

YuuZoo Corporation – a governance nightmare

Besides losing key people, it has repeatedly delayed AGM, faced SGX queries. **BY MAK YUEN TEEN**

YUUZOO Corporation, a social media and e-commerce company, was incorporated in Bermuda and became listed on the Mainboard of Singapore Exchange (SGX) through a reverse takeover (RTO) of W Corporation. It commenced trading on Sept 16, 2014.

Since its listing, YuuZoo has had at least 15 departures of directors and other key officers, including two audit committee (AC) chairs, two other independent directors (IDs), a non-executive director, a chief executive officer, five chief financial officers or CFOs (including one interim), a financial controller, a head of legal, a chief revenue officer and a company secretary. Announcements of these departures generally cited other commitments, personal interests or personal reasons.

YuuZoo's current CFO, Raul Ikonen, was appointed on March 1, 2017, and is based in China. On June 20, YuuZoo posted an advertisement for a CFO on LinkedIn. Therefore, CFO version 7 could be on the way. The AGM (annual general meeting) notice in the company's latest annual report released on June 21, 2017, disclosed that James Strabo, who was appointed as an ID on Feb 6 this year, will stand for re-election at this coming AGM. However, its separate notice of AGM filed on SGX the same day shows that the resolution for his re-election was removed. On June 29, the company issued an announcement confirming that Mr Strabo has decided not to seek re-election. Therefore, another ID is on his way out.

YuuZoo's AC chairman and lead ID at the time of the RTO, Tang Lay Hoon, left just a little over three months after her appointment, and her replacement as AC chairman, Kee Poir Mok, retired at the company's first AGM on May 29, 2015, less than six months after his appointment.

After the departure of Mr Kee, YuuZoo did not announce the appointment of any AC chair until March 24, 2017, when it appointed its newest ID, Christopher Cheong Boon Leong, who became AC chair. In its latest annual report, YuuZoo reported that the AC held three meetings but each AC member attended only two meetings.

CHURN IN EXTERNAL AUDITOR

YuuZoo's external auditors also did not stay around for long. Its external auditor at the time of listing, BDO LLP, issued a clean audit opinion for the company's FY2014 financial statements and then decided not to seek re-appointment at the first post-listing AGM on May 29, 2015. The replacement auditor, Moore Stephens LLP, appointed on Nov 11, 2015, issued a disclaimer of opinion for the FY2015 financial statements and also decided not to seek re-appointment at its AGM on May 27, 2016. Its current auditor, RT LLP, appointed on Jan 12, 2017, has just issued an unmodified audit opinion with two emphasis-of-matter items. This time, the notice for YuuZoo's coming AGM does state that RT LLP will be seeking re-appointment.

At the time of its RTO, YuuZoo appointed a compliance adviser, Macquarie (Capital), which was also its financial adviser for the RTO. According to its RTO circular, Macquarie was to be appointed for a period of two years after completion. However, it was replaced well before the end of its term. YuuZoo did not announce the cessation of Macquarie as compliance adviser so we do not know the reason or exactly when Macquarie actually ceased being a compliance adviser. It was only when the company announced the appointment of RHT Capital (RHTC) as the new compliance adviser on Oct 23, 2015, that the market was informed about the change.

Less than three weeks after the appointment of RHTC as compliance adviser, RHTC's affiliate, RHT Corporate Advisory (RHTCA), was appointed as the replacement share transfer agent. Elizabeth Krishnan, an associate director at RHTCA, also replaced Toon Choi Fan as company secretary. It is surprising that there were no separate announcements for the appointment and cessation of the company secretary. Instead, the appointment of Ms Krishnan



In 2015, a lawsuit was filed in a US court against several parties, including YuuZoo and Mr Zilliacus (left). In 2016, the two filed a motion to dismiss all claims brought against them. In May 2017, the court found that it did have specific jurisdiction over the defendants, and dismissed their motion. PHOTO: SGX

was bundled with the appointment of RHTCA as share transfer agent and filed as a general announcement, which means it could not be found under the "appointment" announcements on SGX. In my view, this is contrary to at least the spirit of rule 704(7) of the SGX Rulebook. Further, the announcement did not mention that Ms Krishnan was with RHTCA. Interestingly, at Vard Holdings on Nov 27, 2015, Ms Krishnan was also appointed as replacement company secretary and RHTCA as share registrar, and the announcement of these appointments was similarly done through a bundled general announcement.

The role of RHTC as compliance adviser is to advise YuuZoo on compliance with SGX's listing rules. Did RHTC advise YuuZoo that it is acceptable to handle the announcement of the appointment and cessation of the company secretary in this way? In my view, there is also a question of a possible self-review threat and conflict of interest in having the compliance adviser and the company secretary from the same firm or affiliated firms.

On page 98 of its RTO circular, YuuZoo stated that the new AC "will endeavour to, upon Completion, appoint a suitable accounting firm or professional advisor as internal auditor of the Enlarged Group". It has been endeavouring ever since, without actually doing so. In its 2014 annual report, it stated that it was "in the midst of appointing an internationally reputable accounting firm to perform internal audit". In its 2015 annual report, it stated that it was "in the process of appointing an independent internal auditor" – a line it repeated in its latest annual report. Is it acceptable for the company to make a representation in its RTO circular that it will "endeavour" to appoint an internal auditor and to then fail to do so after three years?

In its corporate governance reports, YuuZoo also states that one of the areas of review by the AC is "the effectiveness of the Company's internal audit function". It must be interesting to review the effectiveness of a non-existent internal audit function.

Since its listing, YuuZoo has never been able to hold its AGM on time. With a December year-end, its AGM is due by April 30 the following year. Its first AGM was held on May 29, 2015, after it received a waiver from SGX to hold its AGM on time. It announced its application for a waiver only on the day its AGM was due, saying that its auditor needed more time to complete its audit. It applied for a waiver again on April 15, 2016, for its second AGM, this time citing printing errors in its annual report. SGX rejected its application and told the company to take immediate steps to hold its AGM. The AGM was eventually held on May 27, 2016. This year, it applied for an extension of time again on April 25, saying that the audit report would not be ready in time to give sufficient notice to shareholders for the AGM. This was approved by SGX. On May 23, it applied for a second waiver, which was rejected by SGX. It will now hold its AGM on July 7.

Unfortunately, as YuuZoo is incorporated in Bermuda, the Singapore Companies Act requirement for listed companies to hold their AGM within four months of the financial year-end does not apply to the company. Nevertheless, why is the company and its directors not held accountable for the repeated delays in holding its AGM on time when it is clearly a listing rule requirement? Is it not the responsibility of directors to ensure that the audit is completed and

the annual report ready in time for the AGM? Note that YuuZoo took more than five months to appoint Moore Stephens after BDO declined re-appointment, and more than seven months to appoint RT after Moore Stephens left.

QUERIES AND REGULATORY ACTIONS

Over the years, YuuZoo has had to issue responses to at least eight queries and follow-up queries from SGX and several other clarifications, possibly also in response to SGX queries. It is not always clear whether a clarification was issued in response to an SGX query. SGX had also issued two trade-with-caution warnings on YuuZoo's stock.

In June 2015, YuuZoo received a letter from SGX regarding the posting of a positive research report on SGXNet, which was not balanced and fair. This was followed by a reprimand from SGX in July 2016 for the same matter. On July 22, 2015, about 10 months after YuuZoo was listed on SGX, a lawsuit was filed in the US District Court of New York against a number of parties, including YuuZoo and YuuZoo's executive chairman and co-founder Thomas Zilliacus.

The lawsuit involves the purchase of shares by the plaintiffs and a loan of US\$245,000. The plaintiffs alleged federal securities fraud, common law fraud, negligent misrepresentation and breach of contract.

Among the allegations was that the defendants failed to disclose that YuuZoo had been unable to engage in a public offering or merge with a public company in the United States because of accounting irregularities, that sales of YuuZoo had been grossly inflated to raise capital and to facilitate its listing on SGX, and that inquiries into the inflation of sales by SGX had caused serious delays and jeopardised its listing on SGX. The plaintiffs sought damages "in an amount to be proven at trial" and "punitive damages in an amount sufficient to deter future misconduct".

On Dec 16, 2016, YuuZoo and Mr Zilliacus filed a motion to dismiss all claims brought against them on the basis that the US courts lacked personal jurisdiction over the matter. On May 11, 2017, the US District Court of New York found that the court did have specific jurisdiction over the defendants, and dismissed the defendants' motion. On June 12, 2017, a motion for leave to appeal and for reconsideration of the May 11 court's order was denied.

YuuZoo has so far not disclosed the lawsuit in any SGX announcement or in its annual report. Under Appendix 7.1 Corporate Disclosure Policy pursuant to rule 703 on disclosure of material information in the SGX rulebook, "significant litigation" is listed as one of the specific events requiring immediate disclosure. Isn't the above litigation significant and subject to rule 703?

While SGX has clearly been monitoring YuuZoo and has taken regulatory action, one must question whether enough has been done, given the multitude of governance issues in the company. This question becomes even more pertinent when we consider some further issues relating to its disclosure and accounting policies which are the subject of my next commentary to be published tomorrow.

■ The writer is an associate professor of accounting at the NUS Business School, where he teaches corporate governance.