ASTI & CO: TRIPLE WHAMMY

Case overview

On 8 April 2019, ASTI Holdings Limited, Advanced Systems Automation Limited and Dragon Group International Limited announced that they were bidding farewell to their Executive Chairman and Chief Executive Officer, Dato' Michael Loh Soon Gnee, who had tendered his resignation from all three companies due to "personal reasons". This marked the end of a relationship that started with much promise but created much misery for minority shareholders as the companies plunged into losses, with one of the companies facing a mandatory delisting. Questionable corporate governance in the form of significant director turnover, inter-connected directors and high remuneration plagued the companies as they struggled in the face of significant disruption in their industry.

The objective of this case is to facilitate a discussion of issues such as corporate governance risks of listed companies under common control; board composition; director duties; director turnover; board interlocks; remuneration; and the role of regulators.

The rise of the ASTI trident

With two research and development centres and eight factories located across the world, ASTI Holdings Limited (ASTI) was a major provider of semiconductor manufacturing services.[1] After becoming publicly listed in 1999, it migrated from the then SESDAQ to the Mainboard on the Singapore Exchange (SGX) in 2005.[2]

This case was prepared by Avinash Anand, Isaac Lim Wen Liang, Seah Wei Ren and Zhu Shi Yao, and edited by Isabella Ow under the supervision of Professor Mak Yuen Teen. It has been substantially re-written, with information added, by Professor Mak Yuen Teen. The case was developed from published sources solely for class discussion and is not intended to serve as illustrations of effective or ineffective management or governance. The interpretations and perspectives in this case are not necessarily those of the organizations named in the case, or any of their directors or employees.

Figure 1 shows the five principal business activities and group structure of ASTI.

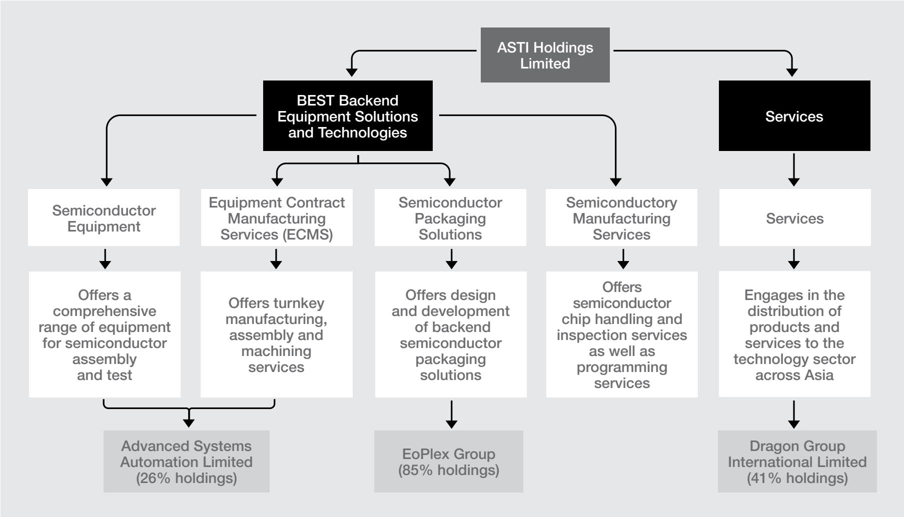

Figure 1: Structure and business activities of ASTI[3]

Dragon Group International Limited (DGI) was founded in 1990 and debuted on the then SESDAQ in September 1994.[4] It moved to the Mainboard in September 1998 and was acquired by and became a subsidiary of ASTI in June 2006.[5] Headquartered in Singapore, DGI has subsidiaries and representative offices across China, Hong Kong and Taiwan.[6] Its principal activities are summarised in Figure 2.

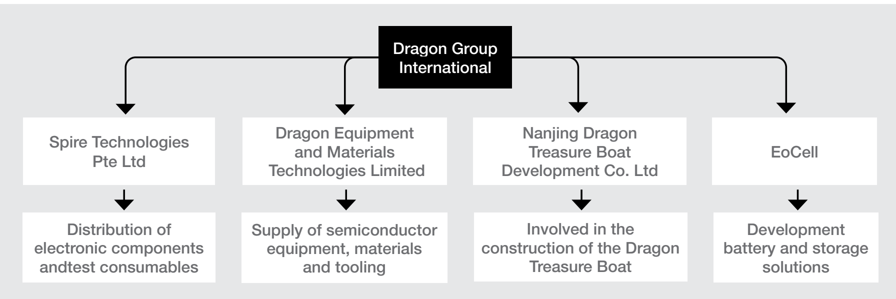

Figure 2: Business activities of DGI[7]

Advanced Systems Automation Limited (ASA) entered the semiconductor industry in 1986 with its core business being the manufacture of automated equipment for the encapsulation of semiconductors.[8] On 22 July 1996, ASA listed on the then SESDAQ.[9] On 16 August 2006, ASTI acquired ASA in order to expand into additional business sectors and hasten its expansion into North Asia.[10] ASA became a part of the ASTI's BEST cluster. ASA's core business activities are shown in Figure 3.

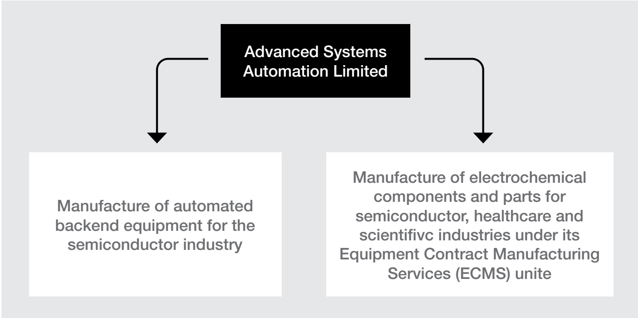

Figure 3: Business activities of ASA[11]

One king, three crowns

Dato' Michael Loh Soon Gnee (LSG) holds a Bachelor of Science degree, with a Double Major in Business Economics & Chemical Engineering from the State University of New York.[12] Having spent 20 years in Silicon Valley, LSG was said to bring with him "practical business experiences" and "a vast network of contacts in the semiconductor industry".[13]

In May 2003,[14] ASTI announced that it had entered into a binding term sheet and a subscription agreement in respect of the proposed investment by LSG in the company. In September 2003, the subscription by LSG of 54,236,000 new ordinary shares at S$0.10 per share was completed.[15] A month later, LSG became ASTI's Non-Executive Chairman, replacing Au Sai Chuen.[16] By 2005, LSG became Executive Chairman (EC)[17] and in 2013, he replaced Charles Cher Lew Siang as company CEO.[18]

In September 2005 – following ASTI's transfer from SESDAQ to the SGX Mainboard earlier in April that year – LSG fully exercised his option to acquire 108,472,000 ordinary shares of the company at S$0.154 per share.[19]

LSG first became a director of DGI on 23 October 2003,[20] and subsequently a director of ASA on 19 July 2006.[21] He was to become EC and CEO of all three companies – ASTI, DGI and ASA. LSG was appointed CEO of ASA in November 2010, and CEO of DGI in July 2008.[22] On 8 April 2018, it was announced that he would transition out of all appointments over the following 12 months.[23]

Three times the trouble

"As we stand today, we are now in a better than ever position to pursue and polish the rough gems we find in the wilderness. Strategically, our long term commercial outlook is very optimistic and we hope to let the diamonds shine in time to come."

– Dato' Michael Loh, on DGI's performance[24]

ASTI started showing signs of trouble in 2012. After posting profits in 2010 and 2011, it reported a net loss of over S$15 million.[25] The CEO at the time, Charles Cher, said that the loss was a result of impairment arising from the proposed divestment of the distribution business, the contribution of losses from ASA and an increase in research and development expenses in relation to semiconductor packaging solutions. However, he remained positive, saying that the company would be working on new solutions and wafer inspection equipment. He was also optimistic about the future of ASA and DGI.[26]

However, Cher resigned as CEO in 2013 after 22 years with ASTI. LSG took over his role, becoming the EC and CEO in the process.[27] Following the change of management, ASTI's troubles persisted.

Prior to the release of financial results for 2013, ASTI issued a profit warning. It mentioned weak market demand for ASTI's equipment, research and development costs, impairment of goodwill, and realisation of reserve upon the Group's completion of its disposal of the distribution business.[28] ASTI posted a loss of nearly S$22 million, with a decline in revenue that was attributed to drop in demand from customers.[29] ASTI was cautious about its performance in the coming years, stating economic uncertainties as well as the cyclical nature of the electronics and semiconductor industries. It also noted that exceptional circumstances such as foreign exchange volatility, intellectual property litigations, product and technology obsolescence, and inventory adjustments could affect ASTI's performance.[30]

In 2014, ASTI issued another profit warning for 1Q2014, citing losses from its subsidiaries and continued research and development costs for the development of semiconductor packaging technologies.[31] For the full-year results, ASTI managed to post an operating profit before tax. However, due to deferred tax liabilities, ASTI still reported a net loss after tax of about S$340,000.[32]

The company recorded a 39.6% increase in revenue due to higher demand for its equipment business. ASTI was optimistic about ASA's new products and ASTI's outlook. However, it was unsure about the outcome for DGI, which was being placed on the regulatory watch-list, and again noted that the ASTI's business was prone to business cycles.[33]

ASTI issued two further profit warnings for the second quarter and full year results in 2015.[34,35] Both warnings cited similar reasons for the expected losses, namely research and development costs, lower demand, and losses from subsidiaries. The final loss for the year amounted to S$46 million, with S$35 million of the losses coming from impairment losses on property, plant and equipment (PPE), goodwill, and receivables.[36] This was explained as being due to China's renminbi and Malaysia's ringgit depreciating, and a drop in crude oil prices. China's slowing growth rate was also cited as a factor in the impairment.[37] ASTI's outlook for the following year was prudent and cautious but it was mentioned that both ASTI and ASA had potential for growth. Meanwhile, DGI was still under the regulatory watch-list.[38]

2016 and 2017 saw a S$7 million loss and a S$14 million loss respectively.[39,40] Operating expenses remained high and the economic uncertainty in China and other parts of the world were cited as reasons for declining profits. Worryingly, DGI had still not exited the regulatory watch-list, even though it had been years since it was placed on it.[41]

ASTI returned to profitability in 2018 with a profit of nearly S$20 million for the year.[42] However, this was due to the disposal of its wholly-owned subsidiary Semiconductor Technologies & Instruments Pte Ltd (STI SG), which accounted for S$42 million of the profit. For its continuing operations, ASTI posted a loss of about S$23 million, continuing the trend from previous years of growing losses.[43] Moreover, there was a 49.3% increase in administrative expenses, growing from S$20 million to S$30 million. The increase was largely due to a bonus pay-out to a director during the year.[44]

DGI started posting losses in 2012 with the primary reason given being simply a decrease in demand from customers.[45] In 2014, a new beginning for DGI was cited as "the Group [continued] to explore investment and business opportunities and [would] make the appropriate announcements in due course."[46] Similarly in 2015, the company was overwhelmingly positive, stating that ASTI's "strategic long term outlook has never been better in more than a decade – filled with opportunities in lucrative and high growth markets." This was despite posting a loss of S$2.5 million, primarily due to "general and administrative costs" with no further explanation given.[47] DGI continued posting losses.[48]

Similar to DGI, ASA was also posting losses. In 2014, ASA disclosed that the successful inclusion of subsidiaries Emerald Precision Engineering and ASA Multiplate would provide ASA with a strong foothold and allow its customer base to expand.[49] Yet, revenue dropped the following year and ASA posted a loss of S$17 million, markedly higher than the S$1 million loss the year before. It said that the poor results were due to a slowdown in growth from China and setbacks in the company's Beijing operations,[50] a sentiment echoed in the following year.[51] Continued losses from its Beijing operations prompted ASA to dispose of it in 2018 and acquire Yumei Technologies Sdn Bhd (Yumei Technologies).[52] Despite this, ASA still ended FY2018 with a loss of S$6 million.[53]

In summary, over the five financial years from 2014 to 2018, each company 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.[54]

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. It closed at S$0.028 on 13 December 2019. It was placed on the Minimum Trading Price (MTP) Watch-list on 5 June 2017[55] and the Financial Watch-list on 6 June 2019.[56]

ASA had cumulative net losses of S$33.5 million from FY2014 to FY2018. Its last traded price was S$0.001 – the lowest price possible on SGX. Its net asset per share was S$0.001. Since it is listed on the Catalist Board, it has been not been placed on any Watch-list.[57]

DGI, listed on the SGX Mainboard, was not quite as lucky. On 11 April 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 4 March 2015 and on the MTP Watch-list since 5 June 2017. Its shares had been suspended from trading, and the company or its controlling shareholder was required to make a reasonable exit offer, but none has been forthcoming. It has accumulated losses of nearly US$70 million in its latest balance sheet, with negative equity of US$6.9 million.[58]

Ties that bind

As of 31 December 2016, ASTI held a 37% equity interest in ASA,[59] effectively making it the controlling shareholder of ASA.

In June 2017, ASA undertook a partially underwritten rights issue of up to 13 billion new shares at an issue price of S$0.0009 for each new rights share. Following this, LSG therefore not only served as the EC and CEO of ASA, but also became its substantial shareholder of ASA owning a 28.09% stake. This allowed LSG to vote independently of ASTI. ASTI was thus deemed "to have lost control over ASA", with ASA no longer considered to be a subsidiary of ASTI, and instead being equity accounted as an associate of ASTI.[60]

As SGX began to question the loss-making activities of ASA,[61] it was revealed that despite ASTI being in a loss position, it still made a loan of S$2.4 million to "associates", later confirmed in the SGX query to be ASA.[62] With LSG also concurrently holding the position of EC and CEO of ASTI, the loan to ASA would have been greenlit by the ASTI's board chaired by him.

In April 2018, ASA entered into a S$10 million sale and purchase agreement for Yumei Technologies and its associate companies.[63] While ASA was facing a loss of S$6 million for the year, it still went ahead with the deal. With S$1.5 million having to be paid in cash in the first year upon completion of the deal, the already cash-strapped company was to face further financing troubles.

The deal also came under further scrutiny as Yumei Technologies was wholly owned by Seah Chong Hoe (SCH) and his wife. What was not revealed was that SCH was also the Chief Operations Officer (COO) of ASA,[64] rendering the deal an Interested Person Transaction (IPT), yet this was not disclosed. With SCH having direct interests in the target and acquiring companies, it raised a few eyebrows as to the true nature of this transaction, especially with SCH now becoming the controlling shareholder of ASA with 29.12% ownership.[65]

Based on the 2018 annual reports, LSG owned 19.89% of ASTI.[66] He also owned 19.91% of ASA.[67] As ASTI owned 25.98% of ASA, LSG also had an indirect interest of 5.17% in ASA through ASTI, making his effective total interest 25.08% in ASA. He did not hold any shares in DGI. However, given that ASTI owned 40.98% of DGI, LSG had an indirect interest of 8.16% in DGI.[68]

Selling the family jewel

In 2019, ASTI announced a profit of S$19.7 million for financial year 2018, with a gain of S$34.5 million from the sale of STI SG, a wholly-owned subsidiary, to Shanghai Pudong Science and Technology Investment Co., Ltd. (PDSTI).[69] In the 'key audit matters' section of ASTI's annual report 2018, the auditors, Ernst & Young LLP, highlighted that they had tested the management's assumptions that STI SG would make more than the "profit guarantee" of S$17 million of aggregate profit before taxes in 2018 and 2019, and found the assumptions to be reasonable.[70] Given that ASTI made a loss of more than S$21 million on its continuing operations,[71] the sale of a profitable subsidiary seemed questionable. Coincidentally, the remuneration structure of LSG was also changed to be more performance-based, the very year ASTI stopped being in the red.[72]

In April 2019, SGX queried ASTI regarding its sale of STI SG. With a consideration of S$90 million paid by PDSTI, SGX questioned why over S$17 million was paid to the financial advisor, VSA Capital Shanghai Limited.[73] The company said that such a "success fee" was justified.[74] However, questions still lingered regarding more than 19% of the consideration being payable as fees.[75]

With a profit before tax of S$2,280,000 in 2017, it was uncertain whether STI SG would be able to make at least S$17 million in 2018 and 2019 as specified in the sale and purchase agreement.[76] Furthermore, STI SG was forecasted to reach a Net Asset Value (NAV) of S$69 million by 30 June 2018, despite having a NAV of S$62,724,000 at 31 December 2017.[77] ASTI had recognised a contingent consideration of S$9 million based on its view that the said targets were reasonable.[78]

In its response to the SGX query, ASTI defended its view that the profit and NAV targets were attainable, and even in "extreme unforeseen circumstances" where the NAV target cannot be met, any shortfall "should not be excessive."[79] It was later disclosed in the response that any shortfall in the profit that exceeds the contingent consideration amount would have to be paid by ASTI to PDSTI, amounting to a maximum amount of S$8 million.[80] In total, the maximum possible deduction from the total consideration is S$17 million, should STI SG not be profitable for both 2018 and 2019.[81]

It was also disclosed that LSG would enter into a consultancy agreement with STI SG, and all consultancy fees would be paid to LSG.[82] With this additional commitment on top of his existing duties, it raised questions as to whether he could discharge his duties to the required standards.

The query also sought clarification on the transfer of intellectual property (IP) from STI SG to ASTI. ASTI responded that PDSTI would be performing its due diligence in deciding whether STI SG would need those IP in its operations.[83] Should the IP not be required, the IP would remain under the ownership of ASTI.[84] However, should they be needed by STI SG, the IP would be under the ownership of STI SG. In that case, PDSTI had agreed to grant a "royalty-free, perpetual and world-wide license" of the said IP to ASTI and its affiliates.[85] This is questionable as PDSTI had paid a premium of S$27,276,000 over the NAV of STI SG,[86] which included IP that would be used in STI SG's operations.

All the king's men

In recent years, ASTI, DGI and ASA have had boards with at least half independent directors (IDs). This is compliant with 2012 Singapore Code of Corporate Governance applicable to these companies during the period.[87] Of the 12 directors who have served on the three boards over the recent five years, there were three Dato's and four PhD holders.[88]

A closer look, however, raises questions as to whether the directors are truly independent.

Inter-changeable directors

Prior to 2016, the board of directors for ASTI had remained relatively stable. However, on 18 July 2016, Peter Lai Hock Meng (LHM), an ID, resigned, citing “increasing work commitments outside of the company which will limit the time and effort that he will have to fulfil his role as an Independent Director of the company”.[89] He was replaced on 20 October 2016 by Dr. Kenneth Yu Keung Yum (YKY), who was deemed suitable due to his “wealth of experience in technology, product design and management in the semiconductor industry”.[90] However, according to an announcement by ASTI on 19 July 2016,[91] the resignation of LHM was on short notice, which resulted in a lack of proper succession planning and a hastened search for another individual to replace him. YKY was already on the boards of both DGI and ASA.[92]

On 1 May 2018, Fong Wai Leong (FWL), who had served 14 years as an ID of ASTI, resigned.[93] YKY also resigned on the same day.[94] YKY cited wanting to “focus on his other projects that will be taking up a substantial amount of his time”[95] as the reason, while FWL said it was “to pursue his other interests”.[96] FWL’s role of Audit Committee (AC) Chairman was taken over by Dr. Daniel Yeoh Ghee Cheong (YGC), citing “his vast experience in the finance and investment banking industry”.[97] YKY’s position was taken over by Mohd. Sopiyan B. Mohd. Rashdi (MSB).[98] However, MSB had numerous other principal commitments. Furthermore, like YKY in 2016, prior to his appointment, MSB was also on the boards of both ASA and DGI.[99]

At DGI, Dato’ Shaarani Bin Ibrahim (SBI) resigned as an ID on 17 April 2017, citing wanting “more time to focus on family matters as well as his increasing work commitments outside the company”.[100] However, similar to the resignation of LHM from ASTI’s board, his resignation was on short notice. This caused the number of members on DGI’s AC to drop below the minimum of three. As a result, DGI was subjected to the requirement in the SGX listing rulebook which states that “In the event of any retirement or resignation which renders the audit committee unable to meet the minimum number (not less than three) the issuer should endeavour to fill the vacancy within two months, but in any case not later than three months.”[101] His role was eventually taken over by YGC on 9 May 2017, citing his “vast experience in entrepreneurial and investment banking.”[102]

LHM, who had resigned as an ID of ASTI in July 2016, was appointed as an ID of DGI on 15 May 2017, which cited his “wealth of experience in the financial industry and corporate governance good practices.”[103] However, LHM resigned after slightly more than one and a half years later, citing “health reasons”.[104]

A few weeks earlier, on 12 December 2018, LHM had resigned as Independent Chairman from another troubled company, Transcorp Holdings, after just four months – “due to medical reasons”.[105] However, he did not resign then as lead ID at Delong Holdings Limited. He did so only on 26 September 2019 following its privatisation.[106] Furthermore, on 6 November 2019, he became an ID at another troubled company, Tee International Limited.[107]

On 8 April 2019, LSG, who was serving as the EC and CEO of ASTI, DGI and ASA, announced his resignation from both positions in all three companies. He cited wanting to “reduce his work load and travel commitments due to age and family commitments”.[108,109,110] However, LSG would remain as EC and CEO of all three companies until 7 April 2020 to ensure a smooth transition.

Serving different masters

A commentary in The Business Times by Professor Mak Yuen Teen highlighted the conflicts of interest that the directors of the three companies may face.[111] It pointed out:

> "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."[112]

It cited that in the case of DGI, the external auditors had in their FY2018 auditors' report flagged a material uncertainty relating to going concern. The auditors did not modify their opinion but said that DGI's ability to continue as a going concern is dependent on the continued financial support of ASTI. The auditors noted that ASTI had also undertaken to not recall the amounts due in the next 12 months.[113]

The author pointed out that it may not be in ASTI's interest to continue to provide the support and undertaking. Several of the directors were on both ASTI's and DGI's boards. On DGI's board, all the directors were either currently or until recently on ASTI's board. Before 1 May 2018, three out of five ASTI directors were on DGI's board. He questioned how these ASTI-DGI directors address the different interests in making the decision as to whether ASTI should provide the continued support and undertaking for DGI.[114]

As another example, he added that SGX has asked DGI or its controlling shareholder to make a reasonable exit offer for the 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.[115]

Paying a king's ransom

Professor Mak also raised questions about the remuneration of LSG and its disclosures. As EC and CEO of the three companies, LSG received remuneration from all of them. His remuneration also included fees for serving as a director in each of these companies.[116]

Based on the companies' remuneration reports, LSG was initially paid an estimated total of about S$23 million from FY2014 to FY2018 for the three companies (although part of it was subsequently returned). Between FY2014 and FY2018, he received total remuneration of S$875,000 per year for ASA – or S$4.375 million in total. ASA had total assets of less than S$25 million and accumulated losses of S$139 million.[117]

Over the same period, LSG received between S$550,000 and S$1.195 million per year from DGI – a total of S$4.071 million. DGI had total assets of less than US$7.6 million and has since been directed to delist.[118]

For FY2018, ASTI's remuneration report disclosed that LSG was paid S$9.911 million, although this amount 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.[119]

At ASTI, he was paid about S$14.6 million over the five year period, with the company having S$50 million accumulated losses, being placed on the Watch-lists, and continuing to face challenging times.

LSG also has a 31-year-old son whose remuneration was disclosed for the first time in ASTI's FY2018 annual report. The disclosure stated that his remuneration exceeded S$50,000 rather than in a band – which is not in accordance with the Singapore Code of Corporate Governance.[120]

His son's appointment (or promotion) was not announced as required under the SGX rulebook, 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. The SGX rulebook also requires the full-year results announcement to disclose such appointments. ASTI only disclosed that two of LSG's nephews occupy managerial positions but there was no mention of his son. It was only in a 12 April 2019 response to queries raised by SGX that his son's promotion to "manager, admin/HR/IT" was disclosed.[121]

The curious 'bonus'

Included in the total remuneration paid to LSG was a S$8 million "bonus and management incentive" paid by ASTI for FY2018. This made up 81% of his total remuneration of S$9.911 million that year.[122]

ASTI did not explain the large bonus but it appears to be due to the net profit of S$19.7 million for that year, compared to a net loss of S$14.6 million incurred in the previous year. Profit from discontinued operations of S$42.7 million relating to the disposal of the STI SG was responsible for the reversal in its bottom line.[123]

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 STI SG are less than the profit guarantee. This disposal was queried by SGX in April 2018, including queries about the S$17.2 million success fee paid to VSA Capital Shanghai Limited. Following the sale, LSG was to be a consultant for STI SG.[124]

Remuneration for the top five key management personnel 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.[125]

ASTI paid out S$16.37 million in dividends in FY2018 – the first time since 2012. The last dividend declared by DGI and ASA was in August 2007 and September 2001 respectively.[126]

According to ASTI's annual report, on 31 March 2019, ASTI's Remuneration Committee (RC) deliberated on the S$8 million bonus that was approved and paid out to LSG following his decision to resign, and later revised the figure to S$2.182 million. This was curious for at least two reasons. Firstly, the bonus was for FY2018 so it is unclear why LSG's decision to resign in 2019, with an effective cessation date as late as 7 April 2020, would affect his bonus for FY2018. Secondly, the company disclosed his decision to resign only on 7 April 2019, when the RC already knew about it by 31 March 2019.[127]

On 2 April 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% of the latest audited net tangible assets, above the three percent 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.[128]

As the "one-off bonus" was to recognise LSG'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.[129]

An article in The Business Times by Professor Mak asked: If LSG 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 figure arrived at in the first place? What is the basis for determining the S$2.182 million? Can the board seriously consider LSG to have made significant contributions, given the huge losses and the entry into the Watch-lists? Have whatever contributions he has made not already been amply rewarded already through his remuneration over the past years?[130]

On 18 March 2020, ASTI announced that the profit guarantee for the sale of STI SG was not met. As a result, S$2,118,334 of the S$9 million contingent consideration, which was held in an escrow account, would be paid to the purchaser.[131]

The elusive AGMs

On 15 April 2019, ASTI applied to delay the holding of its Annual General Meeting (AGM) for the financial year ending 31 December 2019 by a month.[132] The AGM was originally due by 30 April 2019. The reasons given had to do with ASA and DGI. ASTI said that ASA had just recently announced its unaudited results, and needed more time to prepare its financial statements in compliance with new financial reporting standards (FRS) and to seek clearance from ASA's auditors. ASA had also recently acquired two companies and would need more time to consolidate their financial statements in accordance with new FRS.

DGI faced difficulties in completing its audit as it had difficulty getting clearance from the auditors for one of its subsidiaries, which auditors were in turn experiencing difficulties obtaining the relevant working papers from the auditors of the Chinese subsidiary of its subsidiary.[133]

ASTI's application was approved. It also received an extension of time from the Accounting and Corporate Regulatory Authority (ACRA) to hold its AGM by 29 June 2019 and to lodge its annual return by 30 July 2019.[134] It subsequently applied for a further extension of time to hold its AGM by 31 July 2019. However, this was rejected by SGX. ASTI said it was preparing to hold its AGM by 15 August 2019, even though it was not granted any further extension by SGX.[135] Eventually, the company's AGM was held on 15 August 2019.[136]

Similar extensions of time were sought for the AGMs of ASA and DGI, with SGX approving a first extension to 31 May 2019, and then rejecting the applications for further extensions. ASA eventually held its AGM on 30 July 2019, while DGI held its AGM on 15 August 2019.[137,138]

The king keeps his throne

On 8 April 2020, DGI announced the appointment of Timothy Lim Boon Liat (LBL), the Group administrative officer for all three companies, as its president and Acting CEO.[139] That same day, YGC, an ID, was appointed Acting Chairman.[140]

Stephen Shen Hing (SH), a former DGI ID, joined ASA as an ID on 5 August 2019.[141] As of 12 May 2020, there has been no further announcement about whether LSG had left by the scheduled date of 7 April 2020 and no announcement has been released about his successor as Chairman and CEO.

However, over at ASTI, there was an unexpected twist. On 29 March 2020, the company announced that LSG was staying on after all. The company said that since the announcement of his resignation nearly a year prior, it had embarked on a search "but has not been able to find a suitable replacement with the right credentials and varied skill sets to meet the challenges of the company's diverse technology businesses and organisational complexity".[142]

It cited the deterioration in the world economy, the U.S.-China trade dispute and the COVID-19 pandemic and said that, given the challenging times, it had requested LSG to stay on. LSG has agreed and his notice of resignation was withdrawn by mutual agreement.[143]

It is unclear whether minority shareholders to let out a collective sigh, and whether it was due to relief or resignation.

Discussion questions

1. What are the corporate governance risks associated with multiple listed companies under common control? How can such risks be mitigated?
2. Amongst the boards of ASTI, ASA and DGI, there were directors who served on more than one board concurrently or who left one of the boards and joined another soon after leaving. What issues might arise from such a situation? What are examples of situations where directors may face difficulties in discharging their duties to the different companies?
3. Comment on the turnover of directors in the three companies. Do you think the directors who left had good reasons to do so and adequately discharged their duties?

4. Dato' Michael Loh was the Executive Chairman and Chief Executive Officer of all three companies, ASTI, DGI and ASA. Furthermore, he is a substantial shareholder for both ASTI and ASA. Discuss the implications of having one individual holding the positions of Executive Chairman, Chief Executive Officer and substantial shareholder in closely related companies. Should an individual be allowed to be Executive Chairman or CEO of multiple listed companies? Explain.
5. Evaluate the remuneration policies of the three companies, and whether Dato' Michael Loh's remuneration was reasonable. How do you think an executive director, who is also a major shareholder, should be remunerated? How might that be different from how professional managers who hold few shares in the company are remunerated?
6. Do you think the regulators were effective in holding the companies and their directors accountable? Give examples of possible breaches in rules that could have triggered regulatory action.

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