



M&A in Myanmar 18th May, 2017



OVERVIEW

- Not much high-profile activity; M&A transactions are usually on a smaller scale
- High-profile deals: Usually, not M&A, but greenfield investments, either 100% foreign-owned, or JV
- High-profile M&A deals:
 - Colgate buying Laser-Brand Toothpaste in 2014
 - Kirin buying 55% of Myanmar Brewery in 2015
 - Axiata buying Digicel Myanmar Tower Co., Ltd. (edotco Myanmar) in 2015 and 2016





MARKET ACCESS RESTRICTIONS

- Currently, market access restrictions are laid down in MIC
 Notification 15/2017
- Investors seeking to get a foot in restricted sectors try various methods centering around the idea that they would extend a loan to an existing player which would later be converted into shares of that player
- In the end, we are not aware that any of these schemes would ever have played out as intended in Myanmar, so they are outside the scope of this presentation





- Purchase of shares (or subscription to new shares) in a foreign holding company
- Purchase of shares (or subscription to new shares) in a foreign-invested company registered in Myanmar
- Purchase of shares (or subscription to new shares) in a
 100% Myanmar-owned company
- Purchase of assets from a company registered in Myanmar
- Purchase of shares in a nominee structure (please see the following slides for a clear warning)





- Purchase of shares (or subscription to new shares) in a foreign holding company
 - Technically, easy
 - If project has MIC permit, change of control requires prior MIC approval (Rule 191)
 - Authorities having issued licenses should be consulted
 - Does Myanmar capital gains tax apply to a sale of shares in the holding company? ("Vodafone scenario")





- Purchase of shares in a foreign-invested company registered in Myanmar
 - Technically, easy: Cover letter, BoD resolution, share transfer form
 - If project has MIC permit, prior MIC approval required (formerly, application form 7 or 8)
 - With MIC endorsement?
 - Special procedures if project has licenses





- If target is JVCo: Foreigner cannot purchase shares of local JV partner if such share purchase would result in passing the threshold of foreign ownership restrictions
- Stamp duty 0.1%
- Capital gains tax 10% (upstream oil and gas: 40-50%)
- No commercial tax
- Capital increase and subscription to new shares also possible





- Purchase of shares (or subscription to new shares) in a
 100% Myanmar-owned company
 - Not possible if the target company owns land or engages in business that is prohibited to foreigners
 - Old Citizens Investment Law explicitly allowed citizens to sell shares in local companies with MIC permit
 - Share transfer theoretically possible, BUT: target company is converted into a "foreign company" ("FC") with a new company number





This means: The converted company is a new, separate company - existing contracts have to be signed anew, existing licenses have to be obtained anew...





- Purchase of assets from a company registered in Myanmar
 - Advantage of an asset deal over a share deal: Liabilities of the target are not passed on to the buyer (exception: corporate income and commercial tax liabilities of the preceding year)
 - Disadvantage: Contracts and licenses are also not automatically passed on





- Typical scenario: establishment of a JV, rather than taking over all assets
- Taking over land: can only be done through a lease (Example: Local JV partner with land concludes lease agreement with JV company. JV company pays the rent up-front with newly issued shares instead of cash. Land remains the property of the JV partner and does not become the property of the JV company)





Capital gains tax (+); commercial tax (+); stamp duty (+)





- Acquiring shares in a nominee structure
 - The principal in a nominee structure cannot transfer ownership of the business to a potential buyer (sounds simple, but some potential buyers close their eyes before this fact)
 - Assignment of a convertible loan: Untested, at best





STEPS IN AN M&A DEAL

- Target selection
- Memorandum of understanding
- Non-disclosure agreement
- Due diligence
- Valuation and pricing
- Sale and purchase agreement
- Payment and transfer of ownership





DD OF A MILITARY CONGLOMERATE

(Remark: The following summarizes experiences up to 2014; the situation may be different now)

- Regulatory framework
- Financial statements
- Corporate set-up
- Licenses and their renewals
- Lease agreements, land grants
- Agreements with private contractors
- American sanctions





- Land due diligence
- Corporate due diligence
- MIC compliance
- Has the operation of the factory so far been lawful?
 - Licenses in addition to MIC permit: Business license from YCDC; registration certificate of industrial business from Ministry of Industry
 - Insurance?
 - Salary WHT? Social security contributions?





- Foreigners: Visa? Registration?
- Employment contracts registered with Township Labour Office?
- Relationship with customers
 - Identify customers
 - Problems with customers that could lead to liability of acquirer?
 - Non-compliance with code of conduct provided by customers?





- Ownership of machines?
- Labour disputes? Employment of minors?
- Factories and General Labour Laws Inspection Department investigations?
- Litigation or arbitration?
- Loans?
- Security for loans?
- Environmental issues?
- Trademark infringements?





- Compliance with tax and customs regime of CMP manufacturer
- Tax evasion?

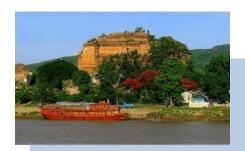




TELCO TOWER COMPANY

- Main issue: many lease agreements not registered
- Change of control requires prior written approval of the Post and Telecommunications Department





LOCAL BUYING FOREIGN BUSINESS

- Locals are allowed to buy shares in overseas companies
- Locals need permission from the Central Bank when opening a bank account abroad and must submit monthly financial statements - also if the bank account is held by the overseas company that the local has invested in?
- How to transfer the money abroad to the sellers?





CONTACT

Lincoln Legal Services (Myanmar) Ltd.

La Pyi Wun Plaza, Room 409 (4th Floor), 37, Alan Pya Pagoda Road, Dagon Township, Yangon, Myanmar

Phone: +95-9-262546284

E-mail: info@lincolnmyanmar.com

Homepage: www.lincolnmyanmar.com

