



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



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



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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



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ACQUISITION STRUCTURE

- 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)



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ACQUISITION STRUCTURE

- **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”)



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ACQUISITION STRUCTURE

- **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



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ACQUISITION STRUCTURE

- 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



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ACQUISITION STRUCTURE

- **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



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ACQUISITION STRUCTURE

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



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ACQUISITION STRUCTURE

- **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



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ACQUISITION STRUCTURE

- **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)**



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ACQUISITION STRUCTURE

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



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ACQUISITION STRUCTURE

- **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



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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



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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



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DD OF A MANUFACTURER

- 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?



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DD OF A MANUFACTURER

- **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?**



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DD OF A MANUFACTURER

- **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?**



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DD OF A MANUFACTURER

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



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TELCO TOWER COMPANY

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



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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?



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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



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