



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 110

General conduct obligations of credit licensees

July 2009

About this paper

This paper sets out ASIC's proposals for guidance about meeting the general conduct obligations of Australian credit licensees under cl 47(1) of the National Consumer Credit Protection Bill 2009. We propose to provide this guidance in an updated version of our existing Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104). Attached to this paper is a draft version of the updated RG 104.

We are seeking the views of potential credit licensees and consumers on our proposals.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 15 July 2009 and is based on the National Consumer Credit Protection Bill 2009 as introduced into the Australian Parliament on 25 June 2009.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on the general conduct obligations of Australian credit licensees under cl 47(1) of the National Consumer Credit Protection Bill 2009. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Business Cost Calculator Report and/or a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 12 August 2009 to:

Ella Cebon and Sophie Waller
Strategic Policy
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001
facsimile: (03) 9280 3200
email: policy.submissions@asic.gov.au

What will happen next?

| | | |
|----------------|----------------|--|
| Stage 1 | 15 July 2009 | ASIC consultation paper released |
| Stage 2 | 12 August 2009 | Comments due on the consultation paper |
| Stage 3 | November 2009 | Regulatory guide released |

A Background to proposals

Key points

Credit licensees must comply with a number of 'general conduct obligations', which are set out in cl 47(1) of the National Credit Bill.

These general conduct obligations are principles-based and it is intended that licensees have flexibility in adopting practices to meet the obligations that suit their business.

While credit licensees are responsible for determining how they should meet the obligations, we are proposing to provide guidance about our expectations for compliance.

We currently provide guidance for AFS licensees about their general conduct obligations under s912A of the *Corporations Act 2001* (in RG 104). We are proposing to update RG 104 to include guidance for credit licensees about meeting their obligations under cl 47(1) of the National Credit Bill.

Regulation of consumer credit by the Commonwealth

- 1 The Council of Australian Governments (COAG) agreed on 3 July 2008 that the Commonwealth would assume responsibility for the regulation of consumer credit. The Australian Government introduced the National Consumer Credit Protection Bill 2009 (National Credit Bill) into Parliament on 25 June 2009.
- 2 Regulation of consumer credit in the new regime will be the responsibility of ASIC. A key component of the new credit regime is that businesses who provide credit services or who are engaged in other 'credit activities' will be required to be licensed and meet a range of general conduct obligations.
- 3 This consultation paper is based on the National Credit Bill. We will monitor the progress of the Bill, and will revise our proposals if the general conduct obligations materially change before they are finally enacted. Our final position will be published in a regulatory guide later this year and will be based on the final legislation as passed by the Australian Parliament.

Note: A copy of the National Credit Bill may be downloaded from the Australian Parliament website at:

<http://www.treasury.gov.au/consumercredit/content/legislation.asp>

New general conduct obligations for businesses that engage in credit activities

- 4 The National Credit Bill requires persons who engage in credit activities to:
- (a) initially, be registered with ASIC; and
 - (b) subsequently, hold an Australian credit licence (credit licence).
- 5 Under cl 47(1) of the National Credit Bill, credit licensees must meet ‘general conduct obligations’.
- 6 These obligations require credit licensees to:
- (a) do all things necessary to ensure that the credit activities authorised by the licence are engaged in efficiently, honestly and fairly (cl 47(1)(a));
 - (b) have in place adequate arrangements to ensure that clients are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by the credit licensee or their representatives (cl 47(1)(b));
 - (c) comply with the conditions on the licence (cl 47(1)(c));
 - (d) comply with the credit legislation (cl 47(1)(d));
 - (e) take reasonable steps to ensure that their representatives comply with the credit legislation (cl 47(1)(e));
 - (f) maintain the competence to engage in the credit activities authorised by the licence (cl 47(1)(f));
 - (g) ensure that their representatives are adequately trained, and are competent, to engage in the credit activities authorised by the licence (cl 47(1)(g));
 - (h) have an internal dispute resolution procedure that:
 - (i) complies with standards and requirements made or approved by ASIC in accordance with the regulations; and
 - (ii) covers disputes in relation to the credit activities engaged in by the licensee or their representatives (cl 47(1)(h));
 - (i) be a member of an approved external dispute resolution scheme (cl 47(1)(i));
 - (j) have compensation arrangements in accordance with cl 48 (cl 47(1)(j));
 - (k) have adequate arrangements and systems to ensure compliance with the licensee’s obligations under cl 47, and a written plan that documents those arrangements and systems (cl 47(1)(k));
 - (l) unless they are a body regulated by APRA:
 - (i) have available adequate resources (including financial, technological and human resources) to engage in the credit

activities authorised by the licence and to carry out supervisory arrangements (cl 47(1)(l)(i)); and

- (ii) have adequate risk management systems (cl 47(1)(l)(ii)); and
- (m) comply with any other obligations that are prescribed by the regulations (cl 47(1)(m)).

Proposed ASIC guidance on the general conduct obligations

- 7 The obligations set out in cl 47(1) are high-level and principles-based. In order to assist credit licensees, we are proposing to provide guidance about our expectations for compliance with the general conduct obligations.
- 8 We propose to provide this guidance by updating Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104) to include guidance for credit licensees. Our guidance aims to clarify our expectations, but also allow credit licensees flexibility to meet the obligations in a way that is most appropriate for their business.
- 9 This approach is in line with the commentary on the Explanatory Memorandum of the National Credit Bill, introduced into Parliament on 25 June 2008, which states that the obligations are ‘principles-based and it is intended that licensees can be flexible in adopting practices that suit their organisation’ (para 2.105).

Attached draft version of updated RG 104

- 10 We have attached for your feedback a draft version of the updated RG 104. We have used marked up text to illustrate the substantive changes from the previous version of RG 104.

B Measures for complying with the general conduct obligations

Key points

This section sets out our proposals for guidance for credit licensees about meeting their general conduct obligations under cl 47(1) of the National Credit Bill.

Guidance about key compliance concepts

Proposal

- B1** We propose to provide high level guidance for credit licensees about key compliance concepts in order to help them to comply with their general conduct obligations. These key compliance concepts include the following:
- (a) The actions that a credit licensee needs to take in order to comply with the general conduct obligations in cl 47(1) will depend on the nature, scale and complexity of their business.
 - (b) Credit licensees must have compliance measures for ensuring that they comply with their general conduct obligations under cl 47(1). This includes documenting, implementing, monitoring and reviewing the compliance measures.
 - (c) Credit licensees can outsource functions that relate to their credit licence, but not their responsibility as a licensee.

This guidance is set out in Section B of the draft updated version of RG 104 that is attached to this paper.

Your feedback

- B1Q1 Do you agree with the guidance we have proposed in Section B of the draft update to RG 104?
- B1Q2 Is there any additional guidance you think would be useful?
- B1Q3 Do you think we should provide this guidance for credit licensees in an update to RG 104 or should we provide the guidance in a separate guide?

Rationale

- 11 We think that it is appropriate to update RG 104 to provide guidance for credit licensees about key compliance concepts that are relevant to complying with the general conduct obligations under cl 47(1) of the National Credit Bill.
- 12 As the general conduct obligations for credit licensees are broadly similar to those for AFS licensees, we think it is appropriate to provide similar

guidance to both groups of licensees. In addition, the key compliance concepts set out in Section B of RG 104 are good business practice and can be appropriately applied to both financial services and credit businesses.

- 13 Providing similar guidance for credit and AFS licensees will also facilitate compliance of entities that are licensed under both regimes.

Guidance about the broad compliance obligations of credit licensees

Proposal

- B2** We propose to provide high-level guidance for credit licensees about complying with the 'broad compliance obligations'. These broad compliance obligations are:
- (a) doing all things necessary to ensure that the credit activities authorised by the licence are engaged in efficiently, honestly and fairly (cl 47(1)(a));
 - (b) complying with the conditions on the licence (cl 47(1)(c)); and
 - (c) complying with the credit legislation (cl 47(1)(d)).

This guidance is set out in Section C of the draft updated version of RG 104 that is attached to this paper.

Your feedback

B2Q1 Do you agree with the guidance we have proposed in Section C of the draft update to RG 104?

B2Q2 Is there any additional guidance you think would be useful?

Rationale

- 14 We think that it is appropriate to update RG 104 to provide guidance for credit licensees about complying with their broad compliance obligations. The broad compliance obligations of credit licensees are equivalent to those of AFS licensees. The guidance we have previously provided to AFS licensees is high-level, to allow AFS licensees to take a flexible approach to compliance.
- 15 We think that a high-level approach to guidance is also appropriate in relation to credit licensees and will allow licensees to develop a compliance plan that suits their business. This approach also accords with the commentary in the Explanatory Memorandum for the National Credit Bill (paragraph 2.105).

Guidance about risk management systems

Proposal

- B3** We propose to provide guidance for non-APRA-regulated credit licensees about having measures in place to ensure that they comply with the obligation to have adequate risk management systems. This includes:
- (a) guidance about how we expect these credit licensees will structure their risk management systems; and
 - (b) that the extent of a credit licensee's risk management systems will depend on the nature, scale and complexity of their business.

We also propose to provide guidance for *all* credit licensees about conflicts of interest.

This guidance is set out in Section D of the draft updated version of RG 104 that is attached to this paper.

Your feedback

- B3Q1** Generally, do you agree with the guidance we have proposed in Section D of the draft update to RG 104?
- B3Q2** Do you agree with the guidance we have provided in relation to conflicts of interest (RG 104.75–RG104.79)?
- B3Q3** Is there any additional guidance you think would be useful?

Rationale

- 16 We think that it is appropriate to update RG 104 to provide guidance for non-APRA-regulated credit licensees about compliance measures that are relevant to complying with the general conduct obligation under cl 47(1)(l)(ii) to have adequate risk management systems in place.
- 17 As the general conduct obligations in relation to risk management for non-APRA regulated credit licensees are broadly similar to those for non-APRA regulated AFS licensees, we think it is appropriate to provide similar guidance to both groups of licensees.
- 18 In addition, in Section D of the draft update to RG 104 we have also provided some brief guidance about complying with the general conduct obligation (under cl 47(1)(b)) relating to conflicts of interest.

Guidance about how credit licensees should supervise their representatives

Proposal

- B4** We propose to provide guidance for credit licensees about having measures in place for monitoring and supervising representatives. We

propose that this guidance will cover topics such as monitoring and supervision of representatives, including employment screening.

This guidance is set out in Section E of the draft updated version of RG 104 that is attached to this paper.

Your feedback

B4Q1 Do you agree with the guidance we have proposed in Section E of the draft update to RG 104?

B4Q2 Is there any additional guidance you think would be useful?

Rationale

- 19 We think that it is appropriate to update RG 104 to provide guidance for credit licensees about complying with the general conduct obligation under cl 47(1)(e) to ensure that the credit licensee's representatives comply with the credit legislation. Broadly, we have updated our existing guidance for AFS licensees to also apply to credit licensees.

Note: We are consulting separately on training requirements for representatives of credit licensees.

Guidance about the resources of credit licensees

Proposal

B5 We propose to provide guidance for non-APRA-regulated credit licensees about having adequate resources to engage in credit activities. We propose that this guidance will cover topics such as:

- (a) having adequate human resources; and
- (b) having adequate technological resources.

This guidance is set out in Section F of the draft updated version of RG 104 that is attached to this paper.

Your feedback

B5Q1 Do you agree with the guidance we have proposed in Section F of the draft update to RG 104?

B5Q2 Is there any additional guidance you think would be useful?

Rationale

- 20 We have updated our existing guidance on resources so that it also applies to credit licensees. We think that this approach is appropriate because the guidance is high-level and can be applied to both financial services and credit businesses.

Note: We are consulting separately on compensation and financial resources requirements for representatives of credit licensees. For more information, see Consultation Paper 111 *Compensation and financial resources arrangements for consumer credit*.

Questions to help credit licensees design and test their compliance measures

Proposal

B6 We propose to provide a list of questions in Appendix 1 of the draft update to RG 104 to help credit licensees to design and test their compliance measures.

Your feedback

B6Q1 Do think that these questions will help credit licensees to design and test their compliance measures?

B6Q2 Do you think that it would be useful to provide other questions to assist credit licensees?

Rationale

21 Appendix 1 of the attached draft update to RG 104 contains a list of questions for licensees to consider when designing and testing measures to ensure that they are complying with the general conduct obligations. Although these questions were originally written for AFS licensees, we have updated them to also apply to credit licensees, as we think the questions will help credit licensees in developing their compliance measures.

C Regulatory and financial impact

- 22 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:
- (a) ensuring that credit licensees comply with the general conduct obligations in cl 47(1) of the National Credit Bill; and
 - (b) not causing credit licensees to incur unreasonable costs in compliance.
- 23 Before settling on a final policy, we will comply with the requirements of the Office of Best Practice Regulation (OBPR) by:
- (a) considering all feasible options;
 - (b) if regulatory options are under consideration, undertaking a preliminary assessment of the impacts of the options on business and individuals or the economy;
 - (c) if our proposed option has more than low impact on business and individuals or the economy, consulting with OBPR to determine the appropriate level of regulatory analysis; and
 - (d) conducting the appropriate level of regulatory analysis—that is, completing a Business Cost Calculator report (BCC report) and/or a Regulation Impact Statement (RIS).
- 24 All BCC reports and RISs are submitted to the OBPR for approval before we make any final decision. Without an approved BCC report and/or RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 25 To ensure that we are in a position to properly complete any required BCC report or RIS, we ask you to provide us with as much information as you can about:
- (a) the likely compliance costs;
 - (b) the likely effect on competition; and
 - (c) other impacts, costs and benefits,
- of our proposals or any alternative approaches: see ‘The consultation process’, p. 4.

List of proposals and questions

| Proposal | Your feedback | |
|--|-------------------------------------|--|
| <p>B1 We propose to provide high level guidance for credit licensees about key compliance concepts in order to help them to comply with their general conduct obligations. These key compliance concepts include the following:</p> <p>(a) The actions that a credit licensee needs to take in order to comply with the general conduct obligations in cl 47(1) will depend on the nature, scale and complexity of their business.</p> <p>(b) Credit licensees must have compliance measures for ensuring that they comply with their general conduct obligations under cl 47(1). This includes documenting, implementing, monitoring and reviewing the compliance measures.</p> <p>(c) Credit licensees can outsource functions that relate to their credit licence, but not their responsibility as a licensee.</p> <p>This guidance is set out in Section B of the draft updated version of RG 104 that is attached to this paper.</p> | <p>B1Q1</p> <p>B1Q2</p> <p>B1Q3</p> | <p>Do you agree with the guidance we have proposed in Section B of the draft update to RG 104?</p> <p>Is there any additional guidance you think would be useful?</p> <p>Do you think we should provide this guidance for credit licensees in an update to RG 104 or should we provide the guidance in a separate guide?</p> |
| <p>B2 We propose to provide high-level guidance for credit licensees about complying with the 'broad compliance obligations'. These broad compliance obligations are:</p> <p>(a) doing all things necessary to ensure that the credit activities authorised by the licence are engaged in efficiently, honestly and fairly (cl 47(1)(a));</p> <p>(b) complying with the conditions on the licence (cl 47(1)(c)); and</p> <p>(c) complying with the credit legislation (cl 47(1)(d)).</p> <p>This guidance is set out in Section C of the draft updated version of RG 104 that is attached to this paper.</p> | <p>B2Q1</p> <p>B2Q2</p> | <p>Do you agree with the guidance we have proposed in Section C of the draft update to RG 104?</p> <p>Is there any additional guidance you think would be useful?</p> |

| Proposal | Your feedback | |
|---|-------------------------------------|--|
| <p>B3 We propose to provide guidance for non-APRA-regulated credit licensees about having measures in place to ensure that they comply with the obligation to have adequate risk management systems. Thus includes:</p> <ul style="list-style-type: none"> (a) guidance about how we expect these credit licensees will structure their risk management systems; and (b) that the extent of a licensee's risk management systems will depend on the nature, scale and complexity of their business. <p>We also propose to provide guidance for all credit licensees about conflicts of interest.</p> <p>This guidance is set out in Section D of the draft updated version of RG 104 that is attached to this paper.</p> | <p>B3Q1</p> <p>B3Q2</p> <p>B3Q3</p> | <p>Generally, do you agree with the guidance we have proposed in Section D of the draft update to RG 104?</p> <p>Do you agree with the guidance we have provided in relation to conflicts of interest (RG 104.75-RG104.79)?</p> <p>Is there any additional guidance you think would be useful?</p> |
| <p>B4 We propose to provide guidance for credit licensees about having measures in place for monitoring and supervising representatives. We propose that this guidance will cover topics such as monitoring and supervision of representatives, including employment screening.</p> <p>This guidance is set out in Section E of the draft updated version of RG 104 that is attached to this paper.</p> | <p>B4Q1</p> <p>B4Q2</p> | <p>Do you agree with the guidance we have proposed in Section E of the draft update to RG 104?</p> <p>Is there any additional guidance you think would be useful?</p> |
| <p>B5 We propose to provide guidance for non-APRA-regulated credit licensees about having adequate resources to engage in credit activities. We propose that this guidance will cover topics such as:</p> <ul style="list-style-type: none"> (a) having adequate human resources; and (b) having adequate technological resources. <p>This guidance is set out in Section F of the draft updated version of RG 104 that is attached to this paper.</p> | <p>B5Q1</p> <p>B5Q2</p> | <p>Do you agree with the guidance we have proposed in Section F of the draft update to RG 104?</p> <p>Is there any additional guidance you think would be useful?</p> |
| <p>B6 We propose to provide a list of questions in Appendix 1 of the draft update to RG 104 to help credit licensees to design and test their compliance measures.</p> | <p>B6Q1</p> <p>B6Q2</p> | <p>Do think that these questions will help credit licensees to design and test their compliance measures?</p> <p>Do you think that it would be useful to provide other questions to assist credit licensees?</p> |



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 104

Licensing: General conduct obligations of licensees

July 2009

About this guide

This is a guide for Australian financial services (AFS) licensees [and Australian credit licensees \(credit licensees\)](#), and licence applicants.

This guide describes what we look for when we assess compliance with most of the general obligations under s912A(1) of the *Corporations Act 2001* [\(for AFS licensees\)](#) and s47(1) of the *National Consumer Credit Protection Act 2009* [\(for credit licensees\)](#).

The general obligations not covered in this guide are covered in separate guides: see Table 1 in Section A.

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- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This version was issued on 15 July 2009 and is based on legislation and regulations as at 15 July 2009.

Previous versions:

- Superseded Regulatory Guide 104, issued October 2007
- Sections A–D and F–G of Superseded Policy Statement 164 *Licensing: Organisational capacities* (PS 164), issued 28 November 2001, updated 8 November 2002, rebadged as a regulatory guide 5 July 2007
- parts of Superseded Policy Statement 130 *Managed investments: Licensing* (RG 130), issued 3 August 1998, updated 4 November 1998, 2 June 1999 and 4 October 1999, rebadged as a regulatory guide 5 July 2007

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

AFS licensees and credit licensees must comply with the general conduct obligations: see under s912A(1), *Corporations Act 2001 (Corporations Act)*; s47(1), *National Consumer Credit Protection Act 2009 (National Credit Act)*. and Licence applicants under the *Corporations Act* or the *National Credit Act* must be able to demonstrate in their licence application that they can comply with these general conduct obligations: see RG 104.2–RG 104.6.

As a licensee or licence applicant, you are responsible for deciding how to comply with the general obligations: see RG 104.7–RG 104.9.

To help you comply, this regulatory guide:

- outlines key compliance concepts that apply to all of the general obligations (see Section B);
- describes what we look for when we assess compliance with various general obligations (see Sections C to FG); and
- includes questions to help you design and test your measures for complying with the general obligations (see Appendix 1).

~~RG 000.1RG 104.1 If you are an AFS licensee, you have general obligations under s912A(1) of the *Corporations Act 2001 (Corporations Act)* to:~~ Licensees have the general obligations set out in Table 1 ~~Table 1.~~

Table 1: General obligations of licensees

| Obligation | AFS licensees (<i>Corporations Act</i>) | Credit licensees (<i>National Credit Act</i>) |
|--|--|---|
| <u>Efficiently, honestly, fairly</u> | <u>Do all things necessary to ensure that the financial services covered by your licence are provided efficiently, honestly and fairly (s912A(1)(a))</u> | <u>Do all things necessary to ensure that the credit activities authorised by your licence are engaged in efficiently, honestly and fairly (s47(1)(a))</u> |
| <u>Conflicts of interest</u> | <u>Have adequate arrangements in place for managing conflicts of interest (s912A(1)(aa))</u> | <u>Have in place adequate arrangements to ensure that your clients are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by you or your representatives (s47(1)(b))</u> |
| <u>Compliance with licence conditions</u> | <u>Comply with the conditions on your licence (s912A(1)(b))</u> | <ul style="list-style-type: none"> • <u>Comply with the conditions on your licence ((-s47(1)(c))</u> • <u>Comply with any other obligations that are prescribed by the regulations (s47(1)(m))</u> |

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| <u>Obligation</u> | <u>AFS licensees (Corporations Act)</u> | <u>Credit licensees (National Credit Act)</u> |
|--|--|---|
| <u>Compliance with relevant laws</u> | Comply with the financial services laws (s912A(1)(c)). | Comply with the credit legislation (s47(1)(d)). |
| <u>Ensuring representatives comply</u> | Take reasonable steps to ensure that your representatives comply with the financial services laws (s912A(1)(ca)). | Take reasonable steps to ensure that your representatives comply with the credit legislation (s47(1)(e)). |
| <u>Adequate resources and risk management systems</u> | Unless you are regulated by APRA: <ul style="list-style-type: none"> • have adequate financial, technological and human resources to provide the financial services covered by your licence and to carry out supervisory arrangements (s912A(1)(d)); and • establish and maintain adequate risk management systems (s912A(1)(h)). | Unless you are a body regulated by APRA: <ul style="list-style-type: none"> • have available adequate resources (including financial, technological and human resources) to engage in the credit activities authorised by your licence and to carry out supervisory arrangements (s47(1)(l)(i)); and • have adequate risk management systems (s47(1)(l)(ii)). |
| <u>Organisational competence</u> | Maintain the competence to provide the financial services covered by your licence (s912A(1)(e)). | Maintain the competence to engage in the credit activities authorised by your licence (s47(f)). |
| <u>Training and individual competence</u> | Ensure that your representatives are adequately trained and competent to provide those financial services (s912A(1)(f)). | Ensure that your representatives are adequately trained, and are competent, to engage in the credit activities authorised by your licence (s47(1)(g)). |
| <u>Dispute resolution</u> | If you provide financial services to retail clients, have a dispute resolution system that complies with s912A(2) (s912A(1)(g)). -Section 912A(2) states that the dispute resolution system must consist of: <ul style="list-style-type: none"> • an internal dispute resolution system that: <ul style="list-style-type: none"> – complies with the standards and requirements made or approved by ASIC in accordance with the regulations; and – covers complaints made by retail clients in connection with all financial services covered by the licence; and • membership of an approved external dispute resolution scheme that covers complaints made by retail clients in relation to all financial services covered by the licence | Have an internal dispute resolution procedure that: <ul style="list-style-type: none"> • complies with standards and requirements made or approved by ASIC in accordance with the regulations (s47(1)(h)(i)); and • covers disputes in relation to the credit activities engaged in by you or your representatives (s47(1)(h)(ii)) Be a member of an approved external dispute resolution scheme (s47(1)(i)). |
| <u>Compensation arrangements</u> | Have compensation arrangements in accordance with s912B | Have compensation arrangements in accordance with s48 (s47(1)(j)) |

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| <u>Obligation</u> | <u>AFS licensees (Corporations Act)</u> | <u>Credit licensees (National Credit Act)</u> |
|---|--|---|
| <u>Ensuring compliance with the general obligations</u> | <u>If you are applying for an AFS licence, you must be able to show that you can comply with the general obligations from the time you are granted a licence, and on an ongoing basis: (reg 7.6.03(g))</u> | <u>Have adequate arrangements and systems to ensure compliance with your obligations under s47(1), and a written plan that documents those arrangements and systems (s47(1)(k))</u> |

When you need to comply with the general obligations

~~RG 000.3~~ RG 104.2 You must comply with the general obligations from the time your AFS or credit licence is granted and on an ongoing basis. If we have reason to believe that you are not complying with your obligations, we may take administrative action, which could include suspending or cancelling your licence, or imposing additional licence conditions: s915C(1) and 914A(1), Corporations Act; s55 and 45(1), National Credit Act.

Note: For guidance on our administrative powers, AFS licensees can refer to Regulatory Guide 98 *Licensing: Administrative action against financial services providers* (RG 98). Although we will not initially be issuing specific guidance for credit licensees in relation to administrative action, much of the guidance in RG 98 will also be useful to credit licensees.

~~RG 000.4~~ RG 104.3 If we conduct a surveillance visit on your business, we may check your ongoing compliance with the general obligations, including the measures you have for ensuring compliance.

~~RG 000.5~~ RG 104.4 If you are an AFS licensee and if you breach or are likely to breach your general obligations, you may need to notify us of that breach: s912D, Corporations Act.

Note: For guidance on breach reporting, see Regulatory Guide 78 *Breach reporting by AFS licensees* (RG 78).

Applying for an AFS licence

RG 104.5 If you are applying for an AFS licence or a credit licence, you must be able to show that you can comply with the general obligations from the time you are granted a licence, and on an ongoing basis: reg 7.6.03(g), Corporations Regulations; s47(1)(k), National Credit Act. We cannot grant you a licence if we have any reason to believe:

(a) for AFS licensees, that you will not be able to comply with your general obligations once you have a licence (s913B(1)(b), Corporations Act); or

~~RG 000.6~~ (b) for credit licensees, you are likely to contravene the general conduct obligations (s37(1)(b), National Credit Act).

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Note 1: If you are applying for an AFS licence, you should read the *AFS Licensing Kit* (RG 1–RG 3). The *AFS Licensing Kit* explains the licence application process and the ‘proof’ documents you may need to provide to support your application.

Note 2: If you are applying for a credit licence, you should read the Credit Licensing Kit. The Credit Licensing Kit explains the licence application process and the ‘proof’ documents you may need to provide to support your application. Section 47(1)(k) of the National Credit Act requires that you have adequate arrangements and systems to ensure compliance with your obligations under s47(1) of the National Credit Act, and a written plan that documents those arrangements and systems.

~~RG 000.7~~RG 104.6 We do not expect your business to be fully operational at the time you apply for an AFS licence. However, when you apply, you must be able to show that you have arrangements in place to ensure compliance once you are granted a licence.

What you need to do to comply

~~RG 000.8~~RG 104.7 The general obligations are principles-based and designed to apply in a flexible way. For this reason, we do not think we can or should give prescriptive guidance on what you need to do to comply with them. The Corporations Act and the National Credit Act places responsibility on you to decide how to comply.

~~RG 000.9~~RG 104.8 However, to help you comply, this guide:

- (a) outlines key compliance concepts that apply to all of the general obligations (see Section B);
- (b) describes what we look for when we assess compliance with various general obligations (see Sections C to F); and
- (c) includes questions to help you design and test your measures for complying with the general obligations covered in Sections C to F (see Appendix 1).

~~RG 000.10~~RG 104.9 In this guide we often use the phrase ‘we expect’. In using this phrase, we are describing what we look for when we assess compliance with the general obligations, based on our experience as a regulator of financial services providers and our knowledge of regulatory regimes in other countries. Our expectations are not intended to limit the ways in which you can comply. It is up to you to decide how best to comply with the general obligations.

~~RG 000.11~~RG 104.10 This guide does not cover all of the general obligations. Some general obligations are covered in separate guides: see Table 42.

Table 2: Where to find our guidance on the general obligations

| Type of obligation | General obligation | Where to find our guidance |
|-----------------------------------|---|--|
| Your broad compliance obligations | Providing your financial services efficiently, honestly and fairly | Section C |
| | Complying with the conditions on your licence | Section C |
| | Complying with the financial services laws or credit legislation | Section C |
| Your internal systems | Risk management systems (if you are not regulated by APRA) | Section D |
| | For AFS licensees, arrangements for managing conflicts of interest. For credit licensees, arrangements for ensuring that clients are not disadvantaged by conflicts of interest | Section D. AFS licensees should also see RG 181 Licensing: Managing conflicts of interest. |
| | Dispute resolution system. (For AFS licensees, this only applies where you provide financial services to retail clients) | RG 165 <i>Licensing: Internal and external dispute resolution</i> |
| Your people | Ensuring your representatives comply with the financial services laws (for AFS licensees) or the credit legislation (for credit licensees) | Section E |
| | Ensuring your representatives are adequately trained and competent: | For AFS licensees, see Section E, and, if you provide financial product advice to retail clients, also RG 146 Licensing: Training of financial product advisers. We are consulting separately on training and competence requirements for representatives of credit licensees. |
| | Maintaining the competence to provide your financial services | For AFS licensees, see RG 105 Licensing: Organisational competence. We are consulting separately on organisational competence requirements for credit licensees. |

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| Type of obligation | General obligation | Where to find our guidance |
|--------------------|--|--|
| Your resources | Adequate human and technological resources (if you are not regulated by APRA) | Section F |
| | Adequate financial resources (if you are not regulated by APRA) | For AFS licensees, see RG 166 Licensing: Financial requirements. We are consulting separately on financial requirements for credit licensees: see Consultation Paper 111 Compensation and financial resources arrangements for credit licensees (CP 111). |
| | Having compensation arrangements in place. (For AFS licensees, this only applies where you provide financial services to retail clients) | For AFS licensees, see RG 126 Compensation and insurance arrangements for AFS licensees. We are consulting separately on compensation requirements for credit licensees: see Consultation Paper 111 Compensation and financial resources arrangements for credit licensees (CP 111). |

Underlying principles

This guide aims to strike a balance between certainty and flexibility for licensees, while furthering the primary goals of the licensing regime and the general obligations.

[RG 104.11](#) ~~For AFS licensees, a~~At the broadest level, these regulatory goals are to [promote](#):

- (a) consumer confidence in using financial services [and credit](#); and
- (b) the provision of efficient, honest and fair financial services [and credit](#) by all [AFS](#) licensees and their representatives.

Our regulatory approach

What if you are also regulated by APRA?

~~RG 104.10~~[RG 104.12](#) If you are a body regulated by APRA, you do not have to read Sections D and F of this guide ([except for the paragraphs in Section D relating to conflicts of interest: see RG 104.75–RG 104.79](#)). This is because the general obligations to have adequate resources and risk management systems do not apply to you: s912A(1)(d) and (h), [Corporations Act: s47\(1\)\(l\)](#), [National Credit Act](#). This is the case even if only a part of your financial services [or credit](#) business is an activity that APRA regulates.

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APRA, not ASIC, imposes any requirements for risk management and resources that apply to you.

Note: The term ‘body regulated by APRA’ has the meaning given in s3(2) of the *Australian Prudential Regulation Authority Act 1998*.

[RG 000-15](#)[RG 104.13](#) In administering the other general obligations, we will take into account that you are regulated by APRA and we will aim to minimise regulatory duplication. When you apply for an AFS [or credit](#) licence, we will accept copies of relevant documents you have provided to APRA. In some areas, you may not need to provide particular supporting ‘proof’ documents. We regularly communicate with APRA and coordinate regulatory activities where we share an interest.

Standards and international principles

[RG 000-16](#)[RG 104.14](#) In thinking about how to comply with your obligations, you might find it helpful to look at good industry practice as captured in standards. Industry and Australian standards are relevant to most licensees because these have been drafted with the Australian regulatory environment in mind. For licensees with larger or more complex businesses, or licensees that are part of a global business, international principles might also be relevant.

[RG 000-17](#)[RG 104.15](#) We also use standards in a similar way—that is, as a guide to good industry practice. However, we check compliance with the law and licence conditions, not with standards—unless, the law or your licence conditions require you to comply with a particular standard. [For example, Regulatory Guide 165 Licensing: Internal and external dispute resolution \(RG 165\) requires licensees to comply with certain elements of AS ISO 10002–2006 Customer satisfaction—Guidelines for complaints handling in organisations.](#)

[RG 000-18](#)[RG 104.16](#) We aim to work with industry, consumer groups and Standards Australia to develop standards as a means of setting good practice. We will also approve codes of conduct where we have a regulatory responsibility to do so.

Note: [AFS licensees can refer to](#) our guidance on approving codes of conduct under s1101A of the Corporations Act, [which](#) is set out in Regulatory Guide 183 *Approval of financial services sector codes of conduct* (RG 183).

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B Key compliance concepts

Key points

What you need to do depends on the nature, scale and complexity of your business: see RG 104.18–RG 104.19.

You must have measures for ensuring you comply with your obligations as a licensee: see RG 104.22–RG 104.34.

You can outsource functions, but not your responsibility as a licensee: see RG 104.35–RG 104.39.

~~RG 000.22~~ [RG 104.17](#) This section outlines key compliance concepts that underpin what we look for when we assess compliance with the general obligations. You need to bear these key concepts in mind when reading Sections C to F.

What you need to do depends on the nature, scale and complexity of your business

~~RG 000.23~~ [RG 104.18](#) There are many different kinds of licensees providing a diverse range of financial services [and engaging in a range of credit activities](#). We do not take a ‘one-size-fits-all’ approach to regulation. Rather, we acknowledge that what you need to do to comply with your obligations will vary according to the ‘nature, scale and complexity’ of your business.

~~RG 000.24~~ [RG 104.19](#) ‘Nature, scale and complexity’ includes factors such as:

- (a) the products and services you offer [\(for AFS licensees\) or credit activities you engage in \(for credit licensees\)](#);
- (b) the diversity and structure of your operations (including the geographical spread of your operations and the extent to which you outsource any of your functions);
- (c) the volume and size of the transactions you are responsible for;
- (d) [for AFS licensees](#), how many of your clients are retail and how many wholesale;
- (e) [for AFS licensees](#), whether you give financial product advice and, if so, whether it is personal or general advice;
- (f) [for credit licensees, whether you provide credit assistance](#);
- ~~(f)~~(g) whether your main business is the provision of financial services [or undertaking credit activities](#); and
- ~~(g)~~(h) the number of people in your organisation.

~~RG 104.20~~ RG 104.20 For credit licensees, when considering whether compliance is adequate, the nature, scale and complexity of the credit activities that are engaged in by the licensee must be taken into account in relation to four of the general conduct obligations in s47(1):

- (a) ensuring that clients are not disadvantaged by a conflict of interest (s47(1)(b));
- (b) training representatives (s47(1)(g));
- (c) having adequate compliance arrangements (s47(1)(k)); and
- (d) for licensees that are not regulated by APRA, having adequate resources and risk management systems (s47(1)(l)).

~~RG 104.21~~ RG 104.21 We will also take into account the nature scale and complexity of your credit business when assessing compliance with the other general conduct obligations for credit licensees: see RG 104.18.

You must have measures for ensuring you comply with your obligations

~~RG 000.25~~ RG 104.22 We use the expression ‘measures’ or ‘compliance measures’ in this guide to refer to your processes, procedures or arrangements for ensuring that, as far as reasonably practicable, you comply with your obligations as a licensee, including the general obligations.

~~RG 000.26~~ RG 104.23 We expect you to:

- (a) document your measures in some form (see RG 104.25);
- (b) fully implement them and monitor and report on their use (see RG 104.27–RG 104.32); and
- (c) regularly review the effectiveness of your measures and ensure they are up-to-date (see RG 104.33–RG 104.34).

If you do not do this, we think you will find it more difficult to comply with the general obligations, and to show you are complying with them.

~~RG 000.27~~ RG 104.24 Your measures will be affected by the nature, scale and complexity of your business: see RG 104.18–RG 104.19.

Documenting your measures

~~RG 000.28~~ RG 104.25 Documentation helps you demonstrate whether or not you are complying with the general obligations. When you document your measures, we expect this will include details of who is responsible, the time frames involved and associated record-keeping and reporting.

RG 104.26 The National Credit Act also requires credit licensees to have adequate arrangements and systems to ensure compliance with their obligations under s47(1), and a written plan that documents those arrangements and systems: s47(1)(k). We will take into account the nature, scale and complexity of a credit licensee's credit activities when assessing compliance with this obligation: s47(2), National Credit Act.

Implementing, monitoring and reporting on your measures

~~RG 104.24~~RG 104.27 It is not enough just to document your measures. You also need to fully implement them. This means you need to put them into practice and integrate them into the day-to-day conduct of your business.

~~RG 104.25~~RG 104.28 For measures to work effectively in practice, you need people at all levels of your business, including your senior management, to understand them and be committed to their success. Integrating your measures into the culture of your business helps ensure they are effective on an ongoing basis.

RG 104.29 You also need to monitor ~~and report on~~ your compliance.

RG 104.30 AFS licensees must, including reporting relevant breaches to us under s912D of the Corporations Act. In order to comply with this requirement, we expect that you will keep records of your monitoring and reporting, including records of reports on compliance and breach notifications.

RG 104.31 Credit licensees are required to lodge with us a compliance certificate on an annual basis: s53, National Credit Act. In order to comply with this obligation, we expect that you will need to keep records of your monitoring and reporting, including records of reports on compliance and non-compliance.

Note: We will release an approved form in which credit licensees will be required to lodge their compliance certificates.

~~RG 104.26~~RG 104.32 We understand that, in some instances, your monitoring and reporting will be built into your business processes. We also acknowledge that your compliance measures might reflect your corporate group's overall approach to compliance. Whatever the case, you need to be able to show us how you are able to monitor your compliance and appropriately address any compliance breaches.

Reviewing your measures

~~RG 000.33~~RG 104.33 Regularly reviewing your measures will help to ensure they remain effective. In some cases, it may be sensible for you to consider external review. Where compliance issues have arisen (such as major breaches or repeated compliance failures), an external compliance review is particularly appropriate.

~~RG 000.34~~ [RG 104.34](#) You need to review your measures when there are changes to your obligations, your business or the environment in which you operate. We expect that you will have a process for identifying changes that may impact on the effectiveness of your measures.

You can outsource functions, but not your responsibility as a licensee

Outsourcing functions that relate to your licence

~~RG 000.35~~ [RG 104.35](#) We recognise that many licensees outsource functions that relate to their ~~AFS~~ licence, including administrative or operational functions. Outsourcing might be to external parties or other entities within a corporate group. Functions that are commonly outsourced include:

- (a) IT systems for storing records in relation to the provision of financial services [or engaging in credit activities](#);
- (b) recruitment and training of representatives;
- (c) research on financial products in relation to which financial services are provided [or credit products in relation to which credit activities are undertaken](#);
- (d) the operation of call centres [\(including customer inquiries\)](#);
- (e) periodic compliance reviews of representatives; ~~and~~
- [\(f\) for credit licensees, sales](#);
- [\(g\) for credit licensees, debt collection; and](#)
- ~~(h)~~ [\(h\) for AFS licensees, unit pricing](#).

Note: For guidance on outsourcing of unit pricing functions, [AFS licensees can refer to Regulatory Guide 94 Unit pricing: Guide to good practice](#) (joint publication with APRA) (RG 94).

You remain responsible for outsourced functions

[RG 104.36](#) If you outsource functions that relate to your AFS [or credit](#) licence, you remain responsible for complying with your obligations as a licensee: see [s769B, Corporations Act; s324 and 325, National Credit Act](#).

[RG 104.37](#) [AFS licensees should also note](#) that under the *Superannuation (Industry) Supervision Act 1993*, superannuation trustees retain ultimate responsibility for the operation of the superannuation fund. Under s601FB(1) of the Corporations Act, responsible entities retain ultimate responsibility for the operation of a managed investment scheme.

Third parties providing financial services on your behalf

~~RG 104.38~~ RG 104.38 If a third party provides financial services ~~to clients or undertakes credit activities~~ on your behalf, they will generally need to be your authorised ~~representative or credit~~ representative or hold their own AFS licence: see s911B(1) Corporations Act and s29(4) National Credit Act. If they are a licensee, they will generally be taken to be the provider of the financial services or credit activities and will be responsible for complying with the general obligations in relation to the provision of those services or activities: see s911B(3), Corporations Act; s67(1), National Credit Act.

Complying with your obligations

~~RG 104.39~~ RG 104.39 If you outsource functions that relate to your AFS or credit licence, we expect that you:

- (a) will have measures in place to ensure that due skill and care is taken in choosing suitable service providers;
- (b) can and will monitor the ongoing performance of service providers; and
- (c) will appropriately deal with any actions by service providers that breach service level agreements or your obligations as a licensee.

Note: In thinking through your obligations when you outsource functions, you might find it helpful to look at:

- International Organization of Securities Commissions (IOSCO) *Principles on Outsourcing of Financial Services for Market Intermediaries* (February 2005), available from www.iosco.org;
- Joint Forum *Outsourcing in Financial Services* (August 2004), available from IOSCO (www.iosco.org), the International Association of Insurance Supervisors (www.iaisweb.org) and the Bank for International Settlements (www.bis.org); and
- if you are also regulated by APRA, APRA's prudential standards and guidance notes on outsourcing (e.g. for ADIs, Prudential Standard APS 231 *Outsourcing*), available from www.apra.gov.au.

C Your broad compliance obligations

Key points

You must have measures in place for ensuring you comply with your licensee obligations on an ongoing basis: see RG 104.42–RG 104.52.

We expect your compliance measures to cover all of your obligations as a licensee: see RG 104.57–RG 104.65.

We expect your compliance area to be independent enough and have adequate resources to do its job properly: see RG 104.53–RG 104.56.

~~RG 000.39~~ [RG 104.40](#) You must:

- (a) do all things necessary to ensure that:
 - (i) if you are an AFS licensee, your financial services are provided efficiently, honestly and fairly (s912A(1)(a), Corporations Act);
 - (ii) if you are a credit licensee, you engage in credit activities efficiently, honestly and fairly (s47(1)(a), National Credit Act);
- ~~(b)~~ comply with the financial services laws if you are an AFS licensee (s912A(1)(c), Corporations Act) or the credit legislation if you are a credit licensee (s47(1)(d), National Credit Act); and
- ~~(c)~~ comply with the conditions on your AFS or credit licence (s912A(1)(b), Corporations Act; s47(1)(k), National Credit Act).

~~RG 104.32~~ [RG 104.41](#) In this guide, we refer to these obligations as the ‘broad compliance obligations’: see RG 104.57–RG 104.65.

~~RG 000.40~~ [RG 104.42](#) You must have measures in place for ensuring you comply with your obligations as a licensee, including the broad compliance obligations, on an ongoing basis: [AFS licensees](#), see condition 4 of the standard licence conditions in Pro Forma 209 *Australian financial services licence conditions* [PF 209]; [credit licensees](#), see [s47\(1\)\(k\), National Credit Act](#). We expect you will document your measures: see RG 104.25.

~~RG 000.41~~ [RG 104.43](#) This section explains what we look for when we assess the adequacy of your compliance measures. When reading this section, you need to bear in mind the key concepts in Section B. For more help in designing and testing your measures, see Appendix 1.

Note: For guidance on compliance plans and measures for managed investments, [AFS licensees should](#) see Regulatory Guide 132 *Managed investments: Compliance plans* (RG 132).

Your compliance measures

~~RG 000.42~~ [RG 104.44](#) Compliance with your obligations as a licensee is central to the protection of consumers and the promotion of market integrity. Having effective compliance measures is a way for you to ensure you comply with your obligations as a licensee, including identifying and appropriately dealing with instances of non-compliance. Compliance measures also help you demonstrate to us that you can comply and are complying with your obligations.

What your compliance measures need to cover

~~RG 000.43~~ [RG 104.45](#) We consider that the broad compliance obligations are both stand-alone obligations and obligations that encompass the other general obligations: see RG 104.57–RG 104.65. For this reason, we expect your measures for ensuring compliance with the broad compliance obligations will cover all of your obligations as a licensee including:

- (a) the rest of the general obligations (including those covered in Sections D, E and F of this guide);
- (b) your licence conditions; and
- (c) any other financial services laws [or credit laws](#) that apply to you.

~~RG 000.44~~ [RG 104.46](#) We also expect that your compliance measures will:

- (a) take into account the specific compliance risks of your business, especially those that may materially affect consumers or market integrity; and
- (b) enable you to:
 - (i) communicate to your representatives what they need to do to comply;
 - (ii) monitor compliance with all of your licensee obligations; ~~and~~
 - (iii) address ~~and report~~ any compliance breaches; [and](#)
 - ~~(iii)~~ [\(iv\) for AFS licensees, report any compliance breaches.](#)

Note: In thinking through your compliance obligations, you might find it helpful to look at:

- Australian Standard AS 3806–2006 *Compliance Programs*, available for purchase from www.saiglobal.com/shop; and
- the principles set out in the IOSCO report *Compliance Function at Market Intermediaries* (March 2006), available from www.iosco.org. [Although this was originally aimed at compliance with securities legislation, many of the underlying principles can also be usefully applied by credit licensees.](#)

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Nature, scale and complexity of your business

[RG 000.45](#)[RG 104.47](#) Your compliance measures might include one or a number of different documents and any of a variety of stand-alone or integrated information technology (IT) systems. As a general rule, the smaller and simpler your business, the smaller and simpler we expect your measures to be.

[RG 000.46](#)[RG 104.48](#) For example, if you deal in a narrow range of simple [financial products](#) [or engage in limited credit activities](#) as an incidental part of your main business or you are a very small business, you might meet your compliance obligations by having a checklist focusing on compliance risks that would adversely affect consumers and the provision of efficient, honest and fair financial services [or credit activities](#).

[RG 000.47](#)[RG 104.49](#) On the other hand, if your main business is to provide financial services and products [or to engage in credit activities](#), you deal in a broad range of products and you have numerous staff that are spread out geographically, you are more likely to meet your compliance obligations by having compliance measures that involve the use of manuals, programs and dedicated compliance staff.

[RG 000.48](#)[RG 104.50](#) If you use external providers to provide functions that relate to your AFS [or credit](#) licence, we think your compliance measures will need to be different from those you would need if you performed those functions in-house.

Compliance measures and risk management systems

[RG 000.49](#)[RG 104.51](#) From our experience, it is common for some licensees' compliance measures to be integrated into their risk management systems. Compliance measures can be one of several controls you can use to address or mitigate risks to your business (including the risk of non-compliance with your obligations under the Corporations Act [or National Credit Act](#)). The general obligation to maintain adequate risk management systems is explained in Section D.

[RG 000.50](#)[RG 104.52](#) If you are also regulated by APRA, the general obligation to have adequate risk management systems does not apply to you: see RG 104.12. However, this does not affect the need for you to meet our requirements on compliance measures, even if your compliance measures are integrated into your risk management systems.

Responsibility for compliance

~~RG 000.51~~ [RG 104.53](#) We expect that you will allocate to a director or senior manager responsibility for:

- (a) overseeing your compliance measures; and
- (b) reporting to the governing body (including having ready access to the governing body).

~~RG 000.52~~ [RG 104.54](#) You need to ensure that the area responsible for compliance:

- (a) is independent enough to do its job properly;
- (b) has adequate staff, resources and systems; and
- (c) has access to relevant records.

~~RG 000.53~~ [RG 104.55](#) It may be appropriate for you to have a separate compliance function (which might be outsourced to a third party). This is likely to be the case for larger, more complex businesses (including a corporate group), but not for licensees whose business is small or whose main business is not the provision of financial services or engaging in credit activities.

The role of senior management

~~RG 000.54~~ [RG 104.56](#) The level of senior management involvement in overseeing your compliance measures might extend to:

- (a) communicating the measures to those responsible for implementing them and other stakeholders;
- (b) ensuring that the area responsible for the measures has adequate staff and resources;
- (c) ensuring staff education and awareness of the measures;
- (d) implementing clear reporting lines for the manager(s) responsible for the measures; and
- (e) receiving regular reports on the measures.

Our approach to the broad compliance obligations

~~RG 000.55~~ [RG 104.57](#) The broad compliance obligations are both stand-alone obligations and obligations that encompass the other general obligations. This means that:

- (a) if you fail to comply with one or more of the other general obligations, you are also likely to breach the broad compliance obligations; and
- (b) even though you may be complying with all of the other general obligations, you may still be in breach of the broad compliance

obligations. This is because the broad compliance obligations are also stand-alone obligations.

Providing financial services or engaging in credit activities efficiently, honestly and fairly

RG 104.58 AFS licensees ~~You~~ need to do all things necessary to ensure ~~your~~ ~~that their~~ financial services are provided in a way that meets all of the elements of 'efficiently, honestly and fairly'. Credit licensees need to do all things necessary to ensure that they engage in their credit activities in a way that meets all of the elements of 'efficiently, honestly and fairly'.

RG 104.59 If you fail to comply with the other general obligations, it is unlikely that you will be complying with the 'efficiently, honestly and fairly' obligation.

~~RG 000.57~~RG 104.60 However, the 'efficiently, honestly and fairly' obligation is also a stand-alone obligation that operates separately from the other general obligations. For example, if you have contractual obligations to clients and breach them, this might not be a breach of the other general obligations, but it could amount to a failure to provide your financial services or engage in credit activities efficiently, honestly and fairly.

Complying with the financial services other relevant laws

AFS licensees

~~RG 000.58~~RG 104.61 In you are an AFS licensee, the obligation to comply with the financial services laws encompasses the other general obligations. However, it also includes an obligation to comply with:

- (a) Chapter 7 or other Chapters of the Corporations Act that may apply to you (e.g. the disclosure requirements); and
- (b) provisions of the *Australian Securities and Investments Commission Act 2001* and other Commonwealth, state and territory legislation dealing with financial services: see s761A.

Credit licensees

RG 104.62 If you are a credit licensee, the obligation to comply with the credit legislation encompasses the other general obligations. However, it also includes an obligation to comply with:

- (a) the National Credit Act (including the National Credit Code); and
- (b) the provisions of the *Australian Securities and Investments Commission Act 2001* and other Commonwealth, state and territory legislation dealing with credit activities: see the definition of 'credit legislation' in s5, National Credit Act.

RG 104.63 Compliance with the credit legislation is relevant to all aspects of a credit licensee's business, but it is especially relevant in your dealings with consumers, because protection of consumers is a key objective of the legislation.

Complying with your licence conditions

AFS licensees

~~RG 000.59~~RG 104.64 The conditions on your AFS licence reinforce some of the general obligations, so breaching a licence condition will sometimes also be a breach of the general obligation that the condition relates to.

Note: The standard licence conditions are set out in [PF 209]. For our guidance on licence conditions, see Section C of Regulatory Guide 167 *Licensing: Discretionary powers* (RG 167).

Credit licensees

RG 104.65 The conditions on your credit licence reinforce some of the general obligations, so breaching a licence condition will sometimes also be a breach of the general obligation that the condition relates to. You must comply with any licence conditions that we impose: s47(1)(c), National Credit Act. In addition, you must also comply with the licence conditions set out in reg 2.2 of the National Consumer Credit Protection Regulations 2009.

D Your risk management systems

Key points

You must have measures in place to ensure you comply with the obligation to have adequate risk management systems on an ongoing basis.

We expect you to have a structured and systematic process for identifying, evaluating and managing risks faced by your business: see RG 104.69–RG 104.74.

~~RG 000.60~~ [RG 104.66](#) You must have adequate risk management systems: s912A(1)(h), [Corporations Act; s47\(1\)\(l\)\(ii\), National Credit Act](#). You must also have measures in place to ensure that you comply with this obligation on an ongoing basis: RG 104.42.

~~RG 000.61~~ [RG 104.67](#) This section explains what we look for when we assess the adequacy of your risk management systems. When reading this section, you need to bear in mind the key concepts in Section B. For more help in designing and testing your measures, see Appendix 1.

~~RG 000.62~~ [RG 104.68](#) If you are regulated by APRA, you do not need to read this section, [except for the paragraphs relating to conflicts of interest: see RG 104.75–RG 104.79](#).

Risk management systems

~~RG 000.63~~ [RG 104.69](#) The requirement for risk management systems ensures that you explicitly identify the risks you face and have measures in place to keep those risks to an acceptable minimum.

~~RG 000.64~~ [RG 104.70](#) We expect your risk management systems will:

- (a) be based on a structured and systematic process that takes into account your obligations under the Corporations Act [or National Credit Act \(whichever is relevant\)](#);
- (b) identify and evaluate risks faced by your business, focusing on risks that adversely affect consumers or market integrity (this includes risks of non-compliance with the financial services laws [or credit legislation as relevant](#));
- (c) establish and maintain controls designed to manage or mitigate those risks; and
- (d) fully implement and monitor those controls to ensure they are effective.

Note: In thinking through your risk management obligations, you might find it helpful to look at:

- Australian and New Zealand Standard AS/NZS 4360:2004 *Risk Management Systems* and the related handbook, HB 436:2004 *Risk Management Guidelines—Companion to AS/NZS 4360:2004*, available for purchase from www.saiglobal.com/shop; and
- Joint Forum *High-Level Principles for Business Continuity* (August 2006), available from IOSCO (www.iosco.org), IAIS (www.iaisweb.org) and BIS (www.bis.org).

Nature, scale and complexity of your business

~~RG 000.65~~RG 104.71 Your risk management systems will depend on the nature, scale and complexity of your business and your risk profile. They will be different for each licensee.

~~RG 000.66~~RG 104.72 Your risk management systems will need to adapt as your business develops and your business risk profile changes over time.

~~RG 000.67~~RG 104.73 If you use external providers to provide functions that relate to your AFS or credit licence, we think your risk management measures will need to be different from those you would need if you performed those functions in-house.

~~RG 000.67~~Note: For credit licensees, we will take into account the nature, scale and complexity of your credit activities when assessing compliance with this obligation: s47(2), National Credit Act.

Financial risks

~~RG 000.68~~RG 104.74 Your risk management systems will normally need to address the risk that your financial resources will not be adequate. For AFS licensees, we have set out the financial requirements for licensees not regulated by APRA in Regulatory Guide 166 *Licensing: Financial requirements* (RG 166).

Note: We are consulting separately on the financial requirements for credit licensees: see Consultation Paper 111 *Compensation and financial resources arrangements for credit licensees* (CP 111).

Conflicts of interest

RG 104.75 Licensees have a general conduct obligation in relation to conflicts of interest.

RG 104.76 AFS licensees must have in place adequate arrangements for the management of conflicts of interest that arise in relation to the provision of financial services. We have provided guidance for AFS licensees about managing conflicts of interests in *Regulatory Guide 181 Licensing*:

Managing conflicts of interest (RG 181). Although RG 181 is aimed specifically at AFS licensees, many of the principles discussed in RG 181 are high level and can be appropriately applied by credit licensees.

RG 104.77 If you are a credit licensee, you must have internal systems in place to ensure that your clients are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by you or your representatives: s47(1)(b), National Credit Act. We think that this obligation also includes the obligation to manage and monitor any conflicts that arise in relation to any credit activities in which you engage.

RG 104.78 We think that the conflicts obligation for credit licensees is more explicit about the required outcomes for the consumer. In RG 181 we say that in some instances AFS licensees would be able to manage their conflict of interest by disclosing the conflict to the client: see RG 181.20. By comparison, in general, a credit licensee would not be able to meet the general conduct obligation in relation to conflicts by disclosing the conflict to the client. Instead, credit licensees are required to ensure that the client is not disadvantaged.

RG 104.79 For example, if a credit provider pays a person providing credit assistance a higher rate of commission for achieving certain volumes of sales, the licensee providing the credit assistance would need to adopt systems to ensure that consumers are not disadvantaged by the possible conflict of interest that arises. The requirement that s47(1)(b) of the National Credit Act imposes on credit licensees makes it explicit that the incentive provided by a higher rate of commission cannot be allowed to disadvantage the client.

Note: For credit licensees, we will take into account the nature, scale and complexity of your credit activities when assessing compliance with this obligation: s47(2), National Credit Act.

E Your people

Key points

You must have measures for monitoring and supervising your representatives (i.e. the people who act on your behalf). We expect these measures will allow you to determine whether your representatives are complying with the financial services laws [or credit legislation](#): see RG 104.84–RG 104.91.

You must also have measures to ensure that your representatives who provide financial services [or engage in credit activities](#) have, and maintain, the necessary knowledge and skills to competently provide those [financial services or engage in those credit activities](#): see RG 104.92–RG 104.99

~~RG 000.69~~ [RG 104.80](#) You must:

- (a) take reasonable steps to ensure that your representatives comply with the financial services laws [or credit legislation](#) (s912A(1)(ca), [Corporations Act; Credit legislation; s47\(1\)\(e\) National Credit Act](#)); and
- (b) if they provide financial services [or engage in credit activities \(as relevant\)](#), ensure they are trained and competent to do so (s912A(1)(f) [Corporations Act and s47\(1\)\(g\) National Credit Act](#)).

~~RG 104.62~~ [RG 104.81](#) You must also have measures in place to ensure that you comply with these obligations on an ongoing basis: RG 104.42.

~~RG 000.70~~ [RG 104.82](#) This section explains what we look for when we assess compliance with these obligations. When reading this section, you need to bear in mind the key concepts in Section B. For more help in designing and testing your measures, see Appendix 1.

~~RG 000.74~~ [RG 104.83](#) You must also have adequate resources, including people, to provide your financial services [or credit activities](#) and carry out supervision: s912A(1)(d), [Corporations Act; s47\(1\)\(l\)\(i\), National Credit Act](#). This particular obligation is covered in Section F.

Monitoring and supervision [of your representatives](#)

~~RG 000.72~~ [RG 104.84](#) To ensure your representatives comply with the financial services laws [or credit legislation](#), we consider that you need to monitor and supervise them.

Who do you need to monitor and supervise?

AFS licensees

~~RG 000.73~~RG 104.85 Any person who acts on your behalf is your 'representative': see s910A, Corporations Act. Your representatives include:

- (a) your employees and directors;
- (b) your authorised representatives; and
- (c) any third party service providers you use to provide functions relating to your licence.

Credit licensees

RG 104.86 Any person who acts on your behalf is your 'representative': see s5, National Credit Act. Under s5, 'representatives' refers to the following classes of persons:

- (a) your employees and directors, or the employees and directors of a body corporate related to you;
- (b) your credit representatives; and
- (c) any other person acting on your behalf.

How closely do you need to supervise your representatives?

~~RG 000.74~~RG 104.87 The level of monitoring and supervision your representatives need will depend on the nature, scale and complexity of your business (e.g. the function your representatives perform, whether your business operates from one or a number of locations etc.).

~~RG 000.75~~RG 104.88 We do not think that you need to scrutinise every activity of your representatives. However, we expect you will have measures that:

- (a) allow you to determine whether your representatives are complying with the financial services laws or credit legislation (including your licence conditions); and
- (b) include a robust mechanism for remedying any breaches.

~~RG 104.69~~RG 104.89 We also expect that you will have measures in place for complying with new requirements as they arise. For example, the responsible lending requirements in Chapter 3 of the National Credit Act will not commence until [date to be advised]; however, we would expect credit licence applicants who apply before this date to have plans to implement adequate supervision once these requirements commence.

Employment screening

~~RG 000.76~~RG 104.90 We expect your measures for monitoring and supervision will include carrying out appropriate background checks before you appoint new representatives. These checks could include referee reports, searches of ASIC's Register of Banned and Disqualified Persons, police checks etc.

Note: In thinking through your monitoring and supervision obligations, you might find it helpful to look at:

- Australian Standard AS 4811–2006 *Employment Screening* and the related *Employment Screening Handbook* (HB 323–2007), available for purchase from www.saiglobal.com/shop; and
- *Reference Checking in the Financial Services Industry Handbook* (HB 322–2007), available for free from www.asic.gov.au. Standards Australia developed HB 322–2007 in conjunction with ASIC. [Although this handbook was originally prepared for AFS licensees, it also provides useful guidance for credit licensees.](#)

Measures for monitoring and supervision

~~RG 000.77~~RG 104.91 Your measures for monitoring and supervision will normally show how you:

- (a) keep track of who your representatives are, what role they perform and whether they are appropriately authorised;
- (b) ensure your representatives (including your authorised representatives [and credit representatives](#)) act within the scope of what you have authorised them to do;
- (c) ensure your representatives understand your compliance arrangements;
- (d) monitor your representatives' compliance; and
- (e) respond to compliance failures.

Training and competence

~~RG 104.72~~—

Requirements for AFS licensees

~~RG 000.78~~RG 104.92 The obligation to ensure your representatives are trained and competent applies only in relation to your representatives who provide financial services.

~~RG 000.79~~RG 104.93 We expect you to:

- (a) identify the knowledge and skills your representatives need to competently provide your financial services;
- (b) ensure that they have the necessary knowledge and skills;

- (c) ensure that they undertake continuing training programs to maintain and update their knowledge and skills; and
- (d) maintain a record of the training they have undertaken (this is required under reg 7.6.04(1)(d), [Corporations Regulations](#)).

Training standards for financial product advice to retail clients

~~RG 000.80~~ [RG 104.94](#) We have specified minimum training standards for representatives (and natural person licensees) who provide financial product advice to retail clients. These are set out in Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146). The training standards are knowledge and skills requirements that can generally be met by completing appropriate training courses on the ASIC Training Register or being individually assessed as competent by an authorised assessor listed on the ASIC Training Register.

~~RG 000.81~~ [RG 104.95](#) The RG 146 training standards are minimum standards that apply to all representatives (and natural person licensees) who provide financial product advice to retail clients: see licence conditions 6 and 7 in [PF 209]. However, there are special rules for customer service representatives, para-planners and trainee advisers.

Customer service representatives, para-planners and trainee advisers

~~RG 000.82~~ [RG 104.96](#) You remain responsible for all of the financial services provided under your licence, regardless of how, or by whom, those services are provided. If you, or any of your representatives, use customer service representatives, para-planners and/or trainee advisers who do not meet the RG 146 training standards, you must ensure that they are:

- (a) trained and competent to perform their role and functions; and
- (b) supervised by representatives who:
 - (i) meet the RG 146 training standards; and
 - (ii) play a material role in the provision of any advice to retail clients.

~~RG 000.83~~ [RG 104.97](#) As a general rule, if you use a disproportionately high number of para-planners who do not meet the RG 146 training standards compared with the number of your representatives who do meet the training standards, we believe there is an increased risk that you will not be satisfying your obligations.

Representatives providing other financial services

~~RG 000.84~~ [RG 104.98](#) We have not specified training standards for representatives (and natural person licensees) providing services other than financial advice to retail clients. However, you must still ensure that your representatives

providing other services are trained and competent to perform their role and functions.

~~RG 000.85~~RG 104.99 You may be able to adapt the training standards in RG 146 to help you determine the appropriate knowledge and skills needed by your representatives providing other financial services.

Requirements for credit licensees

RG 104.100 We are consulting separately on training and competence requirements for representatives of credit licensees.

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F Your resources

Key points

You must have measures in place for ensuring you have adequate resources to provide the financial services [or engage in the credit activities](#) covered by your licence and to carry out supervisory arrangements: see RG 104.101–RG 104.104.

Whether your resources are adequate will depend on the nature, scale and complexity of your business: see RG 104.19.

You at least need to have enough resources to enable you to comply with all of your obligations under the law and meet your current and anticipated future operational needs: see RG 104.106–RG 104.113.

~~RG 000.86~~ [RG 104.101](#) You must have adequate financial, technological and human resources to provide the financial services [or engage in the credit activities](#) covered by your licence and to carry out supervisory arrangements: s912A(1)(d), [Corporations Act](#); s47(1)(l)(i), [National Credit Act](#). You must also have measures to ensure that you have adequate resources on an ongoing basis: RG 104.42.

~~RG 000.87~~ [RG 104.102](#) This section explains what we look for when we assess the adequacy of your human and technological resources. When reading this section, you need to bear in mind the key concepts in Section B. For more help in designing and testing your measures, see Appendix 1.

~~RG 104.83~~ [RG 104.103](#) [For AFS licensees](#), the financial resources part of this obligation is covered in for AFS licensees, Regulatory Guide 166 *Licensing: Financial requirements* (RG 166).

[Note: We are consulting separately about guidance for credit licensees in relation to financial resources: see Consultation Paper 111 *Compensation and financial resources arrangements for credit licensees* \(CP 111\).](#)

~~RG 000.89~~ [RG 104.104](#) If you are regulated by APRA, you do not need to read this section: see RG 104.12.

Having adequate resources

~~RG 000.90~~ [RG 104.105](#) Having adequate technological and human resources is crucial to your ability to demonstrate that you have the capacity to carry on your financial services [or credit](#) business in full compliance with the law and to supervise your representatives. Failure to have enough resources may create

an unacceptable risk that you may not comply with all of your obligations as a licensee.

Human resources

~~RG 000.91~~ [RG 104.106](#) Whether your human resources are adequate will depend on the nature, scale and complexity of your business: see RG 104.19. However, you need to have enough people to enable you to:

- (a) comply with all of your obligations under the law;
- (b) carry out monitoring and supervision; and
- (c) meet your current and anticipated future operational needs.

~~RG 000.92~~ [RG 104.107](#) Your measures for ensuring that you have enough people will normally include:

- (a) recruitment processes and succession planning;
- (b) systems for inducting and training new staff;
- (c) performance management systems; and
- (d) processes for staff retrenchment and redundancy.

Reviewing your human resources

~~RG 000.93~~ [RG 104.108](#) You need to regularly review the adequacy of your human resources.

~~RG 000.94~~ [RG 104.109](#) We expect that you will identify key indicators that your human resources are inadequate. These key indicators are likely to include:

- (a) customer complaints about the quality of customer service, ~~or~~ financial product advice [\(for AFS licensees\) or credit assistance \(for credit licensees\)](#);
- (b) a low ratio of compliance staff to representatives;
- (c) not enough compliance staff to conduct a periodic (e.g. annual) review of representatives who give personal advice to retail clients;
- (d) client accounts and interests not being monitored when staff are absent;
- (e) a large number of inexperienced staff (e.g. staff who have been in your business less than six months); and
- (f) a large number of vacant positions.

Technological resources

[RG 000.95](#)[RG 104.110](#) Whether your technological resources are adequate will depend on the nature, scale and complexity of your business: see RG 104.19. However, you need to have enough technological resources to enable you to:

- (a) comply with all of your obligations under the law;
- (b) maintain client records and data integrity;
- (c) protect confidential and other information; and
- (d) meet your current and anticipated future operational needs.

[RG 000.96](#)[RG 104.111](#) We know that **both** the financial services **and credit** industries use a variety of technological resources, ranging from phones, faxes and personal computers to sophisticated networks and/or customised IT systems. We do not think you need to have sophisticated IT systems if simpler systems enable you to meet the criteria in RG 104.110.

Reviewing your IT systems

[RG 000.97](#)[RG 104.112](#) You need to regularly review the adequacy of your technological resources.

[RG 000.98](#)[RG 104.113](#) When reviewing your IT systems, you need to consider:

- (a) your IT system security;
- (b) the currency of your hardware and software;
- (c) the quality and relevance of the applications you use;
- (d) your disaster recovery systems and business resumption capacity;
- (e) the number of users;
- (f) the ongoing viability of software and other service providers;
- (g) the response times of your IT systems;
- (h) the down times of your IT systems;
- (i) your use of legacy IT systems; and
- (j) complaints (e.g. from staff, clients or service providers) about your IT systems.

[Note: For credit licensees, we will take into account the nature, scale and complexity of your credit activities when assessing compliance with the general conduct obligations in relation to having adequate resources: s47\(2\), National Credit Act.](#)

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Appendix 1: Designing and testing your measures

~~RG 000.99~~[RG 104.114](#) Appendix 1 sets out questions to consider when designing and testing your measures for ensuring you comply with the general obligations covered in Sections C to F of this guide. You need to read this appendix in conjunction with the corresponding section of this guide.

~~RG 000.100~~[RG 104.115](#) This appendix is not intended as a compliance checklist—it does not cover everything you need to consider, and it may cover some things that do not apply to you. You still need to consider your individual circumstances, including the nature, scale and complexity of your business.

~~RG 000.101~~[RG 104.116](#) We will continue to review and update this appendix in light of our regulatory experience.

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Your broad compliance obligations

| | |
|---|---|
| Compliance framework | <ul style="list-style-type: none"> • Have you documented your compliance measures? • Has your governing body signed off on them? • How do you monitor whether your compliance measures are being followed? Who is responsible? • How do you review your compliance arrangements to ensure they remain effective and up-to-date (e.g. to deal with new products)? • Do you undertake regular external reviews of your compliance measures and their monitoring? • How do you assess the impact of outsourcing on your compliance measures? |
| Implementing compliance measures | <ul style="list-style-type: none"> • How do you communicate your compliance measures to your staff? • Are your compliance measures integrated into relevant operational processes? • How do you promote a culture of compliance within your organisation? |
| Compliance function | <ul style="list-style-type: none"> • Have you set up a separate compliance function within your organisation? • Do you have a compliance manager? Do they report to the governing body (or its delegate)? • Are compliance staff adequately trained and qualified in compliance responsibilities? • Are the responsibilities of compliance staff clearly defined and understood? • Do compliance staff have access to the information they need to perform their role? |
| Responding to compliance failures | <ul style="list-style-type: none"> • How do you ensure that you identify and take action to remedy compliance failures and other compliance issues, including action to prevent their recurrence? • How do you identify and address systemic compliance failures or other trends in compliance issues? |
| Breach reporting for AFS licensees | <ul style="list-style-type: none"> • Is there a clear, well-understood and documented process for reporting compliance breaches (including to the governing body or its delegate)? • How do you ensure that relevant breaches are reported to ASIC under s912D? Who is responsible for reporting to ASIC? • What records do you keep of compliance breaches (e.g. a breach register)? • Do you regularly review your compliance measures to take into account past breaches? |
| Safeguarding client money and assets | <ul style="list-style-type: none"> • How do you ensure that client money and assets are separated from your money and assets? |
| Record-keeping | <ul style="list-style-type: none"> • How do you ensure that you keep adequate accounting, business and compliance monitoring records? • How do you ensure that you retain records for the statutory period? |

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Your broad compliance obligations

Conduct and disclosure obligations

- How do you ensure that you comply with your conduct obligations under the Corporations Act [or National Credit Act](#)? [For example, AFS licensees have to meet certain](#) requirements [when](#) giving personal advice to retail clients; [credit licensees have to meet responsible lending requirements](#).
- How do you ensure that you comply with your disclosure obligations? [For example, AFS licensees have](#) obligations relating to advertising, Product Disclosure Statements and Financial Services Guides; [credit licensees will have obligations in relation to providing a Credit Guide](#).

Your risk management systems

Risk management framework

- Have you documented your risk management systems?
- Do your documented measures show who is responsible for risk management?
- Has your governing body signed off on your risk management measures and made a commitment to ongoing risk management?
- Have you appointed senior managers to oversee risk management measures?
- Are there clear risk management reporting lines? Do your staff understand what they are required to report on, and when?
- Do you annually review your risk management measures to ensure they are effective? Does this include external review?
- Do you have a business continuity plan?

Implementing risk management

- How do you ensure that staff understand and comply with risk management measures?
- Are risk management staff adequately trained and qualified in risk management responsibilities?

Identifying risks

- How do you identify risks to your business?
- How do you identify risks to consumers and market integrity?
- Have you considered all your obligations under the Corporations Act [and/or National Credit Act](#) (including the regulations and licence conditions) and identified the risks of non-compliance with them?
- How do you ensure you identify new risks as they arise (e.g. because of new products or technology)?
- Do you document the risks you identify?

Evaluating risks

- How do you establish the probability of a risk event occurring and the impact of the problem if the risk occurs?
- How do you combine the probability and impact factors to determine the overall risk?
- How do you prioritise the risks and establish which ones need to be addressed?
- Do you document the risks you evaluate and how you arrive at your evaluation?

Addressing risks

- How do you address those risks with appropriate measures and controls?
- Do you document your measures and controls for addressing risk and the reasons behind them?

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Your people

MONITORING AND SUPERVISION

Appointing representatives

- What background checks (e.g. referee reports) do you do before you appoint representatives? How do you check the person's identity?
- How do you ensure that you comply with your notification obligations under s916F [of the Corporations Act](#) in relation to your authorised representatives [\(for AFS licensees\)](#) and [s71 of the National Credit Act in relation to your credit representatives](#)?

Monitoring and supervision framework

- Have you established a clear reporting and supervisory structure covering all your representatives? How do you ensure that you are receiving accurate information?
- Who is responsible for monitoring and supervision? To whom do they report?
- Do you have representatives who operate from locations other than your principal place of business? How do you monitor and supervise them?
- How do you ensure your representatives understand your compliance measures? How do you monitor that they are complying with your compliance measures?
- How do you identify and address higher risk activities of your representatives, e.g. providing financial product advice to retail clients [or credit assistance to consumers](#), handling client money?
- Do you have a policy on disciplinary action for compliance failures or other compliance issues? Has it been clearly communicated to your representatives?

TRAINING AND COMPETENCE [\(for AFS licensees\)](#)

[Note: We are consulting separately on training and competence requirements for representatives of credit licensees.](#)

Training responsibilities

- How do you identify which of your representatives provide financial services?
- How do you identify and keep records of the training they complete: see reg 7.6.04(1)(d)?
- How do you identify the knowledge and skills they need?
- How do you ensure they have the necessary knowledge and skills to provide financial services?
- How do you ensure that your representatives who provide financial product advice to retail clients meet the training standards in RG 146?

Continuing training

- How do you ensure that your representatives who provide financial services maintain and update their knowledge and skills?
- Have you determined how much ongoing training they need?
- Do you have a regular (e.g. annual) training program for them? Who is responsible for this?
- How do you ensure your training program continues to meet the needs of your representatives?

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Your resources

TECHNOLOGICAL RESOURCES

- | | |
|-------------------------------------|---|
| Adequacy of resources | <ul style="list-style-type: none"> • What technological resources (e.g. communications, IT) do you need to carry out your business? • Have you identified key indicators that might show you do not have enough technological resources? How do you monitor these key indicators? |
| IT framework | <ul style="list-style-type: none"> • Do you have an IT strategy to support your current and future operational needs? • Do you have a disaster recovery plan and do you test it regularly? • Do you have in-house IT staff to provide and/or manage the delivery of IT services? If not, how are your IT services managed and delivered? • Do you have outsourcing arrangements with third parties for the development and maintenance of your IT systems? • Do you have contracts with third parties that include service level agreements? If so, how often do you review delivery of service levels under those agreements? |
| Data back-up and IT security | <ul style="list-style-type: none"> • Do you have data back-up and recovery plans? • How regularly do you back up your data and how are back-ups stored (e.g. are they stored offsite)? • Do you have network security controls in place? How do you keep viruses out of your system? • How do you protect confidential and other sensitive information? • Is access to physical IT infrastructure restricted? |

HUMAN RESOURCES

- | | |
|----------------------------------|--|
| Adequacy of resources | <ul style="list-style-type: none"> • What human resources do you need for each of your business activities, e.g. compliance, monitoring and supervision, complaints handling? • Have you identified key indicators that might show you do not have enough human resources? How do you monitor these key indicators? • How do you ensure extra staff are available when they are needed (e.g. to supervise staff who have been involved in compliance failures)? • How do you ensure client accounts and interests are monitored while staff are absent? |
| Human resources framework | <ul style="list-style-type: none"> • Do you have a recruitment process? • Do you have systems for inducting and training new staff? • Do you have a performance management process? • Do you have a succession planning process? • Do you have in-house human resources staff to provide and/or manage the delivery of your human resources needs? If not, how are your human resources needs managed and delivered? • Do you have outsourcing arrangements with third parties for the development and maintenance of your human resources needs? • Do you have contracts with third parties that include service level agreements? If so, how often do you review delivery of service levels under those agreements? |

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Key terms

| Term | Meaning in this document |
|-------------------------------------|--|
| AFS licence | An Australian financial services licence under s913B of the <i>Corporations Act 2001</i> that authorises a person who carries out a financial services business to provide financial services Note: This is a definition contained in s761A of the <i>Corporations Act 2001</i> . |
| AFS licensee | Australian financial services licensee as defined under 'financial services licensee' in s761A of the Corporations Act |
| APRA | Australian Prudential Regulation Authority |
| ASIC | Australian Securities and Investments Commission |
| body regulated by APRA | Has the meaning given in s3(2) of the <i>Australian Prudential Regulation Authority Act 1998</i> |
| Corporations Act | <i>Corporations Act 2001</i> , including regulations made for the purposes of this Act |
| credit legislation | Has the meaning given in s5 of the National Credit Act |
| credit licence | An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities |
| credit licensee | Australian credit licensee as defined under 'licensee' in s5 of the National Credit Act |
| financial services laws | Has the meaning given in s761 of the <i>Corporations Act</i> |
| general obligations | For AFS licensees , the obligations under s912A(1) of the <i>Corporations Act</i> ; for credit licensees the obligations under s47(1) of the National Credit Act |
| governing body | The board of directors, committee of management or other governing body of the licensee (including, in relation to a licensee who is a natural person, that person) |
| licensee | A person who holds an AFS licence or a credit licence |
| National Credit Act | National Consumer Credit Protection Act 2009, including regulations made for the purposes of this Act |
| [PF 209] (for example) | An ASIC pro forma (in this example numbered 209) |
| representative | Has the meaning given in s910A of the <i>Corporations Act</i> or s5 of the National Credit Act (as relevant) |

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| Term | Meaning in this document |
|----------------------|--|
| RG 166 (for example) | An ASIC regulatory guide (in this example numbered 166) |
| you | Licensee or applicant for an AFS or credit licence |

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