



February 08

## NZ LAW UPDATE

### FREE TRADE AGREEMENT – CHINA AND NEW ZEALAND

New Zealand is close to a free-trade agreement with China and Trade Minister Mr Phil Goff is confident a deal will be signed in April after final details are worked through.

A 15th round of formal talks were held in Beijing in December 2007. New Zealand is in line to become the first Western developed nation to sign a free-trade deal with China.

Details of what has been agreed so far remain scarce and Mr Goff was unwilling to talk about how long it could take China to phase out tariffs on New Zealand's agricultural goods, while New Zealand removes its remaining tariffs on Chinese clothing and footwear.

Officials have estimated that a good quality free trade agreement with China could boost the New Zealand economy by close to \$400 million through greater market access and tariff reductions.

There is enough local political support for a deal to mean one is likely to be passed by Parliament.

The trade deal will go to the Cabinet for approval after all legal requirements are met.

The deal will be examined through a select committee process, and there will be a national interest analysis of any agreement.

### CLIMATE CHANGE (EMISSIONS TRADING AND RENEWABLE PREFERENCE) BILL

The Climate Change (Emissions Trading and Renewable Preference) Bill has been introduced to Parliament. It has been referred to the Finance and Expenditure Committee, which has called for submissions on the Bill, due by 29 February 2008.

The bill has two objectives:

1. To introduce a greenhouse gas emissions trading scheme covering all sectors and all gases.
2. Creating a preference for renewable electricity generation by implementing a 10 year ban on new baseload fossil-fuelled thermal electricity generation.

For participants covered by the New Zealand scheme, their core obligation is to surrender one emission unit for each tonne of greenhouse gas emissions that the participant is responsible for. The scheme also provides for participants who carry out activities that remove greenhouse gas emissions to earn one emission unit for each tonne of emissions that they remove. They can then sell the emission units they earn on the market for a profit.

Two amendments to the Bill allow linking the emissions trading scheme to the international Kyoto market, which allows participants to convert New Zealand Emission units into Kyoto units for transfer to overseas buyers. The second amendment allows linking of the emissions trading scheme to other countries' domestic trading schemes.

With changes to the regulatory environment gathering pace resulting in new markets, an understanding of the emerging framework for emission trading will be advantageous to doing business both in New Zealand and Overseas.

Climate change has become a key influence on the business landscape. The regulation and reduction of greenhouse gas emissions will affect diverse areas such as tax, capital markets, corporate, property, finance, environmental, trade, commercial, marketing and sales, and litigation.

For more background on Emissions trading refer to website [www.climatechange.govt.nz](http://www.climatechange.govt.nz)

## ARBITRATION – AMENDMENTS TO THE ACT IMPROVE ARBITRATION AS A WAY OF RESOLVING COMMERCIAL DISPUTES

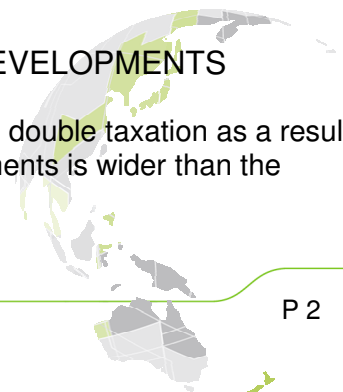
Changes were made to the Arbitration Act 1996 (“the Act”) late last year. These included:

1. clarifying the confidentiality of arbitration proceedings and the exceptions to confidentiality. Confidentiality of the arbitration process is often a key reason why commercial parties choose arbitration as a method of resolving disputes. The Act sets out with much more clarity what is deemed to be confidential and includes a list of items deemed to be confidential.
2. enhancing the arbitrators powers to grant interim measures and providing a mechanism to enforce them.
3. confirming the issue over whether there was sufficient evidence to support a finding of fact made by an arbitrator, is not a question of law for the purpose of appeal from an arbitration award.
4. improving provisions for consumer arbitration agreements.

The amendments will be welcomed as they will have the effect of ensuring more certainty when parties agree to submit to arbitration in New Zealand.

## DOUBLE TAXATION AGREEMENTS – UPDATE ON CURRENT DEVELOPMENTS

Income derived across an international border can potentially be subject to double taxation as a result of two countries taxing the same income. The focus of Double Tax Agreements is wider than the



elimination of double taxation. They are aimed at reducing tax impediments to cross-border trade and investment and assisting tax administration.

New Zealand currently has a network of 34 double tax agreements with its main trading and investment partners, which eliminate certain forms of double taxation. The Pacific Rim countries that have double tax agreements with New Zealand include China, Fiji, Indonesia, Japan, Korea, Malaysia, Philippines, Singapore, Taiwan, Thailand and the United States of America.

A new double taxation agreement with Austria came into force on 1 December 2007. It is called The Double Taxation Relief (Austria) Order 2007. The result will be for those in New Zealand, their withholding taxes commence from 1 March 2008. For all other taxes for income years beginning on or after 1 April 2008. For those in Austria, their withholding taxes commence from 1 March 2008. For all other taxes for assessment years beginning on or after 1 January 2008.

The government is inviting comment on matters to be raised in the negotiation of a new double tax agreement between Australia and New Zealand, which is expected to begin in late March. Of the 34 countries that have a double tax agreement with New Zealand, it is anticipated that a new tax agreement with Australia will have the most impact due to the close economic relationship and the volume of investment between the two countries.

## DISCLAIMER

This publication is necessarily brief and general in nature. You should seek further information before taking any action in relation to the matters dealt with in this publication. If you have any questions on the matters discussed in this update please contact the New Zealand Mackrell partner, Brian Joyce at Clendons North Shore by email [brian.joyce@clendonsnorthshore.co.nz](mailto:brian.joyce@clendonsnorthshore.co.nz) or phone 64 9 377 8419

