

ASIC rejects 30 per cent of AFS applications

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ASIC routinely rejects up to 30 per cent of all AFS licence applications, and new rules could make the process harder for new licensees.

In the 2017-18 financial year, ASIC approved just 40 per cent of all AFS licence applications and 49 per cent of credit licence applications.

ASIC acts as a gatekeeper for the licence and will grant a licence if it follows the obligations set out in the Corporations Act and the National Consumer Credit Protection Act.

There were also a number of new assessments that would begin to impact licence applications, which if adopted would give ASIC a broader range of powers.

The recommendations from the Enforcement Review Taskforce, if applied, will allow ASIC to cancel a licensee for failing to commence business within six months and refuse a licence if they are unsatisfied with the person controlling the licence and if the application is false or misleading.

The powers would also require applicants to confirm that there have been no material changes and align the assessment requirements for AFS and credit licence applications so that the highest standard applies.

Given these new conditions, people applying for a licence needed to follow stricter rules and be more careful about their applications.

Sonia Cruz, head of licensing at The Fold Legal, said more often than not ASIC rejected applications that were not complete or unclear.

“You need to be crystal clear about what products and services you will provide and how they are regulated. When reviewing your application, ASIC needs to be reasonably satisfied that you will comply with your obligations under the Corporations Act or the NCCP Act. So you need to show ASIC that you understand the law and what it means to your business,” she said.

Ms Cruz said that companies also needed to be aware of their responsible managers and make sure they could demonstrate their suitability.

“They must be able to collectively demonstrate that they have the relevant qualifications and experience for all the product authorisations you’re seeking a licence for,” she said.

Given the recent royal commission and spotlight on the industry, meeting obligations was also hugely important and ASIC needed to know compliance arrangements, said Ms Cruz.

“They may want to see that your processes and policies are well documented. For example, ASIC may ask to see procedures that document how you will manage representatives, training, compliance, risk, disputes and your compensation arrangements,” she said.

Ms Cruz recommended that all licensees have their applications reviewed before being submitted to ASIC to not get it rejected.

“This includes ensuring you have all the core, complex product and additional proofs you require and that your responsible managers meet ASIC’s requirements,” she said.