



November 09

## NZ LAW UPDATE

### ANTI-MONEY LAUNDERING AND COUNTERING FINANCING OF TERRORISM ACT (“AML/CFT”)

The Anti-Money Laundering and Countering Financing of Terrorism Act (“AML/CFT Act”) was passed into law on 15 October 2009.

The enactment of the AML/CFT Act is part of New Zealand’s compliance with the recommendations of the international Financial Action Task Force (“FATF”) that sets international standards for combating money laundering and terrorist financing.<sup>1</sup>

The Act will require banks, finance companies and casinos (“reporting entities”) to upgrade their customer due diligence measures and reporting regimes. The reporting entities will have obligations to report suspicious transactions, cross-border transportation of cash and carry out record keeping.

The Act dovetails with the Criminal Proceeds (Recovery) Act passed in April of this year and which comes into force on 1 December 2009.<sup>2</sup> Both Acts enhance the ability to investigate organised crime by following the illegal money trail through financial systems.

The AML/CFT Act appoints the Reserve Bank, the Securities Commission and the Department of Internal Affairs as supervisors and gives them and the Police’s Financial Intelligence Unit powers to carry out their AML/CFT functions. The [Reserve Bank](#)<sup>3</sup> will supervise banks, life insurers and non-bank deposit takers. The [Securities Commission](#)<sup>4</sup> will cover issuers of securities, trustee companies, futures dealers, collective investment schemes, brokers and financial advisers. [Internal Affairs](#)<sup>5</sup> will cover casinos, non-deposit-taking lenders, moneychangers and reporting entities not covered by the other supervisors. Suspicious financial transactions will be reported to the Police who will assess the need for further investigation.

### DISTRICT COURT RULES CHANGES - EASIER RESOLUTION OF CIVIL CLAIMS

The new District Court Rules came into effect on 1 November 2009 and represent a sea change in the procedure for bringing a civil claim in the District Courts. Currently the District Court has jurisdiction for claims up to \$NZ200,000.00.

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<sup>1</sup> Kavanagh, L., & Lloyd, A. (2009, August). “NZ wakes up to Anti-money laundering risks-you should too” *NZ Lawyer On Line*, 118 <<http://www.nzlawyermagazine.co.nz/Archives/Issue118/118F7/tabid/1905/Default.aspx>>

<sup>2</sup> Criminal Proceeds (Recovery) Act 2009 < <http://www.legislation.govt.nz/act/public/2009/0008/20.0/DLM1451001.html>>

<sup>3</sup> <http://www.rbnz.govt.nz/>

<sup>4</sup> <http://www.sec-com.govt.nz/>

<sup>5</sup> <http://www.dia.govt.nz/diawebsite.nsf>

The new Rules focus on timely and cost efficient processes in bringing a claim. It is envisaged that not only more claims may be brought as access to civil litigation for smaller claims becomes no longer uneconomic to pursue but there may be more lay litigants. This perception arises because most of the forms to be filed in civil claims are now available on a government website and provide for easy compliance with the new processes.<sup>6</sup>

These changes are welcomed as one facet of making it easier to do business in New Zealand and may also assist the parties to some cross border contracts in deciding on which country should have jurisdiction over any claims that may arise.

#### RECORD NUMBER OF TAX INFORMATION EXCHANGE AGREEMENTS SIGNED OVER LAST YEAR

Over the past year New Zealand has signed eight Tax Information Exchange Agreements. They are with:

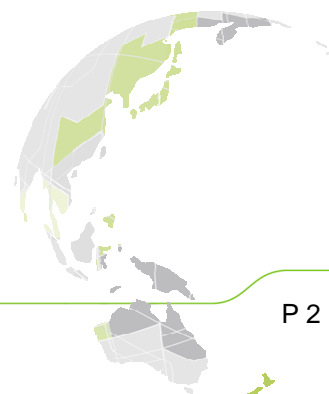
❖ Bermuda	signed 16 April 2009	Effective- Not yet
❖ British Virgin Islands	signed 13 August 2009	Effective- Not yet
❖ Cayman Islands	signed 13 August 2009	Effective- Not yet
❖ Cook Islands	signed 9 July 2009	Effective- Not yet
❖ Gibraltar	signed 13 August 2009	Effective- Not yet
❖ Guernsey	signed 21 July 2009	Effective- Not yet
❖ Isle of Man	signed 27 July 2009	Effective- Not yet
❖ Jersey	signed 27 July 2009	Effective- Not yet
❖ Netherlands Antilles	signed 1 March 2007	Effective 1 January 2009

The Agreements establish a system through which tax authorities can request tax and business information to prevent tax avoidance and evasion. New Zealand's Inland Revenue Department will be able to request off shore tax records, business books and accounts, bank information, ownership information and other tax-related information for the purpose of detecting and preventing tax avoidance and evasion by New Zealand residents.

The moves are part of an overall international trend for key tax havens and other low-tax international finance centres seeking to improve their tax and regulatory systems. Some such as the Cook Islands, doing so after having pressure applied to them by being "blacklisted" on a list of unco-operative tax havens from the Organisation for Economic Co-operation and Development. The large majority are entering into the Agreements after adopting the OECD and United Nations standards for the exchange of tax-related information.

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<sup>6</sup> Parliamentary Counsel Office Website  
< <http://www.pco.parliament.govt.nz/district-courts-rules-forms/>>



New Zealand already has an established network of exchange-of-information arrangements, in the existing thirty-five double taxation agreements it has with major trading and investment partners. The network is being extended by the negotiation of further Tax Information Exchange Agreements.

## UPDATE ON FREE TRADE AGREEMENTS

### *Malaysia*

A new Free Trade Agreement was signed between New Zealand and Malaysia on the 26<sup>th</sup> of October in Malaysia.

There are strong reasons for New Zealand entering into the FTA with Malaysia.

- ❖ Malaysia is New Zealand's largest trading partner in the ASEAN region
- ❖ an FTA would build on the agreements already negotiated with Singapore and Thailand
- ❖ the removal of high tariff barriers would stop any restriction or stifling of potential trade opportunities
- ❖ New Zealand should seek to ensure that its trade access and overall trade competitiveness in the region are maintained and advanced<sup>7</sup>

Two other key areas identified that would be enhanced by a FTA are:

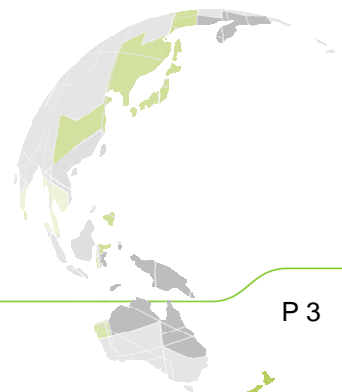
- ❖ the service sectors to the economy, and it was seen that by facilitating the free flow of these services with Malaysia, it would deliver tangible economic benefits
- ❖ the levels of investment between New Zealand and Malaysia. An FTA would provide a more visible platform for greater levels of investment

The FTA will:

- ❖ provide for the removal of import duties on thousands of product lines over the next seven years
- ❖ come into force in 2010, once both countries have completed the required domestic approval processes
- ❖ allow New Zealand enhanced access to its eighth largest export destination, accounting for almost a billion dollars of exports in 2008. Exports have increased by 80% since 2004, which is more than double the rate of New Zealand's export growth to the rest of the world
- ❖ liberalise and facilitate trade in goods, services and investment between New Zealand and Malaysia

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<sup>7</sup> New Zealand Ministry of Foreign Affairs & Trade website < [www.mfat.govt.nz/](http://www.mfat.govt.nz/) >



❖ bring benefits from:

- enhanced access to the Malaysian market for New Zealand goods and services exporters
- improved firm competitiveness as a result of preferential tariff treatment and exposure to international competition
- greater certainty for New Zealand businesses about the future trading and investment environment in Malaysia
- potential long-term gains from enhanced regional integration

*Japan*

In late October, it was announced that New Zealand is according high priority to making progress on an FTA with Japan, which is New Zealand's third largest export market and fourth largest trading partner overall.

It was acknowledged that due to Japan's standing as the second-largest economy in the world, having an FTA with Japan would have great significance for the New Zealand economy.

The approach is to building on the substantial existing goodwill between the two countries and the acknowledged non-competition of the two countries in sensitive areas (such as rice and grain fed beef) as a way of further promoting links with Japan and could in turn help promote a FTA.

*China*

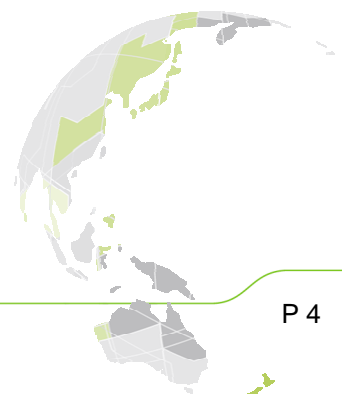
On 1 October 2009, it was the first anniversary of the signing of the New Zealand-China FTA. The twelve-month period has been prosperous for both countries with the New Zealand Ministry of Foreign Affairs and Trade reporting:

- ❖ an increase of 23% in two-way trade (imports plus exports) which is calculated to be worth just over \$10 billion
- ❖ exports to China now worth \$3.5 billion, an increase of almost 60% over the last year
- ❖ increased knowledge-sharing and people to people links
- ❖ China becoming New Zealand's third largest trading partner, following Australia and the USA
- ❖ a strong demand by China for quality New Zealand products

**NEW ZEALAND-HONG KONG WINE ARRANGEMENT SIGNED**

On 28 October 2009, New Zealand signed an 'Arrangement on Co-operation on Wine-related Business' with Hong Kong to enhance co-operation in wine related businesses.

The Arrangement will:



- ❖ help New Zealand wine exporters access the growing Asian market
- ❖ assist Hong Kong in becoming the wine hub of the region, as it develops its wine wholesaling, marketing and distribution centre within Asia
- ❖ enhance knowledge transfer in wine education
- ❖ improve and promote the marketing and profile of New Zealand wines
- ❖ promote wine-related trading, investment, tourism, education, and the fight against counterfeit wine

Currently New Zealand is Hong Kong's tenth largest source of wine imports. The Arrangement will benefit both countries' economies. Adding support to this initiative is the abolition by Hong Kong of its excise tax on wine in early 2008, which saw New Zealand's wine exports to Hong Kong rise in the year to June 2009 by 44%.

#### CLENDONS NORTH SHORE - AUCKLAND CHAMBER OF COMMERCE

Clendons North Shore is currently a member of the Auckland Chamber of Commerce, which in turn is affiliated to 22,000 other Chambers internationally. The Auckland Chamber of Commerce is part of the world's largest business network, with particularly strong connections in the Asia-Pacific region. Through this connection, the firm is able to take advantage of the significant facilities available at sister Chambers throughout the region to assist in the practical day to day needs of parties to cross border arrangements in completing, verifying and implementing those arrangements.

#### 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 to [brian.joyce@clendons-ns.co.nz](mailto:brian.joyce@clendons-ns.co.nz) or phone 64 9 377 8419

