New Zealand M&A Activity: Quarterly Update

April 2017

Russell McVeagh

KEY DEVELOPMENTS – TAKEOVERS CODE CHANGES

- The Takeovers Panel has recommended excluding small companies from the Takeovers Code.
- Companies with less than NZ$30 million of assets and less than NZ$15 million of revenue would be exempt.
- Changes are also proposed to encourage electronic communications during a takeover, not just postal mail.

CURRENT TRENDS – SCHEMES OF ARRANGEMENT

- The competing proposals currently in the market to acquire listed insurer Tower by way of scheme of arrangement, with Russell McVeagh acting for Suncorp on its rival bid to Fairfax Financial's, show that scheme takeovers are well and truly back in the New Zealand market.
- Law changes introduced in 2014 made schemes a viable option again for listed company acquisitions, and last year we acted for Allnex Belgium (a portfolio company of Boston private equity firm Advent International) on the first significant scheme takeover under the new regime, Allnex's $1.05 billion acquisition of NZX listed Nuplex.
- While the key advantages of schemes are well known (primarily the lower approval thresholds than under a Code offer), we have recently completed a scheme over four months from inception to closing, showing similar timeframes to a Code offer are also achievable.

OVERSEAS INVESTMENT OFFICE DEVELOPMENTS

- The Overseas Investment Office (or the OIO) released new template application forms, which must be used for all applications.
- The OIO has introduced a new "application triage" process – this allows the OIO to categorise applications as "high", "medium" or "low" risk based on the nature of the investment transaction and investor and the complexity of the application. This is intended to result in faster processing times for low risk applications and more rigorous assessment of high risk applications.
- "Good character" checks are now being undertaken by the OIO before an application is accepted, so there is now a risk of an application being rejected if it does not adequately address any potentially relevant character issues. This has the potential to cause timing issues if not adequately addressed at the outset.
- The importance of well-reasoned and strongly supported benefit claims is to the fore, and we have recently seen in the market "proposal to decline" letters issued by the OIO where "scattergun" approaches have been taken to benefit claims. We recommend focussing only a few key benefits and ensuring they are strongly supported.

CURRENT OIO TIMING

- In the period July 2016 – February 2017, the OIO's average assessment time for all consents to acquire "Significant Business Assets" was 96 working days.
- In the same period, the OIO's average assessment time for consents to acquire "Sensitive Land" ranging from 118 working days to 155 working days (depending on whether the decision is delegated to the OIO or made by the relevant Ministers).
- In recent cases, we have seen consent granted to acquire "Significant Business Assets" in 40 working days. The OIO, in general, are getting quicker.

OUR RECENT WORK

- Advised Allnex Belgium (a portfolio company of Boston private equity form Advent International) on its $1.05 billion acquisition (by way of scheme of arrangement) of Nuplex.
- Acted for ANZ Bank New Zealand on the sale of UDC Finance to HNA Group.
- Advised Oceania Healthcare on its pending IPO.
- Acted for CDH Fund in its acquisition of an 80% stake in GO Healthy.
- Acted for RIFA on the takeover of NZX listed Airwork Holdings.

SPEAK TO ONE OF OUR EXPERTS

Please contact us on +64 9 367 8000 or +64 4 499 9555 to discuss any of the content in this update, or how we could help you or your clients.

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