

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates 3-5 June 2008

Question: bet 122

Topic: 'Unincorporated Bodies'

Hansard Page: E125-E126

Senator Joyce asked:

Senator JOYCE—Just from their title, 'unincorporated bodies', I know they probably do not involve you. As to the merging of unincorporated bodies, especially where there is multiple membership and they do not have perfect knowledge of what is going on in their structures—and obviously they involve assets—does ASIC have any oversight whatsoever?

Mr D'Aloisio—It would be state jurisdiction, I guess. It would not fall, as you say, under our jurisdiction. Can I take it on notice, have a look at it and give you a more considered answer as to where the responsibility lies?

Senator JOYCE—Certainly, and I will make it a bit more detailed. If an unincorporated body is used as a vehicle, and under which hangs certain incorporated bodies, such as trust companies et cetera—

Mr D'Aloisio—Yes, it would have to have other vehicles to act through.

Senator JOYCE—does that mean that they can say that it is a state legislation and 'it has nothing to do with us'? Can you say: 'Hang on. Just your management vehicle is an unincorporated body. Underneath you is a whole heap of incorporated bodies'? Can I leave that with you.

Mr D'Aloisio—Unincorporated bodies can take various forms. Partnerships, associations, clubs—there is a whole range of unincorporated bodies. I think we get the gist of what you are asking. Let us have a look at it and give you a considered answer on how it works at a state level and how that interacts with the Corporations Act.

Senator JOYCE—And what authority you have, if something goes wrong, to go to someone and say, 'You have misled the membership.'

Ms Gibson—To the extent that it obviously relates to some of the companies that sit underneath it we regulate those companies. To the extent that those companies have change of control elements and disclosures in there, we regulate that. But at the next level it is not ours.

Senator JOYCE—You have those companies just controlling assets. As wealth is made they are held in assets, but the unincorporated membership does not—

Ms Gibson—They would be directors of those companies and those directors would have duties to the creditors

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates 3-5 June 2008

Answer:

ASIC confirms that it does not generally regulate the merger of unincorporated bodies. The takeover provisions of the *Corporations Act 2001* are expressed to apply in relation to a very limited class of such bodies, namely those with share capital that are included in the official list of a financial market. Similarly, the scheme of arrangement provisions of the *Corporations Act* are expressed to apply in some circumstances in relation to those unincorporated bodies that, under the law of their place of formation, may sue or be sued or hold property in the name of their secretary. As a practical matter, ASIC is not aware of any unincorporated bodies that would be subject to these provisions at this time.

There does not appear to be a regulatory regime under Federal or State law that applies to the merger of unincorporated bodies in general. There are many kinds of unincorporated bodies, including partnerships and some clubs, societies, associations and trade unions (some bodies of this kind are incorporated). There are some specific laws at both the Federal and State level that apply in relation to aspects of the activities of specific unincorporated bodies. For example, there are State laws dealing with partnerships and some kinds of clubs; and there are both Federal and State laws dealing with trade unions and political parties. ASIC has no responsibility for these laws and hence no particular expertise in them. A brief examination of those laws suggests that except in relation to trade unions and other industrial organisations, they generally do not deal with mergers.

In the absence of a specific statutory regime dealing with mergers, any rights that a member of an unincorporated body may have would arise as a matter of general law. If specific advice is needed about a particular circumstance, private legal advice should be obtained.

ASIC does, of course, have regulatory responsibilities in relation to any companies that may be controlled by an unincorporated body. That said, it is possible for unincorporated bodies to be merged without any regulatory issues arising in relation to any companies that they control.