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Jardine Strategic acquisition: A shortfall of corporate governance

SGX should review its secondary listing regime or risk it becoming a backdoor for lower corporate governance standards. **BY MAK YUEN TEEN AND CHEW YI HONG**

ON March 8, Jardine Matheson Holdings (JMH) surprised the market when it announced that it will acquire the 15 per cent of Jardine Strategic Holdings (JSH) that it does not already own, through an amalgamation of JSH and a wholly-owned subsidiary of JMH under the Bermuda Companies Act. The transaction is expected to be completed by April 2021, following which JSH will cancel its listings on the London Stock Exchange (LSE), the Singapore Exchange (SGX) and the Bermuda Stock Exchange.

The untangling of the corporate structure is welcomed from a corporate governance and investor's standpoint. But how the transaction is being carried out and the lack of checks and balances have left a bad taste.

JMH offered JSH shareholders US$33 per share. But it is really a "decree" because minority shareholders of JSH have no say. The announcement makes that abundantly clear, stating that while the amalgamation resolution must be approved by at least 75 per cent of the votes cast, JMH and its subsidiaries are allowed to vote and they have undertaken to vote for it. It pronounced that "the requisite Jardine Strategic shareholders' approval is certain to be secured". JSH does not even need shareholders' approval to cancel its listing on the LSE.

To rub salt into the wound, its latest results announced on March 11 reported that its net asset value on a market value basis is US$58.22 per share – more than 75 per cent higher than the US$33 per share offered.

It is hardly surprising that minority shareholders in JSH oppose the deal which they believe severely undervalues JSH, even though JSH unsurprisingly pointed out that the acquisition price is at a premium of 20.2 to 40.3 per cent relative to various benchmarks based on closing share prices.

Did this "forced acquisition" come out of nowhere?

BLAST FROM THE PAST

JMH and JSH are Straits Times Index (STI) component stocks, together with three other Jardine group companies – Dairy Farm Group (DFG), Hongkong Land (HKL) and Jardine Cycle & Carriage (JCC). All except JCC are secondary listings on SGX.

In 2014, the first author pointed out that five companies in the Jardine group proposed to downgrade their UK listing from a premium listing to a standard listing on the LSE ("Jardine group listing changes raise questions", *The Business Times*, April 1, 2014). Standard listings are subject to far less stringent rules compared to premium listings – and compared to SGX rules for primary listings. He asked whether these companies would still satisfy the secondary listing requirements on SGX and remain on the STI.

With the downgrades, these companies effectively have a secondary listing in Bermuda, a standard listing in the UK which is equivalent to a secondary listing, and a secondary listing on the SGX. Standard listings do not qualify for inclusion in the FTSE indices in the UK.

SGX gave a resounding yes. The less stringent rules have now come home to roost.

The move to downgrade the listings was in response to the raising of standards for a premium listing on the LSE. For example, premium-listed companies are subject to more stringent rules on shareholders' approval of major transactions and delisting.

But it was not just avoiding higher standards but a lowering of standards. A UK investor at that time was quoted in the *Financial Times* as saying: "It's unfortunate. Here's a company that for years has not ticked the boxes in terms of corporate governance, and we've all said 'fair enough' given their treatment of minorities. Now they are asking to remove the boxes altogether."

A premium listing would have made the proposed cancellation of the listing on the LSE more difficult as 75 per cent of all shares and a majority of shares held by "independent shareholders" would have to approve. Instead, as a standard listing, shareholders' approval is not required, with JSH merely having to give 20 days' notice of its intention to cancel the listing. The irony is that SGX's own updated rules for a voluntary delisting require approval by at least 75 per cent of the total number of issued shares present and voting, and the offeror concert party group must abstain from voting.

MISSING CORPORATE GOVERNANCE

The acquisition announcement also stated that JSH has delegated responsibility for considering the acquisition decision to a "Jardine Strategic Transaction Committee" since a number of the JSH directors are also directors of JMH. The financial adviser, which advises this committee and considers the acquisition to be "fair and reasonable", is said to have taken into consideration the commercial assessment of the committee.

What was not clearly disclosed is that this committee comprised of just two directors, since only two of the nine JSH directors are not on the board of JMH. Their independence is in doubt. One is also a director of Mandarin Oriental International (MOI) – another Jardine group company with a secondary listing on SGX – while the other has been associated with the group since 1992, rejoined the board of JSH in 2018, and is also a director of HKL and Matheson & Co (which is a wholly-owned subsidiary of JMH).

Similar interlocking relationships among directors exist for the other group companies, with JCC which has a primary listing on SGX being a slight exception. Interestingly, the UK Corporate Governance Code (UK Code), which does not apply to standard listings, includes interlocking directorships as a possible factor which may affect the independence of a director.

It is also somewhat symbolic of the corporate governance of the Jardine companies that the JSH deal was announced on International Women's Day involving two companies whose boards are made up entirely of men. In fact, there is only a single woman director on the five Jardine companies that are listed on LSE. JCC is also an exception in this regard as it has 30 per cent of women directors on its board.

The Jardine companies listed on LSE make no mention of adherence to any particular corporate governance code in the corporate governance statement in the annual reports. They do not identify any directors as independent directors. Given the extensive interlocks, the reality is that the directors are unlikely to be perceived to be independent even if described as so.

Even JCC, which is subject to the Singapore Code of Corporate Governance as a primary listing on SGX, is not immune to the group's idiosyncratic corporate governance. An independent director there has served on the board for nearly 30 years. He was managing director of JMH, DFG, HKL, JSH and MOI until he retired from executive office in 2012 and remains a non-executive director of these companies. He is also a commissioner of Astra, a Jardine-controlled company. Does the JCC board seriously consider that he can be truly independent?

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When the group announced its intention to downgrade its LSE listings, a spokesman said that investors recognise that they have had their governance arrangements in place for many years which have proven successful in creating shareholder value. This is the narrative that the Jardine companies have maintained to justify their corporate governance practices. JSH shareholders may disagree as JSH's share price was in the mid US$30s in 2014 when it announced the downgrades and its volume-weighted closing share price over the most recent six months was US$23.53 – even if it did peak at around US$46 in the intervening period.

To be clear, the outcome may be the same even if JSH had gone for a premium listing. However, the decision by the Jardine companies to downgrade to a standard listing in 2014 certainly facilitated the move by JMH seven years down the road.

Shareholders here should be under no illusion that big blue-chip STI component stocks and those that are also listed in developed markets such as the UK will necessarily have high standards of governance and strong protection for minority investors.

TRY BERMUDA FOR FAIRNESS

JSH minority shareholders who feel shortchanged will have to look to the Bermudan courts. Under Bermudan law, a dissenting shareholder not in favour of the amalgamation and who is not satisfied with the offer can apply to the Bermuda courts for an appraisal of the fair value of his shares. Such an application would not prevent the amalgamation from taking place. Following an appraisal, the target company can choose to either pay dissenting shareholders an amount equal to the court-appraised fair value or terminate the amalgamation. The JSH announcement did not mention this right of dissenting shareholders.

TIME TO REVIEW THE SECONDARY LISTING REGIME – AGAIN

SGX views companies which are listed on either the premium or standard listing segment as being from a developed market. It relies on the classification developed by MSCI and FTSE to determine if a company's home jurisdiction is a developed or developing market. The classification is based on assessments of the state of a country's economy and capital market.

In cases where a secondary listing is from a developing market, SGX assesses exemptions from its listing rules on a case-by-case basis. Pan Ocean, which has a primary listing on the Korea Stock Exchange, is required to comply with chapters nine, 10 and 13 of SGX's listing rules. Why focus on an alignment of rules for listings from developing markets and disregard it for listings from inferior segments of developed markets?

While SGX says that it would also consider other factors in determining whether it remains appropriate for a company to be classified as being from a developed market, it has imposed additional listing requirements on only one out of the 29 secondary listings whether from a developed or developing market – and that is Pan Ocean mentioned above. In JSH's case, what has the developed market status of the UK done to protect investors here?

It is not only the Jardine companies that are benefiting from the approach used by SGX to exempt secondary listings from its listing rules. Consider the case of AMTD International (AMTD) which listed on SGX in April 2020 through a secondary listing. AMTD is incorporated in the Cayman Islands, headquartered in Hong Kong and its Class A shares are listed on the New York Stock Exchange (NYSE) through American Depositary Shares. With its primary listing on NYSE, SGX exempts it from its listing rules. This includes SGX rules for multi-vote shares for primary listings for which the limit is no more than 10 votes per share. The Class B shares of AMTD have 20 votes each.

As a foreign private issuer, NYSE only requires AMTD to comply with the rules of its home market – which is Cayman Islands. Therefore, SGX exempts AMTD from its rules by virtue of its primary listing on NYSE, while NYSE exempts it from its rules because it is a foreign private issuer. In effect, SGX is accepting Cayman Islands' rules as a replacement for SGX rules.

SGX should review its secondary listing regime or risk it becoming a backdoor for lower corporate governance standards.

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