

THEMATIC TITLE	LEGAL PROBLEMS ON MERGERS AND ACQUISITIONS CONCERNING BUSINESS OPERATION
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ABSTRACT

Principal laws of Thailand in respect of the merger and acquisition are the Civil and Commercial Code and Public Limited Company Act, B.E.2535 (1992) providing only the amalgamation when there are two juristic persons and more consolidating and creating a new juristic person, whereby each of the existing two or more juristic persons so consolidated has to be dissolved. According to the existing fact, the merger and acquisition in Thailand is the consolidation, whereby a juristic person transfers all of its business to another juristic person who accepts the transfer of business mentioned above, and later on, the transferor of the business shall lose its legal status (Merger), whereby the merger condition and transfer of all of the business to each other or one another have essences, namely, assets, liabilities, rights, and duties to be transferred to another juristic person are the same. However, the difference is whether, subsequent to the consolidation, a new juristic person shall be established or not. According to the problems on merger and acquisition in the form without being supported by the provisions of laws, it is whether all of the properties, rights, duties, and liabilities shall be automatically transferred to the transferee of the business as same as the consolidation in the form of amalgamation as supported by provisions or not.

In particular, certain categories of business operation are expressly provided by laws that the business shall commence to operate only upon receipt of business operation license as issued by the government agencies. As a result, the problem is whether, upon the acceptance of transfer of licenses from consolidation by the means as not provided and supported by laws, the transferee of the business shall accept the business operation licenses or not. Since, even though, pursuant to the consolidation in the form of amalgamation as supported by laws, the business operation

licenses are not automatically transferred to the new juristic person. This is because the provisions of each Act so issued define the qualifications of the applicant for business operation license with different requirements and methods as to the operations in the case of business consolidation, namely, certain requirements and methods deem that the merger and acquisition is a termination of the licenses mentioned above while certain requirements and methods permit transfer of business operation licenses. Meanwhile, certain laws do not provide the operating methods pertinent to the business operation licenses upon merger and acquisition, causing certain work agencies in relation to issuing the licenses have no clear guidelines. Some work agencies deem that the merger and acquisition are only a change in the name of the licensee while some work agencies deem that the merger and acquisition is to forthwith cancel the business licenses, causing troubles to the new juristic persons due to inability to carry on the businesses on an ongoing basis.

Another important issue is to have impact upon the consumers of merger and acquisition. It can be seen that if the merger and acquisition do not cause monopoly, the merger and acquisition shall not be action taken to cause damages to markets and consumers but shall be beneficial to cause productivity, including reducing costs to enable the competition in the markets and enable the consumers to have option to consume the goods. Nonetheless, if the merger and acquisition cause the monopoly, the State needs to control and supervise the merger and acquisition of the business operators, not to take undue actions causing monopoly in the markets to take advantage over the consumers; hence, the Trade Competition Act, B.E.2542 (1999) is an essential tool to be used in preventing monopoly and creating trade fairness for the benefit of the consumers. Nevertheless, this law on trade competition does not provide the criteria on controlling the merger and acquisition in an express manner, causing the business operators to be likely to take the business consolidation action, finally leading to limit the competition in the markets and create the monopoly power. Moreover, when the Trade Competition Act, B.E.2542 (1999) does not provide the criteria to be used by the Trade Competition Commission in considering permission to merger and acquisition as guidelines, it is extremely necessary to have express criteria on consideration for observance.

From the Study, it would be appropriate to amend laws on merger and acquisition to cover the business consolidation in the category of transfer of entire business to each other or one another and add criteria on consideration of transfer of business operation licenses due to merger and acquisition in advance by the work agencies supervising the business operation so permitted. In addition, it is found that the legal measures have not yet been clear on controlling the merger and acquisition. Accordingly, clear measures ought to be stipulated to prevent the merger and acquisition causing monopoly or unfair competition.