



ASIC
Australian Securities &
Investments Commission

Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of the ASIC, the Takeovers Panel and the Corporations Legislation No. 1 of the 46th Parliament
Question No.	001-004
Topic	CDDA Scheme
Reference	Spoken, 16 November 2021
Committee member	Julian Hill MP

Question 001

Mr HILL: But you've also told us very clearly there's no statutory basis to this scheme, that it's simply a guide—we interrogated that earlier—that the minister or decision-maker is not bound to follow. Is there a legal barrier to the Treasurer of the day making a determination under the CDDA scheme, not giving a direction to ASIC and deciding to pay the compensation from general appropriation or revenue?

Mr Sebar: We will take that question on notice.

Mr HILL: It's a really important question. I do accept, on the face of what you've said, that there is a barrier about directing ASIC on a particular case. I'm not convinced that a finding in retrospect is indeed a particular case, because there is no active decision that ASIC is making. But let's accept, for the sake of caution or prudence, to leave it in the grey zone and lean against it. I'm not hearing anyone saying that there's a direction being made to ASIC if a finding of defective administration is made against ASIC; and if the only direction is where you pay the money from then it's one pot of government money or another pot of government money. No arguments back? Mr Savundra?

Mr Savundra: Like Finance, I'd like to take the question on notice. I'm not really sure it's a question for ASIC—

Mr HILL: I don't think it is either, I'm just inviting you.

Mr Savundra: To the extent that it has been directed at ASIC, I'd like to take it on notice. But I've got nothing by way of response to what you've said at this point.

Answer

This is a matter for Treasury and the Department of Finance.

Question 002

Mr HILL: The CDDA scheme, as I understand it, has been in its current form since 1995. I'm happy to be corrected but that's the advice which I've received and found. Can each agency take on notice to provide advice as to all CDDA payments that have been made by ASIC since 1995 and who the decision-maker was. Could we, for instance, find that the Treasurer of the day a decade or two ago had made a CDDA claim without finding section 12 a barrier? I do understand that the investors have provided a full detailed rebuttal of the section 12 argument to Senator Hume, who has so far failed or refused to respond. Let's leave that bit there. But I'll be interested to see the responses to the questions on notice, because I'm not hearing a legal barrier to the Treasurer making that decision.

Answer

Financial Year	Value of CDDA payments
2008-2009	ASIC made two payments under the CDDA Scheme of \$37,544.66 and \$480 which was determined and approved by an ASIC official.
2009-2010	ASIC made one payment under the CDDA Scheme of \$6,236.10 which was determined and approved by an ASIC official.
2011-2012	ASIC made one payment under the CDDA Scheme of \$2,590 which was determined and approved by an ASIC official.
2014-2015	ASIC made one payment under the CDDA Scheme of \$6,655 which was determined and approved by an ASIC official.
2015-2016	ASIC made one payment under the CDDA Scheme of \$5,935 which was determined and approved by an ASIC official.

Question 003

Mr HILL: Mr Savundra, you're back with us now. You said in your to the question on notice: ASIC has provided a response to an act of grace payment application made to the Department of Finance by unitholders ... This matter remains ongoing. When did you provide that response? And how many responses have you provided? Is it one response?

Mr Savundra: I'm sorry, I dropped out. I'm trying to follow. In 2019, or—

Mr HILL: No. I'm asking you. I'm looking at your response to my question on notice. You said: At the request of the Department of Finance, ASIC has provided a response to an act of grace payment application made to the Department of Finance by unitholders of the Prime Trust. This matter remains ongoing.

When did you do that? And how many times have you provided advice?

Mr Savundra: I'll have to take that on notice. Apologies; I don't have that to hand.

When did ASIC submit its response to the act of grace claim made by Prime Trust unit holders? Did ASIC submit one response or multiple responses?

Answer

On 30 June 2021, ASIC provided to the Department of Finance (**the Department**), a response to a group act of grace application submitted by an applicant on behalf of 40 unitholders in the Prime Retirement and Aged Care Property Trust (**Prime Trust**). On 5 August 2021, ASIC was advised that an additional 10 unitholders had been joined to the application. On 6 September 2021, ASIC provided to the Department, a response to supplementary submissions made by the applicant.

On 6 October 2021, ASIC also provided to the Department, a response to an act of grace application submitted by an individual unitholder in the Prime Trust.

Question 004

Mr HILL: Since the authorisation lapsed in 2015, how many CDDA claims have been made against ASIC?

Ms Hall: We'd have to take that on notice.

Mr HILL: Mr Savundra? I said 'CDDA', not 'act of grace'.

Mr Savundra: I'll have to take that on notice, in terms of application numbers.

Answer

Since 21 September 2015, ASIC has received:

- (a) Four individual applications; and
- (b) Three applications made on behalf of groups of investors.

In each case, the applicants were advised by ASIC that it was not authorised by its Minister to consider their claim, and that they could submit an act of grace payment application with the Department of Finance.