

Existing and new licensees subject to ‘fit and proper’ person tests

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[Jassmyn Goh](#)

<https://www.moneymanagement.com.au/news/financial-planning/existing-and-new-licensees-subject-%E2%80%99fit-and-proper%E2%80%99-person-tests>

Existing Australian financial services (AFS) licensees may be subject to ‘fit and proper’ person tests including periodic police and bankruptcy checks, according to The Fold Legal.

An analysis by the financial services law firm said the ‘fit and proper’ person test now applied to existing and new AFS licensees along with credit licensees.

Officers could also be asked to complete a declaration about any conduct of theirs that may affect their standing as a ‘fit and proper person’, it said.

“If you apply for a variation to your licence the Australian Securities and Investments Commission (ASIC) will assess whether all existing and new ‘officers’ are ‘fit and proper’,” the analysis said.

“Consider putting measures in place to ensure you regularly check that ‘officers’ remain ‘fit and proper’.”

It said ASIC now had the ability to:

- Assess the suitability of entities applying for a licence or that control an AFS or credit licence by requiring applicants to provide information on all officers of the licence applicant and any controllers of the licence applicant (or its officers);
- Refuse to grant a licence if any of the officers of the licence applicant, or its controllers, if any, or the controller’s officers, are found not to be fit and proper;
- Consider previous conduct in other businesses to determine whether an officer of a licence applicant will satisfy the fit and proper test; and
- Vary or revoke an AFS or credit licence if the licensee, its officers, or controllers (or its officers) no longer satisfy the ‘fit and proper person’ test.

Officers of a firm, including directors, company secretaries, responsible managers, chief executives, chief financial officers, senior managers, or any other person who influenced a substantial part of business decisions could be asked to provide a criminal history check, bankruptcy check, and a statement of personal information.

The Fold Legal said this would allow ASIC to consider:

- Any previous AFS or credit, or other professional licence, suspensions or cancellations of the person or any company for which they were a director;
- Whether the person has had any banning orders;
- Whether the person has ever been insolvent or has been the director of a company that has been placed into administration;
- Whether the person has had any criminal offences; and
- Any additional information that ASIC requests.