



## THE RULES OF THE GAME

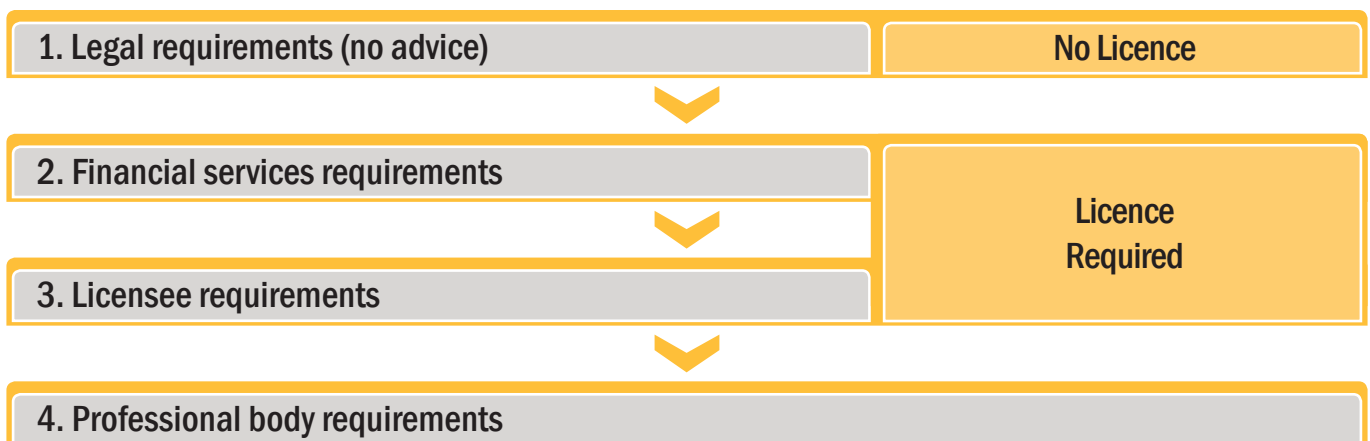
If you're an accountant considering AFS licensing, either as an authorised representative or through obtaining your own licence, you need to be aware of your obligations. Some are legal requirements, while others are imposed by your licensee or professional body. Most accountants are aware that there will be some disclosure requirements (preparation of Statements of Advice (SOA)), but very few are aware of the advice rules they will need to follow in a licensed environment.

At first glance, the rules may appear onerous and will certainly be different to what most accountants are

used to. However, they are good practice and if you develop sound processes around them, they should become streamlined. However, you do need to be aware of them and understand that they are likely to take some time to adjust to.

For accountants providing a compliance based service, often the only consideration is if it's allowed legally. However, an accountant providing advice in a licensed environment needs to operate within extended rules as outlined below or not provide that type of advice.

## OVERVIEW OF ADVICE OBLIGATIONS



## 1. LEGAL REQUIREMENTS (NO ADVICE)

You do not need to be licensed to provide factual information to your clients, as this does not constitute financial advice.

In this instance, client questions that you can answer are:

- Can I have an SMSF?
- How many members can an SMSF have?
- What assets can an SMSF invest in?
- Can an SMSF borrow to invest?
- Can I segregate my assets in an SMSF?

## 2. FINANCIAL SERVICES REQUIREMENTS

By law, once you are licensed to provide advice, there are requirements in place to ensure that personal advice is in the best interests of the client and appropriate to their circumstances. Further details regarding these requirements are outlined in ASIC's Regulatory Guide 175 (RG175).

Once licensed, client questions you can answer will look more like this:

- Should I have an SMSF?

- How many members should my SMSF have?
- What assets should my SMSF invest in?
- Should my SMSF borrow to invest?
- Should I segregate assets in my SMSF?

While these are additional requirements, you will be in a position to fully utilise your skills and expertise to add value to the advice you already provide your client with. In most instances, they have come to you as their accountant for your recommendations and not to ascertain if it is just possible or not.

## 3. LICENSEE REQUIREMENTS

Licensees are responsible for ensuring that their advisers meet their advice obligations. As such, licensees should have measures in place which outline what they consider to be appropriate advice.

These guidelines are needed so that everyone operating under that licence is aware of what is and is not appropriate and can prepare a Statement of Advice (SOA) without it having to be checked every time.

It is not uncommon for licensees to have 30 or more guidelines in place to cover both advice topics (ie: Limited Recourse Borrowing arrangements), and advice procedures (ie: when to provide an FSG).

Returning to the list of questions above, parameters a licensee may impose include:

| Area of Advice                    | Parameters   |
|-----------------------------------|--|
| Recommending an SMSF              | Under what circumstances would you recommend an SMSF over other types of investments?<br>Minimum value of an SMSF?<br>Do you have to complete additional SMSF training to advise in this area? |
| Who can be members of an SMSF?    | When is it appropriate for non-family members to be part of the same SMSF?<br>Do they consider it a good idea for children of the one family to be part of the one SMSF? If not, why not?      |
| Assets that an SMSF can invest in | Should an SMSF invest 100% in direct property?<br>What about collectibles?<br>What principles do you put in place regarding asset allocation?  |

## Area of Advice

## Parameters

|                     |   |
|---------------------|---|
| Borrowing to invest | Does an investor require a high risk tolerance before you will consider borrowing arrangements?<br>Are there any other requirements (marginal tax rate, no intention of retiring etc)?<br>What is the maximum LVR you consider appropriate? |
| Asset segregation   | What is the default position on this and why?<br>Under what circumstances would you recommend assets be segregated (eg: specific assets that individuals want to own; CGT issues)?  |

If you have your own licence, documented advice guidelines are strongly recommended so that you can clearly demonstrate to ASIC what you consider to be appropriate and why. Guidelines will also help you ensure that your representatives are providing appropriate advice.

## 4. PROFESSIONAL BODY REQUIREMENTS – APES230

In addition to legal and licensee requirements, if you are a member of one of the three accounting bodies CPA Australia (CPA), the Institute of Chartered Accountants (ICAA) or the Institute of Public Accountants (IPA), you will also need to comply with their professional body requirements. In addition to the standard professional code of conduct, there is a specific standard that has recently been

introduced for financial advice. For CPA and the ICAA, this is contained in APES230 and for the IPA, it is Pronouncement 11.

APES230 doesn't impose any additional requirements on what it considers appropriate advice. However, it does impose additional disclosure and conduct requirements. It also takes a tougher stance on how accountants can be remunerated, including measures such as 'informed consent' where the fee is based solely on the percentage of the client's funds under advice.

### IMPORTANT INFORMATION:

Licensing for Accountants has taken reasonable care to ensure that the information found in this fact sheet is correct at the time of writing. The information contained in this fact sheet is a guide only. You should obtain further information specific to your situation or professional advice before making a decision. Changes in the law or ASIC's policies may occur at any time and may impact the accuracy, reliability or completeness of the information. We are not liable for any decision taken on the basis of the information shown in or omitted from this document.

Copyright © Licensing for Accountants. All rights reserved.  
Version 1 – January 2015