

7 APPOINTMENT OF REPRESENTATIVES AND CREDIT REPRESENTATIVES

User Guide:

This section details the requirements for employed representatives and credit representatives including:

- + Background checks;
- + Appointment and authorisation (including sub-authorisation);
- + Notifying them to ASIC; and
- + Cross endorsements.

Remember that any person who provides credit services on your behalf is your representative. This includes employees.

It also includes contracted staff and other persons who are external to your business that you authorise to provide credit services – these external people are called credit representatives and a number of special obligations apply when you appoint a credit representative.

TIP

Remember that the word “representative” can be used to refer to any employee or external credit representative that you have authorised to provide credit services on your behalf.

7.1 PRE-CONDITIONS TO REPRESENTATIVE APPOINTMENT

Before appointing any representative, you will need to:

- + Establish the person’s identity;
- + Be sure that the person is suitable to provide credit services. See the section below on Background Checks; and
- + Ensure that the person is a member of AFCA.¹⁴⁹

If you are appointing a person as a credit representative, rather than an employee, then in addition to the above, you will need to make reasonable enquiries to:

- + Ensure that the person is a member of the approved external dispute resolution scheme, AFCA.¹⁵⁰
- + Check that the person has not already been appointed as a credit representative for another credit licensee.¹⁵¹ You can do this by checking the Credit Representative

¹⁴⁹ s 64(5)(c) *NCCP Act 2009* (Cth). The authorisation is of no effect if they are not a member

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¹⁵¹ Reg 9(5) *NCCP Regulations 2010* (Cth)

Register on ASIC's website. It is also advisable to ask the person to sign an acknowledgement to this effect as part of the recruitment process; and

- + If the person has already been appointed as a credit representative of another credit licensee, then:
 - any document lodged with ASIC must contain the credit representative's identification number; and
 - you will need to obtain the consent of the other credit licensee to your appointment.¹⁵² See the section on Cross Endorsements.

7.2 BACKGROUND CHECKS

To ensure that you do not appoint any 'bad apples', undertake the following checks before appointing representatives and credit representatives:

- + Obtain a detailed resume.
- + Obtain at least two business references.
- + Check that they have the appropriate education and experience for their role e.g. if they will provide mortgage broking services, they must have a Certificate IV in Finance and Mortgage Broking. Ask to see verification of all the person's qualifications and training and if appropriate, check with the educational institution.
- + Obtain a criminal history check – an 'ASIC Consumer Credit/Financial Services Licensing Requirements' check can be obtained from the Australian Federal Police (www.afp.gov.au). More than one name check may be needed if the person has been known by other names. Overseas criminal history checks may be necessary if the person has ever lived in Australia or only recently arrived;¹⁵⁴ and
- + Check ASIC's register of banned and disqualified persons.

For Responsible Managers and Fit and Proper Persons, you must also obtain bankruptcy checks – these can be obtained through Index Search Agents who have been authorised by the Australian Financial Security Authority (details available at <https://www.afsa.gov.au/resources/npil>).¹⁵⁵

TIP

It is also a good idea to check if the person has other business interests – if so, there must be appropriate arrangements to manage these interests and ensure that the nature of the business does not give rise to a conflict of interest, e.g. directorship of another financial services business.

¹⁵² s 66 NCCP Act 2009 (Cth)

¹⁵³ RG 205.99 ASIC Regulatory Guide 205: Credit licensing – General conduct obligations, April 2020

¹⁵⁴ More information about criminal history checks can be found in RG 204.285 – 204.291 ASIC Regulatory Guide 204: applying for and varying a credit licence, October 2020

¹⁵⁵ For more information about bankruptcy checks see RG 204.292 – 204.299 ASIC Regulatory Guide 204: applying for and varying a credit licence, October 2020