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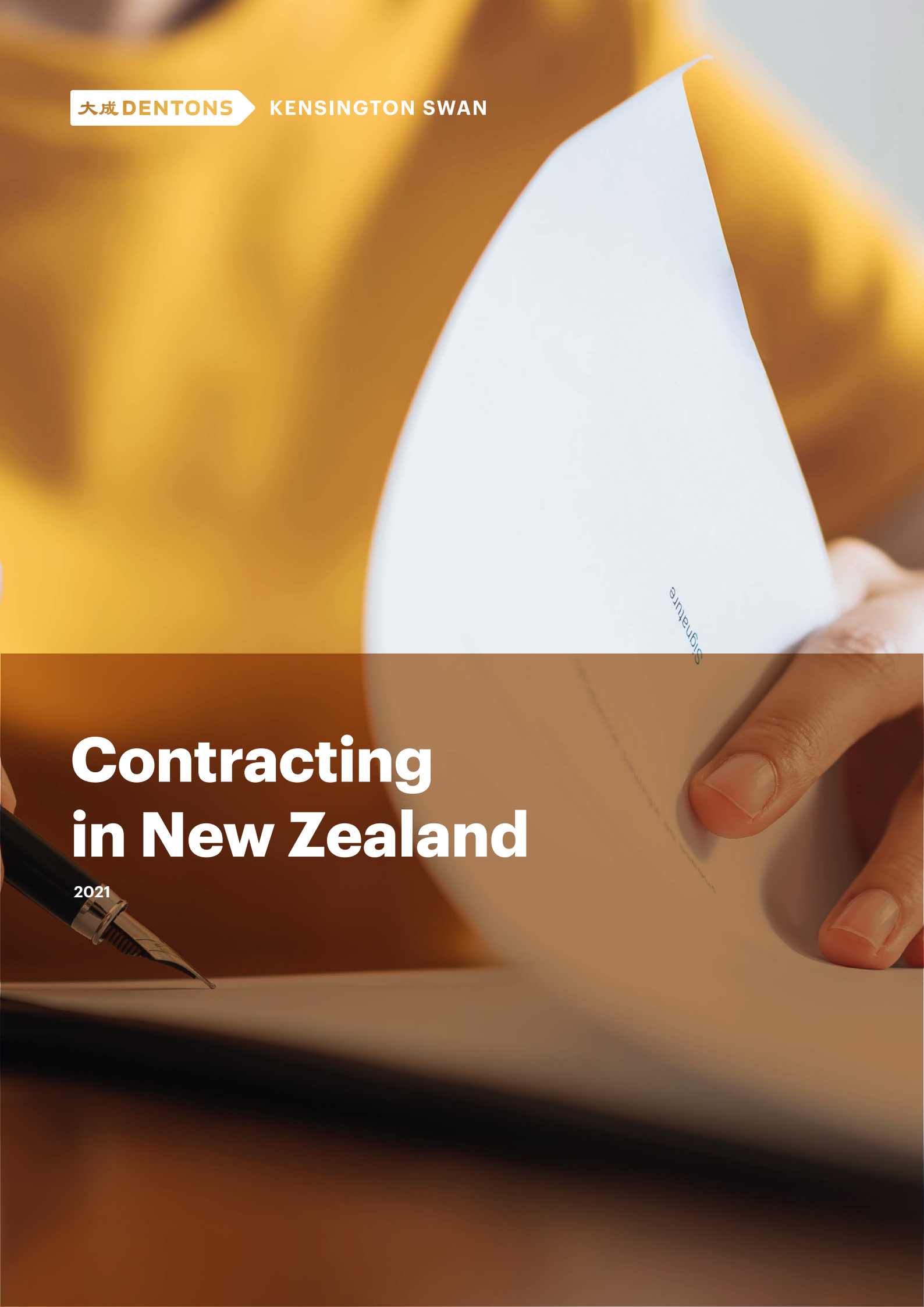

Contracting in New Zealand

2021

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"The corporate and commercial practice at Dentons Kensington Swan is 'willing to walk the extra mile to strive to understand our business concerns and needs', remarks one client."

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Key points about contract law in New Zealand

- Contract law is at the heart of all commercial transactions in New Zealand.
- New Zealand's contract law has its origins in common law, but has been subject to progressive legislative codification, particularly since the middle of the 20th century.
- The Contract and Commercial Law Act 2017 ('CCLA') is the central piece of legislation applying to contracts that are subject to New Zealand law but there remains many matters which are covered on by the common law rules, in other words "judge made law".
- The CCLA applies in full to all contracts entered into after 1 September 2017. Except for certain minor changes in legal effect, the CCLA also applies to contracts made before 1 September 2017.

The detail

Choice of Law for International Contracts

Determining which country's law is applicable to an international contract can have important implications for when and how a contract was formed, whether the parties had capacity to enter into the contract, whether the contract conferred benefits on third parties and even whether the contract was formally valid for the particular transaction.

A choice of law made by the parties in their contractual arrangements will generally be respected by the Courts, provided that the choice is genuine and legal, and does not need to be avoided for reasons of public policy.

When the parties have not expressly chosen an applicable law, the Courts will need to determine what law applies based on the details of the contract and the surrounding circumstances. The Court will seek to establish which legal system has the closest and most real connection with the contract in question. The Court may consider factors such as where the contract was concluded, where performance of the contract was to occur, where the parties reside and the subject matter of the contract. Any substantive dispute between the parties will generally not be able to be resolved until the applicable law has been determined. For this reason, it is advisable to include a choice of law clause in all international commercial agreements.

The United Nations Convention on Contracts for the International Sale of Goods

New Zealand is a party to the United Nations Convention on Contracts for the International Sale of Goods ('CISG'). The CISG is an international treaty that has been signed by over 90 states. The purpose of the CISG was to harmonise the law applying to contracts for the international sale of goods.

Generally speaking, the CISG will apply to contracts for the international sale of goods where both of the parties have their place of business in contracting states or where the rules of private international law lead to the application of the law of a contracting state. This means that, even if the parties have not made any choice of law, the CISG may automatically be the law applying to their contract. It is however possible to contractually agree to expressly exclude the application of the CISG.

Before entering into an international commercial contract, it is important to consider which law should or would apply to the contract in question. We can help your business to ensure that the law applicable to the contract is certain and that it is consistent with the commercial needs and expectations of the parties.

Settlement of disputes

The default dispute resolution mechanism for international commercial transactions is international litigation. Where the parties have not specified which country's courts will have jurisdiction over matters arising from the contract, a New Zealand Court will first need to determine whether or not it has jurisdiction to hear a particular matter. Therefore, it is generally preferable to ensure that any international commercial agreement has a well-drafted choice of forum or alternative dispute resolution clause.

An international commercial contract can also specify that one or more method of international dispute resolution mechanisms will be used to resolve any disputes which arise under the contract, for example mediation or arbitration. The New Zealand Courts will generally honour such clauses and refuse jurisdiction where the parties have chosen an alternative method of dispute resolution. However, it is important to ensure that such clauses are drafted carefully to avoid any potential for a dispute about what the applicable dispute resolution mechanism is.

How we can help you

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Drafting, reviewing and modifying international commercial contracts to avoid common pitfalls that can be costly later down the track.

Drafting, negotiating and advising on a range of commercial arrangements, including distribution, supply and customer contracts and terms of trade.

Resolving commercial disputes of all sizes.

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