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New Zealand Private Equity Landscape

Trends & insights

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As sponsors face greater pressure from investors to address liquidity and deployment demands, we expect private equity-backed transactions in New Zealand to ramp up further in 2025.

In addition to platform investments, we anticipate continued activity in GP-led secondaries, minority and co-investments, club deals, take-privates and carve-out transactions.

The centre-right coalition Government is pursuing a strong pro-growth policy platform, including a more welcoming foreign investment regime supported by faster and lighter consent processes, although there are also proposed changes to tighten New Zealand's competition law regime.

Inbound investment: rolling out the red carpet

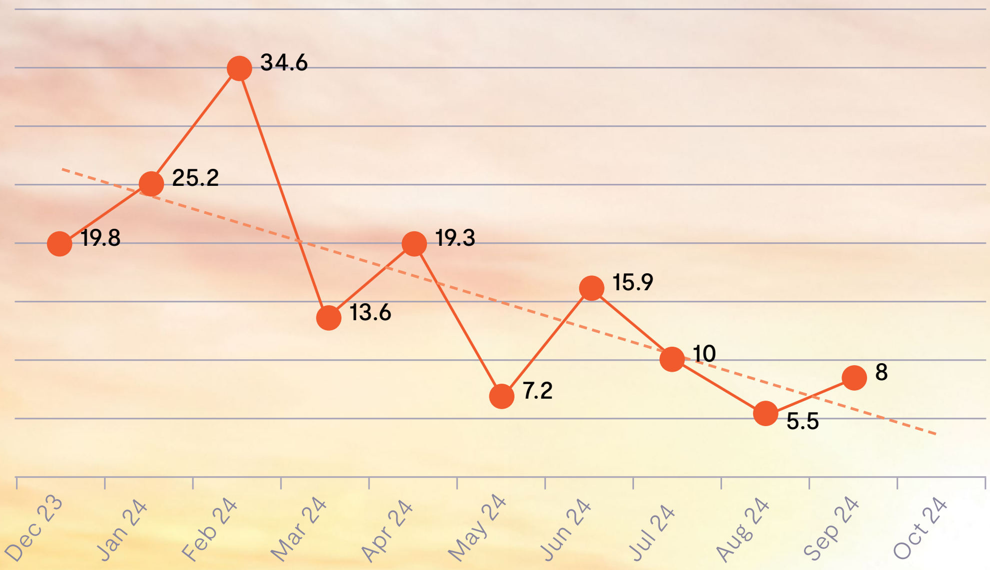
Legislation is expected to come into force in 2026 to inject a more pro-foreign direct investment (FDI) appetite into the Overseas Investment Act 2005. The Government signalled the reform thrust to the Overseas Investment Office (OIO) last year in a Ministerial directive letter.

Highlights included:

1. An objective that assessments be completed in **less than half** the statutory timeframes in **at least 80%** of cases
2. An instruction that the OIO explore every opportunity to minimise compliance costs to investors, impose a burden that is no broader than necessary to fulfil regulatory functions, and prioritise resources towards higher-risk applications
3. A direction that the OIO seek additional verification from applicants only where there is reason to suspect the information provided is unreliable.

The intervention seems to have driven a substantial decrease in application processing times, though the OIO will need to continue to juggle resourcing constraints and the risk that a “rushed” consent is pinged for judicial review.

Average days under active consideration by OIO



Source: Overseas Investment Office

Reforms will turbocharge FDI

Among the proposed legislative reforms are:

- an expectation that non-contentious transactions will be cleared within 15 working days, which should substantially level the playing field for Australian bidders in competitive sale processes
- most consent applications (outside those involving farmland, fishing quota or residential/lifestyle land) to be decided by the OIO on the basis of a consolidated national interest test (under which it will not be necessary for the investor to show good character or benefit to New Zealand)
- a more detailed "stage two" review to apply:
  - mandatorily where the target is a "strategically important business" (e.g., involved in military or dual-use technology, ports or airports, electricity, water, telecommunications, or financial market infrastructure) and where the investor is either, or an associate of, a foreign government (this will catch some investment funds with sovereign wealth fund LPs), and
  - on a discretionary basis where the transaction "could" be contrary to New Zealand's national interest
- both the OIO and Ministers to have the ability to grant consent at "stage two", but only Ministers to have the power to decline consent.

The investor or investment types that may be subject to discretionary "stage two" review remain uncertain at this stage and the Cabinet paper recognises that there is likely to be a high degree of political judgement involved.

While the current Government is highly pro-FDI, a centre-left coalition would be more cautious. The Labour Party has already come out strongly against the proposed reforms, calling them a reckless overhaul that will take New Zealand backwards.

> The new regime is scheduled to come into force in the first half of 2026. Regulations and further Ministerial directive letters will no doubt add texture, and we will be monitoring developments closely.

A higher value threshold (NZ$650m instead of the standard NZ$100m) for transactions not involving "sensitive land" to require OIO consent already applies to certain investments by "Australian non-government investors", as long as the investment is made by an Australian entity and not a New Zealand subsidiary.

Commerce Act reforms

Parts 2 and 3 of the Commerce Act, New Zealand's primary competition legislation, are being reviewed with a particular focus on:

- The merger control regime, including the substantial lessening of competition (SLC) test, the substantial degree of influence test, the treatment of 'assets of a business', mergers outside the clearance process and whether the Commerce Commission (the Commission) should be able to accept behavioural undertakings.
- How the Commission's tools to address anti-competitive conduct might be modernised.
- A potential new industry rule-making power.

Of particular relevance to financial sponsors is whether the Commission should be allowed to assess the cumulative effect of serial or creeping acquisitions which take place over a three-year period and may have the combined effect of lessening competition.

Amending the SLC test, to allow the Commission to assess a transaction as if it were taking place in parallel with earlier completed transactions is likely to undermine investor confidence in the New Zealand market, given the impact it would have on any buy-and-build strategy for portfolio companies.

When the consultation paper was released in December, the timeframe was that Cabinet would decide the recommendations in March/April. But the Commerce and Consumer Affairs portfolio changed hands in late February due to the resignation of the Minister, which we think may delay the timetable for Cabinet decisions until June – August 2025 and the introduction of any new legislation until late 2025.

We have made the following submissions to the Ministry of Business, Innovation and Employment (MBIE) in support of retaining the current SLC test:

- The lawfulness of the marginal transaction should remain the Commission's focus, rather than it being entitled to retrospectively impugn earlier transactions.
- The Commission can already assess the impact of prior related transactions on market structure when assessing the marginal transaction.
- The marginal transaction should only be prohibited if it would likely result in a SLC.
- The Commission already enforces against serial acquisitions e.g. against Wilson Parking in relation to local parking markets.
- If adopted, this amendment could create a statutory presumption against roll-ups and bolt-ons, without regard to the actual competition effects and potential efficiencies of that strategy.

W&I insurance: a buyer's market

Warranty and Indemnity (W&I) insurance offers improved recoverability on claims, enhanced protections on the overall warranty package, maintains management relations and materially enhances the attractiveness of a bid.

No wonder then that W&I remained common in New Zealand private equity deals in 2024, and was very much a buyer's market, with underwriters offering extremely competitive terms. We see the same outlook for 2025.

The Australasian W&I market is on a strong growth trajectory. As recently as 2022/2023, there were only eight or nine insurers who were active in this space. Now there are as many as 22 who are generally willing to offer terms, about 13 of whom could take a lead or primary role.

Although no two deals are the same, certain sectors (financial services, healthcare and pharma, international transport and logistics) can be trickier to insure, with more focus on offshore compliance but the insurer will be more comfortable taking on the risk if the parties are sophisticated, with reputable advisers conducting fulsome due diligence exercises.

Now is the time to push for a better insurance deal. Insurers are offering a range of enhanced coverage of the fundamental warranties at no additional premium, extension of time limitations under the SPA, new breach cover and even cover for liability under the Holidays Act 2003.

Customary exclusions including known issues, transfer pricing, secondary tax liability, pension underfunding, environmental contamination and forecasts remain applicable.

Typical New Zealand market terms

Premium: Net premium range has dropped to as low as c. 0.7%–1%. For more complicated, regulated businesses like financial services and pharmaceuticals, net premiums are slightly higher between 1.4%–1.7%.

Retention/excess: c.0.25%–0.5% of enterprise value, tipping structures may be possible with a small increase in premia.

Liability coverage: The liability cover generally available in the current New Zealand market (as a percentage of the target's enterprise value) is:

- SMEs below NZD 60m EV: 30–50%
- SMEs above NZD 60m EV: 25–40%
- Mid-market deals between NZD 150–700m EV: 20–30%
- Large cap deals between NZD 700m–1.5b: 15–20%
- Deals above NZD 1.5b EV: 10%–15%.

Limitations: De minimis can be between 0.025–0.05% of enterprise value and $0 for title warranties. Insurers will look to the materiality thresholds applied in the due diligence exercise, including both quantitative and qualitative thresholds.

Term: Claims period usually reflects the relevant limitation period in the SPA, while longer coverage periods can be purchased under the W&I regime for minimal additional premium (generally up to three years for general warranties and seven years for tax/title warranties).

Fees: Fees of insurance broker and underwriters' legal advisers are typically borne by the policyholder.

Taxes: If the insured is incorporated in New Zealand, net premiums would be subject to GST of 15% for insurers with NZ-based offices and NRWT of 2.8% for overseas/non-NZ insurers. There is no insurance premium tax payable in New Zealand and, unlike Australia, there is no stamp duty.

Effective MEPs key to success

An effective and well implemented management equity plan (MEP) is critical to a business' success. Incentivising key senior personnel to stay and be motivated until exit ensures the interests of sponsor and management are aligned.

Common structures

Choosing the appropriate structure depends on the financial, non-financial, securities law and tax drivers of a given deal. Typical MEP structures for sponsor-backed companies in New Zealand are loan-backed schemes or option schemes.

Other structures which can be used are performance share rights (shares are offered as a reward for meeting performance-based targets) and phantom share schemes. Performance share rights are generally more common for listed companies.

Tax

A significant factor in the design of MEPs in New Zealand is tax. New Zealand does not have a comprehensive capital gains tax, and there are specific tax rules applicable to employee share schemes. That means a scheme which might be appropriate for use in an overseas jurisdiction may need to be modified for use in New Zealand. Tax advice should be sought early in the design of a scheme.

Securities law

Any offer in New Zealand needs to be made in accordance with the exemptions from disclosure requirements contained in the Financial Markets Conduct Act 2013. These include a specific exemption for employees (which applies in many but not all cases); "wholesale" or "eligible" investors; "close business associates"; and "small offers" (a "personal" offer to 20 or fewer people for a value of less than $2m in aggregate).

LOAN-BACKED SCHEMES

Shares are paid for by participants (in cash or reinvested from participants' shares in the target) or loan funded by the company, generally at a ratio of two or more loan shares to each paid share. Loans are typically interest-free, until a participant ceases employment, and full-recourse (i.e. liability of the borrower is not limited to the value of the shares). Employee shares are generally held in a trust structure.

OPTION SCHEMES

Share options are issued to participants and generally exercisable on payment of the exercise price over a fixed vesting schedule and/or on a future exit.

Non-competes: exercise restraint

Commercial restraints vs employment restraints

Courts are more likely to uphold restraint provisions in the context of business sales because they protect the goodwill and value of the business acquired by the buyer. A broader scope—both in time and geography—is typically permissible.

Restraints of two to (at the extreme) five years are often upheld, especially for national or industry-wide restrictions, if they align with the nature of the business.

Restraints imposed on former employees, including those given by an employee who is also a seller via a shareholders' agreement in a business sale context, are subject to greater scrutiny. Courts will only enforce them if they are reasonably necessary to protect legitimate interests. And non-compete clauses beyond six to 12 months, or covering broad geographic areas, are difficult to enforce. Non-solicit clauses, being less restrictive, are more commonly upheld, provided they are proportionate to the employer's interests.

A recent Supreme Court decision has called into question the jurisdiction that applies to shareholder agreement restraints on an individual holding dual roles as seller and former employee. We recommend that buyers seek advice if this is likely to become an issue in a business sale context. In our experience, restraint disputes rarely get to Court, given the prevalence of restraint clauses in employment agreements but – in the small New Zealand market – they can create a reputational risk.

Drafting considerations

There are two key differences between enforceable restraints in New Zealand and Australia. New Zealand Courts:

- can write down restraints on a discretionary basis, to the degree required to make them enforceable, so the usual approach is to include the desired maximum restraint period and leave the question of reasonableness to the Court, in the event the restraint is subsequently challenged, and
- are unlikely to accept a "waterfall" restraint, as is common in Australian employment agreements. In such circumstances, the New Zealand courts will only enforce the lowest restrictions in the waterfall (i.e. shortest time period, narrowest location).

Another consideration is whether the benefit of the restraint should be framed as expressly transferable to a purchaser of the business without the consent of the restrained party.

Other developments in New Zealand employment law

- New Zealand's first high profile conviction of an officer under the Health and Safety at Work Act 2015. Tony Gibson, former Ports of Auckland CEO, was convicted for failing to discharge his due diligence obligations after a fatality at the port. He was fined $130,000 and ordered to pay $60,000 in costs.
- A raft of significant changes that will materially recontour our employment law landscape in favour of employers are due this year:
  - A new Holidays Act
  - An income threshold of $180,000 base salary above which employees will not be able to bring a personal grievance for unjustified dismissal. The changes will apply to new employees immediately after the legislation comes into force and to existing employees 12 months' after the implementation date
  - A new remedies regime in which employees whose behaviour was found to amount to serious misconduct (by the courts) will not be eligible for any remedies.

Hot sectors in New Zealand M&A

Based on the deals that came across our desks in 2024 and our discussions with intermediaries and our private equity clients, we are picking 2025 could be a big year for:

HEALTHCARE

Demand for private healthcare is at an all-time high, due to an ageing population and the shambolic state of New Zealand's public health system. This is continuing to drive both JV and buyout activity.

TECHNOLOGY

Lucrative exits from Software as a Service (SaaS) businesses such as Kami and Tradify have galvanised interest in New Zealand's technology sector, and there are a number of companies quietly proving their technology and consolidating recurring revenue that are likely to be attractive acquisition targets in the near term.

RENEWABLE ENERGY

Sustainable energy is in high demand and the solar generation industry, in particular, is already booming (though still largely at the greenfields investment rather than buyout stage, with the exception of a couple of big players).

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