

INTERNATIONAL LEGAL PRACTICE

POLICY STATEMENT, 1992

This policy statement was drawn up by the International Legal Practice Committee of the International Law Section of the Law Council of Australia. It has been adopted by the Law Council with the recommendation that, insofar as they have not already done so, its constituent bodies should adopt policies which conform to this policy statement.

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Part A: Introduction

1. Policy Principles

The Law Council considers:

- (a) that globalisation of legal practice should be actively encouraged in the interests of increasing trade and investment activity between Australia and its trading partners;
- (b) that it is necessary that the legal needs of the Australian community, especially the needs of the international business community in Australia, should be served according to the highest professional standards;
- (c) that it is necessary in the public interest that the community should be readily able to distinguish domestic lawyers, who are able to provide the full range of legal services to the community, from accredited foreign lawyers who can only carry on foreign legal practice;
- (d) that no Australian citizenship or residency qualification should be required for admission as a domestic lawyer.

2. Alternatives Open to Foreign Lawyers and Foreign Law Firms

- (a) Foreign lawyers may choose to apply to practise in Australia in any of the three following forms:
 - foreign legal practice as an accredited foreign lawyer (see Part C);
 - foreign legal practice as a recognised foreign law firm (see Part D);
 - full service legal practice in collaboration with domestic lawyers (see Part E).
- (b) A foreign lawyer may with or without accreditation be employed at any time by a domestic lawyer (see part C, paragraph 4).

3. State Control of Foreign Legal Practice

- (a) Foreign legal practice shall be subject to all applicable state laws governing the legal profession and to the control of the state law society in whose state the foreign lawyer wishes to practise.
- (b) Subject to state laws governing the legal profession, each state law society shall have discretion as to how applications to practise are dealt with, the period of accreditation and procedures for renewal of accreditation.

- (c) This policy statement is not to be construed as infringing on any state laws governing the legal profession or as fettering the discretion of state law societies but the Law Council recommends that, insofar as they have not already done so, its constituent bodies should adopt policies which conform to this policy statement.

4. Definitions and Interpretation

In this policy statement, the terms set out below shall have the meanings set out opposite thereto:

- (i) "accredited foreign lawyer" - a foreign lawyer who is accredited as such by a state law society;
- (ii) "domestic law" - the law of a state (which includes all applicable federal and international law);
- (iii) "domestic law firm" - a law firm primarily practising Australian domestic law;
- (iv) "domestic lawyer" - a lawyer admitted to practice in a state and holding a current practising certificate issued by the state law society for that state;
- (v) "domestic professional standards" - the standards of professional conduct and professional ethics required of a domestic lawyer in the relevant state;
- (vi) "foreign law" - law which is not domestic law;
- (vii) "foreign law firm" - a law firm other than a domestic law firm;
- (viii) "foreign lawyer" - a lawyer who is not a domestic lawyer;
- (ix) "foreign legal practice" - the practice by a foreign lawyer of the law of the foreign country in which he has been admitted to practice;
- (x) "full service legal practice" - the practice of domestic law and foreign law;
- (xi) "Law Council" - the Law Council of Australia;
- (xii) "recognised foreign law firm" - a foreign law firm which is recognised as such by a state law society;
- (xiii) "state" - a state or territory of Australia (Australia is comprised of six states and various territories each of which has its own domestic law);
- (xiv) "state law society" - a law society or other body responsible for the administration of state laws governing the legal profession in a state.

The singular number includes the plural and vice versa, and the masculine gender includes the female.

Part B: Requirements Applicable to Foreign Lawyers

1. Domestic Legal Practice

The right to practise or advise on domestic law and to hold oneself out as qualified to practise or advise on domestic law is reserved to domestic lawyers by state laws governing the legal profession.

2. Employment of Domestic Lawyers

A foreign lawyer in respect of his practice in Australia shall not employ a domestic lawyer.

3. Compliance with Domestic Professional Standards

- (a) In this paragraph, "accredited foreign lawyer" includes not only a foreign lawyer who is accredited by a state law society but all partners and employed foreign lawyers of a recognised foreign law firm (whether or not resident in Australia).
- (b) Except as may otherwise be approved by a state law society on application in any particular case, an accredited foreign lawyer shall, in all matters pertaining to the relevant state, be required to observe domestic professional standards.

Part C: Accreditation of Individual Foreign Lawyers

1. Applications for Accreditation

- (a) A foreign lawyer shall be prohibited from practising law or holding himself out as qualified to practise law in Australia until he is accredited as a foreign lawyer.
- (b) Applications to be accredited as a foreign lawyer must be made to the respective state law society.
- (c) Upon accreditation, the foreign lawyer may carry on foreign legal practice as a principal in the relevant state.
- (d) Applications must be supported by suitable evidence as to the following matters:

- (i) that no disciplinary or disbarment procedures have been successfully instituted or are pending against the applicant; and
 - (ii) if required, evidence of the applicant's admission and good standing in his home jurisdiction.
- (e) An accredited foreign lawyer shall not carry on foreign legal practice under the name of any foreign law firm unless it is a recognised foreign law firm.

2. Withdrawal of Accreditation

In the event of the relevant state law society being satisfied:

- (a) that any of the principles contained in this policy statement has been breached by an accredited foreign lawyer; or
- (b) that any disciplinary or disbarment procedures have been successfully instituted against the foreign lawyer in another jurisdiction

the relevant state law society may in addition to any other action withdraw his accreditation as a foreign lawyer and he shall forthwith cease to carry on foreign legal practice in the relevant state.

3. Disclosure to be Made on Letterheads

Except so far as may be dispensed with by the relevant state law society, on the letterheads used by an accredited foreign lawyer in a relevant state, he should disclose the jurisdiction or jurisdictions in which he is qualified to practise law.

4. Employment of Foreign Lawyers by Domestic Lawyers

A foreign lawyer (whether accredited or not) may be employed by a domestic lawyer, or may be engaged by a domestic lawyer as a consultant on foreign law, so long as the foreign lawyer does not act as a domestic lawyer nor hold himself out as a domestic lawyer nor in any other way act in contravention of applicable state laws governing the legal profession.

Part D: Recognition of Foreign Law Firms

1. Applications for Recognition

- (a) A foreign law firm shall be prohibited from establishing an office and carrying on business in Australia until it is recognised as a foreign law firm.
- (b) Applications to be recognised as a foreign law firm must be made to the respective state law society.

- (c) Upon recognition as a foreign law firm, those partners in the foreign law firm who have become or will become accredited foreign lawyers may carry on, from the date of their respective accreditation, foreign legal practice as principals in the relevant state.
- (d) Applications by a foreign law firm for recognition must be supported by suitable evidence as to the following matters:
 - (i) that no disciplinary or disbarment procedures have been successfully instituted or are pending against any of its partners;
 - (ii) that a substantial reputation attaches to the name of the firm and that its partners have extensive experience and expertise in jurisdictions in which the firm has offices;
 - (iii) if required, evidence of admission and good standing in the home jurisdiction of all partners intending to be resident in the relevant office; and
 - (iv) that at least one resident partner is an equity partner of the firm and has been either a partner of the firm or associated with it for at least two years prior to the application.
- (e) All partners of a recognised foreign law firm will be required to give covenants in writing to the relevant state law society that:
 - (i) they shall make available the full resources of the foreign law firm to any office established in the relevant state and to its resident partners;
 - (ii) they shall be jointly and severally liable to satisfy all obligations (including any obligations arising in connection with any matters of negligence, breach of contract or breach of any other duty) which may be incurred by any of the resident partners (whether or not any resident partner is a foreign lawyer or a domestic lawyer or both) in relation to the foreign law firm's activities in the relevant state;
 - (iii) they shall comply with the provisions contained in Part B of this policy statement.
- (f) The giving of any covenant by a recognised foreign law firm may be notified by the relevant law society to the body governing the legal profession in any other jurisdiction or jurisdictions where the recognised foreign law firm has an office.

2. Reciprocity May Be Taken Into Account in Considering Applications for Recognition

- (a) In considering an application of a foreign law firm for recognition in a state, the relevant state law society shall have the right (but not the obligation) to take into account the extent to which reasonably similar reciprocal rights are granted to domestic lawyers in the jurisdiction in which the majority of the partners of the foreign law firm are admitted to practice.
- (b) It is recognised that a foreign lawyer may be admitted in more than one jurisdiction and that there may be other factors which require the issue of reciprocity to be applied flexibly and not be an absolute barrier to recognition. In particular the issue of reciprocity should not be applied so as to discriminate unfairly against any other country or against the spirit of any of Australia's international trade obligations.

3. Withdrawal of Recognition for Breach

In the event of the relevant state law society being satisfied:

- (a) that any of the covenants given by a partner of a recognised foreign law firm have been breached; or
- (b) that a recognised law firm has ceased to be represented by a resident accredited foreign lawyer or that his accreditation has been withdrawn

the relevant state law society may in addition to any other action withdraw the recognition of the foreign law firm. The partners of the foreign law firm shall thereupon forthwith cease to maintain an office and cease to carry on business in the relevant state.

4. Disclosures to be Made on Letterheads

Except so far as may be dispensed with by the relevant state law society, on the letterheads used by a recognised foreign law firm in a relevant state, the firm should disclose:

- (a) which partners are resident in the relevant state;
- (b) the jurisdiction or jurisdictions in which those partners are qualified to practise law;
- (c) if the firm has overseas branches, where those branches are located;
- (d) if none of the resident partners is qualified to practise in the relevant state, a statement to that effect.

5. Use of Home Name

A recognised foreign law firm will, for so long as its recognition is not withdrawn and subject always to any rights of third parties under applicable Australian laws, be entitled to use, and shall use, in the relevant state the name used by the firm in its home jurisdiction unless such name is confusingly similar to that name of an existing domestic law firm or other foreign law firm.

Part E: Integration of Foreign Law Firms and Domestic Law Firms

1. Applications by Domestic Lawyers to Practise Under Name of Recognised Foreign Law Firm

- (a) Application may be made to a state law society by a domestic lawyer or by a domestic law firm for approval to practise as an integrated legal practice under the same name as a recognised foreign law firm and to share the receipts of that practice with the partners of the recognised foreign law firm.
- (b) An approved domestic lawyer or domestic law firm, for so long as such approval is not withdrawn, may practise under the name of the recognised foreign law firm.

2. Withdrawal of Approval for Breach

In the event of a relevant state law society being satisfied that any of the covenants given by a partner of a recognised foreign law firm has been breached, the state law society may (but without prejudice to any other action it may take) withdraw, its approval for the domestic lawyer or domestic law firm to practise under the name of the recognised foreign law firm. The domestic lawyer or the domestic law firm shall thereupon forthwith cease to use the name of the recognised foreign law firm and cease to share the receipts of their practice with the partners of the recognised foreign law firm.

3. Applications by Domestic Law Firms to Admit Accredited Foreign Lawyers as Partners

- (a) It shall be at the discretion of any state law society whether, so long as it is not prohibited by applicable state laws, to permit a domestic law firm to admit accredited foreign lawyers as partners in the domestic law firm.
- (b) The Law Council considers that the admission of accredited foreign lawyers as partners in domestic law firms is not objectionable so long as there is always a majority of partners who are domestic lawyers.