

ASIC responses to Questions on Notice

QoN Number: 4

Hansard Page Ref: 5

Question

Mr FALINSKI: I have a question regarding the audit inspection reviews that ASIC has been undertaking for quite some time. I've got a range of questions which I'm afraid I'll have to put on notice, so my apologies. One question I do have is: are there any legal obstacles or barriers to ASIC releasing the findings of some of the research and investigations that they conduct?

Mr Price: I think there are. One of those legal barriers is set out in section 127 of the ASIC Act and the case of ASIC v Johns. Collectively, the outcome of those two things indicates that where information has been obtained using ASIC's compulsory powers, it can only be released if certain gateways under section 127 of the ASIC Act are satisfied. I make those comments in the sense of ASIC simply releasing the information. There is an ability, of course, for parliament to ask for information. That is subject to the standing orders around public interest immunity and various other things. But certainly, if we were to seek to release information that's been compulsorily acquired using our notice or other powers, there are significant restrictions around how that information can be used and how it can be released. I can provide you with further details on that.

Mr FALINSKI: That would be great.

Answer

1. Section 127 of the ASIC Act provides that ASIC must take all reasonable measures to protect confidential information from unauthorised use or disclosure. Section 127 specifies a number of circumstances that constitute 'authorised' disclosure for the purposes of the provisions.
2. Relevantly, using or disclosing information with the consent of the person who provided it is authorised (s127(3A)), as is disclosure of information by a person for the purposes of performing the person's functions as a member, staff member, or an ASIC delegate is also taken to be authorised use and disclosure of information (s127(3)(a)).
3. We recognize that transparency through identifying entities in ASIC's public reports can, play an important role in advancing ASIC's statutory objectives. Where we consider those objectives are met we rely on those authorisations.
4. However, we would not suggest the lack of care of an auditor of a company has led to material changes to financial reports if we have not comprehensively investigated the role of that auditor, formed a view that the evidence clearly establishes those facts to the standard required at law and taken action against them. This may take a considerable amount of time.
5. ASIC consults firms it proposes to name in its reports in accordance with the requirements of natural justice. Any decision to publish names is made taking into account those submissions.