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Datapulse's shareholders should press for answers

They deserve much better corporate governance, transparency and treatment from the Board even as the company tries to address their concerns about its plans. BY MAK YUEN TEEN

Recent events raise concerns about how Datapulse's board makes decisions and discloses information. This is not the first time that the board has made decisions that are puzzling. BT PHOTO: KUA CHEE SIONG

BETWEEN Dec 12 and 17, Datapulse Technology issued several announcements on the acquisition of a subsidiary in a new business, provided updates of the company's business plans and its proposed purchase of a Toa Payoh property, and responded to my letters in *The Business Times* ("Datapulse Technology's disclosures about its operations throw up more questions than answers", Dec 8; "Datapulse Tech: More questions about disclosures, corporate governance", Dec 13).

Datapulse said that "it is not the case" that the new independent directors "were effectively appointed by the new controlling shareholder " and/or that "the new independent directors have been deemed independent without any proper assessment". Rather, the appointment and assessment were done by "the then board".

Let's look at the timeline surrounding the appointment of the new directors. On Friday, Dec 8, "the then board" announced that the new controlling shareholder, Ng Siew Hong, had conveyed by e-mail her view that the company should diversify the business to include multi-industry investments. Ms Ng was not present at the board meeting that ended at 7pm that day and the board was not able to obtain further information. Nothing was said about any proposals for new directors.

On the morning of Sunday, Dec 10, the three independent directors had resigned. On Monday, two other executive directors also resigned and three new independent directors and a new executive director/CEO were appointed.

Given that the three previous independent directors resigned over the weekend when they apparently had no idea about the plans of the new shareholder or about proposed board candidates as at Friday night, were they involved in the appointment of the new directors at all? Or did the remaining three executive directors appoint and assess the suitability of the new directors? How robust could the process have been when the new board was constituted by Monday, Dec 11?

It was disclosed that Ng Der Sian Thomas and Rainer Teo Jia Kai are business acquaintances of Ms Ng. Neither had prior board experience in listed companies. While Thomas, who has been appointed as chair of the audit committee, was said to have accounting and audit experience, information on his work experience during the last 10 years in the appointment template does not indicate such experience. The company ought to have provided more information about all the new directors.

KEPT IN THE DARK

In the case of Low Beng Tin, the third independent director who is now chairman, the company said he was introduced to Ms Ng by a third party as a possible candidate, and prior to his appointment to the Board, was not acquainted with Ms Ng nor with the other new independent directors. Mr Low, however, is not totally unacquainted with Datapulse. He has been an independent director of Lian Beng since Jul 8, 2015, which has had past dealings with Datapulse until at least as recently as February 2017. I will come back to these dealings later.

Mr Low also held 979,066 shares of Datapulse as at Oct 9 and was one of its 20 largest shareholders, and sold 700,207 of those shares by the time of his appointment to the Datapulse board. As Ms Ng had bought her 29 per cent stake at 55 Singapore cents through a number of married trades, perhaps Mr Low should disclose whether he was one of those who sold his shares to Ms Ng (whether directly or through an intermediary).

Since there have been no details about the background of the new shareholder and the previous board apparently had no idea who she is, how can minority shareholders be confident that the independent directors are truly independent of the new shareholder?

It should be of concern to shareholders that a board that was hastily reconstituted on Dec 11, with questions surrounding the independence, competencies and experience of the directors and no clear plans about future direction, had proposed to buy a Malaysian company in a new business on Dec 12. The new company manufactures haircare, cosmetics and other homecare chemical products in Malaysia. By Dec 15, the acquisition had been completed. It was almost as quick as going for a haircut.

What due diligence could have been done by the new board and management? The consideration was S$3.5 million. The unaudited NTA was about S$2.5 million. The NTA includes three properties in Malaysia which were valued at S$2.4 million by an independent valuer procured by the vendor. Why did the company rely only on a valuation sourced by the vendor rather than engage its own independent valuer?

The company said that it has a "warranty period" of one year for the acquisition which allows it to require the vendor to buy back the company under certain conditions at its full purchase price. Even if the warranty is enforceable, it would be scant consolation to shareholders if the company in the meantime loses a significant amount of money in a business that it has little experience in (the new executive director/CEO was a general manager of the vendor and was involved in the management of the target company from 2008 to 2010).

Datapulse said that it will not be seeking shareholders' approval for the acquisition of the subsidiary since the "relative figures" amount to less than the 5 per cent which would have required shareholders' approval under SGX listing rules. Instead, it will in due course be seeking shareholders' approval for the proposed diversification of the company's core businesses to include this new business. That's putting the cart before the horse. Further, it is unclear when the company plans to do so, and worryingly, whether it will continue to make rapid-fire acquisitions in diverse industries not requiring shareholders' approval because their "relative figures" are below the 5 per cent threshold. This may result in Datapulse quickly bleeding to death through ill-judged investments.

Ms Ng's letter of Nov 29 to the then board of directors included a definitive statement that "the company will be ceasing its manufacturing business soon…". The board's clarification in its Dec 14 announcement containing extracts from the company's prior disclosures merely serves to confirm that continuing the manufacturing activities remains on the table.

The new board said that "it is not in a position to speculate as to what may have been the information in the possession of, or assumptions made by Ms Ng" which led her to make that statement in her letter. It did not attempt to seek any clarification from Ms Ng herself. The regulator should establish whether the disclosures made to the public were accurate.

The new board also sought to clarify the timeline of events relating to the proposed purchase of the Toa Payoh property in its Dec 13 announcement. Unfortunately, the account merely serves to confirm that disclosures to shareholders were selective. Of the events listed on the 12 dates preceding the announcement of the termination of the option to purchase, Datapulse only disclosed timely the securing of the option and the exercise of the option (which would suggest the proposed purchase remained on track). Importantly, shareholders were kept in the dark that key conditions precedent for this purchase were at a significant risk of being unmet when they voted to sell the existing Tai Seng property at the EGM on Sep 28.

In its Dec 12 announcement, it disclosed for the first time that the sale of its existing Tai Seng property has been delayed by the buyer and is now expected to take place in January 2018. The company's earlier disclosure had said that vacant possession shall in any event be delivered no later than Dec 31, 2017. Again, this raises the question as to when the delay became known to the board and whether it should have been disclosed earlier. Is there a possibility that the buyer is unable to complete the purchase?

PUZZLING DECISIONS

Recent events raise concerns about how the board makes decisions and discloses information. Unfortunately, this is not the first time that the board has made decisions that are puzzling, to say the least.

On May 20, 2015, Datapulse announced a private placement of 65 million shares (revised from an earlier proposed 100 million shares) to Lian Beng at 11.235 cents per share, which was a 9.998 per cent discount from recent share prices at that time. This was completed in June 2015. Lian Beng paid S$7.3 million for the stake. Datapulse then did a 3-for-1 share consolidation, which means that the adjusted price per share was about 33.7 cents. Datapulse paid a 0.2 cent dividend per share for financial year ending Jul 31, 2015.

It said that the subscription was in line with the group's plans to pursue suitable new opportunities in the property development business and that Lian Beng will be a strategic investor. In its latest quarterly results at the time, Datapulse had a cash balance of S$24 million and little debt.

On Oct 19, 2015, Datapulse announced that it had bought a 20 per cent stake in a Lian Beng company called Goldprime Realty for S$20 million. In the 2016 annual report, it was disclosed that the company also extended a S$2.9 million unsecured interest-free shareholders' loan to Goldprime. Did Lian Beng also provide a similar loan proportionate to its shareholding interest?

On Jul 21, 2016, Lian Beng sold all its shares – 22.85 million shares or 10.42 per cent – for S$7.587 million to Ng Cheow Chye. This worked out to 33.2 cents per share (which is close to the adjusted price that Lian Beng paid for the private placement). It was about 58 per cent above the closing price that day.

That was the end of Lian Beng's "strategic investment" in Datapulse. Was there an agreement in place for Lian Beng to be able to sell back its stake to Mr Ng or some other shareholder? Just like the recent off-market transactions that allowed certain shareholders, including Mr Ng, to exit at a significant premium of about 53 per cent from the share price, Lian Beng was able to do so at a significant premium that protected it from a loss. Other minority shareholders may rightly feel that the playing field is far from level.

In February 2017, just 16 months after buying its stake in Goldprime, Datapulse completed the sale of its entire stake for S$35,000 and the loan was repaid. It was sold to a subsidiary of KSH, another SGX-listed company. One of Lian Beng's independent directors is also an independent director of KSH, although his interest was disclosed and he abstained from voting based on KSH's announcements. Datapulse now said that the disposal "represents a good opportunity for the Group to manage its assets in a more efficient and optimal manner".

That was essentially the end of the company's very brief foray into property development.

According to Datapulse's 2017 annual report, it has more than 9,000 minority shareholders. These shareholders deserve much better corporate governance, transparency and treatment.

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