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'Tis the season to be wary for minority shareholders at three companies

Three related companies – ASTI Holdings, Advanced Systems Automation and Dragon Group International – risk ending up in intensive care. BY MAK YUEN TEEN

ON APRIL 7, 2019, ASTI Holdings (ASTI), Advanced Systems Automation (ASA) and Dragon Group International (DGI) announced that Michael Loh Soon Gnee was resigning as executive chairman (EC) and CEO. Each company first made a general announcement, followed by three cessation announcements, with each subsequent announcement slightly "clarifying" the effective date of his departure.

Mr Loh, who is 63, will resign from these companies with effect from April 7, 2020 – one year from the date of the announcement – "or such earlier date as the Board may determine". The reason was "to reduce his workload and travel commitments due to his age and family commitments".

Each company's general announcement said: "The Board takes this opportunity to express its appreciation to Dato' Loh for his service and invaluable contributions to the expansion and growth of the Company and wishes him well in his future endeavours".

However, all three companies are in, or at risk of ending up in, the ICU of the Singapore Exchange (SGX). Both ASA and DGI were accounted as subsidiaries in ASTI's financial statements, until ASTI was deemed to have "lost control" of ASA in June 2017 following the partially underwritten rights issue.

Based on the latest annual reports, Mr Loh owns 19.89 per cent of ASTI. He also owns 19.91 per cent of ASA. As ASTI owns 25.98 per cent of ASA, Mr Loh also has an indirect interest of 5.17 per cent in ASA through ASTI, making his effective total interest 25.08 per cent in ASA. Mr Loh does not hold any shares in DGI. However, given that ASTI owns 40.98 per cent of DGI, Mr Loh has an indirect interest of 8.16 per cent in DGI.

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Falling together

Over the five financial years from 2014 to 2018, each company has racked up five successive years of losses from continuing operations, with only ASTI reporting a S$19.7 million net profit in FY2018, due to profit from discontinued operations of S$42.7 million.

ASTI reported cumulative losses from continuing operations of S$98.4 million from FY2014 to FY2018, with accumulated losses on its balance sheet amounting to S$50 million in its latest audited accounts. Listed on the main board, it closed at 2.8 Singapore cents on Dec 13, 2019. It was placed on the Minimum Trading Price (MTP) Watch-list on June 5, 2017 and the Financial Watch-list on June 6, 2019.

ASA had cumulative net losses of S$33.5 million from FY2014 to FY2018. Its last traded price was 0.1 Singapore cent, only because it is the lowest price possible on SGX. There has been minimal trading at that price, its latest net asset per share is 0.01 Singapore cent, and its June 2017 rights issue was priced at 0.09 Singapore cent. The fact that it is listed on Catalist saves it from being placed on any Watch-list.

DGI, listed on the main board, is not quite so lucky. On April 11, 2018, SGX rejected its application for more time to exit from the Financial Watch-list, and it was to be delisted. It had been on the Financial Watch-list since March 4, 2015 and on the MTP Watch-list since June 5, 2017. Its shares have been suspended from trading, and the company or its controlling shareholder was required to make a reasonable exit offer. One-and-a-half years later, there is still no sign of such an offer. It has accumulated losses of nearly US$70 million in its latest balance sheet, with negative equity of US$6.9 million.

Inter-locking and inter-changeable directors

In addition to Mr Loh who was EC and CEO of all three companies, Timothy Lim Boon Liat, the group administrative officer (GAO), serves as executive director (ED) at ASTI and DGI.

Several of the independent directors (IDs) also serve or have served on the boards of more than one of the three companies concurrently. Mohd Sopiyan Mohd Rashdi first joined the ASA board as an ID in 2007, then DGI in 2011 (where he is lead ID), and ASTI in May 2018. Daniel Yeo Ghee Chong became a DGI ID in 2017, and together with Mr Sopiyan, joined ASTI's board in May 2018 and is its lead ID.

Meanwhile, Kenneth Yu Keung Yum was an ID on all three boards, until he resigned from ASTI's board in May 2018. ASTI's cessation announcement said that he "has decided to focus on his other projects that will be taking up a substantial amount of his time" – but he did not resign from the ASA and DGI boards.

While the Code of Corporate Governance does not specifically deem a non-executive director (NED) serving on multiple related companies within the same group as non-independent, there are real threats to the exercise of independent judgement when these common directors are making decisions that affect the different companies. There are also questions about conflict in duties to different companies.

For instance, in the case of DGI, the external auditors have in their FY 2018 auditors' report flagged a material uncertainty relating to going concern. The auditors did not modify its opinion but said: "The ability of the Group to continue as a going concern is dependent on the continued financial support of ASTI Holdings Limited . . . ASTI Holdings Limited has also undertaken to not recall the amounts due in the next 12 months."

It may not be in ASTI's interest to continue to provide the support and undertaking. However, Mr Loh, Mr Lim, Mr Sopiyan and Mr Yeo are currently on both ASTI's and DGI's boards. On DGI's board, all the current directors are either currently or until recently on ASTI's board. Before May 1, 2018, three out of five ASTI directors were on DGI's board. In making the decision as to whether to provide the continued support and undertaking, how did these ASTI-DGI directors address the different interests?

Or consider the fact that SGX has asked DGI or its controlling shareholder to make a reasonable exit offer for the directed delisting. While the DGI directors are expected to get a reasonable offer for DGI shareholders, four of the five DGI directors also owe duties to ASTI and also need to do what is best for ASTI.

Then there is the case of Peter Lai Hock Meng who seems to be in a different predicament altogether. Mr Lai joined the ASTI board as an ID in 2011 and resigned in July 2016 because "his increasing work commitments outside of the Company will limit the time and effort that he will have to fulfil his role as an Independent Director of the Company". However, less than a year later, in May 2017, became a DGI ID. He resigned on Jan 3, 2019, citing health reasons.

A few weeks earlier, on Dec 12, 2018, Mr Lai had resigned as independent chairman from another troubled company, Transcorp Holdings, after just four months – "due to medical reasons". However, he did not resign then as lead ID at Delong Holdings. He did so only on Sept 26, 2019 following its privatisation. Furthermore, on Nov 6, 2019, he became an ID at Tee International, a company suffering from its own unhealthy financial performance and corporate governance.

Of the 12 directors who have served on the three boards over the past five years, there were three Datos and four PhDs, but it takes a lot more than that to be effective.

Directors and management remuneration

As EC and CEO of the three companies, Mr Loh received remuneration from all of them. His remuneration also included fees for serving as a director in each of these companies. Chew Yi Hong and I found in our remuneration study in 2018 that only about one in five ECs and chairman-cum-CEOs were paid director fees, and some were only paid fees but no salary. In Mr Loh's case, it was three from three, and his other remuneration amounts were not modest relative to the size and resources of the companies.

Based on the companies' remuneration reports, I estimated that he was paid a total of about S$23 million from FY2014 to FY2018 for the three companies (although as mentioned later, part of it was subsequently returned). While the three companies were transparent in disclosing remuneration to the nearest thousand dollars for each individual director, it took more than a PhD to navigate through the numbers to avoid double counting, especially as some of the statements accompanying the remuneration reports were confusing.

Between FY2014 and FY2018, Mr Loh received total remuneration of S$875,000 per year for ASA – or S$4.375 million in total. ASA has total assets of less than S$25 million and, as mentioned earlier, is in dire straits, with accumulated losses of S$139 million based on its latest audited accounts.

Over the same period, he received between S$550,000 and S$1.195 million per year from DGI – a total of S$4.071 million. DGI has total assets of less than US$7.6 million and has been directed to delist.

For FY2018, ASTI's remuneration report disclosed that Mr Loh was paid S$9.911 million, but this amount almost certainly included the S$746,000 he received from DGI, which was a subsidiary, but not the S$875,000 he received from ASA, which had been deconsolidated. The fees for the individual directors shown in ASTI's remuneration reports also appear to include fees for directors who also serve on its other listed subsidiaries.

At ASTI, he was paid about S$14.6 million over the five years. There may still be hope for this company but stacked against it are its S$50 million accumulated losses, entry into the Watch-lists, past track record and challenging industry conditions.

Mr Loh also has a 31-year-old son whose remuneration was disclosed for the first time in ASTI's FY2018 annual report, only issued seven months after the year-end. The disclosure stated that his remuneration exceeded S$50,000 rather than in a band – which is not in accordance with the Code of Corporate Governance.

I could not find any announcement of his son's appointment (or promotion) under rule 704(7), which requires "any appointment of a person who is a relative of a director or chief executive officer or substantial shareholder of the issuer to a managerial position in the issuer or any of its principal subsidiaries" to be announced. Rule 704(13) also requires the full-year results announcement to disclose such appointments. In its last (delayed) full-year announcement issued on March 31, 2019, the company disclosed that two of Mr Loh's nephews occupy managerial positions pursuant to rule 704(13), but there was no mention of his son. It was only in a April 12, 2019 response to SGX queries that his son's promotion to "manager, admin/HR/IT" was disclosed.

The curious 'bonus'

Included in the abovementioned total remuneration paid to Mr Loh from FY2014 to FY2018 for the three companies was a S$8 million "bonus and management incentive" paid by ASTI for FY 2018. This made up 81 per cent of his total remuneration of S$9.911 million that year.

The company did not explain the large bonus but presumably this was due to the net profit of S$19.7 million profit for that year, compared to a net loss of S$14.6 million the previous year. Profit from discontinued operations of S$42.7 million relating to the disposal of the STI Group was responsible for the reversal in its bottom line.

The S$42.7 million included a S$34.5 million net gain on disposal from a sales consideration of S$90 million, part of which was a S$9 million contingent consideration based on a profit guarantee. ASTI may also need to pay back up to S$17 million if the actual profits of the STI Group are less than the profit guarantee. This disposal was queried by SGX in April 2018, including about the S$17.2 million success fee paid to VSA Capital Shanghai Limited. Following the sale, Mr Loh will be a consultant for the STI Group.

Remuneration for the top five KMP jumped from S$1.98 million to S$4.65 million for FY2018, while other key officers' remuneration increased from S$1.66 million the previous year to S$3.07 million.

To be fair, shareholders were not left out this time, as the company paid S$16.37 million in dividends – the first time since 2012 that ASTI paid a dividend. The last dividend declared by DGI and ASA was in August 2007 and September 2001 respectively.

According to ASTI's annual report, on March 31, 2019, ASTI's RC deliberated on the S$8 million bonus that was approved and paid out to Mr Loh following his decision to resign, and revised the figure to S$2.182 million. This was curious for at least two reasons. First, the bonus was for FY2018 so it is unclear why Mr Loh's decision to resign in 2019, with an effective cessation date as late as April 7, 2020, would affect his bonus for FY2018 (although shareholders would rejoice at getting the money back). Second, the company disclosed his decision to resign only on April 7, 2019, when the RC already knew about it by March 31, 2019.

On April 2, 2019, ASTI announced the revised S$2.182 million "one-off bonus" as an interested person transaction (IPT), given that the amount was about 3.5 per cent of the latest audited net tangible assets, above the 3 per cent announcement threshold for IPTs. Chapter 9 of the SGX rulebook on IPTs provides an exception for "directors' fees and remuneration, and employment remuneration" although "golden parachute" payments are not covered by the exception.

As the "one-off bonus" was to recognise Mr Loh's "contributions to the group since he assumed the role of the company's CEO and executive chairman in 2003" and in particular the group's improved performance for FY2018, and may not be contractual entitlements under his service agreement, it arguably would not have been covered under the Chapter 9 exception.

If Mr Loh was not entitled to it, why did the RC and board approve and pay out the S$8 million? How was the S$8 million arrived at in the first place? What is the basis for determining the S$2.182 million? Can the board seriously consider Mr Loh to have made significant contributions, given the huge losses and the entry into the Watch-lists? Haven't whatever contributions he has made been amply rewarded already through his remuneration over the past years?

Minority shareholders of the three companies certainly have plenty of reasons not to feel jolly.

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