

Parliamentary Joint Committee on Corporations and Financial Services

ANSWERS TO QUESTIONS ON NOTICE

19 November 2019

Question No: 003
Topic: Whistleblowers
Reference: Hansard page 18

Question:

Question

Senator O'NEILL: Have you had any approaches with regard to the practices of auditing companies from whistleblowers? And can you explain the difference between the corporate model and the partnership model and how that intersects with your capacity to receive?

Mr Day: I'll have to take that on notice.

Answer:

Whistleblower reports about audit firms

Since 1 January 2014, ASIC's records indicate that we have received two reports of misconduct from potential whistleblowers within audit firms raising concerns about the practices of the audit firm in conducting an audit of a client company.

Since that time, ASIC's records indicate that we have received 12 reports of misconduct from potential whistleblowers within companies raising concerns about the practices of the companies' external auditors in conducting an audit of their companies. These reports also include concerns about the relationship between the companies officers and the companies' external auditors.

Application of Corporations Act whistleblower protection provisions to audit firms

ASIC receives reports of misconduct from many sources, including from employees and officers within companies and other business entities. These reports provide ASIC with valuable information and help us enforce the laws we administer and address and prevent harm to consumers.

Employees, officers and certain other people with connections to companies and other incorporated bodies that disclose to ASIC reports of misconduct, an improper state of affairs or circumstances, or breach of the law by the company or incorporated body can access the whistleblower protection provisions in the *Corporations Act 2001* (Corporations Act).

Generally speaking, the whistleblower protection provisions will apply to whistleblower disclosures where the disclosures are about a 'regulated entity' as defined in the Corporations Act. A 'regulated entity' includes:

- a company registered with ASIC under the Corporations Act
- a foreign corporation, that is, a body corporate incorporated overseas that carries on business in Australia, and
- a body corporate incorporated under the law of an Australian state or territory if it is a trading or financial corporation. That is, where the body corporate's trading or financial activities are a sufficiently significant proportion of its overall activities.

The whistleblower protection provisions in the Corporations Act do not apply to reports about other business entities that are not incorporated, such as sole traders or partnerships, because these entities are not included in the definition of regulated entity. Corporations Act provisions do not generally apply to unincorporated business structures.

If ASIC receives a report from an employee of an audit firm structured as a company alleging misconduct by the audit firm, it is likely that this employee will be able to access the whistleblower protection provisions in the Corporations Act. This is because a company is a regulated entity for the purposes of the whistleblower protection provisions.

If ASIC receives a report from an employee of an audit firm structured as a partnership alleging misconduct by the audit firm, it is likely that this employee will not be able to access the whistleblower protection provisions in the Corporations Act. This is because a partnership is not a regulated entity for the purposes of the whistleblower protection provisions.

Regardless of whether the employee can access the whistleblower protection provisions in the Corporations Act, ASIC is legally obliged and has robust processes to maintain the employee's confidentiality. Generally, ASIC does not disclose the identity of people who report misconduct to us, unless they consent or we are compelled to do by law.