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Thailand
Mergers & Acquisitions

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This country-specific Q&A provides an overview of mergers & acquisitions laws and regulations applicable in Thailand.

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Thailand: Mergers & Acquisitions

1. What are the key rules/laws relevant to M&A and who are the key regulatory authorities?

The primary Thai laws and regulatory authorities relevant to M&A activities are as follows:

- The Civil and Commercial Code, as amended (the "**CCC**"), Book III Title XXII: The Ministry of Commerce (the "**MoC**") is the regulatory authority overseeing this legislation. These provisions of the CCC generally apply to M&A deals, particularly in cases where the acquirer, the seller, or the target company is a private company.
- The Public Limited Company Act B.E. 2535 (1992), as amended (the "**PLC Act**"): The MoC is also the regulatory authority overseeing this legislation. The PLC Act applies in cases where the acquirer, the seller, or the target company is a public company.
- The Securities and Exchange Act B.E. 2535 (1992), as amended (the "**SEC Act**"), including its sub-regulations such as disclosure requirements and takeover rules: The Securities and Exchange Commission (the "**SEC**") is the regulatory authority overseeing this legislation. The SEC Act applies in cases where the acquirer, the seller, or the target company is a listed company.
- The Foreign Business Act B.E. 2542 (1999), as amended (the "**FBA**"): The MoC is the regulatory authority for this legislation as well. The FBA outlines limitations and restrictions relevant to foreigners conducting business in Thailand.
- The Trade Competition Act B.E. 2560 (2017) and its sub-regulations: The Trade Competition Commission Thailand is the regulatory authority overseeing this legislation. This legislation is currently the primary framework governing the merger control regime in Thailand.
- The Investment Promotion Act B.E. 2520 (1977), as amended, and its sub-regulations: The Board of Investment of Thailand is the regulatory authority overseeing this legislation.

In addition, various business sectors are regulated by different authorities, including:

- The National Broadcasting and Telecommunications Commission, which regulates and supervises mergers among companies holding licenses in the telecommunications and broadcasting sectors.
- The Energy Regulatory Commission, which regulates and supervises mergers among companies holding licenses in the energy sector.
- The Bank of Thailand, which regulates and supervises mergers among financial institutions.
- The Office of the Insurance Commission, which regulates and supervises mergers among insurance companies.

2. What is the current state of the market?

In 2023, there was notable growth in cross-border deals within the technology, automotive, engine manufacturing, and battery technology sectors, driven by advancements and increased consumer demand. Concurrently, AI, semiconductors, and electric vehicles emerged as key areas for investment and innovation. Conversely, the healthcare, financial services, retail, and hospitality sectors experienced a slight slowdown due to the COVID-19 pandemic and shifting consumer preferences. M&A activity mirrored these trends, with innovative sectors witnessing increased activity, while others contended with economic volatility.

3. Which market sectors have been particularly active recently?

In 2023, the technology, automotive, engine manufacturing, and battery technology sectors experienced significant growth, driven by a strong focus on innovation and sustainability goals. Notably, there has been growing interest among consumers in Thailand towards electric vehicles, including demand for charging stations, which has further propelled the automotive sector and related businesses. Additionally, the technology industry, particularly e-commerce, fintech, and e-entertainment, is again attracting more investors' attention.

Despite this, the food and beverage (F&B) and e-

entertainment sectors remain active, with several noteworthy M&A transactions concluded in Thailand in 2023. One notable example was the cross-border M&A transaction involving the sale of the KFC business in Thailand by Restaurants Development Co. Ltd., a major KFC franchisee with over 280 restaurants and 4,500 employees, to Devyani International DMCC, a subsidiary of India-listed Devyani International Limited, valued at approximately THB 4.5 billion (approximately USD 128.9 million). Another significant deal involved Universal Music Group, one of the world leaders in music-based entertainment, acquiring a 70% shareholding in a joint venture valued at THB 1.6 billion (approximately USD 45.5 million) with RS Music, one of Thailand's most successful music and entertainment companies in Thailand. Following its completion, the joint venture now owns and manages a music catalog of over 10,000 songs and related content. This includes music videos, lyrics, and compositions, as well as pictures, photographs, and other rights under license agreements. Notably, the catalog includes over 960 popular and well-known artists.

These transactions involving renowned brands in the Thai market sparked extensive discussion and scrutiny in the public sphere. Their completion necessitated thorough legal analysis and a profound understanding of the business and local market dynamics, given their unique complexities, scale, and cross-border aspects.

4. What do you believe will be the three most significant factors influencing M&A activity over the next 2 years?

The pervasive impact of technology on every facet of human life cannot be overstated. A primary factor influencing M&A activity is the realm of natural language processing (the "**NLP**"). Leveraging disruptive technologies like AI and machine learning, NLP empowers computers to comprehend and interpret human language, both written and spoken. NLP offers a host of benefits that are remarkably time-efficient and cost-saving; with NLP, what would traditionally require days or weeks of manual analysis can now be accomplished in mere seconds or minutes. From a commercial standpoint, NLP facilitates rapid insights, aiding in the initial assessment of companies for investment decisions by acquiring industry, enterprise, or economic activity data. On the legal front, NLP's ability to identify legal risks buried in vast volumes of unstructured documents is invaluable, streamlining the review process for legal teams by automatically flagging potential issues.

Another key factor influencing M&A is the growing prominence of Environmental, Social, and Corporate Governance (the "**ESG**"). In Thailand, the business landscape is undergoing a transformation driven by heightened environmental and social consciousness. Businesses are increasingly embracing green technologies and sustainable business models. Against the backdrop of the expanding ESG framework and its evolving ambitions, companies are poised to recalibrate their business models, with M&A emerging as a pivotal tool to support the advancement of the ESG framework.

Furthermore, the ongoing popularity of Private Equity investments (the "**PE Investments**") cannot be overlooked. Private equity firms play a crucial role in the economy by injecting capital to fuel company growth and, alternately, by aiding struggling companies, potentially averting bankruptcy and safeguarding jobs. Many cross-border M&A deals in Thailand are propelled by PE Investments, underscoring the growing significance of Private Equity trends in the M&A landscape. As such, we anticipate a continued expansion of PE Investments in influencing M&A activities for the next two years.

5. What are the key means of effecting the acquisition of a publicly traded company?

The primary method of acquiring a listed company is through the acquisition of its shares. Although asset acquisitions, including entire business transfers and partial business transfers, are also common, they tend to be cumbersome. In the case of asset acquisitions by foreigners, it is common for the foreign entity to establish a company to acquire the assets rather than directly carrying out the acquisition itself.

Public companies may also opt for amalgamation, a consolidation where two or more companies are combined, which results in one new separate company being formed, however, this procedure is rarely used due to its time-consuming nature.

6. What information relating to a target company will be publicly available and to what extent is a target company obliged to disclose diligence related information to a potential acquirer?

Private Company

Certain information concerning private companies is publicly accessible. This includes audited financial statements, constitutional documents such as the memorandum and articles of association, and key details about shareholders, directors, registered office(s) and share capital. Additionally, basic information regarding

existing business security and registered intellectual property is available to the public. Furthermore, the Thai court system provides a database allowing the public to search for information on whether the target company is involved in any litigation proceedings.

Under Thai law, there is no requirement for target companies to disclose specific due diligence information to potential acquirers. Typically, such disclosures are subject to negotiation on a case-by-case basis.

Listed Company

For listed companies, in addition to the information mentioned above, they are statutorily obligated to disclose the following information, making it accessible to the public:

- quarterly reviewed and annually audited financial statements in both Thai and English;
- annual registration statements containing updated business information of the company in Thai and English; and
- public disclosure upon the occurrence of certain material events in both Thai and English.

Similar to private companies, a target company that is a listed company is not obligated to disclose due diligence-related information to a potential acquirer. More detailed information can be obtained, but this is typically subject to negotiation on a case-by-case basis. Additionally, to secure the best possible offer for the shares, the target company's board of directors may be willing to provide confidential information to the bidder and any competing bidders, in alignment with the directors' general obligations under the PLC Act to act in the best interests of the company.

Such disclosures may occur despite the constraints outlined in both the SEC Act and its sub-regulations regarding the disclosure of price-sensitive or 'insider' information. However, careful consideration would be given to the following factors when determining what information is to be disclosed:

- whether the information is market-sensitive to the extent that its disclosure may constitute a criminal offense under Thailand's insider trading laws if the bidder subsequently buys shares or makes an offer based on such information;
- whether the information is commercially sensitive; and
- whether such information would typically only be disclosed on a confidential basis to persons with whom the target is negotiating and who have signed confidentiality undertakings.

7. To what level of detail is due diligence customarily undertaken?

M&A transactions involve conducting extensive due diligence, encompassing both financial and legal aspects concerning the target company. The extent of scrutiny required varies, influenced by factors such as the nature of the target company and the size of the transaction. Typically, a high-level due diligence analysis is necessary to identify red flags or potential deal-breakers.

In the case of acquiring a listed company, the depth of due diligence depends on the specifics of the transaction, such as whether it involves an auction where conducting detailed due diligence might be challenging. Additionally, the actual level of control the selling shareholder maintains over the company impacts the due diligence process. Remarkably, some very large acquisitions have been successfully completed relying solely on publicly available information.

8. What are the key decision-making organs of a target company and what approval rights do shareholders have?

The primary decision-making organs of a target company are its board of directors and shareholders' meetings. Below is an overview of the approval procedures for both private and public companies:

Private Company

- For the sale of shares, unless the articles of association of the target company specify otherwise, approval from the target company is not required.
- For the issuance and sale of new shares, a special resolution passed by the shareholders' meeting, requiring approval of not less than 75% of the total number of votes from attending shareholders who have the right to vote, is required by law.
- It is important to note that a private company can only issue new shares to its existing shareholders. Therefore, an acquirer must obtain at least one existing share from the existing shareholder in the target company before the company can issue new shares to them.

Public Company

- Under Section 107 of the PLC Act, the acquisition by a public company of another company's business (which includes the acquisition of shares in a target company that results in the target company becoming its subsidiary) requires the approval of not less than 75% of the total number of votes from attending shareholders who have the right to vote.
- In addition, for the acquisition by a listed company, if the transaction is of material size relative to the listed company (subject to various tests), shareholders' approval of not less than 75% of voting rights shall be obtained.
- In the case of an acquisition of primary shares (i.e., newly-issued shares) of a listed company, the issuer will require its shareholders' approval for the increase of capital (approval of not less than 75% of the total number of votes from attending shareholders who have the right to vote) and the allotment of new shares (by a simple majority vote).

9. What are the duties of the directors and controlling shareholders of a target company?

Private Company

The controlling shareholders of a target company are not bound by specific duties in the event of a potential acquisition. However, directors of a company, irrespective of whether there's a potential acquisition or not, are bound by the general fiduciary duties, including the duty of care and loyalty, as stipulated under Thai law.

Public Company

According to Thai law, directors of a public company are generally required to provide their opinion on each agenda item that will be presented to the shareholders' meeting for consideration. Such opinions will be included in the invitation letter for the shareholders' meeting. Regarding tender offers, the directors of a listed target company must also provide their opinion on the tender offer and appoint an independent financial adviser to provide an opinion. These opinions must be circulated to the shareholders (also see item 24). Directors have a duty of loyalty to the company and shareholders as a whole, but not to individual shareholders.

The listed target company is subject to certain statutory duties in the event of a potential acquisition. From the formal announcement of the tender offer until its completion, there are general restrictions in place with regard to the target company, preventing it from undertaking the following activities unless prior approval is obtained from the specified majority of its shareholders' meeting (this varies according to the type of transaction), or such undertaking meets specified criteria or necessary consent or waiver from specific parties is obtained:

- offering new shares or convertible securities;
- acquiring or disposing of assets that are of material size, or disposing of assets that are necessary for the operation of the business of the target company;
- incurring debts or entering into, amending, or terminating a material agreement other than in the ordinary course of business of the target company;
- conducting a share buyback (treasury stock) or supporting or influencing its subsidiary or affiliate company in the purchase of its own shares; and
- declaring and paying interim dividends to the shareholders other than in the ordinary course of business.

10. Do employees/other stakeholders have any specific approval, consultation or other rights?

Statutorily, there are no requirements for consultation with unions or work councils concerning acquisitions, disposals, or mergers. However, in the case of an asset acquisition or business transfer, the employee's consent is required only if such employee is to be transferred from their existing employer to a new employer where their consent is necessary.

Whether the consent of other stakeholders is necessary hinges on the presence of any change of control provision in a contract or permit of the target company. Such provisions may require consent from stakeholders such as lenders, major suppliers, concessionaires, or joint venture partners before the acquisition of a specified number of shares in the target company.

11. To what degree is conditionality an accepted market feature on acquisitions?

In private M&A transactions, conditionality is a common feature, with material adverse change (MAC) clauses, requisite regulatory approvals, and the obtaining of all licenses and permits critical for the operation of the

target business typically requested by the buyer as conditions precedent to completion. Additionally, merger control clearance has become increasingly significant at the deal structuring stage, as market participants become more accustomed to the legal requirements following the full implementation of the merger control regime in Thailand.

In public M&A transactions, while parties may set conditions for a voluntary tender offer, a mandatory tender offer is typically unconditional. Conditions for launching a voluntary tender offer usually include approval from relevant regulatory authorities, the offeror's board of directors or shareholders, securing relevant third-party consents, and/or obtaining financing from the bank. Following the full implementation of the merger control regime and the increase in high-profile public M&A transactions in Thailand, merger clearance in voluntary tender offers has received more attention. Provisions related to a material adverse change (MAC) clause may also be included as a condition to the acquisition.

Moreover, under Thai public takeover rules, a tender offer may generally be withdrawn if:

- there is severe damage to the status or assets of the target company during the tender offer period, not caused by the offeror; or
- there is a material decrease in securities value during the tender offer period due to any frustrating action taken by the target company—the cancellation of the tender offer, as specified in (i) and (ii) above, can be made if those conditions are stated in the tender offer documents and no objection is raised by the SEC.

12. What steps can an acquirer of a target company take to secure deal exclusivity?

An acquirer can secure deal exclusivity through a memorandum of understanding or letter of intent, which often includes an exclusivity period. This is provided by either the major selling shareholder (in the case of a share sale) or the target company (in the case of an issuance of new shares).

13. What other deal protection and costs coverage mechanisms are most frequently used by acquirers?

Break fees are not commonly utilized in M&A transactions in Thailand. Instead, non-refundable deposits or exclusivity undertakings are typically employed to protect the interests of offerors. However, in instances where break fees are utilized, Thai courts award damages based on actual loss, allowing the quantum of the break fee to be adjusted at the court's discretion.

14. Which forms of consideration are most commonly used?

In M&A transactions in Thailand, the forms of consideration are typically determined by the structure of the transaction and any commercial agreements involved. Cash is the prevailing form of consideration, although share swaps may also be used, depending on the configuration of the transaction.

15. At what ownership levels by an acquirer is public disclosure required (whether acquiring a target company as a whole or a minority stake)?

There is no statutory obligation requiring a private company or public company to publicly disclose information when acquiring a target company.

However, the acquisition of shares at every 5% threshold of the voting rights in a listed company must be publicly disclosed. The acquirer is required to submit an acquisition form (Report of the Acquisition or Disposition of Securities (Form 246-2)) to notify the public via the SEC online system. This excludes certain types of acquisitions, such as rights offerings, securities borrowing and lending, and Non-Voting Depository Receipt (NVDR), etc.

An acquisition of shares that reaches or exceeds 25%, 50%, or 75% of the voting rights in a listed company triggers tender offer obligations and the disclosure of relevant information to the public via both the SEC online system and the portal of the Stock Exchange of Thailand (the "**SET**"). Please see details in item 18.

16. At what stage of negotiation is public disclosure required or customary?

For private company, public disclosure is not required.

For listed company, in cases where a target company has been contacted by an offeror, the SET requires the board of directors of such company, notwithstanding whether an agreement has been reached on making a tender offer, to strictly keep information that has not been disclosed to

the public confidential. This is to ensure that persons involved in negotiations, representatives, intermediaries, or financial advisors perform their duties responsibly and maintain confidentiality. The SET must be immediately informed if there is any suspicion of unauthorized disclosure of negotiation information that has not yet been officially announced. If any information related to the takeover is leaked, the target company is required to immediately disclose such information to the SET.

When the acquisition involves a minority stake or a secondary share sale, public disclosure by the target company is required if there is a direct or indirect change of its major shareholders (defined as a shareholder holding more than 10% of the total number of shares with voting rights in the company). This is normally done upon completion of the acquisition.

In addition, when an acquirer conducts transactions that result in the ownership reaching or surpassing 5% or a multiple of 5% of the target company's shares (including complicated rules for convertible securities or warrants), the acquirer is required to report the transaction to the SEC. This includes:

- direct acquisition or disposal of shares or convertible securities of the target company;
- becoming or ceasing to be a related person; or
- becoming or ceasing to be a concert party.

17. Is there any maximum time period for negotiations or due diligence?

Under Thai law, there are no specific requirements regarding the time for negotiations or due diligence. However, in practice, the typical duration for conducting due diligence is approximately one to two months. As for negotiations, the time frame may vary depending on the complexity of the transactions and the parties involved.

18. Are there any circumstances where a minimum price may be set for the shares in a target company?

If the target company is a private company, there is no minimum price requirement.

If the target company is a listed company, there is no minimum price requirement except in the following cases:

- In the case that the acquirer acquires shares in the target company resulting in its shareholding reaching or exceeding 25%, 50%, or 75% of the voting rights in the target company, the acquirer is required to make a tender offer for all securities of the target company. In such a case, the tender offer price must not be lower than the highest price paid by the acquirer or any of its related persons, concert parties, or related persons of the concert parties of the acquirer for the shares of the target company during the period of 90 days prior to the date on which the tender offer documents are submitted to the SEC.
- In the case of a delisting tender offer, the offer price must not be less than the highest price calculated on the following bases:
    - the highest price paid for the shares that have been acquired by the acquirer or any of its related persons during the period of 90 days prior to the date on which the tender offer documents are submitted to the SEC;
    - the weighted average market price of the shares during the period of 5 business days prior to the date on which the board of directors of the target company passes a resolution to propose the shareholders' meeting to consider delisting the shares from the SET, or the date on which the shareholders' meeting passes a resolution to delist the shares from the SET, whichever is earlier;
    - the net asset value of the target company calculated based on the book value which has been adjusted to reflect the latest market value of the assets and liabilities of the target company; and
    - the fair value of ordinary or preference shares of the target company as appraised by an independent financial advisor.

19. Is it possible for target companies to provide financial assistance?

There are generally no restrictions on financial assistance except in the case of a listed target company where the financial assistance constitutes a connected party transaction due to the fact that it is a transaction between the target company and its related persons.

Shareholders' approval by approval of not less than 75% of the total number of votes from attending shareholders

who have the right to vote is required if the amount of the financial assistance equals or exceeds 3% of the net tangible asset value of the target company.

20. Which governing law is customarily used on acquisitions?

Thai law continues to remain the preferred governing law for domestic M&A transactions. However, in cross-border M&A transactions, it is common practice to adopt foreign governing laws. Thai courts typically recognize and enforce the contractual choice of foreign law, particularly when one of the parties is a foreign entity or individual. This is subject to the general reservation that it is not contrary to public order or the good morals of the people of Thailand, and the foreign law must be proven to the Thai courts as appropriate. Recognition of the foreign governing law may be easier if a share purchase agreement governed by foreign law is enforced outside Thailand, such as through foreign arbitration or a foreign court. Thailand is a signatory to the New York Convention.

21. What public-facing documentation must a buyer produce in connection with the acquisition of a listed company?

The key public-facing documentation that a buyer must produce in connection with the acquisition of a listed company comprises the following:

- Report of the Acquisition or Disposition of Securities (Form 246-2);
- Takeover Statement (Form 247-3);
- Tender Offer for Securities (Form 247-4);
- Form for Revising/Adding Information in a Tender Offer Statement (for amendment to the duration of the tender offer period and proposal of tender offer) (Form 247-6 Kor); and
- Report on the Result of the Tender Offer for Securities (Form 256-2).

22. What formalities are required in order to document a transfer of shares, including any local transfer taxes or duties?

Private Company

As stipulated under Thai private company law, the transferor and transferee are obligated to execute a share transfer instrument, which must be certified by at least one witness for each transferor and transferee.

Additionally, stamp duty payment is required under Thailand's Revenue Code (the "**Revenue Code**"), calculated at the rate of 0.1% of the greater of the sale price or the paid-up value of the shares. Unless agreed otherwise by the parties, stamp duty is payable by the seller of the shares.

Public Company

For the transfer of shares with a share certificate (scrip), a transfer of shares becomes valid upon the endorsement of the original share certificate by the transferor and transferee, with an indication of the name of the transferee, and upon the delivery of the share certificate to the transferee.

For the transfer of securities in a scripless system, a securities holder wishing to transfer securities deposited with a depository participant can do so by contacting the participant directly.

According to the Revenue Code, stamp duty for the transfer of listed securities, for which Thailand Securities Depository Co., Ltd. (TSD) is the registrar, and capital gains taxes resulting from trading by natural person investors on the SET are exempted.

23. Are hostile acquisitions a common feature?

Hostile acquisitions are rare in Thailand, with only a few cases occurring in the past decade. Thai law does not distinguish between procedures for recommended and hostile offers.

24. What protections do directors of a target company have against a hostile approach?

Directors are not specifically protected in the event of a hostile takeover. In fact, directors are restricted from undertaking certain activities during a takeover, as outlined above in item 9.

Nonetheless, directors are required to offer their opinions on each tender offer document from acquirers and must also procure the opinion of an independent financial adviser on these documents.

25. Are there circumstances where a buyer may have to make a mandatory or compulsory offer for a target company?

In private M&A transactions, a compulsory offer for a target company is generally not required by statute

unless such requirement is stipulated in the shareholders' agreement.

If the target company is a listed company, in the case where the shareholding reaches or exceeds 25%, 50%, or 75% of the voting rights in the target company, the acquirer is required to make a tender offer for all securities of the target company.

26. If an acquirer does not obtain full control of a target company, what rights do minority shareholders enjoy?

Private Company

Under Thai company law, minority shareholders in private companies have limited protection rights. However, customary protections exist, including the right to vote in special resolutions, requiring a minimum of 75% of total eligible votes to pass material matters such as reduction and increase of capital and amendment of constitutional documents. Minority shareholders also possess the right to call for shareholders meetings if they represent at least one-fifth (1/5) of the company's total voting rights. Additionally, they have preemption rights, allowing them a pro rata subscription in newly issued shares. Moreover, minority shareholders have information rights to inspect the company's books and records. Further rights can be granted if explicitly stated in the company's articles of association. Moreover, minority shareholders possess the right to take legal action against directors if the directors cause damage to the company and the company fails to act against such directors.

Public Company (shareholders holding less than 25%)

- Minority shareholders may request the board of directors to call a shareholders' meeting (10% threshold).
- They may initiate legal proceedings against directors for breach of fiduciary duties, the articles of association, shareholders' resolutions, or applicable law (5% threshold).
- They may file for cancellation of resolutions adopted at shareholders' meetings that violate the articles of association or applicable law (20% threshold).
- They may request an inspection of the company's business operations and management by submitting an application to the MoC (5% threshold).

Listed Company (shareholders holding less than 25%)

- Minority shareholders may block the issuance of shares at a price lower than the current market price through a private placement (10% threshold).
- They may block resolutions for delisting (10% threshold).
- They may block the issuance and sale of securities to directors and employees (ESOP) (10% threshold).

Public Company (shareholders holding more than 25% but below 50%)

For a public company, transactions requiring approval by shareholders holding at least 75% of the voting rights at a shareholders' meeting are subject to a veto by a shareholder holding more than 25%. Such transactions include:

- increasing or decreasing the registered capital;
- selling or transferring all or significant parts of the business to others;
- purchasing or accepting the transfer of the business of others;
- terminating contracts related to the lease of all or significant parts of the business, transferring management, or consolidating the business with others for profit and loss sharing;
- amending the memorandum of association or articles of association;
- issuing debentures;
- amalgamating with another company or entity; and
- dissolving the company.

Listed Company (shareholders holding more than 25% but below 50%)

In addition to the above requirements for public companies, shareholders of a listed company holding more than 25% can veto specific matters, including:

- “whitewash" approval;
- class transactions; and
- connected party transactions.

27. Is a mechanism available to compulsorily acquire minority stakes?

No, currently, Thailand does not have a legal mechanism for the compulsory acquisition (squeeze-out) of minority stakes.

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