

December 31, 2007

Environmental Practice**Bali Results and Future Prospects**

The 2007 United Nations Climate Change Conference was held in Indonesia in December of 2007 with more than 10,000 participants. Nearly 190 developed and developing country delegates met in Bali over a two-week period and produced a two-track process — one under the UN Framework Convention on Climate Change (the “Convention”) and the other under its related treaty, the Kyoto Protocol (the “Protocol”) — both of which are set for completion in December 2009 in Copenhagen, Denmark. The tracks, collectively referred to as the “Bali road map,” set forth an identical timetable of four sessions annually, starting in March-April 2008 in Ghana, that over the next two years are aimed at culminating in proposed decisions to address emissions in the future to be adopted at Copenhagen.

Each track is to be conducted by separate ad hoc working groups. The group working under the Protocol has been designated as being about “Further Commitments” for developed country Protocol Parties. Its work concerns “consideration of commitments” for the post-2012 periods (when the first protocol commitment period of 2008-2012 expires) solely for developed country Parties, which does not include the United States.

The group working under the Convention has been designated as about “Long-Term Cooperative Action,” which includes both developed and developing countries and “a long-term goal for emissions reductions.” It is intended to address “national/international action” on mitigation of climate change, including “consideration” of “quantified” emission limits and reduction “objectives” for *all* developed country Convention Parties, including the United States, and “mitigation actions” by developing country Convention Parties “in the context of sustainable development.” Emphasis is also placed on enhanced action on adaptation, and for both mitigation and adaptation, on technology development and transfer, including removal of obstacles to, and providing financial and other incentives for, developing country Parties to gain “access to environmentally sound technologies.” Inherent in the technology development and transfer mantra, is the issue of intellectual property rights, which developing country Parties want to obtain from developed country governments.

There is no provision for joining the two tracks as one before Copenhagen, or even then. The term “mitigation actions” for the Convention track provides both vagueness and flexibility for developed and developing countries. Also, absent from that track, at the insistence not only of the United States, but also Australia, Canada, Japan, and the Russian Federation, is any reference to an outcome-related emission reduction percentage, such as was urged by the European Union and the developing countries at Bali. However, the EU reduction percentage of 25-40 percent below 1990 levels by 2020 does appear in the Protocol track conclusions for its developed country Parties.

Both Bali tracks are ambitious, although the Protocol track, which actually launched in Montreal in 2005, has a head start. Nevertheless, it is unlikely to surpass the Convention track because it only applies to the developed country Protocol Parties. The Bali Convention process will engage all of the emitting Parties,

including the United States and developing countries, such as China, Indonesia, India, and Brazil. Although two years are built in for both tracks, provision is made for a review of progress in December 2008. While this time period will see two US Administrations, the progress review will occur before the next Administration takes office.

The Bali roadmap provides guidance to engage for the first time in negotiations for a new climate framework: one that affects all Convention Parties and is aimed at reaching a post-2012 agreement. Among other things, the Convention process is to consider sectoral approaches, sector-specific actions, and the use of markets regarding mitigation actions, "bearing in mind different circumstances of developed and developing countries." While the time period is compacted, the issues are expansive. Including "mitigation actions" by all emitting countries will be difficult, nevertheless the two track process will be transparent and under constant scrutiny.

For more information on this alert or Mayer Brown's [Environmental Practice](#), please contact David Finnegan (dfinnegan@mayerbrown.com), Roger Patrick (rpatrick@mayerbrown.com), or any other Mayer Brown attorney with whom you work.

If you are not currently on our mailing list and would like to be, please email contact.edits@mayerbrown.com with your contact information. If you would like to be taken off our mailing list, please reply to this message with the word "REMOVE" in the subject line.

Mayer Brown is a combination of two limited liability partnerships, one named Mayer Brown LLP, established in Illinois, USA, and one named Mayer Brown International LLP, incorporated in England.

© 2007 Mayer Brown LLP and/or Mayer Brown International LLP. This publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek legal advice before taking any action with respect to the matters discussed herein.

IRS CIRCULAR 230 NOTICE. Any advice expressed above as to tax matters was neither written nor intended by the sender or Mayer Brown LLP to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed under U.S. tax law. If any person uses or refers to any such tax advice in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement to any taxpayer, then (i) the advice was written to support the promotion or marketing (by a person other than Mayer Brown LLP) of that transaction or matter, and (ii) such taxpayers should seek advice based on the taxpayers particular circumstances from an independent tax advisor.