

ASIC responses to Questions on Notice

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Written QoN – W005

Question

What is the optimal success rate for ASIC litigation?

Answer

ASIC commences litigation when it is in the public interest to do and when it considers it has reasonable basis for bringing that litigation. ASIC does not have a defined optimal success rate for its litigation.

Success rate in any litigation is predicated on multiple factors, chief amongst them being strength of evidence accepted by the court.

Given ASIC's "Why Not Litigate" approach to enforcement, more court litigation is expected to be taken by ASIC. In addition, the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019 puts ASIC in a stronger position to pursue significant civil penalties and criminal sanctions against those who breach the law.

These changes are expected to mean more litigation against large and well-resourced institutions and in relation to new and existing laws that now carry penalties.

This will mean an increase in the complexity and uncertainty of ASIC litigation. It can be expected as a consequence that ASIC's litigation risk, including the risk of not succeeding in its court actions, will increase.

ASIC enforcement litigation success rate has been above 90% for the five years to 2018-2019. ASIC does not make decisions about litigation lightly. It recognises its responsibility to use those resources for the public good, meaning that the litigation it commences must be based on sufficient evidence and of benefit to the public in pursuing it.