Law Council
OF AUSTRALIA

General review of the Indonesia–Australia Comprehensive Economic Partnership Agreement

Department of Foreign Affairs and Trade

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The Law Council thanks Norton Rose Fulbright for their work to support the Law Council's grant activity under the Southeast Asia Free Trade Agreements Modernisation Grant Program, which has informed aspects of this submission.

This submission builds upon previous submissions made by the Law Council in relation to trade in legal services with Indonesia, and the negotiation and review of Free Trade Agreements with Southeast Asian economies.

Introduction

1. The Law Council of Australia welcomes the opportunity to provide a submission to the Department of Foreign Affairs and Trade (**DFAT**) to support the General Review of the Indonesia-Australia Comprehensive Economic Partnership Agreement (**IA-CEPA**).

2. Indonesia is a jurisdiction of particular interest to the Australian legal profession due to its economic profile and the breadth of the trading relationship between Australia and Indonesia.[1]

3. Several Australian law firms (or global law firms with Australian offices) have close and longstanding relationships with Indonesian law firms, including through the secondment of senior lawyers to local law firms in Indonesia.[2]

4. Australian lawyers in Indonesia are generally not seeking to practise Indonesian law or represent clients before Indonesian courts. Instead, Australian lawyers and law firms are primarily interested in providing fully integrated commercial legal services to corporate clients and financial institutions.

5. A framework that permits Australian and Indonesian lawyers to work together in close commercial association will ensure the availability of fully integrated legal services that includes both domestic and foreign law components. In addition to reducing cost for clients, such a framework would play a significant role in providing the levels of confidence that major domestic and foreign investors take into consideration when making significant investment decisions.

6. Indonesia presently remains one of the most restrictive jurisdictions for trade in legal services in Southeast Asia, and by international standards. Australian lawyers can presently provide some services, however restrictions apply to the way that these services are provided.

7. Only lawyers with a degree from an Indonesian law school and Indonesian citizenship are eligible to obtain a right to practise Indonesian domestic law or establish law offices. A foreign lawyer may operate as a legal consultant employed by an Indonesian law practice. However, they are not permitted to advise on Indonesian local law.

8. Additional barriers include restrictions on foreign firms establishing a commercial presence in Indonesia, ratios and caps that limit the number of foreign lawyers working in Indonesian firms, and restrictions on foreign lawyers moving between firms.

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1 See for example, Law Council of Australia, *Legal Services Market Access under the Indonesia-Australia Comprehensive Economic Partnership Agreement* (Submission, 19 October 2016).

2 Examples include TNB & Partners, in association with Norton Rose Fulbright, Oentoeng Suria & Partners, in association with Ashurst; Hiswara Bunjamin & Tandjung, in association with Herbert Smith Freehills Kramer; HHP Law Firm, a member firm of the Baker & McKenzie Swiss Verein; and Ginting & Reksodiputro, in association with A&O Shearman.

9. The Law Council has previously made several submissions to DFAT on trade in legal services with Indonesia—both prior to and following the conclusion of the IA-CEPA.[3] This includes the Law Council's recent submission to DFAT as part of its Southeast Asian FTA modernisation review.[4]

10. In conjunction with that review, the Law Council received grant funding from the Commonwealth Government to undertake an analysis of barriers to trade in legal services in Southeast Asia and develop a strategy to address these barriers. This work reinforces a number of observations made by the Law Council in previous submissions.

11. As noted by DFAT, Australia's FTAs are not static documents. They are implemented over time, and are subject to review to maximise the benefits they deliver.

12. The Law Council considers that IA-CEPA provides a platform through which Australia could seek further liberalisation of Indonesia's legal services market, and discuss challenges relating to the implementation of existing commitments. The Law Council encourages the Australian Government to use the current IA-CEPA Review as an opportunity to consider practical measures to address the barriers identified in this submission.

Trade in legal services with Indonesia

Trade in legal services under the IA-CEPA

13. Annex 9A (Professional Services) of IA-CEPA provides that Australia and Indonesia shall encourage the relevant bodies in their territories to develop mutually acceptable standards and criteria for certification and licensing, and to take into account other multilateral agreements that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing and registration.

14. On legal services specifically, the IA-CEPA makes positive commitments in relation to the supply of legal services through different modes of supply.

15. Unlike trade in goods, which involves the physical movement of products across a border, trade in services can happen in several different ways. The General Agreement on Trade in Service (**GATS**) classifies four modes of services supply:

    Mode 1—cross border supply

    > *Example: an Australian lawyer provides legal advice to a client located in Indonesia remotely (e.g. via email, phone call, video conference).*

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[3] See for example, Law Council of Australia, *Legal Services Market Access under the Indonesia-Australia Comprehensive Economic Partnership Agreement* (Submission, 19 October 2016).

[4] Law Council of Australia, *Southeast Asia Free Trade Agreements Modernisation Review* (Submission, 22 January 2026)

Mode 2—consumption abroad

Example: a client from Indonesia visits an Australian lawyer in Australia. The Australian lawyer provides advice to the client.

Mode 3—commercial presence

Example: an Australian law firm seeks to establish a business operation in Indonesia through a commercial presence.

Mode 4—presence of natural persons

*Example: an Australian lawyer flies to Indonesia, usually on a fly-in, fly-out (**FIFO**) basis, to provide advice, often contemplating Mode 1.*

Cross border-supply (Mode 1)

16. Under IA-CEPA, Indonesia has committed to allow the supply of cross-border legal advisory services, such as advice provided via email, covering Australian law, third country law and international law.

17. In practice, there are no rules allowing Australian-based lawyers to advise clients in Indonesia on 'foreign law' from Australia using electronic communications.

Commercial presence (Mode 3)

18. IA-CEPA explicitly confirms that foreign law firms are prohibited from establishing a commercial presence in Indonesia.

19. Under Indonesia's horizontal commitments in Annex II, it is suggested that legal services might be permitted through the constitution, acquisition or maintenance of a limited liability company denoted as PT ('Perseroan Terbatas') unless otherwise specified. The Law Council is not aware of any Australian or foreign law firms that have structured themselves in this way in Indonesia.

20. Under IA-CEPA, Indonesia has also undertaken to automatically lock in any future liberalisation that would allow Australian law firms to establish a commercial presence in Indonesia.

Presence of natural persons (Mode 4)

21. Under IA-CEPA, entry and temporary stay is permitted for an 'Independent Professional For Legal Services' for a period of one year, which may be extended for a period of not more than one year for each extension. This applies only for advisory services on foreign and international law

Progressive articles

22. The IA-CEPA contains several progressive articles on services including National Treatment, Most Favoured National Treatment, Market Access and Local Presence. However, Annex I (Services and Investment) Schedule of Indonesia provided that the Article on National Treatment and Market Access does not apply to legal services.

Addressing barriers to trade in legal services

23. Although IA-CEPA contains some positive commitments, there are still considerable barriers and conditions in Indonesia for Australian lawyers and law firms.

24. These conditions and barriers include:

    (a) the right to practise as a foreign legal consultant is tied to employment to a particular domestic law firm;

    (b) the number of foreign legal consultants in a law firm is limited to a 4:1 ratio and capped at a maximum of five foreign legal consultants;

    (c) the scope of practice for foreign legal consultants is limited to the practise in the field of foreign law, being 'the law of the lawyer's country of origin' or international law in the fields of business and arbitration that encompasses the settlement of disputes outside the courts; and

    (d) the prohibition on foreign lawyers conducting litigation, presenting in court, practising, and/or opening legal services offices or representative offices in Indonesia.[5]

25. These barriers are explored further below along with proposed recommendations grounded in the Law Council's *Best Practice Principles for Regulation of Foreign Lawyers and Transnational Law Practice*.[6]

Requirements on foreign legal practitioners

26. The requirements for an Australian lawyer to practise as international legal consultant in Indonesia are particularly onerous by international standards, requiring that this can only occur in conjunction with a commercial presence. Foreign legal consultants do not have standalone practice rights to practise foreign law in Indonesia. Instead, their right to practise is tied to their employment with a particular Indonesian firm.

27. The process for obtaining the requisite approvals is complicated and lengthy:

    (a) The local Indonesian law firm employing the foreign legal consultant is required to submit a proposal of request for approval from the Minister of Law.

    (b) The foreign lawyer must submit copies of their legal qualifications and current practising certificate and law society membership to both the Ministry of Law and PERADI (the Indonesian Advocates Organisation).

    (c) The foreign lawyer must pass a foreign advocate examination administered by PERADI to obtain a recommendation letter.[7]

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5 Advocate Law (Indonesia) No. 18 of 2009 Article 23(1); and Regulation (Permenkurnham) No. 26 of 2017 Article 19(1).

6 Law Council of Australia, *Best Practice Principles for Regulation of Foreign Lawyers and Transnational Law Practice* (Policy Statement, November 2015).

7 Advocate Law (Indonesia) No. 18 of 2009 Article 23.

(d) If the lawyer is recommended by PERADI and approved by the Ministry of Law, the employer must obtain a work permit from the Ministry of Manpower.

(e) Upon obtaining the requisite approvals, foreign lawyers are required to obtain a temporary stay visa from the Ministry of Immigration and Corrections for one year at a time, after which the lawyer may need to exit Indonesia briefly to reset the visa.

28. Foreign legal consultants working in Indonesia encounter difficulties moving between employers. When a foreign lawyer wishes to move to a different firm, they must obtain a waiver that allows the existing work permit to be used in relation to work for a different employer. Failure to obtain a waiver can result in the foreign lawyer's right to practise being revoked.

29. The requirements for foreign lawyers to be licensed in Indonesia are subject to the discretion of Indonesian regulatory authorities, and whose discretion is subject to change. As such, Australian lawyers must remain in favour with Indonesian regulatory authorities, creating potential complications.

30. A key concern raised by Australian lawyers is the requirement that foreign lawyers in Indonesia must provide significant pro bono services as a condition of practising in Indonesia, namely a minimum of 120 hours per year.[8] This requirement does not apply to domestic Indonesian advocates. If this requirement is not met, the Minister may refuse to extend approval to the employer law firm to extend the lawyer's registration.

31. Although firms have noted that workarounds exist, and discretion can be exercised by Indonesian regulatory authorities, this was still viewed as a significant and unwelcome burden by Australian lawyers.

32. Employers who are hiring foreign workers are required to pay the *Dana Kompensasi Penggunaan TKA (DKP-TKA)* compensation fund $100 USD per month per foreign worker.[9] This payment is submitted in advance for the approved employment period. For example, a 12-month work permit requires USD 1,200 paid upfront through banks appointed by the Ministry of Manpower. This fund is meant to contribute to the skill development of Indonesian workers.

33. When reflecting on the onerous registration requirements, Australian lawyers working as foreign legal consultants have also highlighted the strain created by the ongoing and constant nature of these processes and requirements. Due to the time frames involved, the process for renewing their right to practice typically involves completing the pro bono service hours six months prior to submitting the application to the Ministry, alongside obtaining documentation from Australian (State and Territory) admitting and regulatory authorities, arranging for embassies to notarise documents, scheduling interviews and arranging to leave and re-enter Indonesia.

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8 *Indonesia-Australia Comprehensive Economic Partnership Agreement*, Annex 12-A. By way of comparison, the National Pro Bono Target in Australia is currently 35 hours per lawyer per year. See Australian Pro Bono Centre, *National Pro Bono Target* <https://www.probonocentre.org.au/provide-pro-bono/target/>.

9 Acclime, *How to obtain a work permit in Indonesia* (Webpage, updated 19 March 2026) <https://indonesia.acclime.com/guides/obtaining-work-permit/>.

Recommendation

Encourage Indonesia to streamline the process for registration as a foreign lawyer, including the renewal process.

Recommendation

Encourage Indonesia to reduce the requirement of 120 hours of pro bono service per year as a condition of practice for foreign lawyers.

Recommendation

Encourage Indonesia to remove barriers preventing foreign legal consultants from moving between firms in Indonesia.

Restrictions on law firms

34. Australian firms are currently prohibited from operating in Indonesia. As noted above, there are a number of firms that have longstanding relationships with domestic Indonesian firms that involve the secondment of foreign legal consultants to domestic firms.

35. In 2017 the Indonesian Ministry of Law and Human Rights issued a decree which limits the number of foreign legal consultants in Indonesian firms at a ratio of 4:1, with a maximum of five foreign legal consultants per firm.[10]

36. In February 2020, there were 40 foreign lawyers practising in Jakarta among Indonesia's top 30 commercial law firms.[11]

37. Restrictions on the number and ratio of foreign lawyers working in local Indonesian firms can hamper the capacity to bring together, on a temporary basis, teams of foreign and local lawyers with specialist expertise to undertake complex or major projects.

38. Whilst larger firms can potentially draw on expertise from lawyers based in Singapore or Malaysia, the value of an in-country presence has been emphasised by Australian lawyers working in Indonesia.

39. Whilst the Law Council would welcome a removal of the ratio and cap that restricts the number of foreign lawyers working in Indonesia, the Law Council has received input that even a modest adjustment to the ratio or cap would have an impact in contributing to the internationalisation of Indonesia's legal profession. One foreign legal consultant observed that the presence of ten additional Australian foreign legal consultants working in Indonesia would make Australia the market leader for the provision of foreign legal services in the country.

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[10] Ministry of Law and Human Rights Decision No. 26 of 2017 art 3

[11] The breakdown of foreign counsel by jurisdiction is as follows: US (8), Australia (6), Japan (6), UK (5), Malaysia (4), the Netherlands (4), Singapore (2) the Philippines, (2), Korea (1), China (1), and New Zealand (1). See Jeremy Kingsley, 'Drafting Inter-Asian Legalities: Jakarta's Transnational Corporate Lawyers' (2021) 42(1) Adelaide Law Review 197, 203.

40. IA-CEPA already locks in any future liberalisation for the benefit of Australian law firms. If Indonesia changes its laws in the future to allow foreign law firms to establish, that new law will automatically become part of Indonesia's IA-CEPA commitments.

Establishment of foreign law firms in Indonesia

41. The Law Council would welcome Australian law firms having the ability to establish in Indonesia in their own right.

42. A commitment allowing Australian lawyers to open an office in Indonesia would be valuable, even without a corresponding commitment allowing Australian lawyers to employ local lawyers or enter into commercial association with local lawyers.

Recommendation

Encourage Indonesia to remove the maximum cap and ratio requirements on the number of foreign legal consultants that can be employed by Indonesian law firms.

Recommendation

Encourage Indonesia to remove the prohibition on foreign law firms establishing in Indonesia.

Fly-in, fly-out legal services

43. Foreign lawyers may come to Australia and act for their clients and provide legal services (for example, in commercial negotiations, on transnational contracts, or international arbitrations) on a FIFO basis for a maximum of 90 days in any 12-month period without registration. A foreign lawyer who wishes to practise foreign law in Australia for a longer period, or establish a commercial presence, may register as an Australian-registered foreign lawyer via a simple process.[12]

44. Globally, almost all jurisdictions tolerate the practice of foreign lawyers travelling to accompany or meet with clients on a short-term basis, usually providing foreign law advice on a transactional matter, without establishing a commercial presence.

45. As noted above, the IA-CEPA allow entry and temporary stay of an 'independent professional for legal services'.

46. However, there are no explicit rules allowing temporary practice by foreign lawyers of foreign law. As a result, any FIFO practising of foreign law by Australian lawyers is at the lawyer's own risk, and could be contrary to the terms of the relevant visa. By contrast, Malaysia expressly permits foreign lawyers to provide foreign and international legal services for up to 60 days in Peninsular Malaysia.[13]

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[12] See for example, Australian Business and Licence Service, *Registration as a Foreign Lawyer - New South Wales* (Webpage) <https://ablis.business.gov.au/service/nsw/registration-as-a-foreign-lawyer/16869>.

[13] Legal Profession Act 1976 (Malaysia) s 37(2a).

47. At present, Australian lawyers would most commonly use short-term business visas to provide Mode 4 legal services in Indonesia. Under IA-CEPA business visitors are permitted entry and temporary stay for period of 60 days, which can be extended to a maximum of 120 days.

48. The Law Council would welcome greater flexibility to FIFO practice in Indonesia, including regulation that expressly permits FIFO practice.

Recommendation

Encourage Indonesia to update IA-CEPA to reflect existing tolerance of FIFO practice in Indonesia.

Recommendation

Encourage Indonesia to update domestic regulations to introduce express permission for FIFO practice. Malaysia and Australia provide models relevant models for adoption.

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its constituent bodies:

- the Australian Capital Territory Bar Association;
- the Law Society of the Australian Capital Territory;
- the New South Wales Bar Association;
- the Law Society of New South Wales;
- the Northern Territory Bar Association;
- the Law Society Northern Territory;
- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
- the Law Society of Tasmania;
- the Victorian Bar Incorporated;
- the Law Institute of Victoria;
- the Western Australian Bar Association;
- the Law Society of Western Australia; and
- Law Firms Australia.

Through these bodies, the Law Council represents more than 110,000 Australian lawyers.

The Law Council is governed by a board of 23 Directors: one from each of the constituent bodies, and six Executive members elected by Directors. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President. In 2026, the Law Council Executive comprises:

- Ms Tania Wolff, President
- Ms Elizabeth Shearer, President-elect
- Mr Lachlan Molesworth, Treasurer
- Ms Jennifer Ball, Executive Member
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple.

The Law Council's Secretariat is based in Canberra. Its website is www.lawcouncil.au.