Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

20 October 2011

SEC-OGC Opinion No. 11-43

Criminal liability of Directors

Carlos P. Ty
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Sir:

This refers to your letter dated 26 July 2011 requesting opinion on whether you can institute criminal action against directors and/or officers of Transunion Corporation for their alleged refusal to convene the regular meetings of the board of directors, pursuant to Section 53 in relation to Section 144 of the Corporation Code.[1]

We opine that there is no criminal liability resulting from non-compliance with Section 53 of the Corporation Code regarding the holding of regular meetings of the board of directors.

In the case of *People v. Dela Piedra,*[2] the Supreme Court emphasized that:

> "Due process requires that the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties."

Consequently, a statutory provision must expressly declare that non-compliance therewith is a criminal offense in order that a violator can be held criminally liable. *Nullum crimen, nulla poena sine lege* - there is no crime when there is no law punishing it.[3]

Now, section 53 of the Corporation Code provides:

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[1] Batas Pambansa Bilang 68 (1980).
[2] G.R. No. 121777, January 24, 2001.
[3] *Evangelista v. People*, G.R. Nos. 108135-36, August 14, 2000.

"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.

Meetings of directors or trustees of corporations may be held anywhere in or outside of the Philippines, unless the by-laws provide otherwise. Notice of regular or special meetings stating the date, time and place of the meeting must be sent to every director or trustee at least one (1) day prior to the scheduled meeting, unless otherwise provided by the by-laws. A director or trustee may waive this requirement, either expressly or impliedly." (Emphasis supplied.)

There is nothing in this provision stating that non-compliance therewith constitutes a criminal offense.

In contrast, other provisions of the Corporation Code, expressly declare when a violation constitutes a criminal offense. For example, Section 74 of the Corporation Code provides:

"Books to be kept; stock transfer agent. - xxx

Any officer or agent of the corporation who shall refuse to allow any director, trustees, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, **and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code:** Provided, That if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and Provided, further, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand. xxx"[4]

[4] See also *Gonzales vs. the Philippine National Bank*, G.R. No. L-33320, May 30, 1983.

If the Legislature intended that non-compliance with Section 53 of the Corporation Code would constitute a criminal offense, then it would have expressly declared so as it did with Section 74 of the same statute.

As one commentator on the Corporation Code noted:

> "The proper and reasonable interpretation of Section 144 is to determine what term 'violations' covers. 'Violation' means 'Injury; infringement; breach of right, duty or law; (citing Black's Law Dictionary, 5th Ed.) xxx
>
> Therefore, the 'violations' covered by Section 144 covers only those provisions in the Corporation Code which are expressly mandatory in nature to show the true intent of Legislature to impose a penal sanction for non-compliance therewith."[5]

In view of the foregoing, we reiterate the advise we gave to you in our SEC-OGC Opinion No. 09-05, that your remedy lies within the jurisdiction of the regular courts considering that the instant case involves an intra-corporate controversy between a corporation and one of its stockholders, and the issue involves the conduct of the affairs of the corporation, that is, the meeting of the board members.

In any case, we advise further that it is the National Prosecution Service under the Department of Justice that has the primary jurisdiction to investigate and prosecute criminal offenses under the Corporation Code.[6]

This Opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission, the courts or other tribunals, in other cases whether of similar or dissimilar circumstances.

Please be guided accordingly.

Vesper Julius B. Garcia
Officer-in-Charge

[5] Villanueva, Cesar. Philippine Corporate Law, 2001, page 871.
[6] Presidential Decree No. 1275, as amended, and Executive Order No. 292, Administrative Code of 1987.