

## 11 **RESPONSIBLE MANAGERS**

### 11.1 WHAT ARE THEY?

Responsible Managers (previously known as 'responsible officers'<sup>187</sup>) are senior managers who are directly responsible for making significant day-to-day decisions regarding the provision of financial services by a Licensee.<sup>188</sup>

Having responsibility for significant day-to-day decisions also means having enough time available to make these decisions.<sup>189</sup> 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:<sup>190</sup>

- + 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.

### 11.2 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).<sup>191</sup>

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

<sup>187</sup> ASIC RG 105.34

<sup>188</sup> ASIC RG 105.21

<sup>189</sup> ASIC RG 105.24 - 25

<sup>190</sup> ASIC RG 105.24 – 25

<sup>191</sup> ASIC RG 105.23

supervise the provision of financial services. However, they might be suitable to be appointed as a 'back up' to another Responsible Manager.<sup>192</sup>

Consultants can act as Responsible Managers – it is not essential for a Responsible Manager to be employed by a Licensee. Consultants can be engaged under a written consultancy agreement 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.

**11.3 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.

Generally, ASIC expects Licensees to nominate two or more Responsible Managers<sup>193</sup> but for small businesses, one may be acceptable (e.g. where you operate a one person advisory business).<sup>194</sup> If there is only one, make provision for what will occur if that person is unavailable at any time.

**11.4 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.

If a key person condition applies to your AFS Licence, notify ASIC within 5 business days if the key person can no longer act in this role.<sup>195</sup> You will also need to nominate another

<sup>192</sup> ASIC RG 105.22

<sup>193</sup> ASIC RG 105.43

<sup>194</sup> ASIC RG 105.45

<sup>195</sup> ASIC Pro Forma 209