

1 April 2016

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Ministry of Business, Innovation and Employment  
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Dear Wendy

### **Immigration Advisers Licensing Act 2007 – employees of lawyers**

#### *Introduction*

1. Thank you for giving the New Zealand Law Society (Law Society) the opportunity to comment on a proposed amendment to the Immigration Adviser Licensing Act 2007 (IALA). Lawyers are exempt from the licensing requirements of the Act under section 11(e) and the proposed amendment would ensure that employees of lawyers or law firms (including incorporated law firms) are also exempt. The Law Society appreciates the proposal is at an early stage and has not yet been agreed by the Minister of Immigration or Cabinet.
2. The Law Society also provides comments on paragraphs 25 to 32 of a draft Immigration New Zealand internal administration circular “*Best Practice – Immigration Advisers*” (draft Best Practice) (extract **attached**), which detail how employees of lawyers may interact with immigration applicants and Immigration New Zealand (INZ).

#### *The regulation of lawyers providing immigration advice*

3. The exemption from the licensing requirements for lawyers under section 11(e) of the IALA applies to persons who hold a current practising certificate as a barrister or as a barrister and solicitor.<sup>1</sup>
4. The Lawyers and Conveyancers Act 2006 (LCA) and the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care Rules) 2008 (Rules) provide a comprehensive regulatory framework for lawyers. In its submission on the Immigration Advisers Licensing Bill in 2006, the Law Society supported the proposed exemption for lawyers, noting that the legal profession is at the most-developed end of the industry-led regulation continuum and that additional regulation for lawyers was not necessary.
5. The exemption under the IALA operates so that qualified lawyers who wish to undertake immigration work either hold practising certificates and practise immigration law as solicitors in a law firm or as barristers, or do not hold practising certificates and become licensed immigration advisors subject to regulation under the IALA.

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<sup>1</sup> Immigration Advisers Licensing Act 2007, section 6; Lawyers and Conveyancers Act 2006, section 6.

### *Employees of lawyers*

6. There has been some confusion about the scope of section 11(e), and the Law Society would therefore welcome an amendment to ensure that employees of a lawyer or law firm (including an incorporated law firm) are also exempt from the Act's licensing requirements.
7. The regulatory framework for lawyers ensures robust protection for consumers where employees assist their employers in providing immigration services and advice to clients. In particular, the framework provides that:
  - a. lawyers who practise on own account (sole practitioners, partners in law firms, and directors of incorporated law firms) must meet additional requirements relating to practical legal experience and suitability (section 30, LCA);
  - b. the conduct of employees is supervised and managed by a lawyer qualified to practise on own account (Rule 11.3); and
  - c. both employers and employees can be disciplined under the framework.
8. The Law Society recommends that the scope of the exemption for employees be clearly stated in the proposed amendment, to provide that *an employee of a lawyer, law firm or incorporated law firm may provide immigration services and advice to their employer's client*. This would be on the basis outlined in paragraph 7 above – namely that the employee has the appropriate competency and is under the direct supervision of a lawyer in the law practice and that the supervising lawyer is responsible for the advice given.

### Draft "Best Practice — Immigration Advisers", paragraphs 25 to 32: Employees of New Zealand Lawyers

9. The Law Society supports the development of best practice guidance for immigration advisers and INZ staff on how employees of lawyers may interact with immigration applicants and INZ.
10. Paragraph 25 of the draft Best Practice circular states that:

Because employees of New Zealand lawyers act under the direction and supervision of their lawyer employer, their actions are not considered distinct from their lawyer employer. Employees of lawyers therefore fall under their lawyer employer's exemption from licensing, and may provide immigration advice.
11. Consistent with the recommendation at paragraph 8 above, the Law Society recommends the following sentence be added at the end of paragraph 25 of the draft Best Practice:

However, the lawyer remains responsible for all immigration advice given and must ensure that the employee has the appropriate competency and is adequately supervised.

### *Written authority to act*

12. Paragraph 27 of the draft Best Practice states that "Visa applicants must give authority to a New Zealand lawyer to act on their behalf, and this must be indicated on a written authority to act". In addition, paragraph 28 provides that "once a lawyer has confirmed they are responsible for an application ...".
13. This is a departure from current practice and the Law Society recommends these paragraphs be amended to reflect the current practice, which is correctly stated in the third bullet point at paragraph 17 (acceptable authority to act):

- Confirmation in writing from a New Zealand lawyer on his or her letterhead that the lawyer is acting for the client(s).

*Conclusion*

14. This submission was prepared with assistance from the Law Society's Regulatory team and Immigration and Refugee Law Committee. If further discussion would assist, please do not hesitate to contact the Law Society's Law Reform Manager Vicky Stanbridge ([vicky.stanbridge@lawsociety.org.nz](mailto:vicky.stanbridge@lawsociety.org.nz) / 04 463 2912).

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a horizontal line extending to the right.

Chris Moore  
**President**

Encl:

Paragraphs 25 to 32 of draft Immigration New Zealand internal administration circular "*Best Practice – Immigration Advisers*"

cc Darren Calder  
MBIE, Manager Business Migration

**Extract from Immigration New Zealand, Internal Administration Circular No.: 16/XX [draft for consultation]**

**Employees of New Zealand lawyers**

25. Because employees of New Zealand lawyers act under the direction and supervision of their lawyer employer, their actions are not considered distinct from their lawyer employer. Employees of lawyers therefore fall under their lawyer employer's exemption from licensing, and may provide immigration advice.
26. Only direct employees of law firms or sole practitioner lawyers are covered by the exemption. Employees in any other organisation who are supervised by a lawyer with a practising certificate are not covered.
27. Visa applicants must give authority to a New Zealand lawyer to act on their behalf, and this must be indicated on a written authority to act. This lawyer is responsible for the visa application, and must be added to the contacts tab in AMS as the immigration adviser.
28. Once a New Zealand lawyer has confirmed they are responsible for an application, his or her employee(s) may act on his/her behalf in the context of that visa application.
29. Employees of New Zealand lawyers may not submit visa applications themselves, but may communicate directly with INZ once an application has been accepted.
30. Employees of New Zealand lawyers do not require an authority to act to communicate with INZ about a client represented by their employer.
31. If an application is submitted by a law firm and is not signed by a New Zealand lawyer, INZ will contact the law firm and advise that a lawyer needs to provide written confirmation to INZ that they are responsible for the application before the application will be accepted (an email will suffice for written confirmation).
32. Until a response is received, the application will be treated as if there is no immigration adviser.