

## Legal Express

# Thai Takeover Regulations

August 2020

This memorandum sets out key regulatory considerations concerning takeovers of companies (the “**Target Co**”) listed on the Stock Exchange of Thailand (the “**SET**”), with a focus on a mandatory tender offer under the Notification of the Capital Market Supervisory Board No. TorJor. 12/2554 entitled Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers (as amended) (the “**Notification**”), the Securities and Exchange Act B.E. 2535 (as amended) (the “**SEC Act**”) and relevant notifications issued thereunder.

## Mandatory Tender Offers

In general, any person acquiring securities (i.e. shares, warrants, transferable subscription rights and convertible securities) in the Target Co (the “**Offeror**”) is obliged to make a mandatory tender offer to purchase all equity securities issued by the Target Co (i.e. ordinary and preference shares, warrants, convertible debentures and shares acquired upon the exercise of rights under equity-linked securities) unless exempted, in certain circumstances as described below.

In order to consider whether one has an obligation to make a tender offer, it should take into account not only the securities acquired or held by such person but also by one’s related persons and concert parties as defined under the relevant Thai securities laws.

### Triggers Points

The Offeror is required to make a mandatory tender offer when his or her interest reaches or passes 25%, 50% or 75% of the total number of voting rights in the Target Co at the end of any trading day (the “**Trigger Points**”). In addition, a mandatory tender offer may be triggered if the Offeror has gained significant control, either directly or indirectly, of a shareholder of the Target Co, in which case the voting rights of the respective shareholder in the Target Co must also be taken into account for the purposes of determining the Trigger Points (the “**Chain Principle**”).

### Exemptions

The Notification also provides certain criteria in respect of which a waiver for mandatory tender offer could be obtained, both “before” and “after” reaching the Trigger Points.

- **Before reaching a Trigger Point**

The obligation may be avoided prior to the time any of the Trigger Points is reached if the Securities and Exchange Commission (the “SEC”) or the Takeover Panel permits a partial offer or grants a waiver which may be subject to certain conditions.

- **After reaching a Trigger Point**

The obligation is “automatically” avoided if any of the Trigger Points is reached because (i) the Target Co repurchases shares, unless additional shares are acquired by the potential Offeror, or (ii) securities are (a) inherited or received from exercising purchase or conversion rights under inherited convertible securities, (b) received as share dividends or through a subscription of rights offering only in accordance with the acquirer’s initial entitlement, (c) acquired pursuant to a tender offer in accordance with the Notification, (d) acquired by a Thai Trust Fund or Thai NVDR Company Limited, or (e) acquired as a result of restructuring of shareholding structure of the Target Co, pursuant to which the acquirer has absolute controlling power over the shares so acquired prior to such acquisition, or the acquirer is under the absolute controlling power of the person who has absolute controlling power over the shares so acquired prior to such acquisition.

Further, the obligation can be avoided if within seven days from the date on which a report on the acquisition of shares (Form 246-2) has to be submitted to the SEC, the potential Offeror abstains from voting in respect of the shares held in excess of the Trigger Points and either (i) reduces its shareholding below the relevant Trigger Points, or (ii) abandons its controlling interest in the entities holding shares in the Target Co.

## Announcing Offers

### Statement of Intent

Within the business day after a Trigger Point is reached, the Offeror shall submit a share acquisition report (Form 246-2) and a statement of intent (Form 247-3) to the SEC.

### Offer Document

The Offeror shall submit an offer document in Thai language (Form 247-4) which is prepared in conjunction with its financial advisor to the SEC within seven business days from the date on which the statement of intent (Form 247-3) is required to be submitted. The offer document shall contain the information as prescribed by the SEC.

### Disseminating the Offer

After submission to the SEC, the offer document together with tender offer acceptance form must be delivered to all the shareholders and other securities holders, the Target Co and the SET. The offer must also be advertised in two Thai and one English language newspapers for three consecutive business days if the offer is final and one business day if not final. The advertisement must contain certain key information as prescribed by the SEC which shall be consistent in all material aspect as the information contained in the offer document.

## Terms of Offer

### Offer Price

In general, the consideration for securities to be offered to all holders of securities of the same class shall be in the same form and whilst it may be possible to specify in more than one alternative, one of them shall be in monetary form.

The offer price must be at least equal to the highest price at which the Offeror, its related parties, its concert parties, or related parties of its concert parties have paid for any shares or securities of the Target Co during the period of 90 days prior to filing the offer document with the SEC. The Notification sets out additional requirements regarding determination of the offer price for shares acquired as a result of (i) the exercise of purchase or conversion rights, by way of share swap or for other instruments, and (ii) the Chain Principle.

### Period of an Offer

The Offeror shall begin accepting tenders within three business days from submission of the offer document. The tender offer may be for a period of 25 to 45 consecutive business days and the final terms of the offer must be announced at least 15 days before the end of the offer period.

### Post Offer Requirements

After shares have been purchased pursuant to a tender offer, the Offeror will be prohibited for a period of: (i) six months from the end of the offer period, from acquiring shares or securities of the Target Co at a price or consideration higher than the price or consideration of the tender offer, and (ii) one year from the end of the offer period, from taking any actions materially different from those specified in the offer document without notifying the SEC and obtaining approval of three quarters of the votes of the shareholders present and entitled to vote at the shareholders' meeting of the Target Co.

### 5% Reporting Requirement

The SEC Act also requires that any person acquiring or disposing in an aggregate amount of shares and convertible equity securities of a public company (whether listed or not) which increases or decreases that person's holding through a multiple of 5% of the total voting rights of the public company file a share acquisition report (Form 246-2) with the SEC within three business days following the date of such acquisition or disposition. A copy of such form shall be submitted to the SET or MAI (Market for Alternative Investment), as the case may be, if the securities are listed.

It should be noted that securities held by the respective related parties and persons "acting in concert" will now be required to be aggregated with those held by the person obliged to file the share acquisition report or make a tender offer.

This document is solely intended to provide an update on recent development in Thailand legislation and is not purported to provide a legal opinion, nor a legal advice to any person.

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