

Nintendo's Founding Family vs. Toyo Construction: All the Facts about "250 Blank Days"

An unusually long battle over the buyout proposal

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2023/02/07 7:30

The buyout proposal offered by the founding family of Nintendo Co., Ltd., (hereinafter called “Nintendo”) to Toyo Construction Co., Ltd., (hereinafter called “Toyo Construction” or “the Company”) in May 2022 had been in discussions between the two companies for about eight months. With no progress in sight, Nintendo's founding family has expressed its intention to oppose the reappointment of Toyo Construction's president at the general meeting of shareholders in June 2023. We will get to the bottom of the behind-the-scenes battles waged between the two companies.



An office building in Jimbocho, Tokyo, where Toyo Construction is headquartered. The top management meetings between the two companies were held in Toyo Construction's reception room on the 11th floor (photo by the reporter).

On December 5, 2022, a chilly day with light rain, two men met in the reception room of the head office of Toyo Construction, a major marine civil engineering company, located on the 11th floor of an office building in Jimbocho, Tokyo.

One man was Mr. Banjo Yamauchi, family representative of the Yamauchi No. 10 Family Office (YFO), an investment firm managing the wealth of Nintendo's founding family. He is the grandson, (the second son in the family register), of the late Mr. Hiroshi Yamauchi, known as the patriarch of Nintendo's restoration. The other was Mr. Kyoji Takezawa, president of Toyo Construction. With his background in business and sales in the construction industry, Mr. Takezawa has worked his way up to being the president of the Company.

YFO started buying up shares in Toyo Construction from around March 2022 and became the Company's largest shareholder with an over 27% stake as of May 2022. On May 18, YFO proposed a friendly takeover of Toyo Construction subject to the agreement of the Company's management. YFO offered to buy Toyo Construction at 1,000 yen per share to make the Company its wholly owned subsidiary.

While YFO is principally engaged in investing in startups with advanced technologies, it also focuses on activities that promote the transformation of companies in old-fashioned legacy industries.



The late Mr. Hiroshi Yamauchi, known as the patriarch of Nintendo's restoration. The Yamauchi No. 10 Family Office (YFO) is an investment firm managing the wealth of Nintendo's founding family. (Photo by Hideji Umetani)

Negotiations completely broke down at the December 5 meeting

Since YFO's initial buyout offer, the two companies had been in discussions for as long as 250 days, during which time they met 20 times and negotiated for a total of more than 40 hours. Initially, negotiations were conducted at the secretariat level, but differences in opinion on the buyout proposal could not be resolved. From October 2022 onwards, negotiations have been elevated to the top management of the two companies (i.e., family representative and president).

On December 5, 2022, the fifth top management meeting was held. However, on that day, their usual gentlemanly way of listening carefully to what the other said in negotiations changed dramatically. Mr. Banjo Yamauchi was very upset over Mr. Takezawa's informal letter, provided in advance by Toyo Construction, saying "I cannot agree to your proposal to acquire all of the Company's shares." He angrily said, "What do you mean by not accepting our proposal? I don't think Toyo Construction is well governed," and abruptly cut short the meeting. The meeting ended in about 30 minutes.



Takahiro Yabushita, representative director and senior managing executive officer of Toyo Construction in an interview with *Toyo Keizai* in June 2022 (Photo by Hideji Umetani)

Negotiations between the two companies completely broke down at the December 5 top management meeting. On January 23, 2023, YFO publicly announced that, at Toyo Construction's general meeting of shareholders scheduled to be held in June 2023, it would oppose the reappointment of three directors, including President Takezawa, and exercise shareholder proposal rights to propose its own director candidates.

The talks between the two companies continued for an unusually long period of 250 days, but in fact, their positions remained far apart from start to finish.

In an interview with *Toyo Keizai* in June 2022, Takahiro Yabushita, representative director and senior managing executive officer of Toyo Construction, said: "We have not yet reached the stage of negotiations. Our stance is to first create an environment that allows us to start negotiations." But the negotiations did not make any progress from that point on.

YFO repeated its insistence that Toyo Construction should be delisted and then make serious reform efforts, while Toyo Construction doggedly stuck to insisting that they would not agree to YFO's buyout proposal as long as it was premised on the Company going private and that YFO should present concrete measures for reform.

Initially, many discussions were held at the secretariat level. Mr. Hirowaka Murakami, a childhood friend of Mr. Banjo Yamauchi and now YFO's chief investment officer, represented YFO in the discussions, while on the Toyo Construction side, Mr. Yabushita and

others attended.

But the gap between the two companies ultimately proved too wide to bridge. Toyo Construction did not even consider, let alone try to resolve at a board meeting or other official function, whether or not to accept YFO's buyout proposal.

Exasperated by the situation, the two companies looked for the next move. Both companies agreed that it was time to elevate the negotiations to a higher level and to have top management discuss a resolution. Following that mutual agreement, the negotiations were elevated to the top management of the two companies. The October 6, 2022, secretariat-level meeting became the last and final meeting.

A total of five top management meetings were held so far to break the deadlock. The first top management meeting was held on October 18, 2022, the second on November 2, 2022, the third on November 14, 2022, the fourth on November 25, 2022, and the fifth and final one on December 5, 2022. All top management meetings were attended only by Messrs. Banjo Yamauchi and Kyoji Takezawa, president of Toyo Construction. Even Mr. Hirowaka Murakami, Mr. Yamauchi's right-hand man, seems to have been told by Mr. Yamauchi that he did not have to attend the top management meetings. All these meetings were held in the reception room of Toyo Construction's head office.

Background and details of five top management meetings

It appears that the first top management meeting focused on confirming the background and details of negotiations to date on YFO's buyout proposal. During the second top management meeting, Mr. Takezawa, president of Toyo Construction, spent time explaining to Mr. Yamauchi about the unique structure of the construction industry, including the status in the industry and marine and civil construction business. It is the third top management meeting that moved mountains.

Mr. Yamauchi began by saying, "Can you let me know your own opinion (about our buyout proposal)?" When Mr. Takezawa replied, "I cannot comment on it yet (partly due to time constraints) as it still needs to be reviewed by the Company's third-party committee and board of directors," Mr. Yamauchi requested, "It does not have to be a formal proposal that has gone through the company's approval procedures. Can you just put your thoughts in a letter and give it to me?"

In accordance with this request, Mr. Takezawa handed the letter to Mr. Banjo Yamauchi at the fourth top management meeting. This is the letter saying, "I cannot agree to your proposal to acquire all of the Company's shares" as described earlier in this article. By this letter, Toyo Construction refused YFO's buyout proposal, albeit unofficially. However, Toyo Construction included in the letter its own proposal that stated, "Instead of making the Company go private as proposed by YFO, is there any room to discuss alternative ways that can allow the Company to remain listed?" The content of this proposal leaned closer toward YFO's position, said a Toyo Construction official.

"Toyo Construction probably wanted to ask YFO for cooperation going forward in the form of debt (as a lender) rather than equity (by share buyout)," speculates another industry source familiar with Toyo Construction's inner workings.

As things turned out, the letter infuriated YFO. During the fifth top management meeting held on December 5, 2022, as described earlier, Mr. Yamauchi cut short the meeting and left.

On January 23, 2023, YFO issued a release titled "Significant Issues in Corporate Governance." In this release, YFO described the letter submitted by Toyo Construction as a letter of disapproval and criticized Toyo Construction for failing to consider YFO's buyout proposal virtually for as long as 250 days and for implementing an extremely inappropriate decision-making process for a listed company, such as issuing the letter without going through the review process by the special committee or the decision by the board of directors. (*Partially edited by the editorial desk)

A Toyo Construction official said in disappointment, "YFO initially did not take issue with the fact that the letter had not been approved through the Company's due process. Along the way, they may have changed their strategy to highlight the dysfunction of the Company's governance. Communications did not go well between the two companies." The negotiations never came close to a breakthrough and ended in disagreement. In retrospect, the two companies completely focused and wasted time on futile discussions, which can be said to have been the so-called 250 blank days.

Toyo Construction criticized as using a tactic not to engage in serious discussions

YFO has grown increasingly distrustful of a series of moves by Toyo Construction. "Toyo Construction's tactic was not to enter through the main gate (or not to engage in discussions seriously). In addition, they doggedly stuck to arguing the theory on the risk of the collapse of the business foundation in which if a company other than marine construction companies should take over Toyo Construction and take it private, the Company would not be able to win public works contracts," said a YFO official.

This YFO official has become even more vocal, saying, "Toyo Construction may have downplayed us, thinking that if they threaten us a little, we would leave them alone. We have no choice but to think so because of the way they kept the discussions from progressing by focusing on their theory of the business foundation." Unable to dispel distrust of Toyo Construction's management team, YFO intends to exercise its shareholder proposal right to oppose the reappointment of Toyo Construction's directors, including President Takezawa, but it is unclear whether YFO will be able to win the support of a majority of shareholders for its shareholder proposal.

Some of the overseas funds that have invested in Toyo Construction seem to be dissatisfied with Toyo Construction, thinking that, although YFO has offered a good proposal to buy Toyo Construction at 1,000 yen per share, Toyo Construction has not properly considered this buyout proposal. That said, it is the view of industry insiders that it would be difficult for YFO to get the support of the majority of shareholders for their shareholder proposal (according to an executive of a major marine construction company). As YFO plans to acquire all of Toyo Construction's shares, it is unlikely that they will collude with overseas investors to obtain the necessary number of powers of attorney.

After the general meeting of shareholders, YFO may initiate a takeover bid (TOB) to buy out Toyo Construction's shares, regardless of Toyo Construction's intention. YFO's asset size is said to be 200 billion yen, so it has sufficient financial muscle.

However, YFO has extended the deemed start date of the TOB five times so far (currently, the deemed start date for the TOB is in late September 2023). As for Toyo Construction, since its capital and business alliance partner, Maeda Corporation, a second-tier general contractor, owns 20% of Toyo Construction's shares, "there is a possibility that the TOB will not be successfully completed and YFO will not initiate a TOB (considering the development so far)", said the abovementioned industry source familiar with Toyo Construction's inner workings.

The source further revealed, "Toyo Construction has begun the process of evaluating the content of YFO's buyout proposal." Going forward, Toyo Construction may set up a third-party committee, and prior to its general meeting of shareholders, it may officially announce that it does not support YFO's buyout proposal. The situation involving YFO's buyout proposal remains chaotic and a battle over the buyout proposal between the two companies is expected to linger for even longer.

Toyo Keizai Online delivered on February 7, 2023

License number: 2022-178

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