Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

10 March 2009

SEC-OGC Opinion No.: 09-05
Re: regular meeting of board of directors

MR. CARLOS P. TY
212 C. Santos Street
Barrio Ugong, Pasig City

Sir:

This refers to your letter dated 20 January 2009 requesting our opinion on the following questions:

1. Is it valid for the Board of Directors of Transunion Corporation ("TUC") not to have a regular meeting but instead only on instances when there are urgent matters to be discussed?

2. In the event the answer would be negative, what is the recourse of a director to compel the Corporate Secretary or the board of directors to schedule regular board meetings for the Board of Directors of TUC?

Pertinent to your query is Section 53 of the Corporation Code of the Philippines (B.P. Blg. 68) which provides:

> "Sec. 53. ***Regular and special meetings of directors or trustees.*** — Regular meetings of the board of directors or trustees of every corporation shall be held monthly, unless the by-laws provide otherwise.
>
> Special meetings of the board of directors or trustees may be held at any time upon the call of the president or as provided in the by-laws." (Underscoring supplied).

Based on the above-quoted provision, there are two kinds of directors' meetings, namely: regular and special. Regular meetings "*shall be held monthly, unless the by-laws provides otherwise*" while special meetings "*may be held at any time upon the call of the president or as provided in the by-laws.*" The corporation is given enough leeway to determine the schedule of the regular meeting of its board of directors, which can be held weekly, monthly or bi-monthly for instance. With regard to regular meetings of the board of directors, the provision of the by-laws shall prevail. In the event that the time and date of such meeting is not provided for, then Section 53 shall take effect. The same rule applies when it comes to special meetings where the provision of the by-laws shall prevail over those of the Corporation Code.

On the other hand, Section 5, Article III of the By laws of TUC provides:

> "Section 5- Regular meetings of the Board of Directors may be held monthly on the second Thursday of each month at 2:00 p.m. in the office of the Corporation or at another place in Quezon City, Manila or suburbs as may be designated in the notice and at such other times as the President of the corporation may determine." (Underscoring supplied)

In the case of TUC, its by-laws expressly state that the regular meetings of the board may be held monthly on the second Thursday of each month at 2:00 p.m. in the office of the Corporation or at another place in Quezon City, Manila or suburbs as may be designated in the notice. Special meetings may be called at such time as the President of the corporation may determine. A special meeting may be called in case there are urgent matters to be discussed. In the latter case, a notice is required unlike in a regular meeting where a notice is unnecessary considering that the time and place for such meeting is already stated in the by-laws.

The problem arose, however, in the interpretation of the word MAY in Section 5 of the by-laws of TUC, that is, whether such word denotes that the regular meeting of the board of directors of TUC shall be held only when there are urgent matters to be discussed. Under the rules of statutory construction, the use of the word "may" generally denotes that it is directory. The word "may" is permissive only and operates to confer discretion.[1] Stated otherwise, it is not mandatory. There are instances, however, when the word "may" is construed as "shall" to give effect to the apparent intention of the legislature.[2]

Section 53 of the Corporation Code uses the word "shall" which indicates the intent to make the law mandatory, one that denotes an imperative obligation. Thus, the board of directors is mandated to hold a regular meeting on the date and time specified in the by-laws. Otherwise, it shall be held monthly. In the instant query, the word "may" as used in Section 5 shall be construed in a way that is consistent with the provisions of the Corporation Code. Thus, it is the duty of the board of directors of TUC to hold a regular meeting monthly as stated in its by-laws. In the absence of a notice to the contrary, a regular meeting of the board of directors is deemed scheduled monthly.

Anent your second question, a director may file the necessary action in the regular court which has jurisdiction over intra-corporate controversies, such as the present query where the dispute is between the corporation and a stockholder who also happens to be a member of the board. Further, the act complained of is a violation of the provisions of the by-laws, which is now outside the scope of jurisdiction of this Commission.

In view of the foregoing discussions, this Office is of the opinion that the provision of the by-laws must be construed as mandating a monthly regular meeting of the directors of TUC despite the use of the word MAY in Section 5, Article III of its (TUC) By-laws.

It shall be understood that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issues raised herein and shall not be used in the nature of a standing rule binding upon the Commission in other cases

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[1] AGPALO, RUBEN E. STATUTORY CONSTRUCTION 335 (2003).
[2] Agpalo, supra 336.

whether of similar or dissimilar circumstances. If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

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