

A financial advice Licensee must notify ASIC if any financial adviser/planner fails to meet FAS's continuing professional development requirements.⁴⁴¹

Training Records

To be able to demonstrate that you have complied with ASIC's human resources capacity requirements, maintain records of the following:

- All appointments, authorisations, succession plans for and terminations of Responsible Managers, representatives, authorised representatives and administrative/support staff and referrers, including:
 - Copies of documents such as agreements; and
 - Details of their authorisations, training and qualifications, background checks and references;
- Completion of required training and professional development;
- Monitoring and supervision outcomes and remedial actions taken;
- Proof that consequence management has been implemented in the event of a failure to fulfil training plans or a compliance failure; and
- Proof that a Training or Compliance Manager has regularly reviewed these records.

A financial advice Licensee must retain evidence of the continuing professional development undertaken by financial advisers/planners for at least 12 months after the end of the relevant CPD year.⁴⁴²

15. Responsible Managers

15.1 What are they?

Responsible Managers (previously known as 'responsible officers') are senior managers who are directly responsible for making significant day-to-day decisions regarding the provision of financial services by a Licensee.⁴⁴³

In addition to having responsibility for significant day-to-day decisions, Responsible Managers must also have enough time available to make these decisions.⁴⁴⁴ Before nominating a Responsible Manager, consider if the proposed person has the time to devote to the role.

This is especially important if the person already acts in this capacity for another Licensee – either in your business group or externally. Consider:⁴⁴⁵

- Is the candidate a Key Person for another Licensee;
- Whether any other Licensee(s) share common systems and processes e.g. members of the same corporate group operating from the same premises using the same staff;
- How many staff need to be supervised and whether they are in different locations; and

⁴⁴¹ s922HB *Corporations Act 2001* (Cth)

⁴⁴² s922HC *Corporations Act 2001* (Cth)

⁴⁴³ RG 105.22 ASIC Regulatory Guide 105: Licensing: Organisational competence, June 2022

⁴⁴⁴ RG 105.26 ASIC Regulatory Guide 105: Licensing: Organisational competence, June 2022

⁴⁴⁵ RG 105.27 ASIC Regulatory Guide 105: Licensing: Organisational competence, June 2022

- The nature, scale and complexity of the businesses to be overseen.

15.2 Who can be a Responsible Manager

Responsible Managers must be in a position to determine how a Licensee's financial services are provided and to supervise their provision (although they may not necessarily provide the services themselves). They do not need to be appointed officers of the company (i.e. directors or secretary).⁴⁴⁶

Examples of people who may be appropriate candidates for this role are:

- Principals or Directors;
- Chief Executive Officer;
- Operations Manager; and
- Adviser Managers.

Recent ASIC enforcement activity indicates that a Responsible Manager's 'day job', such as those mentioned above, do not excuse the responsible manager from performing the role of responsible manager properly.

Generally, roles such as Finance Manager, Office Manager or Compliance and Risk Manager are unlikely to be suitable to be a Responsible Manager unless they actually supervise the provision of financial services. However, they might be suitable to be appointed as a 'back up' to another Responsible Manager.⁴⁴⁷

Consultants can act as a Responsible Manager – it is not essential for a Responsible Manager to be employed by a Licensee. Consultants can be engaged under a written Responsible Manager service agreement⁴⁴⁸ on the basis that they have the requisite authority from the Licensee to be involved in making key business decisions or overseeing decisions in relation to the provision of financial services.

To accept an appointment, ASIC must be satisfied that consultants who act as Responsible Managers have the authority, capacity, time and resources to fulfil this role (especially if they are not engaged full time or act for a number of Licensees). The amount of time needed for the role will depend on the nature, scale and complexity of the business.

TRAP

To be 'responsible', Responsible Managers need to be actively involved in the business. Absent Responsible Managers are unlikely to meet ASIC's requirements.

15.3 How Many are Required?

The number of Responsible Managers that a Licensee needs will vary depending on the nature, scale and complexity of their business.⁴⁴⁹

Generally, ASIC expects Licensees to nominate two or more Responsible Managers⁴⁵⁰ but for small businesses, one may be acceptable (e.g. where you operate a one person financial

⁴⁴⁶ RG 105.25 ASIC Regulatory Guide 105: Licensing: Organisational competence, June 2022

⁴⁴⁷ RG 105.23 ASIC Regulatory Guide 105: Licensing: Organisational competence, June 2022

⁴⁴⁸ Source Compliance has a template Responsible Manager Service Agreement available for purchase from the eStore - <https://www.thefoldlegal.com.au/estore/responsible-manager-service-agreement>

⁴⁴⁹ RG 105.49 ASIC Regulatory Guide 105: Licensing: Organisational competence, June 2022

⁴⁵⁰ RG 105.49 ASIC Regulatory Guide 105: Licensing: Organisational competence, June 2022