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Veröffentlichungsversion / Published Version
Zeitschriftenartikel / journal article

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Empfohlene Zitierung / Suggested Citation:
Dixon, C. (2006). The Liberalisation of Foreign Ownership and Cross-border M&A in South East Asia since the 1997 Financial Crisis. *Südostasien aktuell : journal of current Southeast Asian affairs*, *25*(5), 5-41. https://nbn-resolving.org/urn:nbn:de:0168-ssoar-337037

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Studie

The Liberalisation of Foreign Ownership and Cross-border M&A in South East Asia since the 1997 Financial Crisis

Chris Dixon

Abstract

Since 1997 there has been significant liberalisation of foreign ownership regulations in most of the South East Asian economies. This has been associated with some major increases in the level of cross-border Mergers & Aquisitions (M&A). However, the 1997-2001 surge in cross-border M&A activity has to be seen in the context not only of liberalisation, but also of the short-term availability of distressed assets, the lowering of production costs and the final phases of a global FDI boom which had been increasingly driven by M&A. Similarly, the sharp decline in South East Asian cross-border M&A since 2002 can be explained in terms of the acquisition of the most easily purchased attractive assets and the sharp decline in global M&A activity. However, it is argued that post-1997 liberalisation left in place significant barriers to increased foreign ownership and operation in all the South East Asian economies. In addition to continuing direct restrictions on foreign ownership, a wide range of other regulations inhibit cross-border M&A – notably those effecting bankruptcy, M&A procedures and financial reporting. Perhaps more significant are the limitations on foreign ownership and operation that result from ownership patterns, forms of corporate governance, established business practices and the operation of the bureaucratic, judicial and political systems. (*Received April 5, 2006; accepted for publication June 28, 2006*)

Key words: Financial crisis, Southeast Asia, Liberalisation, Foreign Ownership, M&A, Thailand, Singpore

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Studie

Die Liberalisierung ausländischer Eigentumsregelungen und grenzüberschreitender Fusionen und Übernahmen in Südostasien seit 1997

Chris Dixon

Abstract

Seit der Finanzkrise 1997 hat es in den meisten Ökonomien Südostasiens eine beträchtliche Liberalisierung bei ausländischen Beteiligungen gegeben. Dies ging einher mit einem signifikanten Anstieg der grenzüberschreitenden Fusionen und Übernahmen. Die Welle der Fusionen und Übernahmen muss im Zusammenhang mit der Liberalisierung gesehen werden. Sie hängt auch mit der kurzfristigen Verfügbarkeit von gefallenem Anlagevermögen, der Verringerung von Produktionskosten und der letzten Phase des Booms bei ausländischen Direktinvestitionen zusammen. Gleichzeitig kann der starke Rückgang von grenzüberschreitenden Fusionen und Übernahmen durch den Kauf attraktiver Anteile und den Rückgang globaler Tätigkeiten bei Fusionen und Übernahmen erklärt werden. Die These lautet hier, dass auch nach der Finanzkrise 1997 einige wichtige Barrieren für ausländische Beteiligungen und Produktion bestehen. Neben der Beschränkung ausländischen Privateigentums gibt es eine Vielzahl von Verordnungen, die Fusionen und Übernahmen hemmen, insbesondere Bestimmungen zur Insolvenz, zu Zusammenschlüssen und Übernahmen und zum Berichtwesen. Weitaus bedeutender sind jedoch Beschränkungen bei ausländischen Beteiligungen, Formen der Unternehmensführung, in der Region übliche Geschäftspraktiken und die Funktionsweise des Verwaltungs-, Rechts- und des politischen Systems. (*Eingereicht am 5. April 2006; angenommen zur Veröffentlichung am 28. Juni 2006*)

Key words: Finanzkrise, Südostasien, Liberalisierung, ausländische Beteiligungen, M&A, Thailand, Singapur

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1 Introduction

Between 1997 and 2001 South East Asia experienced a remarkable surge in cross-border M&A (Mergers and Acquisitions)[1] as foreign investors purchased a wide range of distressed assets left in the wake of the 1997 financial crisis. Particularly in the most seriously affected countries, Indonesia and Thailand, such purchases were facilitated by significant liberalisation of the controls over foreign ownership. For these countries, liberalisation was a direct result of the IMF prescriptions attached to the rescue loans agreed during 1997. These involved substantial and immediate liberalisation of controls over foreign ownership, related reform of corporate governance and privatisation of state owned enterprises.[2] However, since 1997 almost every South East Asian country has relaxed some controls over foreign ownership. In general, these were part of wider changes aimed at increasing both competitive position and attraction for foreign investment, in the wake of 1997 crisis, a global slow-down in FDI flows and increased competition from, in particular, the PRC.

The surge in M&A that emerged in South East Asia during 1997 was slow to attract the major attention of researchers (Meyer 2001). There was however much initial comment on the expected scale of activity, impact and justification of liberalisation policies (Gilley 1998; Krugman 1998; Sender 1998). The IMF prescriptions for Indonesia and Thailand, for example, were justified in terms of increased foreign participation being necessary for 'clean up' and restructuring that neither domestic business communities nor governments were capable of undertaking (Dornbusch 1997: 26). Zhan and Ozawa (2001) concluded that foreign purchases significantly reduced the level of bankruptcy, thus softening the impact of the financial crisis and facilitating more rapid recovery. More generally, foreign investment and ownership in sectors that had previously been effectively domestic monopolies was expected to bring modern business practices, improved corporate governance, increased efficiency, raised productivity, increased competition, and accelerated recovery of the distressed Pacific economies (Mody and Shoko Negishi 2000: 7-9; Woo-Cumings 2001: 1). Thus, restrictions on long-term capital movements needed to be abolished as completely and as rapidly as possible (Yagi 2000: 132). Such views have been very extensively criticised,

[1] M&A refer to the acquisition of 10 per cent or more of the equity of a company. It is also at this level that M&A transactions become eligible for classification as FDI.
[2] See for example the summaries of conditions attached to the IMF loans in Dash (2003: 274-279).

both in terms of their motivation and possibly adverse impact on the economies concerned (see for example: Bello et al. 1998: 51-52; Bullard 2002: 149-151; Bullard et al. 1998a; Bullard et al. 1998a: 525, 540; Wade and Veneroso 1998). These disputes have to be seen in the context of much wider long-term debates over the impact of foreign ownership on domestic firms, sectors and economies that is beyond the scope of the present paper to review.[3] However, as is examined in the main body of this paper, these debates may be premature in a South East Asia context, for they rest on assumptions concerning the nature, scale and sustainability of the M&A activity and foreign operations, that are as yet far from fully documented and perhaps seriously overestimated.

A number of studies have commented at an earlier stage on the scale of the surge and the sector distribution of purchases (Brimble and Shernam 1999; Mody and Shoko Negishi 2000; Zhan and Ozawa 2001). While Legewie and Meyer-Ohle (2000a) have reviewed the extent to which the increased possibilities of purchase have resulted in changes in the strategies of TNCs operating in South East Asia. More recently, Freeman and Bartles (2004) have produced an over-view of South East Asia investment inflows, highlighting the theoretical and policy issues, and drawing attention to the increased importance of M&A. In addition, some national and sectoral studies of the extent of cross-border activity and its impact on ownership patterns have begun to appear, for example Bartles and Freeman (2000), Freeman and Bartles (1999), Brown (2004, 2006), Dixon (2004). However, in general, detailed information on the impact of the M&A surge and the extension of foreign ownership in South East Asia remains fragmented and partial.

Compared to FDI, data on cross-border M&A remain far from comprehensive or reliable.[4] Major problems of definition and recording continue to distort national, regional and international data on volume of flows (UNCTAD 2002: 303; Bartles 2004: 155-156; Reisen and Soto 2000: 74, 76). More problematic still is the question of the number of deals and the extent to which these involved controlling interests. Here, a number of major commercial databases are available, however these (and even more their analysis) tend still to be focused on North

[3] Amongst an extensive literature see, for example, the reviews by Ozler and Taymez (2003) and Bhagwati (1998).

[4] Except where otherwise stated this paper draws on the UNCTAD, data-base which remains by far the most comprehensive and reliable.

America and Europe rather than South East Asia.[5] The data problems make for some uncertainty over the exact changes in cross-border M&A that have occurred in South East Asia since 1997, the contribution to investment inflows and the extent to which foreign ownership has increased. The latter is by far the most problematic and largely accounts for the still limited detailed published work.

This paper outlines the scale, sequence and international context of the 1997-2001 surge in South East Asian M&A (section 2). Attention is drawn to the brief duration and abrupt curtailment of the M&A boom. In section 3 it is argued that while there has been some very major liberalisation of foreign ownership, some significant barriers remain in place. Perhaps more importantly, relaxing the foreign ownership regulations have exposed other significant regulatory and non-regulatory barriers (section 4). These can effectively limit the extension of foreign ownership and hinder the operation of acquired companies. In section 5 the scale of post-1997 M&A and increases in foreign ownership are put into perspective through a review of evidence from Thailand. In the conclusion, it is argued that there is a need for much more detailed work on the extent and impact of foreign ownership, but available evidence calls into question both the sustainability of M&A activity in much of South East Asia and questions the suggestion that the 1997-99 M&A had ‘a profound impact not only on the industrial structure of the host economies but on international business across Asia’ (Meyer 2001).

2 Post-crisis M&A

Prior to the 1997 crisis while the South East Asian economies had been major recipients of FDI (Table 1), they were limited areas of activity for cross-border M&A (Table 2, 3). Thus, the South East Asian economies, like those of East Asia, were generally out of step with the global trends in FDI, which since the early

1990s had been increasingly driven by cross-border M&A (see: Wan-Soon 2000: 161; UNCTAD 2000: xxii, 114-115). A repeat of the situation that prevailed more briefly during the late 1980s (Table 2, 3). In addition, until 1997 South East Asia was not part of the general shift of M&A activity towards the Third World (Tables 2, 3 and 4) with Latin America and the Caribbean being the dominant areas of activity (Ferraz and Hamaguchi 2002: 388-390; UNCTAD

[5] Notably, Thompson Financial – *Acquisitions Monthly*, KPMG – *Deal Watch* – PriceWaterHouse Coopers – *Asia-Pacific Bulletin*, Bureau Van Dijk - *Zephry*, and Mergent - *Mergent.*

Table 1: FDI net inflows (US$m.)

	Annual average 1987-90	Annual average 1991-96	Annual average 1997-2002	Change 1991-6 to 1997-02 (%)	Annual average 2002-4
Brunei	-	210	688.8	328.0	1049.0
Cambodia	-	99	165.3	70.0	90.7
Indonesia	600	2985	-801.8		-850.3
Laos	-	53	44.3	-16.4	20.3
Malaysia	1240	5436	3412.8	-37.5	3433.7
Myanmar	28	256	399.3	56.0	271.0
Philippines	480	1226	1342.7	9.5	860.0
Singapore	3420	6856	12566.7	83.3	11108.0
Thailand	1200	1964	4303.7	119.1	1271.0
Vietnam	30	1217	1593.3	39.9	1433.3
SE Asia	6998	20302	23853.5	17.5	19668.0
Third World	39850	80302	222610.9	177.2	208597.3
World	187244	289700	852495	76.9	619636.7
SE Asia %	3.7	7.0	2.8	*	3.2
Third World %	21.3	27.7	26.1	*	33.7

Source: UNCTAD, 1998; 2000, 2003; 2004; 2005; IMF, Balance of Payments Yearbook, various issues.

*Note: - zero or near zero; * inapplicable / not meaningful.*

Table 2: Cross-border M&A by country of selling (US$m.)

	Annual average 1987-90	Annual average 1991-96	Annual average 1997-2002	Change 1991-6 to 1997-02 (%)	Annual average 2002-4
Brunei	-	-	-	-	1.7
Cambodia	-	-	-	-	0.3
Indonesia	69.7	349.3	1552.8	344.5	2030.0
Laos	-	1.7	89.1	5159.0	117.0
Malaysia	201.8	333.5	831.3	149.3	402.3
Myanmar	-	3.2	43.3	1268.4	139.0
Philippines	61.0	518.3	1759.7	239.5	502.7
Singapore	385.0	510.2	1779.8	248.9	1170.7
Thailand	17.5	183.8	2504.3	1262.5	512.7
Vietnam	-	1.5	25.2	1577.8	32.7
SE Asia	735.0	1439.1	8619.0	499.0	4908.7
Third World	4661.3	15916.5	70775.3	344.7	50469.7
World	120327.5	155726.5	619270.7	297.7	34811.7
SE Asia %	0.6	0.9	1.6	*	*
Third World%	3.4	10.2	13.4	*	*

Source: UNCTAD, 1998; 2000, 2003; 2004; 2005.

*Notes: - zero or near zero; * inapplicable / not meaningful.*
The data for Thailand is from the Bank of Thailand and the South East Asian and world totals have been adjusted accordingly.
See comments in section 4.

Table 3: Cross-border M&A by country of selling (US$m.)

	1997	1998	1999	2000	2001	2002
Brunei	-	-	-	-	-	-
Cambodia	-	-	-	-	-	-
Indonesia	332	683	1164	819	3529	2790
Laos	-	-	-	-	269	266
Malaysia	351	1096	1166	441	1449	485
Myanmar	260	-	-	-	-	-
Philippines	4157	1905	1523	366	2063	544
Singapore	294	468	2958	1532	4871	556
Thailand	833	5209	4611	3069	1057	247
Vietnam	63	-	59	19	4	6
SE Asia	6290	9561	11481	6246	13242	4894
Third World	66999	82668	74030	70610	85813	44532
World	305048	533848	768644	1144316	593979	369789
SE Asia %	2.1	1.9	1.5	0.6	2.2	1.3
Third World%	22.0	15.5	9.7	6.2	14.4	12.8

Source: UNCTAD, 1998; 2000, 2003; 2004; 2005.

*Notes: - zero or near zero; * inapplicable / not meaningful.*
The data for Thailand is from the Bank of Thailand and the South East Asian and world totals have been adjusted accordingly. See comments in section 4.

2000: xxii). The increased importance of Third World M&A, which has been generally associated with liberalisation and privatisation under crisis conditions, has been seen as one of the distinctive features of the most recent global wave of acquisitions (Ferraz and Hamaguchi 2002: 383). In so far as South East Asia was a field of activity for cross-border M&A prior to 1997, a significant proportion was intra-regional, the main purchaser being Singapore and, to a much lesser extent, Malaysia (ASEAN 2001; Bartles 2004: 156-159). This was a reflection of Singapore's comparatively mature financial and manufacturing sectors, reinforced by government policies of expanding regional activity and assisted by links with Chinese business communities.

During the period 1991-96, the Philippines and Singapore were the largest recipients of cross-border M&A (Table 2, 3), though only in the Philippines was M&A of major significance compared to FDI (Table 4). This reflected more liberal foreign ownership regulations (discussed in section 3) reinforced in the Philippines by significant privatisation. Elsewhere in the region foreign ownership was heavily

Table 4: Cross-border M&A as a percentage of FDI

	Annual average 1987-90	Annual average 1991-96	Annual average 1997-2002	Annual average 2002-4
Brunei	-	0.2	-	0.2
Cambodia	-	-	-	0.3
Indonesia	11.6	11.7	*	*
Laos	-	3.1	-	*
Malaysia	16.3	6.1	24.4	11.7
Myanmar	-	1.2	14.5	51.3
Philippines	12.7	42.2	128.2	58.5
Singapore	11.3	5.1	11.23	10.5
Thailand	1.5	9.4	52.0	40.3
Vietnam	-	0.1	1.6	2.3
SE Asia	10.1	9.3	36.1	25.0
Third World	11.7	27.3	31.9	24.2
World	80.4	53.8	71.5	56.5

Source: calculated from Tables 1 and 2+3.
Note: - zero or near zero.

restricted. In addition, members of the South East Asian business communities generally held strongly negative views of mergers and disposal of assets and 'traditionally avoided' such activity (Bartels 2004: 156). Where M&A did occur, they were normally the result of negotiations between the key individuals, without outside advisers, and reflected the manner in which personalities and relations had driven Asian business (Markland 2001: 2). In general, before 1997, aggressive M&A activity was extremely limited domestically and almost unheard of across-borders (Il Chnong Nam et al. 2001: 99-100; Rossi and Volpin 2002: 27). Similarly, as in emergent markets in general, where domestic and cross border M&A did occur, it appears to have been almost exclusively motivated by extensions of networks and markets, with few, if any, cases of transactions aimed at gaining profit through short-term asset arbitage (Ferraz and Hamaguchi 2002: 384). This situation reflecting the generally low levels of capitalisation, incipient nature of the capital markets, and related ownership forms (see comments in sections 4 and 5).

During the latter part of 1997 and the early months of 1998, the collapse of large parts of the corporate sector, particularly in Indonesia and Thailand, led

to expectations of widespread distressed assets available at 'firesale' prices, with foreign companies picking-up substantial assets at rock bottom prices (Gilley 1998; Sender 1998; Krugman 1998). In the event, while there were attractive bargains, these appear to have been nothing like as abundant or as cheap as many anticipated (Frank 2000; 2002a; Chen and Findlay 2002: 27). While their attraction was tempered by the economic and political disruption, particularly in Indonesia (Robison 2001: 123), continuing restrictions on foreign ownership, the reluctance of many owners to sell, and other regulatory and non-regulatory barriers discussed in sections 3 and 4. However, as the crisis spread and deepened, owners of distressed assets became increasingly willing to sell, and foreign ownership regulations were relaxed. As a result, cross-border M&A became increasingly common features of South East Asian business and increasingly involved the acquisition of controlling interests when and where this was possible. Though there were a large number of negotiations that did not result in deals, this was particularly the case in Indonesia (Prem-chandra Athukorala 2003). However, it should be stressed that this is a common feature of M&A activity (Knowles-Cutler and Bradbury 2002), and it may be that many would-be purchasers had quite unrealistic expectations of the South East Asian situation (see comments in Frank 2000, 2002b; *Financial Times* 2002).

The surge of M&A activity begins in the Philippines in 1997, expanding into Thailand from 1998, Singapore from 1999 and Indonesia from 2001 (Table 2, 3). Overall, during 1997-2002 there was more than a six-fold increase in M&A activity in South East Asia, and major increases in all the economies except Brunei and Cambodia (Table 2, 3). For South East Asia as a whole, M&A expressed as a share of FDI,[6] increased from 9.3 per cent during 1991-96 to 36.1 per cent during 1997-2002, with significant increases in all the economies except Singapore and Vietnam (Table 2, 3). In the latter, there had been few pre-1997 possibilities for M&A activity and no significant changes subsequently. While in Singapore, the post-1997 liberalisation made only marginal changes to an already, by regional standards, comparatively liberal ownership and active M&A situation, and there were few distressed assets available for purchase (Table 2, 3).

The expansion of M&A masked a sharp decline in the level of intra-regional M&A, which had been a significant part of the limited pre-1997 activity (ASEAN 2001; Bartels 2004: 159). Indeed, there were some significant retreats, particularly

[6] For the problems inherent in comparing FDI and M&A see UNCTAD (2002: 303).

from Indonesia with such major Thai companies as Siam City Cement and Charoen Pokphand disposing of assets.[7] A major exception to this was Singapore, which has since 1997 significantly extended its role as the principle regional purchaser of South East Asia assets (Bartles 2004: 159; UNCTAD 2005: 325). However, for the other economies the decline in regional purchases was more than offset by the growth of extra-regional activity.

The expansion of cross-border M&A was most spectacular for Thailand (Table 2, 3), where it moved in close accord with FDI.[8] However, while M&A has made major contributions to regional FDI, the close positive relationship between the annual flows of FDI and M&A found in Thailand does not hold for the other economies or the region as whole.[9] Other than for Singapore the flows have a slight tendency to move inversely. This is only markedly so for Malaysia. In Indonesia the inverse relationship reflects high levels of M&A activity running against, and greatly ameliorating, the large scale of dis-investment. Generally, it could be argued that the inverse movement reflects M&A activity expanding when the overall confidence of greenfield investors in the economies concerned was low and distressed / low priced assets were perhaps more readily available. Certainly, since 1997 M&A activity has tended to concentrate in the most distressed sectors (Mody and Shoko Negishi 2000: 7-8). The unclear and complex relationship between FDI and M&A in South East Asia contrasts markedly with the clear positive ones observed at the global, North American, European and, to a lesser extent, Latin American and Caribbean levels (see UNCTAD 2000: 115-117). However, this has to be seen in terms of the early stage of the opening of South East Asia as an arena for M&A activity, under conditions of crisis and rapid, but extremely uneven, liberalisation with elements of resistance and uncertainty over operating conditions (see sections 3, 4 and 5).

Despite the complex relationship between M&A and FDI, by 2000 the shear volume of activity led UNCTAD (2000: xvii) to assert that M&A had become the

[7] Charoen Pokphand, for example, disposed of its 60 per cent holding in its Indonesia affiliate, PT Cyber Access Communications, for US$120m.

[8] A simple correlation of regional M&A and FDI: $R = +0.7636$; $R^2 = 0.5831$.

[9]

	R	R^2
Indonesia	-0.4427	0.1959
Malaysia	-0.6624	0.4388
Philippines	-0.0298	0.0004
Singapore	+0.2833	0.0803
South East Asia	-0.1825	0.0333

major mode of entry of TNCs into the South East Asian economies. However, the context and motivation for the purchase of South East Asian assets were extremely varied and not always easy to classify. While some companies reacted to the crisis by reducing activity, curtailing expansion plans and even withdrawing investment, others saw distressed assets, declining costs, currency devaluation and liberalisation measures as opportunities. This seems to have been particularly the case with export-oriented sectors, retailing and rapidly growing innovative sectors such as the production of advanced logic micro-chips and bio-technology (Molteni 2000: 112-114). Here, companies were prepared to increase production and make purchases to extend their networks. In some cases such expansion had been long targeted (Legewie and Meyer-Ohle 2000b: 239) – as with Tesco's purchases of the Thai-based Lotus supermarkets. A significant amount of such activity took the form of foreign partners acquiring long-sought majority or full ownership of local joint-ventures, as and where this became possible (*Acquisitions Monthly*, January 1999: 44: UNCTAD 2000: 52). However, these purchases involved a major change in company strategy away from minority holdings, establishing a presence and building relationships with local companies (Legewie and Meyer-Ohle 2000b: 239). Such a shift in approach implies that the companies concerned believed that the liberalisation of foreign ownership regulation reflected a long-term commitment of governments to increased foreign activity and the prospect of the emergence of an operating environment conducive to the operation of foreign business networks. As is discussed in sections 3, 4 and 5, in some cases such expectations may have been premature. It may also be significant that it were particularly Western companies that changed their strategy, while Japanese concerns, with generally much greater experience in the region, generally preferred to continue building relationships and inject additional capital into existing affiliates (Legewie 2000: 84, 95).

While the majority of purchases of South East Asian assets can probably be explained in terms of extension of transnational networks and market penetration in the manner analysed by Giroud (2004), there were undoubtedly some highly speculative purchases in the most distressed sectors (Mody and Shoko Negishi 2000: 7-8). Early in the post-crisis period a variety of equity funds were dedicated to the purchase of Asian company assets (*Acquisitions Monthly*, January 1999: 44). The operation of such funds undoubtedly lay behind the very wide range of purchases made by some, particularly European, organisations (Legewie and Meyer-Ohle 2000b: 239). The Asia-Pacific president of GE-Capital stated:

> Our strategy is very opportunistic.... We don't have specific pools of capital set aside for specific countries and specific reasons. Thailand went into crisis first. Thailand had the IMF in early. Thailand got its auction process together early so we've participated more. (*Financial Times* 21 October 1998, cited Hemmington 2000: 223)

Between the expansion of networks and the extremes of 'bottom feeder' activity lies a significant number of acquisitions that reflected the need to re-capitalise the corporate structure, many wholly or partly based on debt for equity swaps (World Bank 2001: 8; Kasian Tejapira 2002: 329-230). These appear to have become more common as international creditors have sought ways out of the slow moving legal and corporate procedures (see sections 3 and 4), particularly in Indonesia and, to a lesser extent, Thailand. Some of these deals are thought to have been rather poor returns by the standards of international debt workouts. A striking example is the acceptance (after four years of negotiation) of 95 per cent of the equity in Bakrie & Brothers as key to the restructuring of the US$1bn. debts of Indonesia based Bakrie Group (Worzniak 2005: 53). It may be that many such deals, together with speculative purchases, will be further restructured and wholly or partly sold-on, perhaps back to domestic purchasers. In addition, given the continuing barriers to foreign ownership and operation outlined in sections 3-5, a similar fate may be in store for some of the acquisitions motivated by network extension and market penetration.

A critical question is the extent to which M&A, regardless of motive has become a permanent feature of South East Asian corporate activity. The 1997-2001 surge was spectacular by any standards, but declining sharply in 2002, with the exception of Indonesia, the level of M&A activity returned to near pre-crisis levels, though remaining significantly more important relative to FDI (Table 4). Subsequently, only for Singapore has activity returned to the high levels associated with the 1997-2001 period (Table 2, 3). In addition, Indonesia appears to be on a steeply declining trend since 2001 (US$2031m. in 2003 and US$1269 in 2004). However, for the region as whole in 2002-4, M&A inflows and contribution to FDI were some three times the pre-crisis levels. However, to some extent the importance of M&A reflected continued low levels of regional non-M&A FDI. In a global context, South East Asia's share of FDI declined from 7.0 per cent during 1991-96 to 2.8 per cent during 1997-2004, while the region's share of cross-border M&A increased in these periods from 0.9 per cent to 1.4 per cent. These changes

have, of course, to be seen in the context of global declines since 2000 in FDI, M&A and the contribution of M&A to FDI (Tables 1, 2, 3 and 4). While some of the decline in M&A can be related to a decline in privatisation (UNCTAD 2002), there are indications that M&A, particularly in emergent markets, has become less favoured by investors and shareholders (Ghemawat and Ghadar 2000; Frank 2002b; McCaughlin and Quinlin 2002).

While the 1997-2001 surge in cross-border M&A can be simply explained in terms of the crisis and some rapid liberalisation, in these respects the situation could be regarded as following the pattern of many parts of the Third World since the early 1980s – with the major omission (to date) of large-scale privatisation. However, as is indicated in the next section, the exact relationship between liberalisation and cross-border M&A in South East Asia is by no means clear cut. More significantly, there are doubts over the extent to which liberalisation and related reform have created a situation conducive to sustaining a high level of cross-border M&A activity in much of South East Asia.

3 The liberalisation of foreign ownership and its limits

It is not the intention of this paper to review the often complex political processes of liberalisation since 1997. These issues have been particularly well examined for the key economies by, for example, Drysdale (2000) and Rodan et al. (2001). The aim of this section is to outline the extent and speed of liberalisation, and indicate the nature and importance of the remaining direct barriers to foreign ownership.

From the mid-1980s there was significant liberalisation of South East Asian financial and trade regimes. This gave a considerable measure of access for domestic companies to international funds and left few controls over short-term financial flows in Indonesia, Malaysia, the Philippines, Singapore and Thailand. However, significant restrictions on long-term movements remained. These imposed major limits on the ability of foreign companies to operate in certain sectors, acquire permanent titles to land or controlling interest in domestically registered companies. Such restrictions had by the mid-1990s become major issues for many trading partners, a focus of attention in AFTA (ASEAN Free Trade Area) and AIA (ASEAN Investment Area) negotiations and, in a broader context, were becoming central to the WTO agenda. Within the region Singapore was a particular advocate of liberalisation, as were some major corporations in Indonesia, Malaysia and Thailand.

Prior to the 1997 crisis, significant liberalisation of foreign ownership had only taken place in the Philippines and Singapore (Table 5). In the other economies full or majority foreign ownership remained almost entirely limited to export and other priority areas, operating under various promotional and incentive programmes, such as the BoI (Board of Investment) in Thailand or the Indonesian BKPM (Capital Investment Co-ordinating Board). Outside these areas, where a degree of foreign ownership *was* permitted, it was generally subjected to complex approval procedures and limited to non-controlling levels. These varied considerably between countries and sectors – by the mid-1990s limits ranging from 5 to 49 per cent of equity were variously enforced in the region. In addition, in many cases, foreign ownership and operation were in practice made extremely difficult by the intricate web of laws and regulations, coupled with vague administrative guidance, bureaucratic *fiat*, outright corruption and related delays, most strikingly in Indonesia (see comments in section 4).

The comparatively liberal ownership situation in the Philippines dates from the 1991 Foreign Investments Act. This while facilitating a high level of foreign acquisitions during the early 1990s (Table 2, 3), also excluded foreign activity from an exceptionally large number of areas under the Foreign Investment Negative List (Table 5). However, in 1997 the situation was sufficiently open and the level of accessible distressed assets such, that a major surge in cross-border M&A occurred (Table 2, 3). Since 1997 there has been only limited further relaxation of controls. While a significant number of proposals have been advanced, these have generally failed to be implemented due to opposition in the Congress, related vested interests and significant popular support (EIU 2003a: 10, 12-13). A major exception was the liberalisation of the banking sector which from 2000 permitted 100 per cent foreign ownership (EIU 2004d).[10] This was followed by a major acquisition by DBS and the expansion of minority holdings, which explains part of the 2001 blip in cross-border M&A (Table 2, 3).

Singapore's liberal controls over foreign ownership were also tempered by limits in many key areas (Table 5). With the 1997 crisis, the Singapore government opted to further liberalise the financial regime (Lim 2002: 29-30). Some new areas were opened to foreign activity (but not full ownership)[11] and limits removed on

[10] With the proviso that not more than 30 per cent of the sector could be foreign owned. At the end of 2001, 15 per cent was foreign owned (UNCTAD 2004: 321).

[11] Most significantly during 2002, telecommunications, law, medicine and superannuation funds (*Singapore Investment Climate Report*, July 2992: 2)

Table 5: Limits on foreign acquisition of ownership of domestic in 1997

Indonesia	Up to 49% of listed companies; not permitted for unlisted companies; exclusion from such areas as down-stream oil and gas, banking and insurance; requirement that most foreign activity had to involve JVs or other forms of co-operation
Malaysia	Generally limited to 30% of equity; stipulation that 30% of shares must be held by *bumiputra*.;exclusion from areas deemed in the national interest, e.g. banking, insurance and motor vehicles, and those involving ownership of land
Philippines	100% ownership permitted, but excluded from: mass media, telecommunications, retailing, public utilities, resource exploitation - including mining and inshore fishing; limited to 30% in advertising, 40% where land ownership is involved or the enterprise is small,* 60% in banking
Singapore	Foreign ownership restricted in: media, legal and other professional services, marketing, residential property ownership, banking (40%), insurance (20%); in banking approval of the Monetary Authority or holdings of 5% or more; listed companies deemed to be in the national interest limited e.g. 27.5% for Singapore Airlines
Thailand	Full foreign ownership effectively excluded from all areas under the 1972 Alien Business Law; banking and finance limited to 25%; minority ownership excluded from a wide range of areas, including agriculture and any involving ownership of land

Source: Indonesia: Montes and Muhammad Ali Abdusalamov 1998: 167-168; Robison 1987; Pangestu 1989: 218-33; Freshfields 2001. Malaysia: Freshfields 2001: 32-36; Masahiro Kawai 2000: 305, 325; Prem-chandra Athukorala 2000; UNCTAD 2000, Box V4: 147. Philippines: Bautista & Tecson 2003; Hutchinson 2001: 60-61; Freshfields 2001: 50; 2004: 54. Singapore: Kanishka Jayasuriya and Rosser 2001: 248-249, 252; Rodan 2001: 155, 157. Thailand: Bangkok Post 12 November 1997; Bangkok Post 23 February 1997; Freshfields 2001.

*Note: * Defined as less than US$200,000 capitalisation in 2003.*

the levels of foreign equity in others, notably banking (1999) and insurance (2002). Though in the latter areas the acquisition of a controlling interest requires the approval of the Monetary Authority of Singapore, which it has stated that it is not prepared to give (Freshfields 2001: 50; 2004: 54; EIU 2004a: 17). However, both before and after the 1997 crisis Singapore had by far the most open position on foreign ownership in South East Asia, the clearest and simplest M&A procedure (EIU 2004a: 17-18; Freshfields 2004: 59) and related high levels of M&A activity (Tables 2, 3 and 4).

In the Philippines and Singapore the post-1997 liberalisation was a domestic response to the crisis and furthered already comparatively liberal ownership regulations. This contrasts markedly with Thailand and Indonesia where, particularly in the former, liberalisation was externally imposed on a very restrictive situation.

Prior to the 1997 crisis foreign ownership in Thailand was governed by the extremely restrictive 1972 Alien Business Law. This required that every registered business in Thailand should have majority Thai ownership (Table 5). The only significant exception was the small number of US-based corporations permitted 100 per cent ownership and full operation under 1966 Thai-US Treaty of Amity and Co-operation. However, following the Thai government reaching agreement with the IMF in mid-August 1997, there was rapid liberalising of foreign ownership. Starting with the opening to full ownership of the financial sector and JVs established under Board of Investment concessions (Freshfields 2001). As in the Philippines, there was considerable opposition to many of the measures which resulted in delays and watering-down. However, the changes were sufficient to engender a major cross-border M&A boom from 1998 (Table 2, 3). Reforms were consolidated in the 1999 Foreign Business Act which became effective in March 2000. This opened up the majority of the Thai economy to full foreign ownership, but left in place some important exclusions, notably telecommunications and activities involving land ownership.[12]

In Indonesia, the pre-1997 situation was only marginally less restrictive than Thailand's (Table 5; Heritage Foundation 2001). However, moves to liberalise foreign ownership were announced before the government called in the IMF in October 1997 (Haggard and MacIntyre 1998). In the event, following the finalising

[12] Other areas of exclusion were: media, farming, fishing, real estate, domestic transport, mining, sugar refining, rice milling, engineering, architecture services, most construction, tourist services, low level wholesaling and retailing, insurance, accountancy, law, and some brokerage services (EIU 2003a; Freshfields 2004).

of the agreement with the IMF, it became clear that the Soharto regime was either unwilling or unable to effectively implement the policies it had announced (Robison 2001:120). While there was some progress following the fall of Soharto in May 1998, there was no major and effective liberalisation until 2000 when the majority of the economy was opened to foreign ownership (EIU 2003d; Freshfields 2004; Robison 2001: 120; Kanishka Jayasuriya and Rosser 2001: 245). However, some important areas continued to be excluded, notably down-stream oil and gas purchasers. More significantly, in most cases of purchases involving majority control, official approval remained necessary, and acquired operations became foreign companies under the supervision of the BKPM (Freshfields 2004). In addition, the uncertain Indonesian political and economic environment has scarcely been conducive to the expansion of cross-border acquisitions. It is perhaps not coincidental that the expansion of M&A activity in Indonesia coincides with a sharp decline in Thailand as the most attractive deals were concluded (Table 2, 3).

Before the 1997 crisis Malaysia was, after Singapore, the most heavily dependant on FDI and allowed fully owned foreign companies to operate in the export sector with some of the least restrictions in the region (Takatoshi Ito 2001: 66; Jomo 2001: 496). However, restrictions on foreign ownership were at least as great as in Indonesia and Thailand (Table 5; EIU 2004c: 15). Following the 1997 crisis Malaysia's move towards more nationalistic policies initially appeared to precluded any liberalisation of the restriction on foreign ownership (see for example Prem-chandra Athukorala 2000). However, some limited changes in 1998[13] were followed by some expansion of foreign acquisitions during 1998 and 1999 (Table 2, 3). More significant liberalisation took place in 2000 as part of a wider package aimed at stimulating FDI and in 2003 the majority of areas were opened to foreign ownership, but approval remained dependent on a case by case evaluation. While the changes generated increased M&A activity during 2004, in practice, with the exception of Vietnam, Malaysia remains the most restricted of the major South East Asian recipients of FDI. In addition to the stipulation that 30 per cent of equity must be held by *bumiputra*, the approval process can be lengthy and foreign purchasers must prove that the acquisition would not be against the national interest and would provide net economic benefit to Malaysia (EIU 2003c: 29; Freshfields 2001: 33; 2004; 36; UNCTAD 2000, Box V4: 147).

[13] Telecommunication raised to 49%, real estate to 50%; full ownership of new manufacturing permitted, except where it was deemed that Malaysia companies were 'firmly established'.

By 2003 all the South East Asian economies that were major recipients of foreign investment, except Vietnam,[14] had undergone significant liberalisation of regulations on foreign ownership. However, it is apparent that major restrictions remain, not least with respect to 'negative investment lists', some of which remain extensive and contain some remarkable 'catch all' terms,[15] but also with respect to areas where the approval of foreign activity is required – as in the Singapore banking sector and significant parts of the Indonesian and Malaysian economies. In many cases, obtaining approval can be such a protracted process that would be investors are effectively discouraged. More significantly, as is discussed in the next section, there are a wide range of barriers to foreign control and M&A activity that extend well beyond ownership regulations, have been little affected by the post-1997 liberalisation.

4 Non-ownership regulation barriers to the extension of foreign ownership

Put at its most simple, no matter how liberal the foreign ownership regulations, successful cross-border M&A remains dependant on the availability of attractive assets, a regulatory framework that facilitates purchase and business attitudes and practices that favour such activity. While, since 1997 a large number of purchases have occurred, it is also apparent that there have been nothing like as many as expected and many would-be purchasers have left empty handed (Frank 2000, 2002a). Large numbers of seemingly attractive and highly distressed assets proved to be unavailable. Others, on close inspection, proved mired in unacceptable financial and operating conditions, and, as was noted in section 2, large numbers of negotiations failed to result in deals.

A key factor in the unavailability of assets was that outside Singapore the legal framework for bankruptcy remains weak, with procedures remaining slow and cumbersome (Freshfields 2004). In Indonesia there has been a series of

[14] On 17 July 2003 the Vietnamese government raised the ceiling on foreign ownership of listed companies from 20% to 30% (Freshfields 2004: 1). However, given the very limited number of companies that are listed, this has had little no significant impact on M&A activity.

[15] In Thailand foreign participation continues to be limited for some activities on the grounds of national security, cultural consideration, environmental issues, Thai nationals not being considered ready to compete with foreigners and other 'special reasons' (EIU 2003b: 16; Piyanuj Ratprasatporn and Kobkit Thienpreecha 2002: 15-19).

'startling acquittals... as high-profile business figures walked away from bankruptcy proceedings and criminal charges' (Robison 2001: 123). The lack of success in court has left creditors with few options beyond protracted negotiation. This has also been the case in Thailand despite the 1998 and 1999 bankruptcy reforms which were extensive and were praised by the World Bank. However, in practice the reforms have done little to accelerate the process of liquidation and increase the effective power of creditors to force the issue (Kanishka Jayasuriya and Rosser 2001: 242). Procedures could still take years, and even where criminal prosecution is involved the slowness of the system, the partiality of the judiciary and bureaucrats, corruption and the close personal networks can make progress both protracted and difficult (World Bank 2002: 10-11, 40, 42-43). In addition, there has been continuing government support for heavily indebted companies through direction of bank lending and the charging of the Thailand Asset Management Company with rehabilitating rather than liquidating the assets of companies (Dixon 2004: 58, 61). Under such conditions debtors are able to continually delay restructuring negotiations. Perhaps the most extreme case was that of Thai steel tycoon Swat Horrungruang who owed some US$787m. and in a much quoted statement vowed that he would 'neither flee nor pay his creditors'. Subsequently, as Crispin (2002: 43) has written, 'the politically influential Sawasdi has served as the *de facto* spokesman for Thailand's notorious post-1997 corporate culture of non-payment' and many followed his lead.

Resistance to restructuring and the sale of assets continues to be reinforced by general opposition to increased foreign ownership by key sections of, in particular, the Indonesian and Thai political, administrative and judicial systems. In Indonesia there have been a series of court rulings against foreign companies, notably against the local division of the UK-based Prudential Life Assurance in 2002, which have served to continue to unnerve foreign investors (EIU 2003d: 25). Such moves have to be seen, at least in part, in the context of increased economic nationalism in the wake of the 1997 crisis. Something that has been most overt in the case of Malaysian government policy, but has been of considerable importance in Indonesia, Thailand and the Philippines, often with a considerable measure of popular support (see for example Crispin 2001: 10; Dixon 2004: 60-64; EIU May 2001: 20, 27; Glassman 2001a: 517-524; Jarvis 2002: 298, 316; Kasian Tejapira 2002). Indeed, there are on-going concerns that in Indonesia and Thailand nationalist interests might make some aspects of foreign ownership more, rather less, difficult (EIU 2003b: 16; EIU 2003c: 25).

Access to distressed assets by would-be purchasers is further limited by the low levels of capitalisation[16], high levels of family ownership and concentration of shares in a small number of hands (Il Chong Nam et al. 2001; Kasian Tejapira 2002: 325; Khan 1999; 2002; *The Economist* 2000: 93; Yun-Hwan Kim 2000: 21, 28-29; Unite and Sullivan 2000: 191-213). In 1997 the percentage of listed company equity held by major family groups was: Indonesia 67.3; Malaysia 42.6; Philippines 46.4; Singapore 44.8; and Thailand 51.9 (Claessons et al. 1998, cited by Il Chong Nam et al. 2001: 95). In Indonesia, 16 large family controlled conglomerates, including several banks, owned 70 per cent of the Jakarta Stock Exchange equity (Indonesia Capital Markets, *Annual Report* 1997). The control over members of the group was intensified by links with the banks. The Salim group which in 1995 controlled 17 per cent of the Jakarta Stock Exchange equity, centred on the Bank Central Asia – Indonesia's then largest private commercial bank. A very similar pattern of bank-centred groups had also developed in Thailand (Jansen 1997: 55-65; Muscat 1994: 114-117; Pasuk and Baker 1995: 122). Such banks provide the majority of funding for the linked companies, which in turn dominated the banks' lending activities. A study of Indonesian banks concluded that in 1995, 42 of them had lent over 50 per cent of their loans to linked companies (McLeod and Garnaut 1998).

It may be that the figures cited above hide the true level of pre-crisis family control because of the large numbers of major concerns that were not listed and the very complex nature of the interlocking ownership patterns and family networks (see comments on Thailand in Ammar Siamwalla 2001: 6-7; Akira Suehiro 1989: 224). While the strength of family control may well have been reduced in the wake of the 1997 crisis, as in the Thai banking sector (Dixon 2004: 54), it might be that in other areas such control has increased (Crispin 2000). Be that as it may, the interlocking ownership patterns, like that of the Japanese *keiretsu* system, make M&A activity particularly difficult. Cruz (2001) concluded that in the Philippines, where the ownership regulations are comparatively liberal and there was significant pre-1997 M&A, such activity remains seriously limited by family ownership.[17] In addition, the position of the family owned corporations has generally been furthered by close links with politicians, bureaucrats, the military

[16] At the end of 1999 the five South East Asian stock markets and a combined capitalisation of US$465bn. – the equivalent of 3% of the all listed US listed stock and less than Microsoft alone (Freeman and Bartels 2000: 2-3).

[17] As has been noted the pre-1997 M&A activity in the Philippines was closely related to privatisation.

and related organisations and institutions (amongst an extensive literature see for example: Drysdale 2000; Rodan et al. 2001).

In addition to the family corporations, large parts of the economies of, in particular, Indonesia, Malaysia and Singapore are insulated from M&A by state ownership. As well as large non-traded state sectors, there are significant numbers of major corporations in which the state retains a controlling interest. In 1997 the Singapore state held 40.1 per cent of the share value of traded companies, while the Malaysian state held 34.8 per cent (Claessons et al. 1998, cited by Il Chong Nam et al. 2001: 95).

Where assets are available for purchase, a wide range of regulations and procedures (or the lack of them) can inhibit M&A. In the Philippines, for example, the comparatively liberal foreign ownership position, has continued to be seriously compromised by complex rules and procedures, weak enforcement of regulations, limited reform of corporate governance, and the overall difficulties involved in rapidly concluding M&A arrangements (Masahiro Kawai 2000: 307; Abrenica and Llando 2003: 276-277; EIU 2003a: 16). In Thailand the restrictions on direct purchase of real estate, can sometimes prevent foreign investors from acquiring majority control, anti-trust laws prevent buyers from acquiring a dominant market position following take-over, and the legal requirements for mergers remain complex and demanding (EIU 2003b: 17-18, 43-44; Freshfields 2004: 88-93). For example, the requirement for merging companies to consolidate their accounts before the merger can be daunting and the reverse of Western practice. More generally, regulations often prevent the forced buyout of minority shareholders while enabling them to block measures such as de-listing and rewriting of the articles of association, even in the face of 75 per cent control (Freshfields 2001; 2004). In addition, many companies have articles of association that place limits on foreign ownership (Freshfields 2001; 2004). It is not that these types of barriers to take-overs and mergers are uncommon outside South East Asia, but in combination with still often limited transparency, there are real dangers of ‘poisoned pills’ hidden in apparently attractive deals. In this context, poor accounting standards continue to fuel distrust among creditors and purchasers (Deunden Nikomboriak and Somkiat Tangkitvanic 2001: 404). While the lack of transparency extends beyond hidden agreements, undisclosed share ownership and complex articles of association, to included uncertainty over levels of company liabilities (see comments on Thai banks in section 5).

The built in resistance of significant parts of the South East Asian business sector to increased foreign ownership has been maintained, perhaps even strengthened, in the face of liberalisation of ownership regulations. It is likely that further significant liberalisation may well occur, notably in Indonesia, Malaysia and Vietnam, through the need to conform with WTO rules (see Hilary 2003), commitments under AFTA, AIA and various bi-lateral agreements, and more generally, as a response to falling levels of FDI (Table 1) and the increasing attraction of China. However, it may well be that no matter how limited the formal regulations, the resistance facilitated by the non-regulatory barriers, particularly when supported by government officials, the judiciary and politicians, may be extremely effective in limiting the growth of foreign ownership and the ability of foreign controlled companies to operate and influence the business environment. The reduction of these non-regulatory limits on foreign activity rests on significant economic and political change, particularly with respect to the political influence of business, ownership patterns and business practices (see further comments in sections 5 and 6). For some observers, the key to much of this is the increase in foreign ownership which will engender changes in the direction of international business practices and corporate governance (Dornbusch 1997: 26; Mody and Shoko Negishi 2000: 7-9; Woo-Cumings 2001: 1; Yagi 2000: 132). Setting aside the broader debates concerning the impact of increased foreign ownership (noted in section 1), the key issue is the extent to which there *has been* significant increase of foreign control in South East Asia since 1997.

5 Post 1997 M&A in perspective: The example of Thailand

It is important to put the 1997-2002 M&A activity into perspective. Firstly, it should be stressed that outside Singapore and the Philippines foreign ownership started from a very low level.[18] The situation is perhaps best illuminated by

[18] Little attention has focused on areas where the level of foreign ownership has declined in the wake of the 1997 crisis. This is particular important for Indonesia, where foreign investment flows were negative 1997-2003 and the percentage share of foreign capital on the stock exchange fell from 50 in 1997, to 25 in 2000 (Indonesian Capital Markets).

Thailand, where the volume of M&A activity was by far the greatest in the region (Table 2, 3).[19]

While there has been a high level of purchase of Thai company assets by foreign investors there is a serious lack of hard evidence on the extension of majority foreign control (Brimble 2002). Information on the number acquisitions that involved majority control is far from consistent, but indicates that comparatively few Thai companies have passed into majority foreign ownership since 1997. A study by Brimble and Shernam (1999) suggested that between June 1997 and May 1999, there were 138 cases of foreign acquisition of interest in Thai companies, of these 80 involved majority control. However, a later study by Moody and Negishi (2000: 6-7) suggested that during the period 1997 to 1999 there were only some 63 majority control acquisitions. For the whole period 1997-2002, the UNCTAD data-base recorded 286 foreign acquisitions, but this source does not record the number involving a controlling interest. For the sample period, the Zephry database records 215 acquisitions of which 112 involved majority control. These numbers must also be seen in the contest of the near-zero level of foreign control before 1997. In addition, while there have been some high profile acquisitions in Thailand, such as Tesco's take-over of the Lotus supermarket chain, and the sale of 49 per cent of the Shin Corporation to the Singapore government's holding company, Temasek, none of the major national corporations have passed into foreign control.[20]

Some increase in the level of foreign participation may be obtained from the SET listings. However, this only gives a very partial view, because large numbers of the companies involved in M&A activity were not listed[21] and the possibility that companies were de-listed following their acquisition. At the end of 1998, SET data suggests that there had been significant increases in foreign holdings in 23

[19] While Thailand had the largest volume of M&A, the Philippines and Singapore received slightly more relative to the size of their economies. A crude comparison of cumulative M&A 1997-2004 and GDP (at current prices) for 2004 gives: Indonesia 0.6%, Malaysia 4.8%, Thailand 10.1%, Singapore 12.8%, Philippines 13.3%.

[20] This contrasts markedly with South Korea, where a series of major nation corporations, such as Samsung Electronics, Pohang Iron and Steel, and the major financial groups Kookmin and Shinhan, have become foreign controlled, as has 44 per cent of the equity of listed companies (Bowring 2004). However, foreign control in South Korea is *still* regarded as fragmented and limited by the complex ownership patterns and linkages between controlling groups (Bowring 2004).

[21] According to Rossi and Volpin (2002: 27) during the 1990s as a whole only 17.1 per cent of Thai M&A involved traded companies. This compares with Indonesia (10.6), Malaysia (15.2), Philippines (21.4) and Singapore (34.5).

of the 418 listed companies, 7 of which involved a controlling interest (Duenden Nikomboriak and Somkiat Tangkitvanich 2002: 411). By the end of 2002, despite the high level of M&A inflow (Table 2, 3), only 20 of the 381 listed firms had majority foreign ownership, though 20.3 per cent of the paid up share capital was foreign owned.[22]

While in general the increased foreign ownership in Thailand remains fragmented, partial exceptions to this are the electrical, electronics and banking sectors where some concentration of foreign control has emerged. By 2002, in the electrical sector, 3 out of the 7 listed companies and 69.5 per cent of the sector's shares were foreign controlled. Similarly, in the electronics sector, foreign interests controlled 3 out of the 10 listed companies and 53.6 per cent of the shares. In each case foreign control resulted from the buyouts of Thai partners. However, while these were large companies, they represent only a small proportion of Thai electrical and electronics production, sectors which remain dominated by foreign, JV and Thai companies operating under Board of Investment promotional programmes.[23]

The most striking expansion of foreign ownership in Thailand was in banking, which during 1997-2002 accounted for 37.5 per cent of total M&A and 22.8 per cent of FDI. This resulted in four banks passing into foreign control and significant increases in foreign equity holding in three of the other eight banks.[24] Overall, there was a dramatic rise in the percentage of foreign owned bank equity from 9.5 in 1996 to 38.0 in 2002 (Dixon 2004: 54).[25] The comparatively high level of foreign equity control, reflects the much higher capitalisation of the foreign controlled banks, some expansion of minority foreign holdings, but most significantly, the still very low level of capitalisation of the 'Thai-Thai' banks.

However, it is important not to exaggerate the extent of formal foreign control. The four banks with majority foreign ownership only represented 10.2 per cent of the branches, 5.6 per cent of deposits, 6.2 per cent of the market and 4.7 per cent of assets (Dixon 2004: 54). UNCTAD (2004: 321), suggests a slightly higher level of foreign asset ownership of 6.8 per cent, but stresses that is one of the lowest levels of foreign ownership of a banking sector in the world. Significantly, the foreign

[22] Calculated from SET year end data for 2002 accessed on 4 July 2003.

[23] In 2002 there were 100 Thai companies, 278 foreign companies and 234 JVs (Board of Investment 2002).

[24] In 1996 there were 15 domestically controlled banks, by 2002 this had been reduced by closure, merger and sales to 8.

[25] This increased further in 2005 when Standard Charter increased its holdings in the Standard Charter Nakornthon Bank from 75 per cent to 99.9 at a cost of US$498.5.

purchases of the Thai banks appears to be the exception in the region, elsewhere from 1997 'take-overs were either purchases of small financial institutions of the acquisition of minority stakes' (Hishikawa 2003: 2). Even including the Thai purchases the average size of financial sector purchases were small (US$40m.) compared to Latin America (US$187m.- Hishikawa 2003: 2).

Overall, the expansion of foreign control is far short of the predictions by many observers at an early stage in the crisis (see for example, *Asian Wall Street Journal*, 6 December 1997). The critical question is whether the level of foreign control is sufficient to have any major impact.

There is evidence to suggest that the foreign controlled banks have not found operation easy and this has tended to discourage investors from further purchases (*Bangkok Post* 27 September 2002, 3 October 2002, 30 November 2002; Dixon 2004: 54-55; EIU 2003d: 13; *Oxford Analyica* February 20, 2002). The foreign banks have had to contend with much higher levels of NPLs (Non-Performing Loans) than expected, and a slow return to profitability. In addition, the Ministry of Finance terms the foreign controlled banks 'hybrid banks' and is expected to subject them to much closer scrutiny. Perhaps more seriously, the foreign controlled banks are likely to be largely excluded from the complex, often long-established, and frequently highly personalised, linkages that exist within the banking sector and between individual banks, the still family dominated corporate sector and the Ministry of Finance.[26] To this has to be added the still significant political influence of the Thai-Thai banks and the lack of official enthusiasm for further foreign control in the sector (Davies 2004; *Far Eastern Economic Review* November 4 1999: 10-13). Overall, the foreign controlled banks continued to be out-performed by Thai-Thai banks, notably the Siam Commercial Bank, Kasikorn Bank (formerly the Thai Farmers Bank) and the Bangkok Bank (see for example *Asian Money* 2004, XV, 3: 33).

Despite the operating problems faced by the foreign banks, it is possible that increased foreign involvement is having an influence out of proportion to the level of formal control. It has been suggested that the banking reforms initiated by the Bank of Thailand and the Ministry of Finance (see Bhanupong Nidhiprabha and Warr 2002: 109; EIU 2003f), have been significantly reinforced by the arrival of foreign capital, technology and expertise, particularly with respect to spreading of

[26] The importance of these linkages was brought out in the interview with Finance Minister Tarrin Nimmanahaeminda (*Far Eastern Economic Review* 1999) when he commented on the number of banking executives that were relatives, golf partners or frequent dinner guests.

'international standards' of reporting, policy towards NPLs and, perhaps most significantly, the level of debt / equity ratios (for a general discussion of this see Wade and Veneroso 1998: 3-23). Given the centrality of banks to the Thai corporate sector, changes in banking practices *could* have a major impact on Thai business.[27] However, while there have been changes in banking practice it is far from easy to identify the contribution of the foreign sector.

The new foreign activity in the banking sector is believed to have played a significant part in its rapid modernisation, including increased accessibility of branches, the spreading of ATMs, online banking and the expansion and diversification of consumer credit (EIU 2002; 2003f; Kasian Tejapira 2002: 348, Note 9; Tasker 1999). However, it is extremely difficult to isolate the impact of the extension of foreign control from other changes in the wake of the financial crisis. If there had been no foreign acquisitions in the Thai banking sector modernisation may well have followed as the surviving companies sought to develop new consumer business to replace that lost in the corporate sector. This type of counterfactual lies at the heart of the debate over the impact of foreign control (Meyer 2001).

If the Thai banking sector represents the greatest extension of foreign control and concentration of M&A in the country that received the largest volume of M&A activity, what does this suggest about post-1997 levels of foreign ownership in South East Asia as a whole? Is it the case that despite some significant post-1997 cross-border M&A, foreign ownership remains limited and fragmented? Perhaps too much so too have any major impact.

6 Conclusion

During 1997-2001, combinations of crisis and liberalisation brought most of South East Asia into, or further into, the world of cross-border M&A. The critical question is how fully and lastingly has this happened? As has been discussed, there remain very significant barriers to the extension of foreign ownership. It may well be that the post-2001 decline in M&A reflects these continuing obstacles as much as global trends and the emergence of more attractive opportunities in East

[27] Before the crisis averages ratios were between 2:1 and 3:1, by 2002 they had fallen to 1.5:1, as against the Western norm of 1:1 (Kasian Tejapira 2002: 325). This may well reflect both banking and corporate views of the investment climate rather than a major shift in policy (see Woo-Cumings 2001: 2, 5).

Asia, particularly China (Bartels 2004: 159). While there may be an element of consolidation in the slowdown in South East Asian cross-border M&A, it may be that the 1997-2001 surge was just a 'blip' that will not lead to sustained activity.

A critical question is the motivation of foreign purchasers. As has been discussed, the majority of purchases appear to have resulted from international firms wishing to expand their networks into South East Asian markets and production systems. It seems clear that firms were taking opportunities to consolidate their position in expectation of recovery of domestic markets and competitive position in the most seriously affected economies. In addition, both new and long established investors in South East Asia certainly appeared to base their activities since 1997 on the assumption that the crisis, related reforms and, in Indonesia, political change, had set in motion processes that would rapidly open South East Asia to large-scale foreign ownership, while transforming capital markets, regulations, corporate governance and business practices towards Western norms. Slow progress in these areas, lack of recovery, particularly in export sectors, may well have discouraged further foreign purchases. The prospect for further M& A activity is part of the broader challenge of re-establishing the region's attractiveness for FDI, give the continuing high levels of dependence on foreign funds[28] and question marks over levels of competitiveness, particularly with respect to the PRC (see for example the discussion of Thailand in Glassman 2001b, World Bank 2004: 27-32). A situation reflected at the specific level by the relocation of electronics production from Thailand to the Shanghai area and at the general level, in the shift of investment away from South East Asia and towards the PRC which is also beginning to emerge as a significant target for cross-border M&A (Freshfields 2005, 2004: 2-4; *Mergers and Acquisitions* July 2004: 4-12).

Given the conditions under which the M&A have taken place it seems likely that significant numbers will result in failure, restructuring and resale of part or all of the assets. This seems particularly the case given the high level of failure for M&A in general, even in the Western economies (see Bartels 2004: 156, Knowles-Cutler and Bradbury 2002). It may be that significant assets will be sold on, particularly to domestic and regional buyers. The latter continuing to centre on Singapore. It may be that given the nature of the South East Asian business environments, networks and ownership patterns, such activity might be easier and more likely to succeed than extra-regional purchasers.

[28] Net FDI inflows expressed as a percentage of gross domestic capital formation for the period 1997-2002, averaged: Malaysia 14.0; Philippines 9.5; Singapore 39.7; Thailand 15.3; Vietnam 22.0.

If South East Asia does not become a major field of activity for M&A, particularly for extra-regional purchasers, what are the implications? It may be that the South East Asian-Chinese business systems will be left largely in place. The implications of this are both highly contested, far from fully researched and beyond the scope of the present paper to explore in more than a cursory manner. For advocates of the South East Asian-Chinese model, such as Wo-Cummings (2001: 5-6), established practice is market-adaptive and efficient enough to need little reform. In the absence of wholesale political and economic reform, changes in the direction of Western corporate practice may well undermine the dynamism of the business systems and the economies as whole. Against this, Regnier (2000: 17) concluded that the Thai-Chinese family business structure worked extremely effectively until the changed conditions of the 1980s. Subsequently, it has become increasingly a barrier to expansion, raising productivity and enhancing competitiveness. In addition, Regnier's (2000: 103-148) study of foreign involvement with small and medium sized Thai enterprises revealed that those with close linkages with foreign firms weathered the crisis much better than those without. Thus in the absence of increased foreign ownership large numbers of small South East Asian companies may loose the opportunity to become part of TNC networks (Bartels 2004: 163 – citing *The South China Morning Post*, 'Minnows easy pray for patient giants', 2001: 6). Thereby failing to internationalise business practices and leading to South East Asia being left behind in the global system.

The final issue is the possibility that slow-down in global FDI and increased competition from the PRC force changes on the South East Asian economies as will AIA, AFTA, WTO and various bi-lateral agreements which will undermine South East Asian business systems, eroding the built-in resistance to foreign ownership and operation. It may be too early to tell, but much detailed research needs to be done.

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