

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

29 May – 31 May 2012

Question: BET 62

Topic: Ansett Financial Accounts

Hansard Page: Tuesday 29 May, page 93

Senator Williams asked:

Senator WILLIAMS: I want to go to the liquidation of KordaMentha. I asked you questions about it before, which you took on notice. I asked about the number of orders and if they do them over the 10-year period. When I say 'orders', I am speaking about the exemption order for accounts. Your answer was:

ASIC has executed only one order on 30 June 2004. In this order ASIC granted an exemption to 25 companies in the Ansett Group from legislative requirements in Part 2M.3 to prepare and lodge audit annual financial reports for the years ended 30 June 2004, 30 June 2005 and 30 June 2006. This order also exempted Ansett group from the requirements to lodge half year financial reports for the period ending 31 December 2004 and 31 December 2005.

So there are a lot of exemptions given to KordaMentha regarding this liquidation of the Ansett group. I had a look at KordaMentha. It started in Melbourne in April 2002. It now has offices in Melbourne, Sydney, Perth, Adelaide, Brisbane, the Gold Coast, Townsville, New Zealand and Singapore. KordaMentha partners undertook the first voluntary administration in Australia—the largest voluntary administration in Australia, Ansett Australia—with 42 companies, 15,000 employees and in excess of \$1 billion assets. They were the largest group of voluntary administration in Australia—Stotfield Limited—with 84 companies and more voluntary administrations than any other insolvency firm in Australia in 2003. KordaMentha now has over 350 staff with offices in all Australian capital cities, Auckland and Singapore, as well as international affiliates in the UK and the US.

It has been a company that has really grown quickly, but my concern is that we cannot find anything out about the results of the liquidation of Ansett Australia. It was a big company.

My question is: prior to KordaMentha applying for accounting relief on 17 December 2003, was ASIC aware that the Ansett Australia Limited annual financial reports for 30 June 2001, 2002 and 2003—three years' financial accounts—had not been lodged as required by section 319 of the Corporations Act?

Ms Gibson: I will need to take that detail on notice.

Answer

The obligation to lodge accounts, or to seek or extend relief from having to lodge accounts, rests with the company. While ASIC runs surveillance campaigns to detect breaches of the financial

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reporting lodgement obligations, the campaigns run at the time of the administration of Ansett did not include companies in administration, and therefore did not capture Ansett.

When considering the relief application in 2004, ASIC was aware of and considered the non-lodgment of the 2001-2003 financial reports. ASIC formed the view that the non-lodgment of accounts should not be an impediment to granting the exemption relief in 2004.

Our regulatory guidance did not state that to be eligible for exemption relief where members have no ongoing economic interest in the company, all financial report lodgements must be up to date. Rather the 'unreasonable burden' test was applied to whether relief should be granted in relation to the 2004 application.

In addition, in relation to the earlier years' accounts, we were mindful that the burden that would be imposed with respect to the prior year accounts, in the form of the erosion of potential return for creditors, would be for limited benefit.