

NAVIGATING COMMERCIAL CONTRACTS UNDER NEW FINANCIAL ADVICE LAW

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Introduction

The objective of this webinar is to give you an understanding of:

- Why contracts are important
- Some key issues that arise when contracting in the financial advice sector
- Structuring options under the new regime and the key related agreements
- Commercial considerations relevant to agreements
- Regulatory considerations relevant to agreements
- Matters for financial advisers to consider
- Improving client agreements

Why Contracts are Important

- Record a shared understanding of the essence of your relationship with someone else and help you to manage that relationship.
- Help to ensure compliance with regulatory obligations.
- Agreements reflect core elements of a business, its value proposition and its place in the regulatory regime.
- The introduction of the new regime is good opportunity to revisit your contracting model and contract terms.

Contracting Issues in the Financial Advice Sector

- Poor service descriptions
- Wrong form of agreement
- Use of the term “client ownership”
- Poor quality agreements (including client agreements)
- Poor integration of compliance obligations

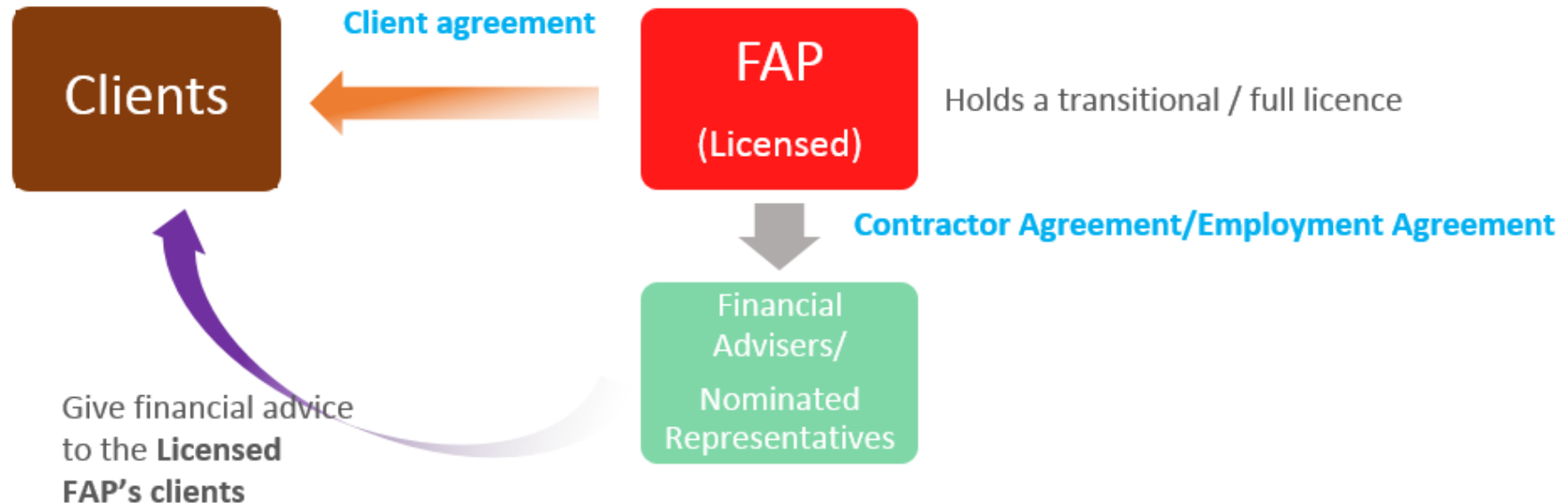
Structuring Options & Key Agreements

The three basic structuring options under the new financial advice regulatory regime are:

- The Financial Advice Provider (**FAP**) Model
- The Authorised Body (**AB**) Model
- The Interposed Person (**IP**) Model

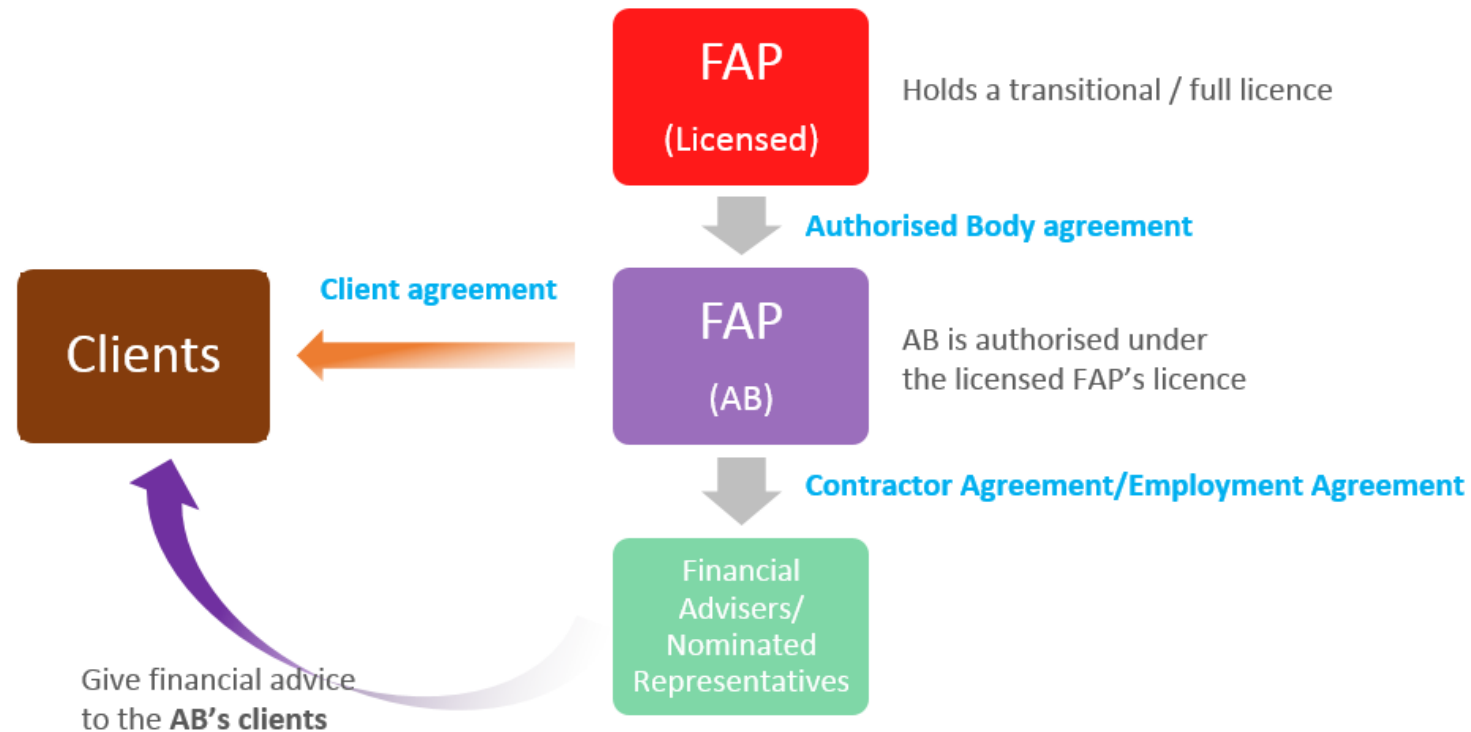
Structuring Options & Key Agreements (1)

FAP MODEL



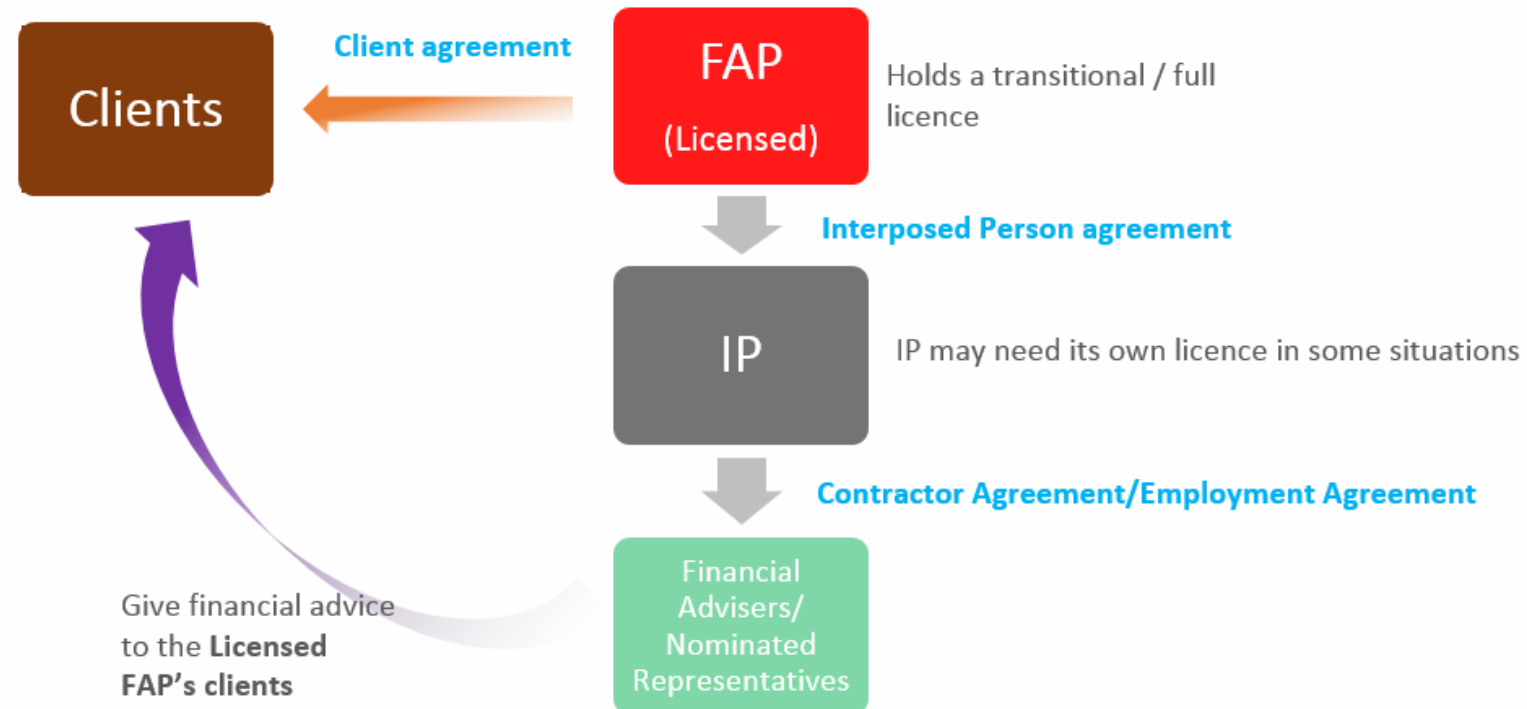
Structuring Options & Key Agreements (2)

AUTHORISED BODY MODEL



Structuring Options & Key Agreements (3)

INTERPOSED PERSON MODEL



Commercial Considerations

- Complexity of the financial advice sector
- Client ownership
- Commissions and payments
- Commercial conflicts of interest

Regulatory Considerations

- Imposing “FAP requirements” (e.g. FAP policies, procedures & standards) on ABs, financial advisers & nominated representatives
- Supervision & monitoring of ABs & financial advisers
- Contracting with nominated representatives
- FAP considerations in relation to appointing and managing financial advisers

Financial Adviser Considerations

- Contracting as an individual (and not via a company)
- Employee vs contractor status
- Rights to trail commissions

Improving Client Agreements

- FAP contracts with the client
- When to enter into the client agreement
- Agreement should be client focused
- Consumer Guarantees Act applies
- Client agreement must not include unfair contract terms
- The client agreement is not a liability shield



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