



**ASIC**  
Australian Securities &  
Investments Commission

<b>Committee</b>	Parliamentary Joint Committee on Corporations and Financial Services
<b>Inquiry</b>	Oversight of the ASIC, the Takeovers Panel and the Corporations Legislation No. 1 of the 46th Parliament
<b>Question No.</b>	QoN 011, QoN 012 and QoN 013
<b>Date</b>	27 August 2021
<b>Topic</b>	CDDA Scheme
<b>Reference</b>	Spoken, 27 August 2021, Hansard pages 26-27
<b>Committee member</b>	Mr Julian Hill MP

### QoN 011

#### **Extract – Hansard page 26**

**Mr HILL:** In handing over to Chris, can I just seek clarification on the term that you used? The media article in the digging that I've done suggests that Treasury or others are trying to steer people towards the so-called act-of-grace payments, which are the ones that, ultimately, are at the discretion of the government. Usually the finance minister has to sign them off. The investors don't want an act-of-grace payment. They want a determination under this specific scheme. I was under the understanding that this scheme still exists. So I just pulled that up because you've used the words 'act of grace', but that's not what they're pursuing. The media reports were that, for whatever reason, at some point in 2015 ASIC lost the delegation, which they had from the then Assistant Treasurer Josh Frydenberg when he was in his previous role. They had a delegation to make a determination under the CDDA Scheme and for some reason that delegation was lost. Why was the delegation lost? I understood that delegations from ministers to agencies were standing delegations. They can be refreshed or revoked when there's a change of minister but they don't lapse. Why was the delegation lost? Does the scheme still exist? Who can determine things under that scheme? I'd like to understand that before we talk about act of grace payments, if that's okay, Chair.

**CHAIR:** Of course.

**Mr Savundra:** You're correct in that the defective administration, or the CDDA, scheme, remains in place. As I understand, in September 2015 the authorisation for the minister lapsed. I'd like to take on notice just to double check what I'm about to tell you is correct, but as I understood it, it was a personal authorisation. It was when the then acting minister ceased to be the acting minister that the authorisation lapsed. In terms of the chronology of events, if it might assist you, it lapsed in 2015. In February 2019 ASIC received a CDDA application on behalf of 40 investors relating to the client trust. In March 2019 we advised those applicants that we no longer had an authorisation and, therefore, we were unable to consider the application under the CDDA Scheme. I think, as Mr Longo has said, the authorisation was a matter for the minister. So really that's as far as ASIC can take it.

#### **Answer**

We refer to the evidence provided by Mr Savundra and confirm that:

- Up until September 2015, ASIC officials were authorised by the then Assistant Treasurer, Josh Frydenberg to make decisions and approve payments under the CDDA Scheme. ASIC officials were provided a personal authorisation by the Assistant Treasurer;
- This personal authorisation lapsed when there was a change in the holder of the office of the Assistant Treasurer. ASIC is, therefore, unable to consider applications made to it under the CDDA Scheme; and
- The decision to grant ASIC officials authorisations is a matter for the Minister.

**QoN 012****Extract – Hansard page 27**

**Mr HILL:** I have two supplementary questions, Chair. If you could give us quite a specific answer. Perhaps I'm just arcane and curious, but I would like to understand the delegation issue precisely. I have an email that ASIC sent to a complainant in March 2019 saying very clearly that the authorisation lapsed when there was a change of office holders. I'd like to unpick that a little more. Have there been any discussions or dialogue between ASIC and the Treasury or the Treasurer since receiving the request in 2019? What advice or request for advice has come from the Treasury and the Treasurer's office? What advice has been provided by ASIC in relation to this matter? Have there been discussions with any other ministers or the Department of Finance? I see in the email in 2019 that ASIC referred the complainants to the Department of Finance, not the Treasury. I'm sorry. I'm not trying to be tricky. It says, 'You may wish to contact the Discretionary Payments Section of the Department of Finance,' with an email address.

**Mr Savundra:** I'd need to take that on notice in terms of the interactions that we've had with Treasury in relation to this specific application—that's the Prime Trust investors' application. More generally from time to time over that period since September 2005 there have been a number of interactions with Treasury in relation to the CDDA Scheme and the fact that there is no authorisation for ASIC.

**Answer**

Since September 2015, ASIC has had discussions with Treasury and the Department of Finance in relation to the CDDA Scheme, and since 2019, ASIC has also had discussions with both Departments about the application made under the CDDA Scheme by unitholders of the Prime Retirement and Aged Care Property Trust.

**QoN 013****Extract – Hansard page 27**

**Mr HILL:** Thank you; that's very helpful. My final question on that topic is: have you been asked for any input on an act of grace or a CDDA claim assessment in relation to the Prime property trust collapse?

**Mr Savundra:** I'd like to take that on notice, Mr Hill. I'm not aware of any. If the report in the paper is correct around Treasury's position, I wouldn't have thought that they would, given that they don't feel that they're in a position to make a determination.

**Mr HILL:** The stated reason was that they didn't want to interfere with ASIC's independence, which I think, left the readers, or me at least, to throw my hands up in the air and going, 'Really? Someone's got to be responsible!' If you don't have the delegation, it makes no logical sense to say that the Treasury wouldn't assess it because it would interfere with your independence. But, anyway, we will take that up with Treasury.

**Answer**

ASIC has not been asked to provide input into any assessment of a claim made under the CDDA Scheme by unitholders of the Prime Trust.

At the request of the Department of Finance, ASIC has provided a response to an act of grace payment application made to the Department of Finance by unitholders of the Prime Trust. This matter remains ongoing.