

VISA PAK ISSUE 237 — 20 NOVEMBER 2015

## **WHO IS THE EMPLOYER? LEGAL ENTITIES AND WORK VISA CONDITIONS**

As provided by work visa instructions at W2.25 (a) it is normal practice for immigration officers to impose as a condition of a work visa that the holder may work only for a ‘specified employer’; unless:

- a. the relevant work visa instructions provide for the grant of what is commonly referred to as an ‘open’ work visa, e.g. a partnership-based work visa; or
- b. the authority to work does not need to be restricted to a ‘specified employer’ as is the case with persons granted a work visa under Essential Skills instructions for work in the Canterbury region.

Where it is necessary to impose a condition when granting a work visa that the holder work only for a ‘specified employer’ it is very important to ensure the employer specified in the visa conditions is a legal entity.

### **What is a legal entity?**

There are three types of legal entities (persons) who can be a legal employer:

1. Human Beings
2. Corporate persons including:
  - a. Companies formed under the Companies Act; whether limited or unlimited e.g. Progressive Enterprises Limited
  - b. Corporations formed under specific statute
  - c. Incorporated societies
  - d. Incorporated charitable trust boards
3. The Crown including Crown organisations as defined by the Crown Organisation (Criminal Liability Act)

The New Zealand Companies Office website has [Registers](#) which can be searched not only for companies but other entities listed above if verification is necessary.

Also as provided by the Employment Relations Act 2000, every employee must have a written employment agreement, which must be signed by both the employee and the employer. This can be either an individual agreement or a collective agreement. Every agreement requires a clause, which makes it clear just who the parties involved are. It is a requirement that this clause specify the correct legal name for the employer, and the full name of the employee. Immigration officers imposing a ‘specified employer’ condition on a work visa should therefore source the name of the employer from the employment agreement submitted in support of the application and check that it is a legal entity before granting the visa. Non-legal entities include trading names, franchises, partnerships, joint ventures, trusts (unless incorporated as a charitable trust), and co-operatives. If employment agreements do not stipulate a legal entity as the employer then clarification of the “legal employer” is required.