

A Guide to Applying for an **AFS Licence**

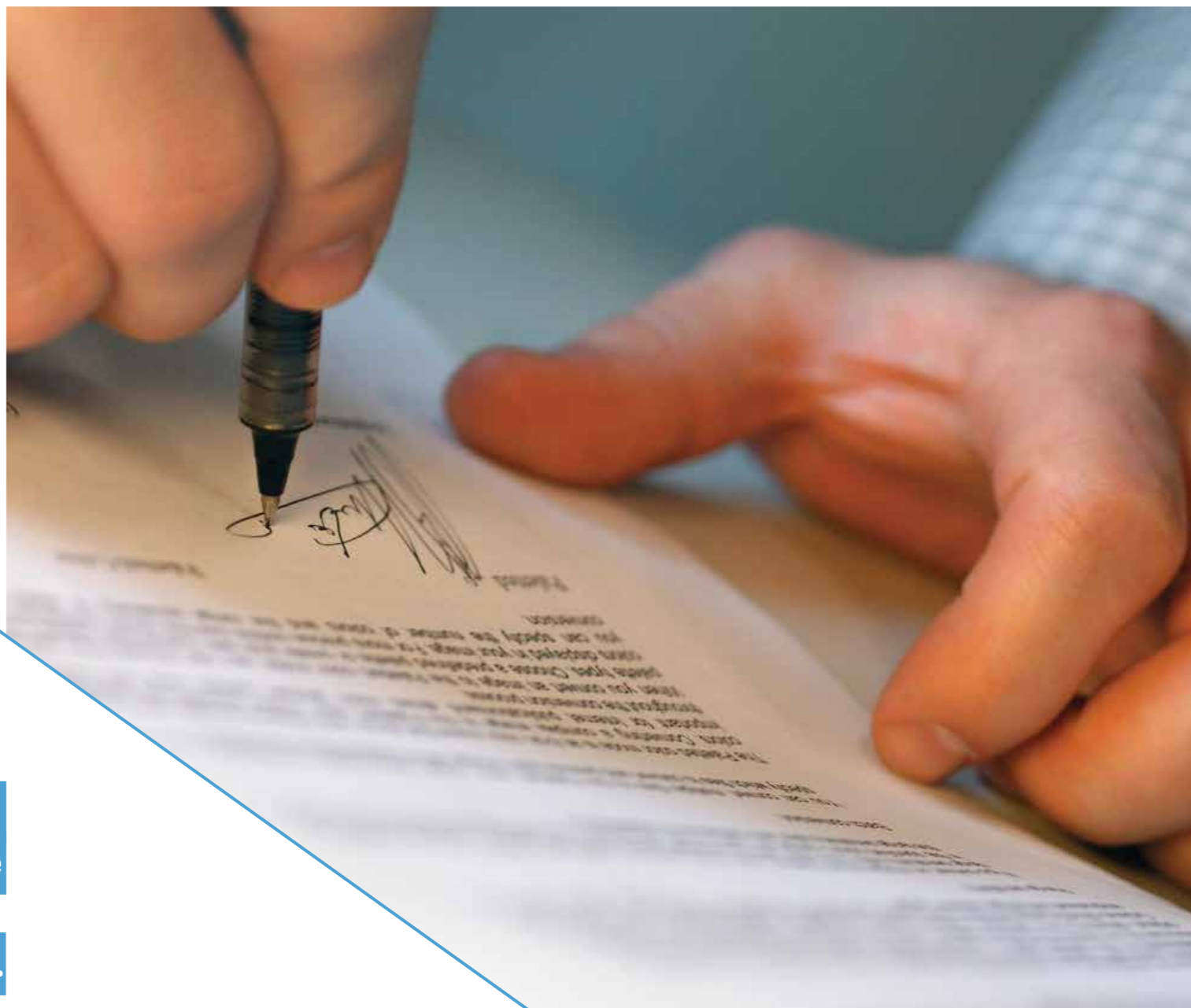
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Applying for an AFS Licence



Obtaining your own Australian financial services (AFS) licence or varying an existing AFS licence can be a complex process. But before you begin, you need to consider some key questions.

Do I need an AFSL?

Holding your own AFS licence is an important step for any financial services business. It can provide you with independence, allow you to reach larger markets and provide your clients with a greater sense of security. But do you need one?

Chances are that if you are reading this guide, then you have already made the decision to obtain an AFS licence. If you are in the business of providing financial services in Australia, then unless an exemption applies, you will need an AFS licence.

There are, however, a number of circumstances where you are not required to hold an AFS licence. Examples include where you are an authorised representative of a licensee, you only provide financial services to related bodies corporate or you are an offshore regulated entity that only provides services to wholesale clients in Australia.

If you are not sure whether you need an AFS licence, then it is best to speak to a specialist and get some advice.

Key questions:

- Do you need an AFSL?
- What authorisations do you require?
- Do you have people with the right experience?
- What financial requirements will you need to meet?
- Do you need a retail or wholesale licence?
- What are the steps involved in the process?
- How long will it take?

What authorisations do I need?

Every AFS licence is different, and not every licensee is authorised to provide all the financial services it is possible to provide. Some licensees, like independent experts, may only need a very limited AFS licence, whilst fund managers generally require licences with a number of authorisations.

Determining what authorisations you require will also determine the responsible managers you need to nominate, so this step is critical in the process.

Do you need a licence to issue a financial product, or arrange for the issue of a financial product or arrange for another person to acquire a financial product? Will you be providing general or personal financial product advice? There are subtle differences in the authorisations that you can apply for, and ultimately obtaining the wrong authorisations will mean you could be providing financial services without a licence — even if you have one!



Do you have the right people with the right experience?

Any application rises and falls on the experience and knowledge of the nominated responsible managers.

A responsible manager is a person who is responsible for the day-to-day decision making about the financial services provided by an AFS licensee. This does not mean that they actually have to be providing the services, but they have to be responsible for the supervision of those that do provide the services.

A responsible manager is not necessarily a company officer and vice versa. You do not have to be a company director or officer to be appointed as a responsible manager.

As a rule of thumb, you will need to appoint at least two responsible managers. However, for sole traders one will be sufficient.

Those responsible managers nominated will need to meet one of five options specified by ASIC. Generally, this means that they will need to hold an under-graduate or postgraduate qualification relevant to the financial services they are responsible for, along with 3 years' experience out of the last five in providing the services for which they are being nominated.

A special submission can be made for people who do not hold formal qualifications, but who nevertheless are highly experienced.

What are the financial requirements?

All AFS licensees (other than those regulated by APRA) must be solvent and have positive net assets. In addition, licensees must prove they have, or have access to, sufficient financial resources to meet their anticipated cash flow expenses.

For particular licensees, such as responsible entities, IDPS operators, wholesale fund trustees, custodial and depository service providers and retail OTC derivative issuers, additional capital adequacy requirements apply.

You will need to budget for these requirements and provide balance sheets, cash flow statements and other financial information to ASIC as part of the application process.

Do you need a retail or wholesale licence?

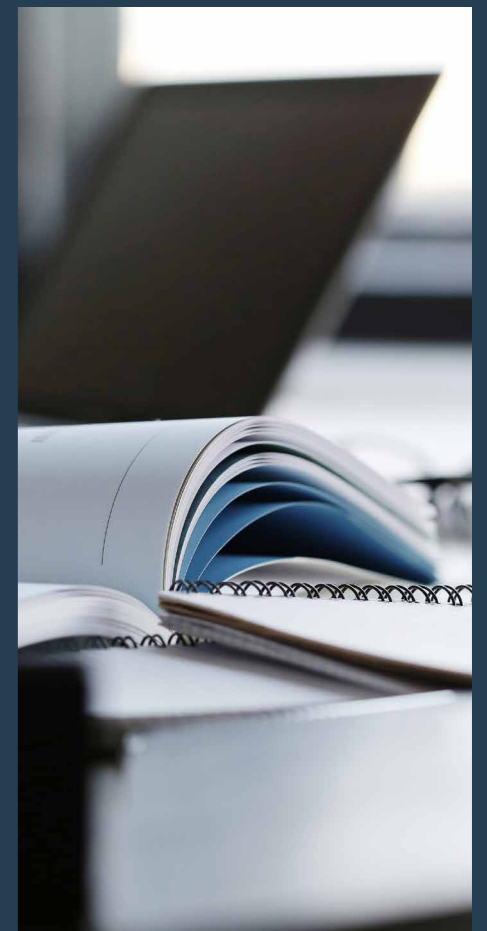
A fundamental question before you make an application for an AFS licence is whether you will be providing services to retail clients or wholesale clients or both.

Providing services to retail clients means that you must hold professional indemnity insurance, become a member of an external dispute resolution scheme and comply with additional training obligations where you are providing advice to those retail clients.

Understanding how retail and wholesale clients are defined under the law is vitally important in understanding the kind of licence you require. Wholesale clients are generally those that meet certain wealth thresholds or invest \$500,000 or more in a financial product.

5 myths about AFS licencing

1. "I only deal with wholesale clients, so I don't need an AFS licence." If you are in the business of providing financial services, even just to wholesale clients, then you need an AFS licence unless an exemption applies.
2. "I've been in the industry for years: I have enough knowledge and experience to be a responsible manager." If you do not meet one of ASIC's five options for nominated responsible managers, then you will not qualify as one.
3. "We have appointed a third party custodian for our wholesale fund, so we don't need to hold the custodial and depository authorisation." This statement will only be true in the rarest of circumstances—that is, where the custodian agrees directly with the clients to hold their property.
4. "We can be appointed as a corporate authorised representative to operate our wholesale fund as trustee." ASIC considers that trustees must be acting as principals when they provide trustee services and so ought to hold their own AFS licence.
5. "It's too expensive to obtain my own licence and the ongoing compliance obligations are too burdensome." Every business is different and it is important to include upfront licensing costs and ongoing compliance costs in any business case for obtaining your own AFS licence. Speak to some independent licensees and ask them if it is all too much.





What are the steps involved in the process?



Step 1 Preparing the application

The first step is to collate the material you will need to lodge with ASIC. This requires the preparation of core proofs and financial statements and cash flows. It also means collating material from the nominated responsible managers such as copies of their qualifications, along with police checks and bankruptcy searches.

The application is lodged online and we will complete the ASIC form FSO1 on your behalf.



Step 2 ASIC review and preparing any additional proofs

Once the application has been lodged it will be delegated to an ASIC assessor. The first review that is conducted is whether the application is accepted at all. This generally means that the application contains the fundamental components that ASIC requires but an assessment is not made of the substance of the application at this stage.

If the application is accepted, then a review is conducted and ASIC may seek further information including in the form of additional proofs.



Step 3 ASIC requisitions

ASIC may ask for further information arising from its review of the proofs which have been lodged.

An applicant generally has 10 days to answer such requisitions.



Step 4 Letter of offer

If the requisitions are answered to ASIC's satisfaction and it decides to grant a licence, then it will issue a letter of offer with draft licence conditions. You may be required to provide proof of certain things at this stage, such as professional indemnity insurance cover if you are providing services to retail clients.

How long will it take?

You should allow for the process to take between three to four months. If you do not have the requisite experience within your organisation to obtain the kind of AFS licence you need, then you will need to look outside your organisation for the right personnel. This process can add a significant amount of time to the overall application time.



How can we help?

We will guide you through the application process from start to finish.

We will:

1. Provide a legal opinion on the kind of authorisations that you will need for your business.
2. Assess the responsible managers you wish to nominate and advise you whether their experience and knowledge is sufficient to meet ASIC's requirements. We maintain a database of experienced responsible managers with specific skills and can make introductions to you if required.
3. Help you understand the financial requirements that will apply to your licence.
4. Prepare the necessary proofs for lodgement with ASIC. These documents are the supporting information for the licence application and are tailored to your business.
5. Advise you with a high degree of certainty as to whether the application will be accepted, and identify any weaknesses in the application.
6. Help you deal with requisitions from ASIC.

Contact us

Give us a call for more information about obtaining an AFS licence.

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