

Fixed Term Arrangement (Non-Ongoing Fee) Policy

Version 1

Last updated 15 July 2022

AIM OF THIS POLICY

This policy sets out the Licensee's measures for entering into and maintaining Fixed Term Agreements (FTA).

The measures are intended to help the Licensee and its ARs meet statutory and licensing requirements relating to:

- the requirement to do all things necessary to provide financial services efficiently, honestly and fairly
- compliance by representatives with the law
- unfair contract terms
- implied warranties

This policy does not cover measures for:

- entering into and maintaining fee Ongoing Fee Arrangements (OFA);
- entering into and maintaining fee arrangements with wholesale clients;
- complying with the requirements of the FPA Professional Ongoing Fees Code.

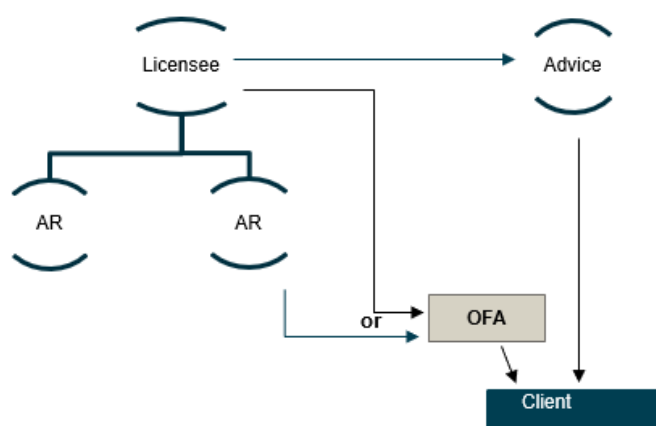
HOW DOES THE LAW APPLY TO OUR BUSINESS?

The regulatory regime sets out requirements that apply when a licensee or AR enters into an FTA.

What is an FTA?

An arrangement is an FTA if:

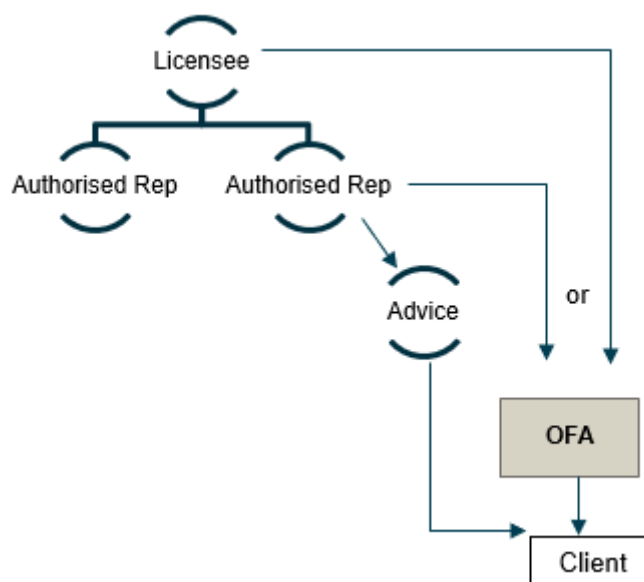
- a licensee gives personal advice to a person as a retail client; and
- the person enters into an arrangement with the licensee, or an AR of the licensee; and
- under the terms of the arrangement, a fee is to be paid for a period of no more than 12 months.



OR

- an AR of a licensee gives personal advice to a person as a retail client; and

- the person enters into an arrangement with the AR or the licensee; and
- under the terms of the arrangement, a fee is to be paid for a period of no more than 12 months.



The Licensee considers that when a representative of the Licensee enters into an FTA with a retail client, that person does so on behalf of the Licensee (if the Licensee employs them) and on behalf of the CAR (if a CAR employs them). They do not do so in their own capacity, unless they run their business in their individual name and not that of a corporate entity. This is rare.

The regulatory regime defines FTAs in a way which is broad enough to capture arrangements which are not contracts, as well as ones which are. However, normally, an FTA would itself be a contract or would involve a contract. The concept of “contract” is contained in the law made by the courts. A contract is a legally binding agreement. A contract can exist without it being reflected in writing. The Licensee regards each FTA to which it (or its AR) is a party as a contract or as including a contract.

The Act provides that the rights of a licensee or AR under an FTA may be assigned to another licensee or AR. If the rights under an FTA are assigned, then the licensee or AR to which they are assigned becomes subject to the requirements under the Act for FTAs which would otherwise have been applicable to the licensee or AR which first entered into the FTA.

Under contract law, it is possible for the licensee or AR to transfer its rights (and even, provided certain conditions are met, its obligations) under the contract to another licensee or AR. This is relevant when a licensee or AR seeks to sell a book of clients to another licensee or AR.

What is not an FTA?

An arrangement with a retail client is not an FTA if:

- it is an arrangement for the client to pay in instalments for personal advice provided to the client before the arrangement commenced;
- the only fee payable under the arrangement is an insurance premium;

- the fee paid under the arrangement is charged by a product issuer and the fee is for the administration, management or operation of a financial product that the issuer has issued to the client;
- a fee is for the cost of providing financial product advice and is legally able to be passed on to a member of a regulated superannuation fund.

Obligations applicable to an FTA relate to:

- obtaining express written consent to deduct fees

Other legal considerations

FTAs will attract other obligations under law made by the courts in addition to the legislative obligations, in the areas of:

- contract
- negligence
- equity

A licensee must do all things necessary to ensure that financial services are provided efficiently, honestly and fairly. This applies to financial services provided under FTAs.

In ASIC's view, one way of meeting this requirement is by a licensee (and its ARs) meeting their contractual obligations to clients.

The licensee (or AR) must do what it says it is going to do under an FTA.

If it does not, it can be sued for breach of contract, and the Licensee may be in breach of the requirement to do all things necessary to provide financial services efficiently, honestly and fairly.

To the extent an FTA is a contract, certain other statutory provisions may apply. These are that:

- a term in the contract that is unfair will not be enforceable by the Licensee (or AR)
- the financial services to be provided under the contract must be rendered with due care and skill.

Also, the law says that a person must not engage in dishonest conduct in relation to a financial product or a financial service. Committing to providing services to a client under an FTA when the Licensee or AR knows that it is unable to provide these services, is a breach of the law.

The law also prohibits a person from taking payment for financial services when there are reasonable grounds for believing the person will not be able to provide the financial services within a reasonable time.

The law prohibits a person from engaging in misleading and deceptive conduct or making false or misleading representations.

WHAT IS THE LICENSEE'S APPROACH?

This policy is drafted on the basis that either the Licensee itself or its CAR may enter into an FTA.

The way in which this policy is drafted reflects the Licensee's expectation that an individual AR may not enter into an FTA. Only the employer of an individual AR may be a party to an FTA. The Licensee's individual ARs are all employed by CARs of the Licensee.

AR's

Where the Licensee's CAR enters into an FTA and receives fees under that FTA, the CAR is responsible for meeting the statutory requirements applicable specifically to FTAs. The CAR is also responsible for meeting any obligations which form part of a contract with the client.

The Licensee requires its CARs to follow this policy and use the associated tools as a way of helping the Licensee to meet its obligations to:

- do all things necessary to ensure that financial services are provided efficiently, honestly and fairly;
- take reasonable steps to ensure that its representatives comply with the financial services laws.

Given that the CAR is the party entering into a contract with the client as part of, or in the form of, an FTA, the Licensee accepts that the CAR should have some freedom to tailor the FTA Template to suit its own business. However, any changes to these standard tools must be approved by the Licensee before the CAR begins using the updated tools.

PREPARING AN FTA DOCUMENT

The Licensee or CAR ensures that its advisers use the FTA Template to reflect the terms of an FTA. These templates can be found in either Xplan or the iC2 App.

This may be provided to the client in hard copy or electronically.

The Licensee or CAR ensures that the FTA document provided to a client:

- only includes services the Licensee or CAR will definitely provide ;
- states when or how often each service will be provided;
- does not include an offer of an annual review but, rather, includes an annual review itself.

Do not include services in the FTA which the Licensee or CAR may not provide. For example, it is not acceptable to say, "We may invite you to seminars from time to time."

When it comes to setting out fees in the FTA document, the Licensee or CAR ensures that:

- the benefit the client receives from the services is commensurate with the fees charged by the Licensee or the CAR for the services provided.
- fees are expressed as a fixed dollar amount or as a percentage of funds under advice.
- the FTA document specifies whether or not the fees will be paid by an investment entity (such as a platform provider) from an account held for or on behalf of the client.

ENTERING INTO THE FTA

The process for entering into a FTA with a client is:

1. Provide the client with personal advice via an SOA. As part of this process, assess whether it is in the client's best interests to enter into an FTA with the Licensee or CAR.
2. If it is not in the client's best interests, do not recommend it.
3. If it is in the client's best interests:
 - a) recommend it in the SOA;
 - b) populate the FTA Template with the client's details;
 - c) enter the proposed start date for the FTA in the FTA Template;
 - d) enter the fixed term applicable to the agreement;
 - e) ensure that the services described in the FTA document are services the Licensee or CAR can actually provide at the times set out in the FTA document;
 - f) attach the FTA document to the SOA (and, if applicable, a written consent to deduct advice fees from the client's account under the FTA) for consideration by the client.

Make sure you know who is the appropriate client party to enter into the FTA. For example, it might be:

- an individual;
- a married couple;
- The corporate trustee of an SMSF.

4. If the clients sign and return the FTA document, record the date on which you received the FTA document with the appropriate client signatures. Record the date on which you received the signed FTA document from the client as the date on which the FTA was entered into.

RENEWING THE FTA

The process for renewing an FTA with a client is:

1. populate the FTA Template with the client's details;
2. enter the proposed start date for the FTA in the FTA Template;
3. enter the fixed term applicable to the agreement;
4. ensure that the services described in the FTA document are services the Licensee or CAR can actually provide at the times set out in the FTA document;
5. send the agreement for consideration by the client.

Replacing FTA's:

- It is possible to replace an existing FTA with a new agreement.
- Where a client enters a new FTA, best practice would be to state that the new agreement terminates the old agreement and that the new agreement terms apply.
- It is possible for a client/s to have two FTA's in place concurrently. For example, where different services are to be provided under separate agreements.

HOW DOES CONSENT WORK?

Obtaining and renewing consent

The law requires a fee recipient to obtain written consent before they can deduct fees, or arrange for fees to be deducted, under a non-ongoing fee arrangement from a client's account

If the account is held jointly, you must obtain written consent for each account holder.

When consent is withdrawn or expires

If a client withdraws or varies their consent, within 10 business days you must:

- give written confirmation to the client that notice was received; and
- if the consent was provided to a third party, give the account provider a copy of the notice.

If the consent expires, you must give written notice to the account provider that the consent has expired within 10 business days of the expiry.

If you receive a fee when consent has not been provided, or after consent has expired or been withdrawn, you must repay the amount received within 10 business days.

WHAT HAPPENS WHEN AN FTA TERMINATES?

An FTA may terminate:

- automatically, at the end of the fixed term;
- because the client exercises their right to terminate the FTA;
- because the Licensee (or CAR) exercises a right to terminate, to which it is entitled under the terms of the FTA;
- because the Licensee or CAR and the client agree to terminate;
- because the Licensee or CAR becomes aware that the client has died.

Once an FTA terminates, the Licensee (or CAR) must immediately cease charging fees to the client under the FTA. The Licensee or CAR is also relieved of having to provide any services under the FTA which are contingent on the fee being paid.

Termination due to a breach

Where termination occurs pursuant to a breach, it is the responsibility of the CAR to ensure that the fees are switched off immediately.

If the client signs and returns the FTA document, then the Licensee or CAR may resume charging fees from the time it receives the new signed FTA document.

CHARGING FEES

The Licensee or CAR will not deduct fees, or arrange for fees to be deducted, from a client account without the client providing their express written consent for that to occur.

The Licensee or CAR ensures that no fees are charged to a client once it becomes aware that the FTA with the client has terminated (whether for reason of breach or another reason).

The Licensee or CAR's systems for charging fees to clients enable the Licensee or CAR to cease charging fees to a client immediately upon the Licensee or CAR identifying that the FTA has terminated.

Where fees are charged by a third party investment entity deducting fees from the client's account, the Licensee or CAR's systems and the third party's systems, as well as the communications framework between them, allow for fees to be switched off immediately upon the Licensee or CAR identifying that the FTA has terminated.

SCHEDULING AND RESOURCING

The Licensee (or CAR) may use an IT solution to achieve this.

Each time the Licensee or CAR enters into a new FTA with a client, it ensures that the commitments under that FTA are entered into the plan described above.

If the Licensee or CAR has been assigned the rights under FTAs by another entity (such as through the purchase of a business or a book of clients), then it must ensure that the commitments under those FTAs are entered into the plan described above.

When an adviser leaves the Licensee or CAR, the Licensee or CAR will ensure that the clients who were receiving services from that adviser under FTAs are allocated another adviser who will take over providing services under each FTA as soon as the old adviser finishes.

The Licensee or CAR, when assessing FTA resources, has regard to the policies and procedures of the Licensee in relation to adequacy of human resources.

WHAT RECORD KEEPING OBLIGATIONS DO WE HAVE?

The Licensee will ensure that records are kept as follows.

Record	Length of time
Copy of each FTA document	Indefinitely. To be kept in either Xplan or iC2 App.
Copy of each consent	Six years from date consent given. To be kept in either Xplan or iC2 App.
Records relating to personal advice given under FTA, including copies of SOAs, ROAs and information demonstrating that best interests obligations were met	Seven years from the date the advice was provided to the client. To be kept in either Xplan or iC2 App.
Emails confirming termination	Indefinitely. To be kept in either Xplan or iC2 App.

