

13 RESPONSIBLE MANAGERS

13.1 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.³⁵⁴

In addition to having responsibility for significant day-to-day decisions, Responsible Managers must also have enough time available to make those decisions.³⁵⁵ Before nominating a Responsible Manager, consider whether 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:³⁵⁶

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

13.2 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).³⁵⁷

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

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

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

³⁵⁴ RG 105.20 ASIC Regulatory Guide 105: Licensing: Organisational competence, April 2020

³⁵⁵ RG 105.24 ASIC Regulatory Guide 105: Licensing: Organisational competence, April 2020

³⁵⁶ RG 105.25 ASIC Regulatory Guide 105: Licensing: Organisational competence, April 2020

³⁵⁷ RG 105.23 ASIC Regulatory Guide 105: Licensing: Organisational competence, April 2020

supervise the provision of financial services. However, they might be suitable to be appointed as a 'back up' to another Responsible Manager.³⁵⁸

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 agreement³⁵⁹ 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.

13.3 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.³⁶⁰

Generally, ASIC expects Licensees to nominate two or more Responsible Managers³⁶¹ but for small businesses, one may be acceptable (e.g. where you operate a one person advisory business).³⁶² If there is only one, make provision for what will occur if that person is unavailable at any time.

13.4 KEY PERSON CONDITION

ASIC can impose a 'key person condition' on an AFS Licence when it is granted or varied.

Usually this occurs when there is only one Responsible Manager or because one particular Responsible Manager is considered to have important qualifications/skills for a particular financial service. In such cases, ASIC considers this person to be critical to demonstrating that the Licensee has the organisational competence to provide the financial services for which the Licensee is authorised.³⁶³

³⁵⁸ RG 105.21 ASIC Regulatory Guide 105: Licensing: Organisational competence, April 2020

³⁵⁹ The Fold has a template Responsible Manager Service Agreement available for purchase from the eStore

³⁶⁰ RG 105.42 ASIC Regulatory Guide 105: Licensing: Organisational competence, April 2020

³⁶¹ RG 105.43 ASIC Regulatory Guide 105: Licensing: Organisational competence, April 2020

³⁶² RG 105.44 ASIC Regulatory Guide 105: Licensing: Organisational competence, April 2020016

³⁶³ RG 105.45 and RG 105.93 ASIC Regulatory Guide 105: Licensing: Organisational competence, April 2020