

QUESTION

I am a director of a dealer that will soon transition and have been offered a second directorship of a dealer that has transitioned and holds an Australian Financial Services Licence. Can I be a director of more than one AFSL?

ANSWER

The issue in this question stems from the fact that section 910A of the post FSR Corporations Act defines a representative to include each director of an AFSL, so not only is the question *can I be a director, but also because I am, can I be a representative of more than one AFSL?*

There is no restriction that limits a person from being appointed a director of more than one AFSL under the post FSR Corporations Act ("the Act"), if the director is merely acting in their capacity as a director. It is only when a person is appointed a director of more than one AFSL Holder and is also engaged to provide financial services for more than one AFSL Holder that the procedural requirements of such appointment, pursuant to the Act, must be followed.

Now, assuming that both of the AFSL's are *unrelated* then provided that you are appointed as an *authorised representative* of both AFSL's and both consent to this, then a director may provide financial services for two *unrelated* AFSL Holders.

This is the basic requirement of section 916C of the Act. In particular 916C provides: *One person can be the authorised representative of 2 or more financial services licensees, but only if each of those licensees has consented to the person also being the authorised representative of each of the other licensees; or each of those licensees is a related body corporate of each of the other licensees.*

Relevant to note is that section 910A of the Act recognises that a Director is a *representative* of an AFSL merely by being appointed as a director and therefore *can* provide financial services without the need to be an *authorised representative*.

Which means for completeness you should be aware that by virtue of section 911B(a) of the Act, coupled with the definition of *representative*, a person who is a Director of two *related* AFSL's is not required to be appointed as an *authorised representative* of both AFSL Holders pursuant to section 916C(1).

By the mere fact that the person is a Director of both AFSL's who are *related* body corporates means that the person can provide financial services for both AFSL's in their capacity as a *representative*.

Therefore the question is not whether a person can be appointed a director of two or more AFSL's, the question turns on whether a director wishes to be appointed a director of two or more AFSL's *and* provide financial services for more than one of them. If yes and they are related body corporate, no problem. If no, and they are not related you must go through the formal authorisation process.

We pose the question to you however; do you want to be appointed a director of two unrelated AFSL's? When answering this question we suggest you bear in mind the cross liability provisions of the Act which rest on the Licensee, namely the director, and the *authorised representatives*. Query whether or not it is wiser to accept appointment as a director of only one AFSL's, in which you do not

provide financial services *and* act as an *authorised representative* of the other AFSL's but not be appointed as a director of that company.

We suggest that if you agree to be appointed a director of two unrelated AFSL's, whether or not to provide financial services for both, you conduct a legal and compliance due diligence of the companies before you accept such appointment. The cross liability issues strongly suggest that you need to be made confident that the systems, checks and balances will highlight issues that need the attention of the directors, not only of their company but also the other company of which any of them are also directors; it is an issue for all directors.