

AFSL needed in binder agreements

8 July 2020

Jassmyn Goh

<https://www.moneymanagement.com.au/news/liferisk/afsl-needed-binder-agreements>

Binder agreements entered into by insurance agents or brokers looking to offer insurance on behalf of the insurer need to make sure each party has the appropriate Australian financial services licence (AFSL) authorisations to provide the service, The Fold Legal warns.

In an analysis, the firm's lawyer Lydia Carstensen said having AFSL authorisation was particularly important when claims handling became a regulated financial service.

“When entering into any agreement, you will have to rely on the other party's representations, which is why these are expressly included in the relevant contract,” she said.

She noted, at a minimum, when negotiating binder agreements each party should be required to make representations and warranties that:

- They have the power to carry on their business as contemplated for the performance of the obligations under the binder;
- They are not aware of any previous or future investigation or disciplinary activity by any regulatory body; and
- Entry into the agreement will not conflict with any law, regulation or other document, instrument or agreement.

“A party that holds a binder will perform certain functions for and on behalf of the insurer including issuing policies and handling administration including variations, endorsements, cancellations, and claims,” she said.

Carstensen said the other considerations for negotiating binder agreements were servicing rights, client data and intellectual property, profit share, scope of authority, and termination.