

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

19 – 20 October 2011

Question No: SBT 323 - 324
Topic: Wellbeinggreen
Hansard Page: Written

Senator Xenophon asked:

323. What is the status of ASIC's investigations into Wellbeinggreen?
324. The administrators report states that approximately \$1 million was transferred from the company to the brother of a Director just before the company's collapse. The report alleges the money was transferred to set up phoenix companies, and the brother has moved to Pakistan, which is not a signatory to a key international insolvency regime.
- a) What monitoring does ASIC conduct of phoenix companies?
- In this instance, what actions can ASIC take to ensure the Directors of Wellbeinggreen don't set up shop again?
- b) How will creditors be prioritised?

Answer:

323. ASIC has made enquiries into the company and its operations, but while Envirocare & Savers Pty Ltd (ACN 127 198 494) (In Liquidation) trading as Well Being Green is an incorporated entity, its business of creating and trading carbon credits, Renewable Energy Certificates (RECs) and small-scale technology certificates (STCs) under Australian Government and state government schemes in relation to people's installation of energy efficient hot water systems and light globes is not regulated by ASIC.

324. The Corporations Act 2001 obliges liquidators to investigate the companies to which they are appointed and to report to ASIC where they form an opinion that company officers may have breached their duties under the Corporations Act.

As part of our regulatory responsibilities for the insolvency system, ASIC has made enquiries with the liquidator about the company's liquidation and provided assistance to the liquidator with fulfilling his obligations. We note that the liquidation is still in its early stages and we are advised that the liquidator's investigations into the company's failure and actions of the company's operators are continuing.

a). In relation to phoenix and fraud allegations, the regulatory actions that ASIC may take against companies and company operators depend upon whether any provisions of the Corporations Act have been breached. The Corporations Act does not contain a general fraud offence for ASIC to enforce in response to the allegations that company operators have obtained money by fraud. Fraud offences are contained in general criminal law statutes of the states and territories and investigations into fraudulent conduct are generally the responsibility of the relevant state or territory police force.

For this reason, ASIC has also referred information we have uncovered through our enquiries about the company to the New South Wales Police to assist with its consideration of these matters. Creditors affected by the conduct of the company operators may also wish to raise their concerns directly with the police force in their state or territory.

At this time, however, the information currently before ASIC does not provide sufficient evidence of breaches of the Corporations Act by the company or the company operators to warrant ASIC commencing an investigation into the company operators. However, ASIC will continue to engage with the liquidator as needed and consider any reports we may receive from the liquidator, along with any complaints from creditors, to determine whether to take regulatory action against the companies or its operators in the future.

b). Claims against companies in liquidation are governed by a priority payment system. The appointed liquidator will prioritise creditors; with secured creditors first, then unsecured creditors and then shareholders (section 556 of the Corporations Act).