

SENATE STANDING COMMITTEE ON ECONOMICS QUESTION
(Supplementary Budget Estimates 20 October – 21 October)

Question: SBT 21

Topic: LKM Capital

Senator Williams asked:

- a) Is ASIC aware that the directors of LKM Capital proposed and canvassed the appointment of PPB as Administrators with Sandhurst Trustees prior to the appointment of BRI Ferrier as Receivers and manager in July 2008?
- b) Would ASIC agree that this course of action might not only have preserved asset values but also have allowed for a less costly administration for the ultimate benefit of the secured creditors?

Answer:

- a) ASIC is aware that the directors of LKM Capital Limited ("LKM") met with PPB prior to the appointment of BRI Ferrier as Receiver and Manager ("R & M") in July 2008. It is not uncommon, and often appropriate, for company directors to speak to and obtain advice from advisors, including insolvency practitioners, if the directors have concerns in respect to their company's solvency, particularly before the appointment of an external administrator. This aligns with ASIC's Regulatory Guide 217 Duty to prevent insolvent trading: Guide for directors, released in July 2010, which sets out key principles that directors should consider when a company is in financial difficulty.
- b) It is not unusual for secured creditors to appoint a R & M to protect and realise their secured interest following an act of default. Once LKM breached the conditions of the Debenture Trust Deed, Sandhurst Trustees Limited, as Trustee of the Debenture holders ("the Trustee") appointed Brian Silvia and Andrew Cummins of Ferrier Green Krejci Silvia as R & M over the assets of LKM subject to its security. ASIC does not generally have the power to intervene in the making of such an appointment. ASIC is unable to assess whether the appointment of PPB as an administrator would have been less costly than appointing BRI Ferrier as receivers and managers.

ENDS