

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates

2015 - 2016

**Department/Agency: Australian Securities and Investment Commission**

**Question: AET 81**

**Topic: Phoenix activity prosecutions**

**Reference: Hansard page no. 23 - 11 February 2016**

**Senator: Madigan, John**

**Question:**

**Senator MADIGAN:** Are you able to inform the committee of how many prosecutions have occurred over the past couple of years? Is there an increase, or is this sort of activity and the number of people involved in this increasing?

**Mr Price:** We will try to get that information for you on notice, if we can. I do not have it to hand at the moment.

**Senator MADIGAN:** Is there a publicly available list of people who have been involved in this sort of activity?

**Mr Price:** As I said, part of the difficulty with phoenix activity is that it may be perfectly legal. There may be perfectly legitimate reasons to restructure a business, or it may be illegal.

**Senator MADIGAN:** More to the point, people have been involved in what you describe as illegal activity. Is there a publicly available list of those persons?

**Mr Price:** Yes. I would like to take that on notice.

**Mr Tanzer:** There is a list of those people that we banned, which is a publicly available list. It is a register that is available.

**Senator MADIGAN:** If you could point us to where that is, that would be good. And, on average, how long have these individuals who have been found to be involved in this sort of activity been disqualified from being directors of any other companies?

**Mr Price:** Again, I would need to take that on notice. I do not have that in front of me.

**Answer:**

1. **Senator MADIGAN:** Are you able to inform the committee of how many prosecutions have occurred over the past couple of years? Is there an increase, or is this sort of activity and the number of people involved in this increasing?

Response:

ASIC has a number of programmes that aim to deter illegal phoenix activity. Two such programs include the Liquidator Assistance Program and the Director Banning program.

1. Liquidator Assistance Program

During 2013/14 and 2014/15, ASIC prosecuted 314 and 355 individuals respectively for offences relating to the failure to provide external administrators with a report as to the affairs of a company, or failing to help a liquidator by delivering books and records, attending on the liquidator and giving them information about the company. The primary reason for the increase in prosecution numbers is as a direct result of a

corresponding decrease in directors complying with their obligations to assist liquidators.

## 2. Director Bannings

In 2013/14 and 2014/15 ASIC banned 60 and 27 individuals respectively from managing corporations after they had been directors of two or more entities in liquidation within 7 years.

## 3. Assetless Administration Fund (AAF)

The AAF provides liquidators with funds to conduct investigations and submit reports into companies that have little or no assets. A focus of the fund is illegal phoenix activity. Of the 60 directors banned in 2013/14, 47 were AA funded. Of the 27 in 2014/15, 22 were AA funded.

## 4. Other investigations

ASIC also investigates misconduct which may be related to illegal phoenix activity or which it considers has the hallmarks of a phoenix type operation. In general terms these offences relate to dishonesty and or fraud. In 2013/14, 12 investigations were referred to the CDPP with a further 8 referred in 2014/15.

2. **Senator MADIGAN:** More to the point, people have been involved in what you describe as illegal activity. Is there a publicly available list of those persons?

**Mr Price:** Yes. I would like to take that on notice.

**Mr Tanzer:** There is a list of those people that we banned, which is a publicly available list. It is a register that is available.

**Senator MADIGAN:** If you could point us to where that is, that would be good. And, on average, how long have these individuals who have been found to be involved in this sort of activity been disqualified from being directors of any other companies?

Response:

1. ASIC publishes a list of those directors who have been banned or disqualified. As there is no specific offence for illegal phoenix activity, ASIC cannot publish such a list. The banned and disqualified persons register is located on the ASIC website.

[Search Company and Other Registers](#)

2. As there is no specific offence for illegal phoenix activity, ASIC cannot provide average periods of disqualification for directors who are banned or disqualified.