

AFS licence application—steps and timing

An Australian financial services (AFS) licence authorises the provision of financial services in Australia.

How McMahon Clarke Legal can help?

The legal and regulatory requirements to obtain an AFS licence are complex. McMahon Clarke Legal has prepared and reviewed numerous AFS licence applications and supporting documents for financial planners, product issuers, responsible entities, research houses, promoters and stockbrokers.

McMahon Clarke Legal can manage the entire AFS licensing process for you and prepare the documentation in support of your application. In addition, McMahon Clarke Legal can manage your ongoing compliance obligations.

The purpose of this factsheet is to provide you with a general outline of the steps and timing involved in applying for an AFS licence. As a general rule, you should allow three to four months to obtain a draft AFS licence from the Australian Securities and Investments Commission (ASIC).

Step 1—Preparation of the AFS licence application

The initial documents which need to be prepared for an AFS licence application include the following:

- ASIC form FS01.
- Business description statement. This document sets out the nature of the financial services business to be operated and other information as required by ASIC.
- Organisational expertise chart. This document summarises the education and experience of the responsible managers.
- Financial statements, including balance sheet and cash flow projection. Additional financial requirements may apply depending on the nature of the financial services to be provided.
- Membership with an approved external dispute resolution (EDR) scheme, such as the Financial Ombudsman Service. This is only required if financial services will be provided to retail clients.

In addition to the above, there are a number of supporting documents required for each responsible manager, as follows:

- Statement of personal information.
- Australian Federal Police (AFP) search—this search result must be less than 12 months old.
- Two references—these must be less than 12 months old. The references need to outline the responsible manager's financial services experience.
- Bankruptcy search—this search result must be less than 12 months old.
- Certified copies of relevant qualification certificates—each responsible manager will need to provide certified copies of any relevant qualifications which they have obtained.

Timing—allow at least four weeks to prepare the application and collate the necessary supporting documents. Additional time may be required to obtain the results of the AFP check, which can take up to six weeks to obtain. Accordingly, you should request AFP searches for each proposed responsible manager as soon as possible.

Step 2—Compliance arrangements

As part of the AFS licence application process, ASIC will generally request details of the applicant's compliance arrangements and other procedures, such as risk management and conflicts of interest statements.

We recommend these compliance arrangements be prepared as early as possible to ensure there are no delays in meeting ASIC's lodgement timeframes. We can provide you with a list of the compliance arrangements and statements you will be required to provide ASIC as part of the AFS licence application.

Timing—the compliance arrangements can generally be prepared within four weeks; however, they can be finalised whilst we are waiting for ASIC to respond to the application.

Step 3—ASIC review

ASIC's review of the AFS licence application will initially involve confirmation the application has been accepted.

ASIC will then commence its review of the application, which includes considering the suitability of the proposed responsible managers and the resources available to the applicant.

During this process, ASIC may issue "requisition letters" which will outline any areas of concern or request further information.

Timing—the AFS licence application will generally be allocated to an ASIC officer within four weeks of submission of the hard copy of the application. ASIC's initial review of the application will generally be completed within a further two to three weeks.

You should allow at least four weeks to resolve any issues raised by ASIC during the review process. It is important to note that responses are generally required to be provided to ASIC within five business days of the issue of the requisition letter.

Assuming all issues raised by ASIC are adequately resolved, a draft AFS licence will be issued, subject to satisfaction of a number of conditions.

Step 4—AFS licence issue

The AFS licence will be issued once all of the outstanding conditions attached to the draft AFS licence have been satisfied. The conditions to be satisfied are dependent on the nature of the financial services to be provided.

For responsible entity applicants, the conditions will generally include the following:

- Professional indemnity insurance—the terms of the insurance cover must satisfy the requirements of ASIC Regulatory Guide 126.
- Custodian—confirmation of the appointment of a custodian (if applicable).
- Registration of a managed investment scheme—this requires the lodgement of the constitution and compliance plan for the scheme. Applicants have up to four months to lodge scheme documents for registration from the date of issue of the draft AFS licence. This condition only applies to named scheme applications.
- Financial statements—depending on the time which has elapsed between the date of the issue of the draft AFS licence and the lodgement of the scheme documents, ASIC may require updated financial statements to be lodged.

For other types of AFS licence applicants, such as financial planners or security dealers, the conditions will generally only include providing ASIC with evidence of its professional indemnity insurance; however, the requirement to hold professional indemnity insurance only applies to AFS licensee authorised to provide financial services to retail clients.

As noted above, the terms of the insurance cover must satisfy the requirements of ASIC Regulatory Guide 126.

Timing—the outstanding requirements can be satisfied on the same day the draft AFS licence is issued, subject to the applicant having the applicable documentation in place.

If the registration of a managed investment scheme is required as part of the issue of the draft AFS licence, then ASIC will have two weeks to review the scheme documents (i.e., the constitution and compliance plan) once lodged.



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