Explanatory Material Concerning the Expression of Opinion (Opposition) Regarding the Application for a Tender Offer for Company Shares by YFO etc.

May 24, 2023



The Special Committee's Report based on Comprehensive Determination following a designated "Framework for determination in the consideration"



Whether the Application is "a bona fide offer" or not?

- 1. The purchase price and other transaction conditions are specifically presented, so the specificity of the acquisition proposal cannot be reasonably questioned
- 2. YFO etc. has presented post-acquisition managerial policy and corporate value enhancement measures (even if there is a dispute with the current management as to its significance and validity), so the legitimacy of the purpose cannot be reasonably questioned
- 3. Regarding the financial backing for the purchase, the Special Committee has been unable to confirm from the replies of YFO etc. whether the funds for purchases can be reliably prepared, so a certain doubt must be interjected here. Meanwhile, however, at the current point in time, with the feasibility of the Application reasonably doubted, the reasonableness and appropriateness of the Application cannot be denied without considering other circumstances
- It cannot be said that the Application does not constitute a "bona fide offer"

However

The reasonableness and appropriateness of the price and other transaction conditions under the Application

- ◆ Regarding the transaction conditions under the Application, including the purchase price, it can be said that there is a certain degree of reasonableness
- ◆ However, considering the fact that even the status of YFO etc.'s assets and debts that can easily be explained has not been clarified despite the repeated questions from the Special Committee, because the financial backing for the purpose cannot be confirmed, at the current point in time, a certain level of doubt must be interjected regarding the feasibility of the Application

Whether there is an alternative proposal and if so, its details

- ◆ The Committee acknowledges that New Mid-Term Business Plan has a considerable degree of feasibility, and based on the calculation results from the DCF method, indicative of a company's intrinsic value, the price of 1,000 yen per share under the Application is far below the median price and is closer to the bottom end of the valuation range
- ◆ The purchase price per share under the Application (1,000 yen) (although it is reasonable to some extent), compared to the intrinsic value assuming the New Mid-Term Business Plan as an alternative proposal, cannot be said to exceed the valuation price assuming the New Mid-Term Business Plan. The intrinsic value based on the New Mid-Term Business Plan is relatively superior to the purchase price of the Application

The Special Committee's Report based on Comprehensive Determination following a designated "Framework for determination in the consideration" (Cont'd)



The relationship between the Application and corporate value and interests of shareholders

- ◆ Regarding YFO etc,' corporate value enhancement measures, the evaluation of the Company's Board of Directors that "the measures are either addressed, or the measures that YFO etc. argues for are all general and abstract, and do not constitute a meaningful proposal that takes into account the conditions specific to the Company. "has nothing odd about it and can be considered reasonable
- ◆ YFO etc. have no experience of investing in construction business or participating in the management thereof, or of acquiring a controlling stake of a listed company and operating its business. Therefore, if YFO etc. obtains control of the Company, no business synergy with YFO etc. can be expected
- ◆ In light of significant doubts regarding violations of laws and regulations, there is also the risk that if the acquisition under the Application is carried out, there will be a certain adverse impact in a variety of transactional relation, such as a decline in contracting competitiveness, decline in orders because of difficulties with JV businesses, decline in supply capacity because of difficulty in securing cooperating companies, greater difficulties in personnel hiring and training. There is a danger that if these risks materialize, the Company's corporate value will be damaged
- ◆ YFO etc. has not clarified the amount or terms of the financing that they stated they would obtain from outside financial institutions, and depending on the amount and terms of such financing, there is a risk of damage to the Company's financial foundation and ultimately the Company's corporate value

The appropriateness and fairness of the Application process

◆ There are strong suspicions that the Application is an acquisition proposal that is built on these violations of laws and regulations and the victimization of general shareholders, and the Special Committee, while acknowledging that there is a certain reasonableness in the acquisition price under the Application, is unable to ignore these suspicions of violations of laws and regulations and affirm the reasonableness and appropriateness of the Application

Taking all these circumstances into consideration,
the Application is not found to be reasonable or appropriate from the perspective of the mediumto-long-term corporate value of the Company and the interests of shareholders

Considering Report of the Special Committee, the Company's Board of Directors opposes the application by YFO etc.

The Contents of the Report of the Special Committee

The Application is not found to be reasonable or appropriate from the perspective of the medium-to-long-term corporate value of the Company and the interests of shareholders

The reasons for the opposition to the Application by the Company's Board of Directors

- Implementing the Company's New Mid-Term Business Plan will maximize the Company's corporate value and the common interests of shareholders (more than the Application)
 - ◆ The Company has formulated <u>a five-year New Mid-Term Business Plan</u> entitled the "Toyo Construction Group Mid-Term Business Plan (2023-2027)"
 - o In light of a comparison with the range of the per-share value of Company Shares in the DCF analysis based on the financial projections on which the New Mid-Term Business Plan is based, the Company's Board of Directors has determined that the intrinsic value of the Company that can be realized by implementing the New Mid-Term Business Plan is relatively superior to the tender offer price of 1,000 yen
 - The measures listed in the New Mid-Term Business Plan are measures that the Company, based on a deep understanding of its business and the construction industry, has determined to be fully feasible
 - ◆ The Company firmly believes that <u>implementing the Company's New Mid-Term Business Plan will maximize the Company's corporate value and the common interests of shareholders</u>
- 2) The tender offer price is insufficient, and the probability of the TOB is unclear
 - **♦** The tender offer price of 1,000 yen of the TOB does not reflect the intrinsic value of the Company
 - Based on the Company Share price, which is thought to partly reflect expectations for enhancement in the Company's corporate value as a result of implementation of the New Mid-Term Business Plan, at the tender offer price of 1,000 yen, the premium would be a mere 1.5 to 3.8%
 - ◆ It is unclear whether YFO etc. has funds for purchase and the TOB cannot be deemed reliably feasible
 - No objective materials that corroborate the existence of YFO Group's assets have been provided, and the scale of the Group's assets and their liquidity have yet to be clarified

The reasons for the opposition to the Application by the Company's Board of Directors (Cont'd)

- (3) Acquisition of the Company by YFO etc. is likely to significantly damage the corporate value of the Company
 - It is obvious that YFO etc.'s corporate value enhancement measures will not enhance the Company's corporate value
 - Many of the measures proposed by YFO etc. are based on a misunderstanding of the facts, and the Company already
 has addressed or currently is implementing a majority of those measures
 - The proposal of YFO etc. includes no specific or valid corporate value enhancement measures that take into consideration the conditions specific to the Company
 - The acquisition by YFO etc. will cause the Company's business foundation to collapse
 - The acquisition by YFO etc. is highly likely to have an <u>adverse impact on or a handicap to the Company's</u> activities to win orders
 - The acquisition by YFO etc. <u>has a negative impact on the Company's production organization and cost</u> <u>competitiveness</u>
 - If the Company is acquired by YFO etc., which is <u>suspected of violating laws and regulations</u> and <u>has repeatedly</u>
 <u>breached the agreement</u>, it is obvious that <u>the Company's corporate value will be damaged</u>
 - It is obvious that the interest-bearing debt and loans to be incurred by the Company as a result of the acquisition by YFO etc. could have a material adverse effect on the Company's investment in growth, which in turn significantly damage the Company's corporate value

The Company formulated a five-year Mid-Term Business Plan starting from FY2023

The Company will make significant changes to management with ① transformation from "defense to offense" ②transformation to a "high profit model," and ③transformation to "capital efficiency management" as the three core pillars, and achieve the numerical management targets by implementing the priority measures

Promoting
Growth
Drivers

- Full-Scale Entry into the Offshore Wind Power generation market
- Accelerating Localization of Overseas Construction Business

Deepening Existing Businesses

- Further Strengthening of Domestic Civil Engineering Business
- Business Model Development of Domestic Construction Business
- Productivity Improvements through DX (Toyo DX)

Strengthening Business Foundation

- Acquiring and Developing Precious Human Resources to Support Management Transformation
- · Enhancement of Business Management Systems
- · Strengthening Governance Structure

Transformation to capital efficiency management

- Setting KPIs with emphasis on capital efficiency
- Strengthen allocation to growth investments
- Implementation of capital policy beneficial to interests of shareholders

<Consolidated Targets for FY2027 (ending March 2028)>

Sales	235.0 billion yen or more
Operating Income	15.0 billion yen or more
Annual Net Profit	9.0 billion yen or more
ROE	12.0% or more
D/E ratio	Around 0.4
Shareholder	The dividend ratio for the first year (FY2023) through third year (FY2025) of the plan will be 100%
Returns	(minimum dividend:50 yen).
	From the fourth year (FY2026) onward, the Company will continue to proactively pay dividends with a target equity
	ratio of 40% (minimum dividend:50 yen)

Assessment of share price calculation report premised upon the New Mid-Term Business Plan

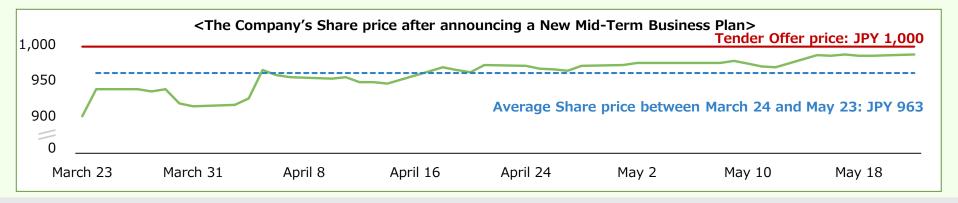
TOYO CONSTRUCTION CO., LTD.

- The Company made a request to Mitsubishi UFJ Morgan Stanley Securities Co., Ltd., a financial advisor and third-party valuation institution that is independent of the Company and YFO etc., for a valuation of Company Shares premised upon the financial projections on which the New Mid-Term Business Plan released on March 23, 2023 is based, and obtained a share valuation report dated May 23, 2023 ("Share Valuation Report")
- In light of a comparison with the range of the per-share value of Company Shares in the DCF analysis of the Share Valuation Report based on the financial projections on which the New Mid-Term Business Plan is based, the Company's Board of Directors has determined that the intrinsic value of the Company that can be realized by implementing the New Mid-Term Business Plan is relatively superior to the tender offer price of 1,000 yen, and that the implementation of the New Mid-Term Business Plan is what will maximize the Company's corporate value and the common interests of shareholders
- The Company, based on a deep understanding of its business and the construction industry, has determined the policies of the plan to be fully feasible. It should be noted that since FY2014, the Company has achieved three consecutive mid-term business plans and has an established reputation for its ability to achieve targets, and the Board of Directors has considerable confidence in this regard. The Company accordingly believes that implementation of the New Mid-Term Business Plan will enable it to realize the abovementioned per-share value of Company Shares

The Company firmly believes that implementing the Company's New Mid-Term Business Plan will maximize the Company's corporate value and the common interests of shareholders

The tender offer price of 1,000 yen does not reflect the intrinsic value of the Company

- The Company formulated a New Mid-Term Business Plan on March 23, 2023, and given that it is fully feasible, the Company's corporate value should be appraised on the assumption that the Company will implement the New Mid-Term Business Plan. The Company's share price on and after March 24, 2023, the day after the Company announced the New Mid-Term Business Plan on March 23, 2023, is thought to partly reflect expectations for enhancement in the Company's corporate value as a result of implementation of the New Mid-Term Business Plan
- (i)The closing price of Company Shares on the day before May 24, 2023, the day this Press Release was published, was 985 yen, and (ii) the average closing price of Company Shares during the period from March 24, 2023 to May 23, 2023 was 963 yen; based on these share prices, Company shareholders who would tender their shares in the TOB having the tender offer price of 1,000 yen would obtain a premium of mere 1.5 to 3.8%. The Company's Board of Directors has determined that the tender offer price of the TOB of 1,000 yen does not reflect the intrinsic value of the Company



The Board of Directors has determined that the tender offer price of the TOB of 1,000 yen does not reflect the intrinsic value of the Company

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- Since receiving the Application from GK YFO etc., the Company has repeatedly asked YFO etc. through direct discussions and open questions to explain the state of procurement of funds for purchase. In response, in their press release dated April 14, 2023, YFO etc. announced that they planned to use funds disbursed by the YFO Group and loans from external financial institutions as funds for purchase, and that the Group owns the level of assets that enable it to easily prepare funds for purchase
- However, <u>no objective materials that corroborate the existence of YFO Group's</u>
 assets have been provided, and the scale of the Group's assets and their liquidity
 have yet to be clarified

It is uncertain whether YFO etc. indeed has the level of funds for purchase that would enable it to commence the TOB, and thus **the TOB cannot be deemed reliably feasible**

- 3
- The Company has received from YFO etc. the May 17 YFO Management Policy, the July 5, 2022 "Additional Explanation for Management Policy and Corporate Value Enhancement Measures for Toyo Construction (draft)", the December 9, 2022 "Presentation of Additional Information for Management Policy and Corporate Value Enhancement Measures (draft)", the January 18, 2023 "Presentation of Additional Information for Management Policy and Corporate Value Enhancement Measures (draft) Version 2" and the January 24, 2023 "Management Policy and Corporate Value Enhancement Measures (draft): Strategic Measures Addressing Individual Challenges You Face and Envisioned Impact on Corporate Value from Value Creation Plan"
- In these materials, YFO etc. proposes to the Company various measures on the basis of their own understanding of the Company's management issues. However, many of the <u>measures proposed</u> by YFO etc. are based on a misunderstanding of the facts, and the Company has already addressed or is currently implementing a majority of those measures
- The proposal of YFO etc. is nothing but general ideas from a perspective outside the
 construction industry, and includes no specific and valid corporate enhancement measures
 taking into consideration the conditions unique to the Company

The trial calculation asserted by YFO etc., "using only quantitative measures, an upside of up to 3.0 billion yen can be projected", is not feasible, and it is obvious that YFO etc.'s corporate value enhancement measures will not enhance the Company's corporate value

It is obvious that the acquisition by YFO etc. will cause the Company's business foundation to collapse and damage its corporate value TOYO CONSTRUCTION CO., LTD.

The Company's business foundation

The Company believes the following constitute the Company's "business foundation"

- 1. The establishment and operation of a legal compliance system and a system to strictly control confidential information
- 2. Winning trust from stakeholders and the maintenance of good relationships with them

However

YFO etc.'s fitness as a person to acquire the Company is doubtful

- The Company began having meetings with YFO etc. in April 2022, but <u>has yet to dispel distrust of and concerns</u> about YFO etc
 - YFO etc. repeatedly made public announcements about the Company's business foundation including highly confidential information, and asserts that the Company is using the risk of collapse of the Company's business foundation as a "false reason" to turn down the acquisition proposal of YFO etc. At the top meetings held on the basis of trust between both parties, regarding the letter sent by the Company's President and Representative Director to Mr. Yamauchi, the Company's President and Representative Director explained that the Company cannot provide any decision that has gone through the third-party committee or the Board of Directors. But YFO etc. made a public announcement distorting the facts, stating that the letter was delivered without making an organizational decision, and unilaterally disclosed the details of negotiations relating to the Application although such disclosure is prohibited under the NDA. YFO etc. made a shareholder proposal objecting to the reappointment of the Company's directors, and are repeatedly engaged in acts that no bona fide acquirer would do
 - Decause the acquisition of Company Shares by YFO etc. is suspected to have violated the Financial Instruments and Exchange Act, the Foreign Exchange and Foreign Trade Act, and the Unfair Competition Prevention Act (Please refer to Ref. 2 for the explanatory material as disclosed on the Company's homepage (https://www.toyo-const.co.jp/en/wp/wp-content/uploads/2023/05/20230530-3_E.pdf)), the Company provided information to the relevant authorities
 - YFO etc. are involved in investments in overseas companies, and there are concerns that confidential information of the Company and its related parties may be leaked to the overseas companies in which YFO etc. invests. Their experience in hands-on investment is unknown, which raises concerns about business continuation after the acquisition. The Company's customers, cooperating companies and other stakeholders are voicing their distrust and concern

It is obvious that the acquisition by YFO etc. will cause the Company's business foundation to collapse

- The Company is involved in many projects such as social infrastructure and national defense-related works in which trust from stakeholders is essential. In the environment under which competitors are fiercely competing with each other, a concern or doubt about illegality is highly likely to cause adverse impact on or a handicap to the Company's activities to win orders as soon as it occurs, and <a href="https://example.com/exa
 - Because the port infrastructure development business, which is the core business of the Company, requires highly advanced port technologies that contribute to national interest, suspicions of compliance issues and concerns about leaks of port technology are expected to lead to negative evaluations in areas other than price and technical prowess, and there is a likelihood of a severe impact on winning contracts for port engineering projects. National defense projects holding an important position in the domestic civil engineering business in the New Mid-Term Business Plan are in particular highly confidential, and it is a strict requirement that contractors be reliable in information control based on past experiences. If the Company is placed under the umbrella of YFO etc., which have no experience in management of the construction business, have a short business history, and are aggressively investing in overseas companies, there is concern that the trust built between clients and the Company may be impaired, and clients may avoid placing orders to the Company due to the risk of information divulgation
 - The Company organizes joint ventures with other companies in the same industry to receive orders of large-scale port civil engineering projects and tunnel and other onshore works, but for the reasons above, there is a likelihood that other companies will avoid organizing a joint venture with the Company, being concerned about a handicap at time of bidding. In particular, the partnership with Maeda that has a capital and business partnership with the Company will collapse if the capital relationship is dissolved, and winning contracts for large-scale onshore government works on the premise of collaboration with Maeda will no longer possible

It is obvious that the acquisition by YFO etc. will cause the Company's business foundation to collapse (Cont'd)

- If such an impact on activities to receive orders occurs, the volume of orders placed with cooperating companies will decrease, as a result of which there is a likelihood that the cooperating companies will leave the Company, and it has negative impact on the Company's securing of production organization and cost competitiveness
- There are also concerns about the impact on the Company's precious human resources such as loss of precious human resources or adverse impact on new recruitment. In fact, the number of people which decline the offers has increased when compared to before the Application, and recruitment of new graduates and mid-career workers has been affected thereby
- Additionally, the rating for the Company assigned by the external rating agencies had been designated as rating
 monitoring for upgrade, but <u>after YFO etc. announced TOB, the rating was downgraded from BBB (positive) to
 BBB (stable)</u>

It is obvious that the acquisition of the Company by YFO etc. will cause the Company's business foundation to collapse

- As the Company stated in its March 28, 2023 press release "Provision of Information Regarding Violation of Laws and Regulations by the Yamauchi-No. 10 Family Office to Related Authorities", the Company suspects that the Large-Scale Purchase by YFO etc. violates laws such as the Financial Instruments and Exchange Act, the Foreign Exchange and Foreign Trade Act, and the Unfair Competition Prevention Act. In this regard, the Company provided information to the relevant authorities, and has received notice from some of them that the information from the Company has been received as fraud-related information, etc. (Please refer to Ref. 2 for the explanatory material as disclosed on the Company's homepage (https://www.toyo-const.co.jp/en/wp/wp-content/uploads/2023/05/20230530-3_E.pdf))
- YFO etc. have repeatedly made public the details of the negotiations with the Company,
 which is prohibited by the NDA, thereby breaching the confidentiality duty under the NDA
- Regardless of the business foundation of each company, it is clear that persons suspected of
 violating laws and regulations and those who repeatedly breach agreements are neither fit
 nor qualified to acquire a company or be a shareholder. We also believe that if such a person
 becomes the wholly owning parent company of a company, there would be a significant risk of
 scandals occurring in that company and a loss of trust from business partners, leading to
 deteriorating performance

It is clear that if the Company is acquired by YFO etc., which are suspected of violating laws and regulations and have repeatedly breached the NDA, the Company's corporate value will be harmed

It is obvious that the interest-bearing debt and loans to be incurred by the Company as a result of the acquisition by YFO etc. could have a material adverse effect on the Company's investment in growth, which in turn could significantly damage the Company's corporate value and the common interests of shareholders

• In the May 18, 2022 TOB Advance Notice Press Release, YFO etc. stated, as the breakdown of the funds to acquire for the Application, "At present, from the perspective of capital efficiency of our company and the optimal capital structure of the target company, we assume a loan amount of approximately 50 billion yen from financial institutions and an investment amount of approximately 44 billion yen by our company

However

During the period of the new medium-term business plan it is essential to make large capital investments (of more than 24 billion yen), including the construction of new cable-laying vessels and other large working vessels, in the offshore wind power business, which is the Company's growth drivers. On the other hand, the Company believes that the large amount of interest-bearing debt incurred by the Company in connection with this Application and the deterioration of the Company's finances would have a negative impact on growth driver, as it would undermine the Company's flexibility in raising funds and could have a significant impact on the financing of such growth investments

• Since orders and contracts for national defense projects, etc. based on the National Defense Strategy, for which the Company has high expectations, require the submission of a performance bond issued by a financial institution (i.e., insurance company) to the ordering party, even if YFO etc. were to secure funds for such growth investments from YFO etc.'s own funds through loans to the Company, it may be difficult for the Company to secure a sufficient performance bond from financial institutions (i.e., insurance companies) due to the Company's large balance of interest-bearing debt and other circumstances, which would in turn lead to a decrease in business volume and profits in the domestic civil engineering and construction business

In the case of public works, such as national defense projects, the results of orders received and construction work performed have a significant impact on subsequent orders received. It is clear that if the Company is unable to obtain the results of orders received and construction work performed due to the Company's inability to issue a performance bond during the period of the New Mid-Term Business Plan, it will have a negative impact on the Company's subsequent orders and may significantly damage the Company's corporate value

(Ref.) Report of the Special Committee

Report of the Special Committee

⇒ The Application is not found to be reasonable or appropriate from the perspective of the medium-to-longterm corporate value of the Company and the interests of shareholders

Framework for determination in the consideration by the Special Committee

- Consideration is made first of whether the Application is "a bona fide offer"; if it can be considered a bona fide offer, then, comprehensive consideration is given to the following
- B a Purchase price and other transaction conditions
 - Mhether there is an alternative proposal and if so, its details
 - Whether the corporate value enhancement measures of the proposer will contribute to enhancing the corporate value of the Company
 - The course of events and negotiation process leading to the acquisition proposal; and evaluation is made of whether the Application will contribute to medium-to-long-term corporate value and interests of shareholders

Consideration by the Special Committee

A Whether the Application can be considered a "bona fide offer"

- 1. In the Application, the purchase price and other transaction conditions are specifically presented, so the specificity of the acquisition proposal cannot be reasonably questioned
- 2. YFO etc. has presented post-acquisition managerial policy and corporate value enhancement measures (even if there is a dispute with the current management as to its significance and validity), so the legitimacy of the purpose cannot be reasonably questioned
- 3. Regarding the financial backing for the purchase, the Special Committee has been unable to confirm from the replies of YFO etc. whether the funds for purchases can be reliably prepared, so a certain doubt must be interjected here
- However, at the current point in time, with the feasibility of the Application reasonably doubted, the reasonableness and appropriateness of the Application cannot be denied without considering other circumstances

Given the foregoing, it cannot be said that the Application does not constitute a "bona fide offer"

B a The reasonableness and appropriateness of the price and other transaction conditions under the Application

(1) Financial backing for the purchase

- Because YFO etc. have not submitted any certificate of investment, certificate of loan, or any other objective material
 and YFO etc. refuses to directly answer questions the Special Committee has regarding the YFO Group's finances, as
 of the current point in time, the Special Committee is unable to confirm on the basis of objective materials the state of
 YFO etc.'s preparation of the settlement funds
- While this alone is insufficient to conclude that the feasibility of the Application is immediately rejected, given that YFO etc. did not even reveal the state of their assets and liabilities (which are described in the balance sheet), which should be easily explainable, in the Special Committee's evaluation, there is no choice but to interject doubt into the matter of the feasibility of the Application

(2) Valuation results

- ◆ The Special Committee has confirmed that it found nothing unreasonable in the process of the Company's preparation of the New Mid-Term Business Plan, found it to be a plan with a high probability of success, and found its specifics to have a certain reasonableness; and the Special Committee approved use of financial projections based on this plan as the basis for Plutus's calculation of the share price
- Plutus calculated the stock value using the DCF method and the comparable company method, and nothing unreasonable was found in the calculation method or calculation results of Plutus
- ◆ The purchase price of 1,000 yen per share under the Application is within the range of the Company's equity value according to the calculation results from both the DCF method and the comparable company method. Therefore, it can be said that the purchase price under the Application is found to have a certain reasonableness in relation to valuation calculation results when certain assumptions are applied

(B) The reasonableness and appropriateness of the price and other transaction conditions under the Application (Cont'd)

(3) Transaction conditions other than price

- ◆ The TOB is an offer to purchase all Company Shares, with no maximum number set, and the minimum number is at a level enabling a squeeze-out through consolidation of shares (the level at which a special resolution can be passed at a general shareholders meeting). In the post-tender offer squeeze out, a cash out is planned at the same price as the tender offer price. This type of acquisition proposal is known as an "all-or-nothing" offer, and in such a purchase, it can be said the problem of coercion is eliminated
- Otherwise, nothing inappropriate can be found in the transaction conditions under the Application

Regarding the transaction conditions under the Application, including the purchase price, it can be said that there is a certain degree of reasonableness. However, considering the fact that even the status of YFO etc.'s assets and debts (which are described in the balance sheet) that can easily be explained has not been clarified despite the repeated questions from the Special Committee (because it is important), because the financial backing for the purpose cannot be confirmed, at the current point in time, a certain level of doubt must be interjected regarding the feasibility of the Application

(B) Whether there is an alternative proposal and if so, its details

- ◆ If there is any alternative proposal better than the Application in terms of enhancement of the medium-to-long-term corporate value and the common interests of the shareholders, then the Application is not necessarily the best proposal and is neither reasonable nor appropriate for the shareholders
- The current management team has released the New Mid-Term Business Plan (which includes a shareholder return policy) starting from fiscal year 2023, and this can be said to present an alternative proposal to the Application from YFO etc.
- In light of this, the Special Committee has considered the contents of the New Mid-Term Business Plan and compared it to the Application
- ▶ In the New Mid-Term Business Plan, profit margins in the existing domestic civil engineering business, domestic construction business and overseas business are expected to be generally at the same level as the previous mid-term business plan, and the growth rate of sales is within the range of a natural increase, so there is nothing particularly unusual. Regarding offshore wind power business, it is not an entry into an entirely new business area, but into an area where the Company can make the most of its extensive knowledge, know-how, technology and assets that the Company has developed over the years, and also, it is in line with the medium-to-long-term government policy. Considering these as well as the market growth potential, the numerical goal for the offshore wind power business expected in the New Mid-Term Business Plan has a considerable degree of feasibility. Therefore, the New Mid-Term Business Plan, against which the Application is compared, is found to be feasible
- ◆ In the calculation results from both the DCF method and the comparable company method, especially since the DCF method is considered to indicate a company's intrinsic value (i.e. a company's essential value that can be achieved by using the current management resources effectively under the effective corporate management), the price of 1,000 yen per share under the Application is far below the median price and is closer to the bottom end of the valuation range. The purchase price per share under the Application (1,000 yen) (although it is reasonable to some extent in the sense that it is within the range of the calculation results of both calculation methods), compared to the intrinsic value assuming the New Mid-Term Business Plan as an alternative proposal, cannot be said to exceed the valuation price assuming the New Mid-Term Business Plan. The intrinsic value based on the New Mid-Term Business Plan is relatively superior to the purchase price of the Application

The relationship between the Application and corporate value and interests of shareholder

- Regarding YFO etc,' corporate value enhancement measures, the evaluation of the Company's Board of Directors has nothing odd about it and can be considered reasonable: "In addition to inconsistencies with respect to the understanding of issues on which the measures are based and the fact that most of the measures are things the Company has already addressed, the measures that YFO etc. argues for are all general and abstract, and do not constitute a meaningful proposal that takes into account the conditions specific to the Company."
- Further, as far as the Special Committee is concerned, according to the track record of YFO etc., they have no experience of investing in construction business or participating in the management thereof, or of acquiring a controlling stake of a listed company and operating its business. Therefore, if YFO etc. obtains control of the Company, no business synergy with YFO etc. can be expected. This is a significant difference from the going-private transaction INFRONEER attempted in 2022
- ◆ Additionally, in light of significant doubts regarding violations of laws and regulations as explained in (B) (d), while it is difficult to make a quantitative analysis of this, there is also the risk that if the acquisition under the Application is carried out, there will be a certain adverse impact (dis-synergy) in a variety of transactional relation, such as a decline in contracting competitiveness, decline in orders because of difficulties with JV businesses, decline in supply capacity because of difficulty in securing cooperating companies, greater difficulties in personnel hiring and training. There is a danger that if these risks materialize, the Company's corporate value will be damaged
- Furthermore, although YFO etc. has not clarified the amount or terms of the financing that they stated they would
 obtain from outside financial institutions, depending on the amount and terms of such financing, there is a risk of
 damage to the Company's financial foundation and ultimately the Company's corporate value

(B) (1) The appropriateness and fairness of the Application process

◆ If there is a violation of laws and regulations in the course of the large-scale purchase of the Company Shares (Large-Scale Purchase), then the Application is based on illegal acts, and it is unclear whether it was possible to propose the Application, and accordingly, such proposal is not reasonable or appropriate. Therefore, the Special Committee discussed whether there was any illegal act in the course of the Large-Scale Purchase

(1) Suspected violation of laws and regulations

- Regarding the Large-Scale Purchase, there are the following three suspected violations of the regulations on submission of a report of large volume holdings
 - 1. In relation to the fact that WK 1-3, during the period from March 31 to May 17, 2022, submitted a report of large volume holdings and change reports stating that "pure investment" was its only purpose for holding Company Shares, it is seriously suspected that such submissions constituted submissions of large volume holdings reports and change reports that contained "a false statement about a material particular" (Article 27-23, Paragraph 1, Article 27-25, Paragraph 1, Article 172-8, Article 197-2, Item (6) of the FIEA)
 - 2. There are serious suspicions that it constitutes a breach of the obligation to submit a change report within five business days after the change in the purpose of holding (Article 27-23, Paragraph 1, Article 27-25, Paragraph 1, Article 172-8, Article 197-2, Item (6) of the FIEA)
 - 3. Although YFO etc. themselves admitted, in the May 18, 2022 TOB Advance Notice Press Release, that they had an "agreement to jointly acquire share certificates, etc." with WK1-3, they did not include this in the report of large volume holdings and change reports. In this regard, there are serious suspicious that the submission of a report of large volume holdings and the change reports constitutes submissions of the report of large volume holdings and change reports that contain "a false statement about a material particular" (Article 27-23, Paragraph 1, Article 27-25, Paragraph 1, Article 172-8, Article 197-2, Item (6) of the FIEA)
- Relating to the Large-Scale Purchase, there are also suspicions of violation of prohibition of wrongful acts (FIEA, Article 157, Item 1) and violation of the prohibition against market manipulation (FIEA, Article 159, Paragraph 3), as well as suspicions of violation of the advance notification duty regarding acquisition of shares under the Foreign Exchange Act

(B) (1) The appropriateness and fairness of the Application process (Cont'd)

(1) Suspected violation of laws and regulations (Cont'd)

- These violations or suspected violations of FIEA have been pointed out by multiple legal scholars
- Moreover, GK YFO and WK 1-3, while making disclosures indicating the purpose of holdings to be pure investment, and without making any disclosures whatsoever of such information as target acquisition price (up to what price acquisition will be made), planned number of shares for acquisition, or acquisition period, bought up shares on the market, using four corporate entities, including Cayman Island corporations. The general shareholder has not been given the information necessary to consider whether to tender their shares and the opportunity for consideration, and has no assurance of an opportunity to have their shares acquired under equal conditions with other shareholders or of an opportunity to receive equal distribution of the control premium
- ◆ Furthermore, before YFO etc. disclosed their intention to implement the TOB, virtually every day, WK 1-3 submitted change reports; to a general shareholder in this situation, because it was completely unknown how many shares YFO etc. would buy up or what its policy regarding possession would be after acquisition (how general shareholders would be treated), it is possible there are some general shareholders who hurriedly sold their shares even though they may have thought that the price was insufficient (coercion through market purchases)
- ◆ In addition, while YFO etc. privately had the intention to carry out a tender offer at 1,000 yen per a share, it kept this secret, purchased shares at a far lower price (the acquisition price is estimated to have been a little more than 800 yen), up to 27.19% of outstanding Company Shares from general shareholders; it is possible that there are a considerable number of shareholders who, if they had known that there were plans to implement a tender offer at 1,000 yen a share, would not have sold their shares in March and April of 2022. In this sense, there is a possibility that the Large-Scale Purchase resulted in victims such as these
- ◆ Legal scholars point out that while current tender offer regulations in principle do not apply to market purchases, "the method of a two-stage acquisition" as under the Application, "combining large-volume market purchases and a tender offer, are markedly inappropriate from the perspective of the objectives of the tender offer regulations, and must be called something that markedly disregards the interests of general shareholders."

(B) (1) The appropriateness and fairness of the Application process (Cont'd)

(2) Breach of NDA

 YFO etc. made public announcement that, using quotation marks, cited content of letters from the Company that it received during the negotiation process, and there is suspicion that this breached the NDA

As discussed above, there are strong suspicions that the Application is an acquisition proposal that is built on these violations of laws and regulations and the victimization of general shareholders; the Special Committee, while acknowledging that there is a certain reasonableness in the acquisition price under the Application, is unable to ignore these suspicions of violations of laws and regulations and affirm the reasonableness and appropriateness of the Application

Conclusion

Taking all these circumstances into consideration,

the Application is not found to be reasonable or appropriate from the perspective of the medium-to-long-term corporate value of the Company and the interests of shareholders

TOYO CONSTRUCTION CO., LTD.

This document has been prepared for the purpose of contributing to the understanding of the Company's press release ("Notice Regarding Expression of Opinion (Opposition) Regarding the Application for a Tender Offer for Company Shares by Godo Kaisha Yamauchi-No. 10 Family Office (formerly Godo Kaisha Vpg) and Kabushiki Kaisha KITE") dated May 24, 2023, and is not intended to influence the interpretation of these statements.

This material was initially prepared in Japanese, and the Japanese version should be referred to as the original