NUS National University of Singapore

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Raffles Education and the bane of Covid-19 meetings

Ideally, all companies should implement real-time remote voting and electronic communications – including post-Covid – if virtual meetings continue. BY MAK YUEN TEEN

ON SEPT 30, at 10 am, Raffles Education Corporation (REC) held its virtual EGM to consider the proposed acquisition of a 35.9 per cent shareholding interest in Langfang Hezhong Real Estate Development Co Ltd (Hezhong) owned by Langfang Heying Real Estate Development Co Ltd (Heying). The acquisition is to be made by REC's 99 per cent-owned China-incorporated subsidiary, Langfang Tonghui Education Consulting Co Ltd (Tonghui).

The consideration, to be paid in cash, is 254 million yuan (S$49.987 million).

A summary of the background to the transaction was provided in REC's 49-page circular.

From education to property

Seven years ago, REC's subsidiary Tonghui had entered into a framework agreement for the sale of land and buildings to Heying. The land and buildings were initially acquired by REC in 2008 for the development of education facilities and then transferred to Tonghui in 2012 as part of an "internal reorganisation" of the group.

Tonghui and Heying then incorporated Hezhong as a joint venture (JV) with the two JV partners contributing 70 per cent and 30 per cent respectively to the registered capital of Hezhong. Tonghui's contribution was in the form of the land and buildings valued at 233.33 million yuan, while Heying's contribution was cash of 100 million yuan. Heying's role as a JV partner was to procure the conversion of the land from educational use to residential and mixed development use.

Option agreement

Tonghui and Heying also entered into an option agreement which gave Tonghui the right to require Heying to buy Tonghui's 70 per cent interest in the JV for 700 million yuan, which was based on the then prevailing value of the land. In 2014, the two JV partners entered into supplementary agreements to amend the shareholders' agreement and the option agreement.

Tonghui later exercised its option but Heying paid only 460.83 million yuan instead of 700 million yuan. Heying now owned a total beneficial interest of 65.9 per cent in the JV. Both parties agreed to waive any claims against each other under the shareholders' and option agreements. The settlement agreement was announced in June 2019.

Back to education

The Sept 30, 2020 EGM was for REC shareholders to approve the sale back to Tonghui of the additional 35.9 per cent beneficial interest, which Heying acquired following the exercise of the option.

The net tangible asset value and book value of the sale shares based on the latest management accounts for the year ended Dec 31, 2019 is 290.34 million yuan. An independent valuation commissioned by Tonghui undertaken by Jones Lang LaSalle Corporate Appraisal and Advisory Limited valued the sale shares at 295.97 million yuan as at June 30, 2020.

On the surface, it does not seem like a bad deal. After all, Heying had paid 460.83 million yuan for the stake, which it is now selling back to Tonghui for 254 million yuan. The sale price is also below the net tangible asset value and book value in Hezhong's management accounts and the valuation by Jones Lang LaSalle. However, these values may not be relevant given that the land will now be used for educational purposes. Jones Lang LaSalle also emphasised that with Covid-19, "values may change significantly and unexpectedly even over short periods".

Questions and more questions

It turns out that on Sept 21, Oei Hong Leong, who has direct and deemed interest of 13.53 per cent in REC, sent a list of questions relating to the JV and the proposed transaction to REC, attention to its lead independent director, Lim How Teck. That letter has now been posted on a website called Save Raffles Education (*https://save-raffles-education.com/*).

However, REC only posted its responses to the questions on Sept 29, at 5.30pm. That was after the deadline for shareholders to vote their shares, which was 10am the day before.

> While companies that are truly interested in engaging with shareholders may implement such "best practice", my worry is that shareholder meetings for most companies will continue to be the way they were for nearly all companies that conducted virtual meetings this year – with shareholders only being able to observe and listen, and often having to vote before their questions are satisfactorily answered. As in the case of REC.

Many of the responses do not in my view adequately answer the questions, and a number raise concerns about decision-making by the board.

For example, under the shareholders' agreement with the JV partner, whose role was to procure the conversion of the land from educational use to mixed development and residential use, there was no deadline imposed. This makes it impossible for REC to enforce the agreement and as it turns out, the conversion did not happen.

Heying, the JV partner/vendor, is currently 95 per cent and 5 per cent owned by two individuals, Zhao Qinhua and Liu Guilin, respectively. However, the 95 per cent shareholder of Heying when the JV was formed seven years ago was not the same individual. REC said it has no additional information on the current beneficial shareholders of Heying and merely said that there was no "change of control" clause in the various agreements. Wouldn't who owns and controls the JV partner be crucial in any decisions to enter into JVs?

Mr Oei also asked why REC would persist with a JV partner who has not delivered on what it was supposed to do in the past.

When asked what due diligence was done on the vendor before entering into the JV, the company merely said it conducted "the usual business due diligence", without providing more information.

REC also said that details about the development of the acquired land and the proposed higher education institution are still being worked out. In other words, it decided to increase its stake in the JV and the land without firm plans.

Adding to the concerns is that REC reported a full-year loss of more than S$14 million in August and the cash consideration of S$50 million for the stake is substantial relative to the cash position of the group.

New guidance from regulators

On Oct 1, 2020, the Accounting and Corporate Regulatory Authority, the Monetary Authority of Singapore and the Singapore Exchange Regulation issued a joint statement relating to Covid-19 meetings. This followed the latest updates from the Multi-Ministry Taskforce which extended the temporary relief measures to allow entities to hold general meetings via electronic meetings up to June 30, 2021.

The latest joint statement includes the following: "To facilitate shareholder engagement at general meetings, issuers are encouraged to adopt enhanced digital tools at their general meetings, such as allowing for real-time remote voting and real-time electronic communication."

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The ideal is that all companies implement real-time remote voting and real-time electronic communications – including post-Covid – if virtual or hybrid meetings continue to be used. Pre-Covid, other Asian territories such as China, India, Japan and Taiwan were already ahead of Singapore when it came to online voting.

Companies should be required to disclose substantive questions they have received from shareholders and post answers before the voting deadline. The fact that certain shareholders have raised substantive questions may be relevant to how other shareholders may vote.

In REC's case, the concerns and further questions raised by REC's responses could also have influenced how other shareholders vote. It is simply unacceptable for REC to post its responses to the shareholder's questions the day after the voting deadline, when the questions were sent eight days earlier.

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