



### Distressed M&A Trends for Post-Pandemic Thailand

With the pandemic continuing to limit global economic growth, many businesses are running out of options to maintain liquidity. One way out of this situation involves mergers and acquisitions (M&A), a transaction that can manage these pressing financial concerns.

This type of solution may or may not be right for any particular business, but it is worth understanding how distressed mergers and acquisitions are carried out. The distressed business may need to attract the attention of private equity in Thailand, including venture capital, to succeed in its M&A objective.

These types of investment activities have increased over the past few years, mostly in the consumer goods, retail, and technology sectors. Banks and various large companies typically set aside venture capital in hopes of harnessing opportunities for collaboration and investment.

Still, there is no guarantee of success; investor interest must be earned, competing interests between various parties must be navigated, and any subsequent agreement must be carefully negotiated and understood in order to produce the desired outcome.

#### The devil is in the details

Rather than risk losing everything, companies spiraling toward bankruptcy will often seek out M&As for relief. This process is not as simple as one might expect, and there are several obstacles and outcomes that merit careful consideration before each side decides to buy, sell, or merge.

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Get in touch

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***Deal strategy, feasibility analysis, due diligence, negotiation and drafting, shareholding structuring, valuation, warranty protection, tax structuring and regulatory compliance are all part of the lifecycle of an M&A transaction.***

Buyers usually have the upper hand when it comes to choosing what they want to obtain from the acquisition. Moreover, M&As can be very complex, leaving unprepared parties at a significant disadvantage. Advice on due diligence and valuation, transaction structuring, warranty protection, anti-embarrassment provisions, and regulatory issues should be sought and obtained from professionals.

Additionally, multiple stakeholders might be involved in distressed M&A transactions, further complicating the process. For example, stockholders may prefer a longer process if it will result in greater interest, while secured creditors may prefer a faster transaction that guarantees repayment of their debts. Untangling these competing interests may require a sensible corporate restructuring strategy, in addition to resourceful negotiating tactics.

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***Sensible corporate restructuring strategy, in addition to resourceful negotiating tactics is required when multiple stakeholders are involved in distressed M&A transactions.***

Many sellers prefer a quick and smooth sale at lower prices – but buyers should keep an eye out for potential legal obstacles that may prevent these types of transactions, such as anti-trust laws or due diligence requirements. Certain exceptions can sometimes be made for distressed businesses, but generally the same regulatory standards apply whether or not one party is in financial distress.

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***Buyers should keep an eye out for potential legal obstacles such as anti-trust laws.***



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Other factors meriting consideration include the possibility that internal restructuring may occur as a result of a merger, as the buying company takes special measures to reduce costs or comply with certain regulations. Furthermore, the availability of tax deductions and benefits within the merger or acquisition allows both sides to take advantage of the reduced transaction fees.

Alternative solutions may also be found, if there is a desire to limit the scope of the proposed merger or acquisition. The seller may undertake a carve-out in order to separate and sell off a stand-alone business or asset, leaving the remainder of the business untouched. Such a split may prove impractical, however, if the carved out portion remains reliant on its former organization. Carve-outs can also be tricky for inexperienced buyers due to tax issues or the involvement of other external parties.



***Carve-out is an alternative for seller to limit the scope of a proposed merger or acquisition. However, buyers should be aware of tax implications.***

Still, the carve-out option may be a win for both parties if it is carefully designed and the carved out business can be made independently sustainable. As with other distressed M&A activities, however, each party must be protected against risk as much as is practicable when carrying out such an agreement.

### **Risks and rewards for buyers**

When multiple buyers are interested in a distressed M&A target, quick and decisive action may be necessary to secure the objective. Experience is of particular importance in such situations, as buyers need to process information quickly and commit to a course of action.

### **How we can help**

Undertaking M&A transactions in a distressed market means buyers and sellers have even more to consider than in a typical M&A transaction. Kudun & Partners can help with every part of this process, serving financially distressed entities as well as holders of private equity in Thailand.

## **About Us**

### **Corporate and M&A Practice Group**

Our M&A lawyers work closely with our other practice group to provide a seamless, one-stop solution for our corporate clients, covering the full spectrum of corporate transactions, including joint ventures and consortium arrangements, share and asset acquisitions and disposals, private equity investments, corporate restructurings, privatizations and mergers, and leveraged buyouts. We distinguish ourselves by developing a deep understanding of our client's goals and objectives and are known for "getting the deal done."

We can advise on strategy, analyze deals, organize legal and tax matters, draft contracts, negotiate agreements, and otherwise facilitate successful M&A activities surrounding financially distressed companies and venture capital. Contact Kudun & Partners today, and let us help you achieve your goals.

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