Private M&A deal?**

#### Share transfer

In a share transfer, the acquirer will acquire shares in the target company to be acquired. All the assets and liabilities of the target remain the same post-acquisition, unless hived off pre-completion.

#### Asset transfer

In an asset transfer, only the assets and liabilities which the acquirer has elected to acquire will be transferred, so there is no automatic transfer of all assets and liabilities of that business.

For example, if a debt is not transferred to the acquirer in an asset sale, the right to collect the debt remains with the seller of the business.

Sellers must also ensure that EA Employees are offered employment with the acquirer on terms no less favourable than their existing terms.

### **What transfer taxes are payable on a share sale and an asset sale?**

Stamp duty is payable on an instrument of transfer as follows:

#### Share transfer

In a share transfer, stamp duty is payable on the instrument of transfer at the rate of 0.3% on whichever is the higher of

- a. consideration/purchase price; and
- b. value of the shares, as adjudicated by the Stamp Office.

Real property gains tax ("**RPGT**") is also payable on a disposal of the shares of a company classified as a "real property company". The tax rates range between 5% and 30% depending on the length of the duration the asset has been acquired before the disposal.

#### Asset transfer

In respect of an asset transfer, stamp duty is payable on an instrument of transfer. As such, any transaction which requires an instrument to effect the transaction will be subject to stamp duty and the rate of stamp duty payable would depend on the nature of the instrument.

In relation to real property, RPGT is payable on a disposal of real property. The tax rates range between 5% and 30% depending on the length of the duration the asset has been acquired before the disposal.

### **What consultation or approval rights do employees have in a Private M&A Deal? Do employee contracts move automatically in a Private M&A Deal?**

Generally, Malaysian employment laws do not provide employees with consultation or approval rights for M&A deals unless specifically provided for in the employees' terms of employment whether by way of a collective agreement or otherwise.

The movement of employment contracts is different depending on the specific type of transaction chosen by the parties.

#### Share transfer

In a share transfer, from the perspective of employees of a target company, their employer, and the terms of their employment contracts, remain the same.

### Asset transfer

In an asset transfer, the employees of the business are not automatically transferred to the acquirer.

The employment contracts of such employees must first be terminated by the seller and the acquirer (if it/he wishes) needs to re-employ them under new contracts of employment. The termination and re-employment must comply with legislative and contractual requirements and procedures, failing which the seller may be liable to pay statutory compensation and/or damages.

**Can an agreement relating to the purchase of shares or assets provide for a foreign governing law? If so, are there any local laws that would still automatically apply to the Private M&A deal?**

Yes, parties can provide for the agreement to be governed by foreign law.

Malaysian law recognises freedom to contract including freedom of choice of governing law. This, however, is not absolute and is subject to exceptions, including whether a foreign law is chosen with the intention of circumventing or contracting out of statutory requirements, or is held to be against public policy, in which case Malaysian law will still apply.

However, as a foreign governing law merely affects the interpretation of a contract, the parties must still comply with all the other aspects of Malaysian law.

For example, if stamp duty is payable on a share transfer form, this will need to be complied with, failing which the penalties and consequences provided under the Stamp Act would apply.

Alternatively, if a regulator's approval is required for the acquisition, this will still need to be obtained.

**Are arbitration awards enforceable in your jurisdiction?**

Yes, since Malaysia is a party to the New York Convention, arbitration awards issued in countries that are also parties to the Convention will be enforceable in Malaysia.

# MYANMAR



## How are Private M&A deals commonly done in Myanmar?

In Myanmar, Private M&A deals are commonly done by way of (a) share purchase; and (b) asset purchase.

Asset purchase may be preferable where there are issues with transferring shares to a foreigner. Such issues may arise where the target company is a local Myanmar company and its shares are not allowed to be transferred to foreigners, or where the target company owns land (as foreigners are not allowed to own land).

## What are the regulatory approvals required in a Private M&A deal?

### Approval from the authorities

Depending on the business undertaken by the targets, sector specific approvals may be required. For instance, for companies undertaking mining, approval from the Ministry of Mines may be required.

### Share transfer

Myanmar Investment Commission's approval is required for any transfer of majority shares of investors in companies holding permits or approvals issued under the Myanmar Investment Law 2016.

For all share transfers, an application must be made to register the share transfer with the Directorate of Investment and Company Administration ("**DICA**") and the share transfer form must be filed with the Companies Registration Office. Changes in shareholding must be notified to the electronic corporate registry maintained by DICA within 21 days of the transfer.

### Asset transfer

The regulatory approvals required for the transfer of assets are dependent on the assets in question. For example, if licences are required to be transferred, approval of the relevant supervising authority that issued the licence would need to be obtained.

Myanmar Investment Commission's approval is required for any transfer of more than 50% of the assets owned by the investors of the companies established under Myanmar Investment Law 2016.

### Approval from Competition Commission

The Myanmar Competition Law was introduced in February 2015, under which the Competition Commission's approval is required to be obtained in some cases. The Myanmar Competition Commission was established on 31 October 2018, and is chaired by the Union Minister for the Ministry of Commerce.

Under the Myanmar Competition Law, "mergers of businesses" or "joint ventures or acquisitions" which create excessive market dominance or have the intention of reducing competition are prohibited. There is currently no guidance in respect of how "excessive market dominance" or "reducing competition" will be determined, and as such, any merger or acquisition should undertake some degree of assessment prior to completion.

### **What are the rights and liabilities that are automatically transferred in a Private M&A deal?**

The rights and liabilities that may be automatically transferred in Private M&A deals are different depending on the specific type of transaction chosen by the parties in practice.

#### Share transfer

In an acquisition through a share transfer, all the assets, liabilities and obligations of the target entity will automatically be acquired.

However, third party consents are required for contracts subject to change of ownership restrictions.

#### Asset transfer

In an acquisition through an asset transfer, only the assets and liabilities which the buyer agrees to obtain, and which are identified are acquired. Third party consents are required for contracts containing no-assignment prohibitions.

### **What transfer taxes are payable on a share sale and an asset sale?**

#### Share transfer

Stamp duty of 0.1% of the value of the shares being transferred is payable.

Capital gains tax of 10% is payable where the total value of the capital assets disposed of within one year exceeds MMK 10 million. This does not apply to transfers of capital assets in respect of oil and gas companies, where tax rates ranging from 40% to 50% apply instead.

#### Asset transfer

For lease agreements between one and three years, stamp duty of 0.5% of the average annual value of rent is payable. For lease agreements exceeding three years, the stamp duty rate is reduced from 3% to 2% (on the average annual value of rent). Furthermore, lease premium paid in addition to the annual lease rental is also subject to 2% stamp duty on the total value of the premium.

All values of immovable property transfers are subject to stamp duty of 2%, plus an additional 2% if the immovable property is located in Yangon, Nay Pyi Taw or Mandalay.

Capital gains tax mentioned above for share transfers is also applicable for asset transfers.

### **What consultation or approval rights do employees have in a Private M&A deal? Are employee contracts automatically transferred in a Private M&A deal?**

Generally, local employment legislation does not provide employees with consultation or approval rights for M&A deals.

The automatic transfer of employment contracts is different depending on the specific type of transaction chosen by the parties in practice. Accordingly:

#### Share transfer

For share transfers, employee contracts will remain with the target, unless there are terms in the contract to the contrary.

#### Asset transfer

For asset transfers, employees' consents are required for transferring their employment contracts to a new entity. If an employee does not consent to being employed by the new employer, a severance payment of between one month's pay and five months' pay will need to be made to him, depending on the length of employment.

Can an agreement relating to the purchase of shares or assets provide for a foreign governing law? If so, are there any local laws that would still automatically apply to the Private M&A deal?

Yes, the parties may provide for the agreement to be governed by foreign laws.

Notwithstanding the choice of foreign governing law, the following local Myanmar laws will still be applicable:

1. State Owned Economic Enterprises Law, under which certain activities are reserved for the state or may be undertaken only through joint ventures with government-owned entities.
2. Myanmar Investment Law 2016 and Myanmar Companies Law 2017, which contain foreign ownership restrictions.
3. Transfer of Immovable Property Restriction Act 1987, which prohibits foreign ownership of land and property.
4. Myanmar Stamp Act and Law Amending the Stamp Act, which prescribes the stamp duty payable on transfer of assets (as described above).
5. Union Tax Law 2019 which prescribes the capital gains tax payable (as described above).

Apart from the above, other laws specific to the sector in which a business operates may also be applicable.

Are arbitration awards enforceable in your jurisdiction?

Myanmar's Arbitration Law 2016 covers both arbitration proceedings in Myanmar and the enforcement of domestic and foreign arbitral awards in Myanmar. As Myanmar has acceded to the New York Convention in 2013, Myanmar's Arbitration Law provides procedures to recognise and enforce foreign arbitral awards made in member countries.

# PHILIPPINES

How are Private M&A deals commonly done in the Philippines?

## Share transfer

Share sales are a common method of doing a Private M&A deal in the Philippines because it is simpler to implement.

## Asset transfer

This is preferred in instances where, amongst other concerns, there is a need to manage liabilities, such as contingent tax liabilities.

What are the regulatory approvals required in a Private M&A deal?

## Approval from the authorities

In general, no approval is required from authorities for a Private M&A deal, unless the structure of the deal will involve amendments to the articles of incorporation and bylaws of any of the parties to the deal, or foreign investment into a corporation that will exceed 40% of the equity, which will require regulatory approvals.

Under the Philippine Competition Act of 2015, parties to a Private M&A deal that meets the size of party and value of transaction thresholds are required to notify and seek clearance from the Philippine Competition Commission.

## Share transfer

In a share transfer, the approval of the tax authorities is required prior to the registration of the transfer of the shares in the books of the corporation. The approval is a confirmation that the correct taxes have been paid for the transfer of the shares.

## Asset transfer

In an asset transfer involving land, the approval of the tax authorities must be obtained prior to the transfer of the title of the property in the name of the purchaser. The approval is a confirmation that the correct taxes have been paid for the transfer of the land.



### Approval from the internal managerial body of the parties

In an asset transfer which involves the sale of all or substantially all of the assets of a corporation, the authorisation of the stockholders representing at least two-thirds of the outstanding capital stock is required. Further, the sale may trigger the appraisal rights of the dissenting stockholders.

### Approval from the relevant parties

In an asset transfer which involves the sale of all or substantially all of the assets of a corporation, the operation of the Bulk Sales Law may be triggered. This requires, among others, notice of the sale to the creditors and, in certain instances, payment of all debt to creditors or waiver of payment by the creditors.

### **What are the rights and liabilities that are automatically transferred in a Private M&A deal?**

The rights and liabilities that may be automatically transferred in Private M&A deals are different depending on the specific type of transaction chosen by the parties in practice.

### Share transfer

In a share transfer, the transferee generally does not become liable for the obligations of the corporate enterprise under the doctrine of separate juridical personality, unless either the transferee assumes the obligations through contract or there is a basis to discard the separate juridical personality of the corporation.

### Asset transfer

In an asset transfer, the transferee is not liable for the debts and liabilities of the transferor, except where the transferee expressly or impliedly agrees to assume such obligations.

### **What transfer taxes are payable on a share sale and an asset sale?**

The transfer taxes payable on Private M&A deals are different depending on the specific type of transaction chosen by the parties in practice.

### Share transfer

In a share transfer, the capital gains tax for the sale of shares of stock not traded in the stock exchange is 15% of the net capital gains.

A documentary stamp tax of PhP 1.50 on each PhP 200.00 of the par value of such stock shall be paid on the sale.

### Asset transfer

In an asset transfer, the transferor is liable for the regular corporate income tax on the sale of the assets.

A value-added tax of 12% is generally imposed on the sale of assets used in the business of the corporation.

### **What consultation or approval rights do employees have in a Private M&A deal? Are employee contracts automatically transferred in a Private M&A Deal?**

The employees generally have no consultation or approval rights in a Private M&A Deal.

The automatic transfer of employment contracts is different depending on the specific type of transaction chosen by the parties in practice.

### Share transfer

In a share transfer, since the result of the transaction may only be a change in control of the corporate employer, there is no change in the relationship between the corporate employer and the existing employees.

### Asset transfer

In an asset transfer, the transferee is not bound to retain the employees of the transferor, unless the transferee has contractually undertaken to retain the employees of the transferor corporation.

### **Can an agreement relating to the purchase of shares or assets provide for a foreign governing law? If so, are there any local laws that would still automatically apply to the Private M&A deal?**

Yes, the parties may provide for the agreement to be governed by foreign law. Parties are generally free to come to an agreement and stipulate what law should

govern their contractual rights and duties in the absence of prohibitive law or public policy providing otherwise.

However, there is a risk that courts will apply local Philippine law when the choice-of-law has no or very limited connection with the transaction or the contracting parties.

### Are arbitration awards enforceable in your jurisdiction?

Yes, foreign arbitral awards are recognised and enforced in the Philippines. As the Philippines is a party to the New York Convention, any party to a foreign arbitration may petition a Philippine court to recognise and enforce a foreign arbitral award made in a country that is also a party to the New York Convention.

However, the court may, upon grounds of comity and reciprocity, recognise and enforce a foreign arbitral award made in a country that is not a signatory to the New York Convention as if it were a Convention Award, if such country extends comity and reciprocity to awards made in the Philippines. If that country does not extend comity and reciprocity to awards made in the Philippines, the court may nevertheless treat such an award as a foreign judgment enforceable under the Philippine Rules of Court.

# SINGAPORE



## How are Private M&A deals commonly done in Singapore?

In Singapore, Private M&A deals are commonly done in the form of a share acquisition or an asset sale and purchase. The decision to make a share or asset purchase is usually influenced by factors such as the characterisation of gains as either revenue or capital, the amount of stamp duty payable on asset purchases and share purchases and the complexity of the deals involving the transfer of assets.

Private M&A deals are largely unregulated by statutory laws and parties are free to dictate the terms and conditions in the sales or purchases and they are mainly driven by commercial considerations. Nevertheless, Private M&A deals in Singapore share similar basic features and components with deals in other jurisdictions.

## What are the approvals required in a Private M&A deal?

### Approvals from the authorities

In general, no regulatory approval is required in a Private M&A deal.

Targets in certain industries that are regulated, such as insurance, banking, finance and mass media, may be subject to share ownership restrictions.

In addition, antitrust clearance from the CCCS is strongly recommended if the merger or acquisition would, or is expected to, result in a substantial lessening of competition within a particular market for goods or services in Singapore.

### Approvals from the internal managerial bodies of parties

The sale of businesses or shares requires the prior approval of the company's board of directors and/or its shareholders.

### Approvals from the relevant parties

Prior consent of existing customers, suppliers, lenders, partners or landlords may be required to ensure minimal disruption to the business.

## What are the rights and liabilities that are automatically transferred in a Private M&A deal?

The rights and liabilities that may be automatically transferred in Private M&A deals are different depending on the specific type of transaction chosen by the parties in practice.

### Share transfer

For share transfers, an acquirer automatically acquires all the rights, assets and liabilities of the target entity.

The acquirer should however note that certain regulatory licences and/or contracts of the target entity may contain change-in-control clauses which may automatically invalidate or terminate the licence or contract depending on the specific clause in question.

### Asset transfer

For asset transfers, the rights and liabilities of a target entity will not automatically pass on to the acquirer unless the acquirer opts to assume such rights or liabilities. Otherwise, the rights and liabilities will remain with the target entity.

## What transfer taxes are payable on a share sale and an asset sale?

### Share transfer

For a share transfer, stamp duty is payable on each instrument of transfer at the rate of 0.2% on the higher of (a) the purchase price and (b) the net asset value of such shares.

There are additional taxes payable for an acquisition of shares in property-holding entities that own primarily residential properties in Singapore with exemptions available in certain scenarios.

### Asset transfer

Stamp duty is only payable on transfer of shares (as above) and buyer stamp duty is payable for the acquisition of real property at the rate of approximately 3% on the higher of (a) the purchase price and (b) the current market value of the property. There is a seller stamp duty applicable for the sale of industrial and residential properties if sold within a holding period and additional buyer stamp duty for residential property

depending on the profile of the buyer. Such seller stamp duty and additional buyer stamp duty will be computed based on the higher of (i) the purchase price and (ii) the current market value of the property.

## What consultation or approval rights do employees have in a Private M&A Deal? Do employee contracts move automatically in a Private M&A Deal?

In Singapore, employees are typically not accorded with consultation or approval rights for M&A deals. However, collective agreements with trade unions may sometimes require employers to consult the respective trade unions (or bodies) prior to the sale of shares or assets.

In a Private M&A deal involving the transfer of a business or part thereof, the employment contracts of all employees who are covered under the Singapore Employment Act (the "**Employment Act**") will be automatically transferred to the acquirer or new employer. The Employment Act extends to all employees, including all persons employed in managerial or executive positions, with the exception of seamen, domestic workers, government employees or any class of persons whom the Minister for Manpower declares not to be employees under the Employment Act. The foregoing does not apply to a sale of assets on a piecemeal basis.

Under Section 18A of the Employment Act, the transferor company (i.e. the target entity) is obliged to notify and engage the employees (and their unions, if any) in consultations on the transfer of their employment to the acquirer or new employer as soon as it is reasonable and before the transfer takes place. Section 18A also provides that there will be an automatic transfer, with no break, in the continuity of employment, and on the same terms and conditions enjoyed by the employee prior to the sale unless the employee and the acquirer or new employer agree otherwise.

## Can an agreement relating to the purchase of shares or assets provide for a foreign governing law? If so, are there any local laws that would still automatically apply to the Private M&A deal?

Yes, the parties may provide for the agreement to be governed by a foreign law. However, certain provisions and statutory requirements may not be circumvented with the choice of a foreign law.

One example is the transfer of employees under Section 18A of the Employment Act. An asset transfer involving

the transfer of the assets or employees of the target entity will still have to be in compliance with Singapore laws despite the choice of foreign law.

### Are arbitral awards enforceable in your jurisdiction?

Yes, arbitral awards are enforceable in Singapore. Enforcement of international arbitral awards in Singapore is provided for in the International Arbitration Act, which gives effect to the New York Convention.

International arbitral awards made in Singapore and outside Singapore may, by leave of the Singapore High Court, have the same effect as judgments of Singapore Courts unless, amongst other things, they are deemed contrary to the public policy of Singapore.

# THAILAND



## How are Private M&A deals commonly done in Thailand?

There are generally three types of Private M&A deals in Thailand, namely, an amalgamation, a share acquisition and an asset acquisition, but the most common way to acquire a private limited company is by way of a share acquisition or an asset acquisition.

## What are the regulatory approvals required in a Private M&A deal?

### Approval from the authorities

In general, there is no requirement to obtain governmental approval for a Private M&A deal.

### Approval from the Trade Competition Commission

The Trade Competition Act B.E. 2560 (2017) and implementing Notifications on merger control set out certain regulatory requirements where a merger satisfies the specified thresholds.

### Post-merger notification

A post-merger notification is required when a business operator engages in a merger that may cause substantial reduction of competition in a particular market and must notify the Trade Competition Commission ("**Commission**") of the merger within seven days.

A "*substantial reduction of competition*" is defined by the Commission as a merger which has (a) a sales revenue of THB1,000 million or more, and (b) does not meet the requirements of having a "*monopoly*" or being a business operator with "*market dominance*" in the market, as discussed below. This sales revenue includes the sales revenue of all the business operators which are related in terms of policy or commanding power.

### Pre-merger approval

A pre-merger approval is required where the merger may result in a "*monopoly*" or a business operator with '*market dominance*'.

For the merged company to hold a "*monopoly*" on the market, it must have the power to fix the price and quantity of its goods or services independently and have a sales volume of THB1,000 million, or more.

The threshold for a business operator to have "*market dominance*" is more complex, requiring either: (a) a business operator having a market share of 50% or more and having sales volume of THB1,000 million, or more, in the preceding year; or (b) the first three business operators in a market of any goods or services having an aggregate market share of 75% or more and each having sales volume of THB1,000 million or more in the preceding year. However, this "*market dominance*" threshold will not apply to a business operator having the market share in the preceding year lower than 10%.

### What are the rights and liabilities that are automatically transferred in a Private M&A deal?

The rights and liabilities that may be automatically transferred in Private M&A deals are different depending on the specific type of transaction chosen by the parties in practice.

#### Share transfer

In the case of a share transfer, all rights and liabilities of the target company are automatically transferred to the purchaser.

#### Asset transfer

In the case of an asset transfer, the purchaser would not assume the liabilities of the target company (except in the case of an entire business transfer ("**EBT**"), where certain liabilities would be transferred). It is noteworthy that criminal liabilities will not be transferred to a purchaser.

### What transfer taxes are payable on a share sale and an asset sale?

The transfer taxes payable on Private M&A deals are different depending on the specific type of transaction chosen by the parties in practice.

#### Share transfer

The taxes applicable to a share transfer are corporate income tax, withholding tax and stamp duty.

#### Asset transfer

The taxes applicable to an asset transfer are corporate income tax, specific business tax (applicable to sale of real estate only), VAT, withholding tax, and stamp duty.

However, there are exemptions in certain circumstances, for example, the Revenue Department currently grants a tax exemption in the form of specific business tax, including stamp duty and VAT for EBT.

### What consultation or approval rights do employees have in a Private M&A Deal? Do employee contracts move automatically in a Private M&A Deal?

The transfer of employee contracts is different depending on the specific type of transaction chosen by the parties in practice.

#### Share transfer

A share transfer causes a change in the shareholding structure of the target company, without having an impact on the target company's employees. In general, therefore, there would be no requirement to obtain the employees' approval for the share acquisition because the employer remains the same.

There is a small chance that the employees may argue that there is a change of employer on the basis that there is a change of control. Therefore, it is recommended that the employees be informed of the change of control in writing.

#### Asset transfer

In the case of an asset transfer, the transfer of employment would not occur automatically. An asset transfer would affect the employment relationship between the transferor and its employees in that there would be a change of employer. As a result, the employees' prior written consent must be obtained for the transfer of their employment to be valid and effective.

### Can an agreement relating to the purchase of shares or assets provide for a foreign governing law? If so, are there any local laws that would still automatically apply to the Private M&A deal?

Yes, the parties may provide for the agreement to be governed by foreign law. Under the Act on Conflict of Laws 1938, the parties to an agreement are free to choose the governing law of their agreement. The choice of a foreign law to govern the terms of an agreement is enforceable in Thailand to the extent that the provisions of foreign law are not contrary to Thai public policy.

The party seeking to rely upon a foreign law would be required to prove the existence of that foreign law to the satisfaction of the court and that the foreign law provisions being relied upon are not contrary to Thai public policy. Thai public policy is a wide and undefined term, giving the courts substantial discretion when deciding on the issue.

Commercial terms in an agreement are not generally deemed to be contrary to Thai public policy, except where they are clearly contrary to Thai law, for example, a provision in an agreement which allows a creditor to charge compound interest immediately upon default.

However, Thai law would apply to matters relating to the form of the transaction as required by relevant laws, for example, the requirement for the registration of transfer of land, and the requirement for a transfer of shares to be evidenced by a signed written instrument and entry in the share register book of the company.

### Are arbitration awards enforceable in your jurisdiction?

Yes, Thailand is a party to the New York Convention and as a result, a final arbitral award issued in a country that is a party to the New York Convention would generally be enforceable in Thailand.

# VIETNAM



## How are Private M&A deals commonly done in Vietnam?

In Vietnam, Private M&A deals are commonly done by way of:

### Share/capital contribution transfer

The transfer depends on the enterprise form of the target company to be acquired by the investor. If the target company is a joint stock company, the deal will be done by way of share transfer. If the company is a limited liability company, the deal will be done by way of capital contribution transfer (or as named under Vietnamese law, capital contribution assignment).

### Asset transfer

An asset transfer can be done when the investor does not want to inherit the rights and obligations of the target company, but just to obtain its assets and/or the business.

### Merger

A company ("**Target Company**") transfers all lawful assets, rights, obligations and interests to another company which survives the merger ("**Surviving Company**"), and then the existence of the Target Company is terminated.

### Consolidation

Two or more companies are consolidated into a new one and the existence of the former companies are terminated.

### Division/separation

- a. The transferor company may divide shareholders/members, rights and obligations, and assets of the company to establish two new companies or more (the transferee companies).
- b. Upon the completion of the division, the existence of the transferor company shall be terminated.
- c. A transferor company may be partially divided by transferring part of its existing assets, rights, obligations, shareholders/members to establish one or some new companies without terminating the existence of the transferor company.

After the division or separation, the shares of the target company will be transferred to the investor.

### What are the regulatory approvals required in a Private M&A deal?

Subject to the nature of transaction, the regulatory approvals required in a Private M&A deal are generally as follows:

#### Acquisition/Subscription approvals

- a. For the transfer of shares or capital contribution to foreign investors, the acquisition/subscription approvals of the competent licensing authority shall be obtained as an in-principle approval of the competent authority for foreign investors to invest in the target company by way of acquisition/subscription of shares or capital contribution in the following cases:
  - i. the acquisition/subscription of shares or capital contribution results in an increase in foreign investor ownership in the Target Company engaging in business activities which are subject to "*conditions for market approach applicable to foreign investors*";
  - ii. the acquisition/subscription of shares or capital contribution results in (A) increasing foreign investor ownership from 50% or below 50% to more than 50%; or (B) increasing ownership ratio of foreign investors who already owned more than 50% to a higher ratio; and
  - iii. the acquisition/subscription of shares or capital contribution in the Target Company having land use right certificates of land lots located on islands, coastal or border commune, ward or town or in other areas which affects national defense and security.
- b. For transfer of real estate assets, an in-principle approvals of a competent licensing authority must be obtained as the approval for the transferring of the rights to implementation of the real estate project (project transfer approval).

#### Amendment of existing registration

- a. For the transfer of shares or capital contribution to foreign investors, the amendment of incorporation licences (Enterprise Registration Certificate and Investment Registration Certificate) and/or notification on the change of shareholding ownership to reflect the change of shareholders should be obtained from/submitted to the competent licensing authority.
- b. For transfer of real estate assets, the parties must register for the amend land use rights certificate to reflect the change of property ownership as the result of the project transfer.
- c. For the transfer of other assets which are required to register ownership, the amendment of ownership registration licence/certificate to reflect the change of owner is required.

### What are the rights and liabilities that are automatically transferred in a Private M&A deal?

The rights and liabilities that may be automatically transferred in Private M&A deals are different depending on the specific type of transaction chosen by the parties in practice.

#### Share/capital contribution transfer

All rights and liabilities of the selling party over the sold shares/capital contribution shall be automatically transferred to the purchasing party accordingly. This means that the purchasing party shall take over all interests and bear all debts arising from the transacting shares/capital contribution.

#### Asset transfer

The buyer/investor shall have all rights and interests (as asset's owner) over the sold assets transferred automatically from the seller to the buyer.

#### Merger

All rights and liabilities of the Target Company shall be automatically transferred to the Surviving Company, including the rights and liabilities over the capital, the assets, the employees, the business, etc.

### Consolidation

All rights and liabilities of the consolidating companies shall be automatically transferred to the consolidated company including the rights and liabilities over the capital, the assets, the employees, the business, etc.

### Division/separation

- a. For division of a company, the new companies after division must be jointly liable for unpaid debts, labour contracts and other property obligations of the company being divided.
- b. For separation of a company, the company being separated, and the separate company must be jointly liable for unpaid debts, labour contracts and other property obligations of the company being separated.

### **What transfer taxes are payable on a share sale and an asset sale?**

The applicable taxes in Private M&A deals are different depending on the specific type of transaction chosen by the parties in practice, the legal entities of the sellers, and the enterprise form of the target company, and the type of assets.

### Share/capital contribution transfer

A capital gain tax of (a) 20% of the gain (the difference between the transaction consideration and the investment cost) or (b) 0.1% on the sale proceeds.

### Asset transfer

The asset transfer is subject to the income tax, value added tax, and registration fee.

### **What consultation or approval rights do employees have in a Private M&A Deal? Do employee contracts move automatically in a Private M&A Deal?**

No employees' consultation or approval is required in a Private M&A Deal. However, in case of merger or consolidation, the company must inform their employees about such transaction within 15 days after the internal approval of the same.

In a merger or consolidation deal, the merged or consolidated company shall automatically inherit the

employee contracts. However, the new employer has the following rights:

- a. to amend and/or supplement the labour contracts; and
- b. if the new employer decides not to re-employ all employees, to assign to some employees' part-time jobs and/or to terminate the labour contracts of some employees under a plan of employment, which is prepared after consultation with the representative of the employees.

In an asset acquisition deal, the buyer shall not inherit the employee contracts. The seller has the responsibility to implement a plan of employment after consultation with the representative of the employees.

### **Can an agreement relating to the purchase of shares or assets provide for a foreign governing law? If so, are there any local laws that would still automatically apply to the Private M&A deal?**

Yes. In principle, in a purchase agreement of shares or assets involving a foreign party, the parties are entitled to choose a foreign law as the governing law of their transaction.

However, if the purchase transaction involves a real property, the governing law of the transaction must be the law of the country where the subject real property is located.

### **Are arbitration awards enforceable in your jurisdiction?**

Domestic commercial arbitration awards can be enforced under the Law on Enforcement of Civil Judgments. Accordingly, an arbitration award shall be voluntarily performed by a judgment debtor within 30 days from the date when the judgment debtor has duly received or been informed of the arbitration award. Otherwise, the judgment creditor shall be entitled to request the Civil Judgment Enforcement Management Agencies for a coercion of enforcement of such an arbitration award upon the procedures set forth by laws.

Foreign arbitral awards can be enforceable in Vietnam subject to the recognition of the competent court of Vietnam. Since Vietnam is a party to the New York Convention, the recognition and enforcement of such awards in Vietnam must comply with the New York

Convention and conform concurrently to the conditions and procedures stated in Vietnam Civil Proceedings Code. However, in cases of foreign arbitral awards made in countries which are not members of the New York Convention, the recognition and enforcement of such arbitral awards shall be governed under bilateral agreements on judicial cooperation between Vietnam and such countries (if any) or under the reciprocity principle.

As long as a foreign arbitral award is recognised by a Vietnamese court, it shall be enforced in the same manner as a domestic award.

## ASIA MARKET ENTRY – MERGER CONTROL ISSUES

Country	Merger Provisions in Generic Competition Law	Dedicated Enforcement Agency(ies)	Transactions Covered	Notification (Voluntary / Compulsory)	Notification Thresholds	Stand-still Period	Review Timelines	Availability To Offer Commitments	Directions / Sanctions / Penalties
Cambodia	No	NA	NA	NA	NA	NA	NA	NA	NA
China	Yes	Yes (Anti-monopoly Bureau of the State Administration for Market Regulation)	Mergers, amalgamations, acquisitions of shares/assets, or joint ventures	Compulsory as long as relevant thresholds are met	Depending on (i) Combined business volume worldwide and the business volume of single companies in China; or (ii) Combined business volume in China and the business volume of single companies in China	30 days	90 days	Yes	<ul style="list-style-type: none"> <li>Issue orders or directions such as to stop the merger, to dispose shares or assets, to transfer the business or adopt other necessary measures to restore the market situation before the merger</li> <li>May impose financial penalties</li> </ul>
Indonesia	Yes	Yes (Indonesian Competition Commission or <i>Komisi Pengawas</i> )	Mergers, consolidation and acquisitions of shares or assets	Voluntary pre-closing (Written Consultation)	(i) Combined value of worldwide assets of the merged entity > IDR 2.5 trillion (approx. USD	No	(i) Voluntary pre-closing (Written Consultation). The review timeline is not specified in the	KPPU can issue a Conditional Approval. However, the regulations are silent whether it	<ul style="list-style-type: none"> <li>Notification failure: Penalty of IDR 1 billion (approx. USD 72,000/EUR 64,000*) per</li> </ul>

Country	Merger Provisions in Generic Competition Law	Dedicated Enforcement Agency(ies)	Transactions Covered	Notification (Voluntary / Compulsory)	Notification Thresholds	Stand-still Period	Review Timelines	Availability To Offer Commitments	Directions / Sanctions / Penalties
		<i>Persaingan Usaha</i> ("KPPU")		Compulsory post-closing (Notification)	<p>179 million/EUR 160 million*) [IDR 20 trillion (approx. USD 1.44 billion/EUR 1.28 billion*) for banking sector]</p> <p>(ii) Combined Indonesian sales value (turnover) of the merged entity &gt; IDR 5 trillion (approx. USD 359 million/EUR 320 million*)</p> <p><i>Notes:</i> *Approximate (rounded) USD and EUR figures are provided for convenience based on the middle exchange rate of the Bank Indonesia's IDR/USD and IDR/EUR middle transaction rates on 31 December 2019: USD 1 = IDR 13,901.00,</p>		<p>2019 Merger Guideline. But based on our discussion with the KPPU, the timeline will be the same as that in the mandatory post-closing notification</p> <p>(ii) Compulsory post-closing (Notification). It comprises:</p> <ul style="list-style-type: none"> <li>The clarification and research phase (up to 60 business days)</li> <li>Substantive assessment phase (up to 90 business days)</li> </ul>	can be proposed by the parties or it is the KPPU's sole discretion	<p>day of delay up to a maximum amount of IDR 25 billion (approx. USD 1.80 million/EUR 1.60 million*) for each notifiable transaction</p> <ul style="list-style-type: none"> <li>If the transaction is deemed to result in monopolistic practices and/or unfair business competition, the KPPU may open an investigation to the alleged violation of the ICL with the fines ranging from IDR1 to 25 billion (around USD 72,000 to 1.8 million/EUR 64,000 to 1.60</li> </ul>

Country	Merger Provisions in Generic Competition Law	Dedicated Enforcement Agency(ies)	Transactions Covered	Notification (Voluntary / Compulsory)	Notification Thresholds	Stand-still Period	Review Timelines	Availability To Offer Commitments	Directions / Sanctions / Penalties
					EUR 1 = IDR 15,588.63.				million*) and cancellation of the transaction  <i>Notes: *Approximate (rounded) USD and EUR figures are provided for convenience based on the middle exchange rate of the Bank Indonesia's IDR/USD and IDR/EUR middle transaction rates on 31 December 2019: USD 1 = IDR 13,901.00, EUR 1 = IDR 15,588.63.</i>
Lao PDR	Yes	Competition Authority of Lao PDR	Merger, acquisitions of shares/assets or joint ventures	Compulsory (pre-merger for large enterprises and post-merger for SMEs)	Depends on whether the parties are considered large or small and medium enterprises. Currently, there is no definition. We expect that	Yes	Up to 30 days, may be extended for additional 30 days	NA	General measures are stated in the Law on Competition. However, we expect more detailed sanctions in the regulations to be passed

Country	Merger Provisions in Generic Competition Law	Dedicated Enforcement Agency(ies)	Transactions Covered	Notification (Voluntary / Compulsory)	Notification Thresholds	Stand-still Period	Review Timelines	Availability To Offer Commitments	Directions / Sanctions / Penalties
					this will be in the regulations to be passed				
Malaysia	No	Yes (Malaysian Competition Commission)	NA	NA	NA	NA	NA	NA	NA
Myanmar	Yes	Not yet established	Mergers, amalgamations, acquisitions of shares/assets, joint ventures or mutual business co-operations	Not provided	Market Share	NA	NA	NA	<ul style="list-style-type: none"> <li>• Suspend or terminate business operations</li> <li>• Impose financial penalties and/or imprisonment (up to two years)</li> </ul>

Country	Merger Provisions in Generic Competition Law	Dedicated Enforcement Agency(ies)	Transactions Covered	Notification (Voluntary / Compulsory)	Notification Thresholds	Stand-still Period	Review Timelines	Availability To Offer Commitments	Directions / Sanctions / Penalties
Philippines	Yes	Yes (PCC)	Mergers, amalgamations or acquisitions of shares/assets	Compulsory (pre-merger)	Value of transaction exceeds PHP 2.4 billion, and assets or turnover of at least one party in, or into the Philippines of PHP 6 billion	Yes	Up to 90 days <sup>9</sup>	Yes	<ul style="list-style-type: none"> <li>• Impose financial penalties for failure to notify</li> <li>• Issue directions / impose financial penalties</li> </ul>
Singapore	Yes	Yes (CCCS)	Mergers, amalgamations, acquisitions of all or parts of shares/assets, joint ventures	Voluntary	(i) Market share of merged entity 40% or more; or  (ii) Market share of merged entity 20% to 40% and post-merger combined market share of the three largest firms (CR3) is 70% or more	No	Phase 1 – Up to 30 working days  Phase 2 – Up to additional 120 working days	Yes	<ul style="list-style-type: none"> <li>• Issue directions to remedy competition concerns, including divestment</li> <li>• Impose financial penalties</li> </ul>

<sup>9</sup> This may be reduced to 15 days if the merger qualifies under the PCC Rules on Expedited Merger Review (i.e., no actual or potential horizontal or vertical (including complementary) business relationship in the Philippines between the acquiring entity and the acquired entity and the entities it controls, global transaction with Philippine companies as assemblers or export manufacturers, global transaction with limited presence in the Philippines, joint ventures for real estate projects). Commission Resolution No. 008-2019 dated 18 May 2019, issued by the PCC.

Country	Merger Provisions in Generic Competition Law	Dedicated Enforcement Agency(ies)	Transactions Covered	Notification (Voluntary / Compulsory)	Notification Thresholds	Stand-still Period	Review Timelines	Availability To Offer Commitments	Directions / Sanctions / Penalties
Thailand	Yes	Yes (TCC)	Mergers, amalgamations or acquisitions of all or parts of shares/assets	Not stated	To be provided in guidelines	NA	90 days with extension of not more than 15 days	Yes	<ul style="list-style-type: none"> <li>• Issue directions</li> <li>• Impose financial penalties</li> </ul>
Vietnam	Yes	Yes (Vietnam Competition Commission ("VCC")) <sup>10</sup>	Mergers, consolidations, acquisitions/ subscription, joint-ventures	Compulsory (pre-merger)	<p>To be considered based on one of the following factors:</p> <p>(i) Total assets value:</p> <p>Total assets value of enterprises and their affiliates in Vietnam of the fiscal year preceding the year of the proposed transaction equal to or above (a) 15 trillion VND if the involved enterprises are</p>	Yes	<p>Phase 1 – Up to 30 days</p> <p>Phase 2 – Up to 90 additional days with extension of up to 60 additional days</p>	Yes	<ul style="list-style-type: none"> <li>• Impose financial penalties for failure to notify</li> <li>• Issue directions to remedy competition concerns, including divestment</li> </ul>

<sup>10</sup> VCC has not been established yet but it's provided under the new Law on Competition which comes into effect from 1 July 2019 that VCC shall be established to handle competition matters. Until the establishment of VCC, Ministry of Industry and Trade shall handle notification of M&A transactions.

Country	Merger Provisions in Generic Competition Law	Dedicated Enforcement Agency(ies)	Transactions Covered	Notification (Voluntary / Compulsory)	Notification Thresholds	Stand-still Period	Review Timelines	Availability To Offer Commitments	Directions / Sanctions / Penalties
					<p>insurance companies or securities companies; or (b) 20% of total assets of all credit institutions operating in Vietnam market if the involved enterprises are credit institutions; or (c) Three trillion VND if the involved enterprises are companies other than (a) and (b);</p> <p>(ii) Total sales turnover or input purchase turnover:</p> <ul style="list-style-type: none"> <li>Total sales turnover or input purchase turnover of enterprises and their affiliates in</li> </ul>				

Country	Merger Provisions in Generic Competition Law	Dedicated Enforcement Agency(ies)	Transactions Covered	Notification (Voluntary / Compulsory)	Notification Thresholds	Stand-still Period	Review Timelines	Availability To Offer Commitments	Directions / Sanctions / Penalties
					<p>Vietnam of the fiscal year preceding to the year of the proposed transaction equal to or above (a) 10 trillion VND if the involved enterprises are insurance companies; or (b) 3 trillion VND if the involved enterprises are securities companies or companies other than insurance companies and credit institutions</p> <ul style="list-style-type: none"> <li>• Total turnover equal to or above 20% of total turnover of all credit institutions operating in Vietnam market if the</li> </ul>				

Country	Merger Provisions in Generic Competition Law	Dedicated Enforcement Agency(ies)	Transactions Covered	Notification (Voluntary / Compulsory)	Notification Thresholds	Stand-still Period	Review Timelines	Availability To Offer Commitments	Directions / Sanctions / Penalties
					<p>involved enterprises are credit institutions; or</p> <p>(iii) Market share:</p> <p>Combined market share of involved enterprises equal to or above 20% in the relevant market of the fiscal year preceding the year of the proposed transaction; or</p> <p>(iv) Transaction value</p> <p>Value of the proposed transactions equal to or above (a) 3 trillion VND if the involved enterprises are insurance companies or</p>				

Country	Merger Provisions in Generic Competition Law	Dedicated Enforcement Agency(ies)	Transactions Covered	Notification (Voluntary / Compulsory)	Notification Thresholds	Stand-still Period	Review Timelines	Availability To Offer Commitments	Directions / Sanctions / Penalties
					<p>securities companies;  (b) 20% of total charter capital of all credit institutions of the fiscal year preceding the year of the proposed transaction if the involved enterprises are credit institutions;  (c) 1 trillion VND if the involved enterprises are companies other than (a) and (b).</p> <p>If proposed transactions are offshore transactions, the notification thresholds are considered for either asset value, total sales turnover, input purchase</p>				

Country	Merger Provisions in Generic Competition Law	Dedicated Enforcement Agency(ies)	Transactions Covered	Notification (Voluntary / Compulsory)	Notification Thresholds	Stand-still Period	Review Timelines	Availability To Offer Commitments	Directions / Sanctions / Penalties
					turnover, or market share only. The transaction value will not be considered as a notification threshold for offshore transactions.				

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