

## Applying for an AFS licence: A Thomsons Guide



Obtaining your own Australian financial services (AFS) licence can be a complex process. This guide is intended to assist you to understand the application process, some of the costs involved and timing.

### Do you need an AFS licence?

The first question you need to consider is whether you need an AFS licence. The Corporations Act 2001 (Cth) (Corporations Act) requires people who carry on a business of providing financial services to hold an AFS licence (unless they are covered by an exemption or are authorised to provide those financial services as a representative of another person who holds an AFS licence).

You may need an AFS licence if, as part of your business, you do any of the following:

1. Provide financial product advice—A person provides financial product advice where they provide a recommendation or a statement of opinion, or a report of either of those things, that is intended to influence a person in making a decision about a particular financial product, or could reasonably be regarded as being intended to have such an influence.
2. Deal in a financial product—A person ‘deals’ in a financial product when they apply for or acquire a financial product, issue a financial product, underwrite an offer of shares or interests in a managed investment scheme, vary a financial product or dispose of a

financial product. Where you do any of these things on your own behalf then, except in limited circumstances (for example, where you are a financial product issuer), you are exempt from the requirement to hold an AFS licence.

3. Make a market for a financial product—You will be making a market for a financial product if you regularly quote prices at which you will buy or sell financial products, and other persons could reasonably expect to be able to regularly sell to you, or buy from you, financial products at the prices you have quoted.
4. Operate a registered scheme—If you wish to operate a registered managed investment scheme, then you will need to become a responsible entity and obtain the appropriate authorisation under an AFS licence.
5. Provide a custodial or depository service—A person provides a custodial and depository service to another person if they hold a financial product, or a beneficial interest in a financial product, in trust for, or on behalf of, the other person.

These types of conduct will only be a financial service if they are provided in relation to a ‘financial product’. You will need to think about whether the particular products that you deal with in your business are financial products under the Corporations Act, and if you are unsure, then please contact us.

### What type of AFS licence will you need?

If you decide that you need an AFS licence in order to operate your business, then you will need to decide upon

the type of AFS licence that you need. Not all AFS licences are the same, and when you make an application for an AFS licence to the Australian Securities and Investments Commission (ASIC) you need to tell ASIC the financial services you will be providing and these will be noted on your licence. If you decide to expand your business in the future and provide other financial services, then you may need to go back to ASIC to vary your licence to add these new services.

There are a number of other things you will need to determine before you apply, including the following:

1. To whom will you be providing financial services? Will they be 'retail' clients or 'wholesale' clients or both?
2. If you are providing financial product advice, then will you provide general or personal advice?
3. If you intend to operate a registered scheme, then what kind of assets will the scheme own? Please note, except in limited circumstances, ASIC will require that you have made an application to register a scheme before it will grant you an AFS licence to operate the scheme.
4. Which entity will make the application? Individual, partnership, trustee of a trust, proprietary company or public company?

## Do you have people with the right skills and experience?

The success of any AFS licence application is largely dependent upon the skills and experience of the people you nominate as 'responsible managers'. A 'responsible manager' is a person who is directly responsible for significant day-to-day decisions about the ongoing provision of your financial services.

Your nominated responsible managers must, individually, meet one of five options ASIC has set for demonstrating appropriate knowledge and skills, and must, collectively, have appropriate knowledge and skills for all of your financial services and products.

The number of people you need to nominate as responsible managers will depend on the nature, scale and complexity of your business. However, ASIC expects that most people will nominate two or more responsible managers.

As part of the service Thomsons Lawyers provides, we can assess each of your proposed responsible managers' skills and experience and determine whether it is likely ASIC's organisational competence requirements will be met. We can also assist you identify potential responsible managers who can work on a consulting basis to provide the skills and experience your organisation might need to obtain an AFS licence.

## Getting started—preparing the application

If you have determined that you need an AFS licence and that your proposed responsible managers meet ASIC's requirements, then the following documents will need to be prepared in the initial phase of the AFS licence application process:

1. ASIC form FS01. This document requires you to provide information about you as the applicant, your business, the financial services and products you want to be authorised to provide and your ability to meet your obligations as an AFS licensee through your responsible managers, resources, systems and processes. If you are providing services to retail clients, then you will also need to provide ASIC with information about your arrangements for internal and external dispute resolution, compensation and insurance.
2. Business description statement. This is a more detailed description of your business, including your sources of business income and growth expectations, typical client types, service delivery models and methods and organisational chart.
3. People proofs for each responsible manager. These documents provide ASIC with information on the competence and good fame and character of your nominated responsible managers. They include:
  - a. a statement of personal information;
  - b. copies of qualifications;
  - c. copies of a national criminal history check and a bankruptcy check, both not less than 12 months old; and
  - d. copies of two business references which outline the responsible manager's financial services experience (not less than 12 months old).
4. Table of organisational competence. This is a document that substantiates the relevant knowledge, experience and skills of your nominated responsible managers who will be directly responsible for significant day-to-day decisions about the ongoing provision of your financial services.
5. Financial statements and financial resources. There are various financial statements that must be submitted, depending on the financial requirements that apply to your financial services and products. Generally, most applicants would be required to provide recent statements of income, cash flows and a balance sheet, and a cash flow projection to meet the cash needs requirement. They would also need to provide a description of their processes for ensuring ongoing compliance with their financial requirements.

Once this information has been collated, the form FS01 can be lodged on-line. ASIC's lodgement fees for making an application are \$825 for an individual or \$1,485 for a corporate, partnership or trustee applicant.

Timing - You should allow between two to four weeks to complete this part of the process, although Australian Federal Police national criminal history checks can take up to six weeks to be received. This timeframe assumes you have responsible managers with the right experience and skills, and that you do not have to engage an outsourced responsible manager to assist you obtain your licence.

## ASIC review and preparing additional proofs

Once the application has been lodged on-line, it may take ASIC between two to four weeks to allocate the application to an officer for review and advise you it has been accepted for review.

Once your matter has been allocated for review, ASIC is likely to request you provide additional information (called 'proofs') about your compliance arrangements, depending on the kinds of services you are seeking to provide. For example, ASIC typically requests that a licensee provides the following proofs in addition to the material lodged in the initial phase of the application:

1. **Development Program for Responsible Managers.** This proof includes a description of your processes for ensuring that your responsible managers are of good fame and character and maintain adequate skills and competence and a description of the development program you offer to your responsible managers and how it is conducted.
2. **Compliance Arrangements.** This proof includes a table describing your compliance arrangements which must include details of your:
  - a. compliance obligations;
  - b. procedures for maintaining compliance with those obligations;
  - c. how you will monitor your procedures; and
  - d. who will do the monitoring and how often.
3. **Arrangements for Managing Conflicts of Interests.** This proof includes a table describing your conflicts management arrangements which must include details of:
  - a. any identified conflicts of interest;
  - b. your arrangements for managing these conflicts; and
  - c. your procedures for monitoring your arrangements.

4. **Outsourcing Statement.** This proof includes a table describing your outsourcing arrangements which must include details of:
  - a. the activities you will outsource;
  - b. the service provider;
  - c. how you will monitor the provision of the service; and
  - d. who will do the monitoring and how often
5. **Program for Monitoring, Supervision and Training of Representatives.** This proof must include a detailed description of your processes for supervising and monitoring your representatives (including employees and authorised representatives).
6. **Human Resources Capacity Statement.** This proof includes a description of your processes for ensuring that you have adequate human resources available to meet your AFS licensee obligations.
7. **Information Technology Capacity Statement.** This proof includes a description of your processes for ensuring that you have adequate information technology resources available to meet your AFS licensee obligations.
8. **Dispute Resolution System Statement.** This proof includes details of how you handle complaints and what services are covered by your PI insurance.
9. **Risk Management System Statement.** This proof includes a table describing the main risks your business will face focusing on risks that adversely affect consumers or market integrity (this includes risks of non-compliance with the financial services laws).

If you are seeking to be authorised to operate a registered scheme, make a market or provide a custodial and depository service, then additional proofs will be required.

Timing - If ASIC requests further information, then this must be provided within 10 business days. Given the amount of documentation typically requested by ASIC, it is worth preparing these documents whilst you are waiting for your application to be allocated (or even prior to lodgement) so that you are ready to provide them as soon as ASIC requests.

## ASIC requisitions

Once ASIC has reviewed your application and additional proofs, it may ask for further information about certain aspects of the application. The nature and volume of the requisitions will depend upon the nature and quality of the application and the requirements of the ASIC officer charged with reviewing the application.

Timing - ASIC's review of the application and additional proofs can take two to three weeks after ASIC's initial

review. You are generally required to respond to ASIC's requisitions within five business days.

## Receiving a letter of offer

Once you have provided responses to ASIC's requisitions and assuming those responses are adequate, ASIC will issue you a letter of offer for an AFS licence. This offer will contain the conditions upon which ASIC is prepared to grant you an AFS licence.

The letter of offer will also generally be conditional upon you providing ASIC with details of your professional indemnity insurance (where your services are being provided to retail clients). If you are seeking to be authorised to operate a registered scheme, then the offer will be conditional upon you registering the scheme within a certain timeframe (typically within four months).

## How long will it take?

Depending on the nature of the application you make, you should allow for the process to take between three to four months in total. Where you are required to locate and engage responsible managers to assist you obtain your AFS licence then you should allow extra time. If you nominate responsible managers who have been, or are currently, responsible managers for other licensees, then generally they will have the information they are required to provide on hand which can dramatically reduce the timeframes for preparing the application.

## How Thomsons Lawyers can help

Thomsons Lawyers can guide you through the AFS licence process and prepare all the documentation necessary for you to obtain an AFS licence. This includes the following services:

1. Reviewing resumes of proposed responsible managers.
2. Identifying any skill or experience gap among the proposed responsible managers and assisting you identify responsible managers who may be able to provide the requisite skill or experience on a consulting basis.
3. Assisting you apply for membership of an external dispute resolution scheme.
4. Assisting you obtain professional indemnity insurance and reviewing your policy to ensure it meets ASIC's requirements.
5. Preparing pro forma reference letters for your responsible managers.
6. Assisting you obtain criminal history checks and bankruptcy searches.
7. Preparing the ASIC form FS01.
8. Preparing your business description statement.
9. Assisting you prepare your financial statements, including providing you with a comprehensive guide on those requirements.
10. Preparing your table of organisational competence.
11. Preparing all the additional proofs ASIC may request.
12. Assisting you answer ASIC requisitions.

If you have any questions about the process for applying for an AFS licence, then please contact us.

## For further information, please contact



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