

## emissions trading and climate change bulletin

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### Analyzing Alberta's *Climate Change and Emissions Management Amendment Act, 2008*

On 4 November 2008, Alberta's *Climate Change and Emissions Management Amendment Act, 2008* (the "**Amendment**")<sup>1</sup> received Royal Assent, thereby amending the *Climate Change and Emissions Management Act* (the "**Act**"). Most importantly, the Amendment delegates the administration of the Climate Change and Emissions Management Fund (the "**Fund**") to a third party.

#### **The Climate Change and Emissions Management Act**

The Act legislates an intensity-based target of reducing emissions *vis-a-vis* GDP to 50% of 1990 levels by 2020.<sup>2</sup> The Act requires facilities with greenhouse gas ("**GHG**") emissions above certain thresholds to report their emissions. The Act also grants Alberta's cabinet the authority to regulate emissions and offsets.

The *Specified Gas Emitters Regulation* (the "**Regulation**") has been promulgated under the Act. It requires facilities with annual GHG emissions at or above 100,000 tonnes to apply for a baseline emissions intensity ("**BEI**"). The Regulation distinguishes between new and established facilities, defining the former to be a facility that began operations in 2000 or later. New facilities need not reduce their emissions within their first three years of operation. Established facilities, as of 2008, must reduce their annual emissions intensity by twelve percent.

In addition to simply reducing emissions to meet its target, a facility can comply by offsetting its emissions in accordance with Alberta Environment's offset project guidelines. Such projects must be located in Alberta. Facilities can, of course, also buy emission performance credits from facilities that have reduced their emissions below required levels. Finally, facilities can obtain "fund credits" by paying into the Fund \$15 per tonne of emissions reductions required.

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<sup>1</sup> *Climate Change and Emissions Management Amendment Act, 2008*. Online: <http://www.assembly.ab.ca/bills/2008/pdf/bill-008.pdf>.

<sup>2</sup> *Climate Change and Emissions Management Act, S.A. 2003 c. C-16.7*.

### **The *Climate Change and Emissions Management Amendment Act, 2008***

The Fund was created by amendments to the Act in 2007 and was launched in April 2008. It accumulated \$40 million over the course of its first reporting period. In introducing the Amendment, Alberta's Environment Minister stated the Amendment to be administrative in nature and with a view to "establish the group to oversee the climate change and emissions management fund."<sup>3</sup>

While the Minister of the Environment will continue to collect payments into the Fund, the Amendment delegates the investment of the Fund to an arm's length not-for-profit organization.<sup>4</sup> The Act specifies that the Fund is to be used only "for purposes related to reducing emissions of specified gases or improving Alberta's ability to adapt to climate change" and provides a non-exhaustive list of potential purposes.<sup>5</sup> The Amendment also provides the Minister more flexibility in tailoring facility-specific emissions reduction targets and undertakings.<sup>6</sup> The Fund will be subject to review by the Auditor General.<sup>7</sup>

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<sup>3</sup> Alberta, Legislative Assembly, *Hansard*, 27th Legislature, 1st session, April 30, 2008.

<sup>4</sup> Alberta, Legislative Assembly, *Hansard*, 27th Legislature, 1st session, May 26, 2008.

<sup>5</sup> *Climate Change and Emissions Management Act*, S.A. 2003 c. C-16.7, s. 10(3).

<sup>6</sup> *Climate Change and Emissions Management Amendment Act*, 2008, *supra*, s. 3(a).

<sup>7</sup> Government of Alberta, "Legislation launches climate change fund as vehicle to deliver real emissions reductions" (30 April 2008). Online: <http://alberta.ca/acn/200804/23419A1030535-DBAD-651B-8FB5E6FBDB74469C.html>.

In commenting on the Amendment, the Official Opposition expressed concern over the delegation of authority and queried the utility of the Amendment given prospective national and continental emissions trading regimes.<sup>8</sup>

### **The 2008 Climate Change Strategy**

The Amendment is an element of Alberta's Climate Change Strategy (the "**Strategy**").<sup>9</sup> The Strategy includes three themes: energy efficiency and conservation; carbon capture and storage; and sustainable energy production. It calls for the intensity targets set in the 2002 plan to be reached by 2010; for GHG emissions to be stabilized by 2020; and for an absolute GHG emission reduction of 14% below 2005 levels by 2050. Such a long-term reduction goal is in marked contrast to the reduction goal of 80% articulated by U.S. President-elect Obama and also found in proposed legislation in Congress.

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<sup>8</sup> Alberta, Legislative Assembly, *Hansard*, 27th Legislature, 1st session, May 28, 2008.

<sup>9</sup> Government of Alberta, *2008 Climate Change Strategy: Responsibility / Leadership / Action* (January 2008). Online: <http://environment.gov.ab.ca/info/library/7894.pdf>.

### **A Cautionary Note**

*The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.*

### About McMillan LLP's Climate Change Group

Innovation and strategic thinking are the hallmarks of our interdisciplinary Emissions Trading and Climate Change Group. Incorporating lawyers from our Energy, Environmental, Natural Resources, Structured Products, Mining, Public Policy, Public Markets, and Tax Groups, our highly skilled team advises clients on the complex compliance issues and burgeoning business opportunities that greenhouse emission reductions and trading are generating globally.

Along with our experience in all aspects of business law, our team includes specialized expertise in energy, mining, securities law, environmental law, government regulation, public policy, and Russian law and commerce, as well as hands-on experience helping establish Ontario's NOx and SOx emissions trading registry. Licensed in Ontario, Quebec, New York and Russia and fluent in English, French, Spanish, and Russian, our team's experience includes legal practice in Canada, China, Japan and Russia.

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