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Project Finance 2025

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1 Overview

1.1 What are the main trends/significant developments in the project finance market in your jurisdiction?

Recent announcements mean that the coming 12 months look set to be the most active period for project finance in New Zealand for some years. The Government has announced plans for a new programme of public private partnerships ("**PPPs**"). The 100km Northland Corridor motorway extension has been announced and it is expected that other PPP projects will be announced later this year.

The Government released a new funding and financing framework for infrastructure in December 2024. The objectives of the framework are to broaden the funding base for investments and to utilise private capital, where efficient.

In anticipation of new PPPs being announced, the Government has been working on updates to the PPP model, which was last updated in the 2010s. The updates are intended to reflect learnings from earlier PPPs and recent international experience. The Government released its new PPP Framework in November 2024, describing it as a blueprint for future transactions. It includes forewords from the National, ACT and Labour parties and shows some cross-party support for delivering new infrastructure through PPPs.

In addition to PPPs, there is also increasing project finance activity in the renewables space. A power supply squeeze in winter 2024 should spur on further renewable energy development, and an overhaul of resource management laws, including fast-track approvals, are intended to make it faster and easier to obtain consents for projects with regional or national benefits.

In March 2025, the Prime Minister hosted the inaugural New Zealand Infrastructure Investment Summit. The purpose of the summit was to attract foreign investment to aid in reducing New Zealand's infrastructure deficit. Key announcements from the summit included a commitment to establish Invest New Zealand, an agency to support foreign investors and streamline the regulatory process, and an indication that a 30-year infrastructure plan will be delivered by December 2025. Most major parties in New Zealand have indicated support for the development of a bi-partisan infrastructure pipeline to provide certainty that projects will not be cancelled if a change in government occurs.

1.2 What are the most significant project financings that have taken place in your jurisdiction in recent years?

The largest project financings in New Zealand have been PPPs. Two roads of national significance have been delivered as PPPs, being Transmission Gully, which opened in March 2022 and Puhoi to Warkworth, which opened in mid-2023. Three prisons have also been delivered as PPPs, including the new Waikeria prison, which is due to open in 2025. The Government has announced plans to expand Waikeria prison after the initial capacity opens.

There has also been recent activity in the renewables space. In late 2023, a joint venture between Genesis Energy and FRV Australia reached financial close on the Lauriston Solar Farm development near Christchurch in the South Island. In August 2024, a joint venture between Contact Energy and Light Source BP reached financial close on the Kowhai Park Solar Farm adjacent to Christchurch Airport and in January 2025, Harmoney Energy and First Renewables reached financial close on the Tauhei Solar Farm in the centre of the North Island.

2 Security

2.1 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

Yes, in project financing transactions it is usual for the obligors to enter into a general security agreement under which they grant a security interest over all of their assets. If security is taken over all assets under a general security agreement, it is not necessary to identify each asset individually in the security document or to enter into separate security documents for individual assets.

The method of perfection for each type of asset can differ. Perfection of security interests over land is governed by the Land Transfer Act 2017 ("**LTA**") (discussed in question 2.2). Perfection of security interests over all other property is governed by the Personal Property Securities Act 1999 ("**PPSA**"), under which there are different methods to perfect security interests in different types of personal property.

A security interest in personal property that is subject to the PPSA is perfected when the security interest has attached and either a financing statement has been registered on the Personal Property Securities Register ("**PPSR**") or the secured party has possession of the collateral (except where possession is a result of seizure or repossession). The PPSR is a publicly available online register which shows all security interests registered against an entity's personal property that is subject to the PPSA.

Under the PPSA, a security interest 'attaches' to collateral when:

- value is given by the secured party;
- the debtor has rights in the collateral; and
- except for the purpose of enforcing rights between the parties to the security agreement, the security agreement is enforceable against third parties.

The most common method of perfecting a security interest is the registration of a financing statement on the PPSR, which is a quick, cheap and straightforward process. Where the relevant property includes a serial-numbered good (a motor vehicle or an aircraft) it is necessary to include the serial number and various other details of the relevant property in the financing statement.

A security interest in personal property subject to the PPSA is enforceable against a third party in respect of particular collateral, only if the collateral is in the possession of the secured party or the debtor has signed or assented to a security agreement that contains:

- an adequate description of the collateral by item or kind that enables the collateral to be identified;
- a statement that a security interest is taken in all of the debtor's present and after-acquired property; or
- a statement that a security interest is taken in all of the debtor's present and after-acquired property except for specified items or kinds of personal property.

Although a security interest over all different categories of personal property can (and typically will) be perfected by the registration of a financing statement on the PPSR, it is sometimes also desirable to take additional steps in relation to certain categories of personal property to ensure that the required priority is obtained and protected. For example, under the PPSA, a previously first ranking security interest over investment securities, negotiable instruments or chattel paper can lose priority over those assets to a subsequent purchaser (which includes the grantee of a security interest) if that purchaser obtains (among other things) possession of the relevant property.

There are certain types of collateral (such as inventory and accounts receivable) that are subject to special priority rules. Accordingly, it is important to establish what key assets the obligor owns so that all necessary steps can be taken to protect the lender's position.

In addition to (or, in some cases, instead of) registration on the PPSR, a number of other registration regimes may also be applicable, depending on the asset concerned (for example, ships, fishing quota, insurances, and radio frequencies).

2.2 Can security be taken over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground)? Briefly, what is the procedure?

Security over land may take the form of an unregistered charge contained in a general security deed but, where the borrower owns material interests in land, it is typical to take a registered mortgage. Pursuant to the LTA, instruments registered on real property titles take effect according to the date and time of registration. Generally, registered mortgages have priority over subsequently registered mortgages and unregistered mortgages. Hence, failure to register may lead to loss of priority. Mortgages are registered at Land Information New Zealand through an online e-dealing system and the registration process is handled by the solicitors acting on the transaction.

Security over land not subject to the LTA (for example, certain Māori land or land which was overlooked when the prior deeds system was replaced by the LTA regime) is generally taken by way of a charge, assignment by way of security, or equitable mortgage.

2.3 Can security be taken over receivables where the chargor is free to collect the receivables in the absence of a default and the debtors are not notified of the security? Briefly, what is the procedure?

Yes. A security interest over an accounts receivable is generally taken under a general security agreement covering all of the obligor's assets. The security interest for key contracts often takes the form of an assignment by way of security. It is typical for the security document to provide that the chargor continues to collect and manage the receivables in the absence of a default. The financing documents typically provide for a notice of assignment to be delivered to contractual counterparties, who are requested to acknowledge the assignment. It is a matter for commercial negotiation whether the notice is given pre-default, but it is typical for the notice to be given and acknowledged pre-default in relation to material contracts in a project finance transaction. The notice usually confirms that the obligor may continue to manage the contract until the secured party notifies the counterparty to the contrary. In a project financing, the notice and acknowledgment may be documented within a direct agreement.

The secured party should register its security interest on the PPSR (as set out in question 2.1 above).

2.4 Can security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Yes. A security interest over New Zealand bank accounts is generally taken under a general security agreement covering all of the obligor's assets. For a project financing, it is usual for the account bank to be given notice of, and to acknowledge, the security interest. It is also usual for there to be extensive controls over the operation of the project accounts, including withdrawal conditions and payment waterfalls. These arrangements can be documented in the facility agreement if the account bank is another finance party. Otherwise, an account bank agreement or similar document is usually needed.

The secured party should register its security interest on the PPSR (as set out in question 2.1 above).

2.5 Can security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Briefly, what is the procedure?

Yes. A security interest over shares in a New Zealand company is generally taken under a general security agreement covering all of the obligor's assets (if given by an obligor giving all asset security) or under a specific security agreement (if given by an equity investor giving limited security but security from the equity investors is typically not needed because project financings usually adopt a two-tier obligor structure whereby the equity investors hold their interests in a holding vehicle which owns the borrower and which grants all asset security, including over the shares in the borrower).

It is possible for shares to be in certificated form, but this is not usual for a project financing transaction.

Secured parties typically wish to take possession of the shares to minimise the risk of losing priority to a subsequent purchaser (including the grantee of a security interest) who obtains possession of the shares. A secured party may take possession of the shares by holding the share certificates (if they have been issued) or by having its interest noticed in the share register (if the shares are uncertificated). If the shares are uncertificated, it is also usual for the obligor to represent and warrant that no share certificates have been issued and to undertake not to issue any share certificates.

The secured party should also register its security interest on the PPSR (as set out in question 2.1 above).

2.6 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets (in particular, shares, real estate, receivables and chattels)?

The only applicable costs (in addition to costs incurred in connection preparing the security documents) are registration costs. These costs are generally nominal. For example, the cost for registering a financing statement in respect of personal property under the PPSA is currently NZ$16.10 and the cost of registering a mortgage over land under the electronic "Landonline" system is currently NZ$122 (both including goods and services tax).

2.7 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

Security filing, notification or registration requirements in New Zealand are not particularly onerous.

2.8 Are any regulatory or similar consents required with respect to the creation of security over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground), etc.?

Subject to limited exceptions, regulatory consents are not generally required for security over land or most privately-owned assets. PPP agreements contain restrictions on the project entity granting security but provide for security in connection with its financing arrangements.

3 Security Trustee

3.1 Regardless of whether your jurisdiction recognises the concept of a "trust", will it recognise the role of a security trustee or agent and allow the security trustee or agent (rather than each lender acting separately) to enforce the security and to apply the proceeds from the security to the claims of all the lenders?

Both trust and agency concepts are recognised in New Zealand. It is usual for the project security to be held by a security trustee on behalf of the lenders. The security trustee enforces the security following an event of default acting in accordance with the instructions of a requisite majority of lenders and applies the proceeds in accordance with a pre-agreed waterfall (subject to any priority interests or preferential claims). The law of trusts was modernised and streamlined in the Trusts Act 2019. The High Court of New Zealand retains inherent jurisdiction over the administration of trusts.

3.2 If a security trust is not recognised in your jurisdiction, is an alternative mechanism available (such as a parallel debt or joint and several creditor status) to achieve the effect referred to above which would allow one party (either the security trustee or the facility agent) to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

This is not applicable.

4 Enforcement of Security

4.1 Are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or the availability of court blocking procedures to other creditors/the company (or its trustee in bankruptcy/liquidator), or (b) (in respect of regulated assets) regulatory consents?

A lender can generally enforce its security or guarantee freely after default by the obligor, subject to:

- compliance with the terms of the security agreement or guarantee;
- in respect of personal property, compliance with the notice requirements and other duties under the PPSA and the PLA;
- in respect of mortgages over land, complying with the notice and procedural requirements of the PLA; and
- all insolvency, moratorium, reorganisation or similar laws affecting creditors' rights generally (including voluntary administration and statutory management).

A brief outline of the process requirements is set out below.

Regulatory consents may be required for a sale upon enforcement to an overseas person (see question 6.1 below) or under licences or PPP documentation (subject to the terms applying to a particular project).

Personal property

Part 9 of the PPSA provides statutory remedies available to a secured party when a debtor is in default or the collateral is "at risk". Part 9 does not apply to a receiver within the meaning of section 2(1) of the Receiverships Act 1993 (with enforcement by a receiver being governed by that Act).

Section 108 of the PPSA allows a first ranking secured party to collect accounts receivable and other financial assets held as security and to apply the proceeds to the obligation secured if the debtor is in default. Section 109 of the PPSA allows a secured party (whether or not such secured party's security interest is first ranking) to take possession of and sell collateral when the debtor is in default under the security agreement or where the collateral is at risk.

Notice is required to be given to the debtor and other secured parties at least 10 working days prior to any proposed sale unless an exception applies (for example, if the collateral is perishable). Where the security interest is a 'mortgage over goods' as defined by the PLA, a matching 10 working day period before the goods can be sold applies and a prescribed form of notice must be given. The parties to a security agreement may contract out of the requirement to notify the debtor under the PPSA but may not contract out of the notice requirements under the PLA.

As noted above, the secured party does not need to have first ranking priority over other secured parties when selling collateral but must use the proceeds of any enforcement to pay out those prior ranking secured parties first.

In exercising a power of sale, the secured party is obliged to obtain the best price reasonably obtainable and must provide a statement of account within 15 working days to the debtor and other secured parties. A secured party must also exercise its rights in good faith and in accordance with reasonable standards of commercial practice.

Additional obligations apply where personal property has become an accession to, or has been mixed with, other property given the interests of third parties that may be involved.

Prior to a secured party selling collateral, the debtor (or another secured party given notice) may redeem the collateral by fulfilling the obligations secured by the collateral and paying the reasonable expenses incurred by the secured party in enforcing the security agreement. It is not possible to contract out of this ability to redeem.

The debtor may, prior to the sale of collateral, reinstate the security agreement by paying any sums in arrears, remedying any other defaults and paying the reasonable expenses incurred by the secured party in enforcing the security agreement. This cannot be done more than twice a year.

Land

A mortgage over land may not be enforced by reason of a default unless a notice in the form prescribed in the PLA has been served (whether by the mortgagee or the receiver) on the mortgagor and, on the expiry of the remedial period specified in the notice, the default has not been remedied. The minimum remedial period is usually 20 working days.

Enforcement powers for which such conditions must be satisfied include:

- the mortgagee entering into possession of the mortgaged land;
- a receiver managing mortgaged land or demanding and recovering income from the mortgaged land;
- the mortgagee or receiver selling the mortgaged land; and
- amounts secured by the mortgage being payable under an acceleration clause.

A mortgagee who exercises a power of sale owes a duty of reasonable care to the following persons to obtain the best price reasonably obtainable as at the time of sale.

4.2 Do restrictions apply to foreign investors or creditors in the event of foreclosure on the project and related companies?

Foreclosure, which involved the mortgagor's rights in a secured asset and the mortgagor's equity of redemption being extinguished, has been abolished in New Zealand (see, for example, section 117 of the Property Law Act 2007).

Please see question 4.1 in relation to the process for a secured creditor exercising the power of sale. In general, foreign creditors seeking to run an enforcement sale are not treated differently from domestic creditors.

5 Bankruptcy and Restructuring Proceedings

5.1 How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the security?

The main insolvency procedures in New Zealand are voluntary administration, liquidation and receivership. The commentary in this section and the following sections on insolvency focus on companies but similar regimes exist for limited partnerships (companies and limited partnerships being the usual structures for borrowing entities in project finance).

Voluntary administration is provided for in Part 15A of the Companies Act 1993 ("**Companies Act**"). Voluntary administration begins when an administrator is appointed. An administrator may be appointed by the company, a liquidator, the court or a substantial secured creditor. While the company is in administration, the administrator has control of the company's business, property and affairs.

The object of the voluntary administration regime is to provide for the business, property and affairs of an insolvent company (or a company that may become insolvent) to be administered in a way that:

- maximises the changes of the company, or as much as possible of its business, continuing in existence; or
- if it is not possible for the company or its business to continue in existence, results in a better return for the company's creditors and shareholders than would result from immediate liquidation.

Commencement of voluntary administration brings an automatic moratorium for the duration of the administration, which prevents a person from enforcing a charge over the company's property and halts any enforcement process in relation to the company's property. In addition, during an administration, a guarantee or a liability of the company cannot be enforced against a director of the company or their spouse or relative, without the court's permission. The purpose of a moratorium is to give the company space during which it may continue to operate while parties assess the situation and form a plan to present to creditors. An important exception to the moratorium is that a creditor with a security interest over the whole or substantially the whole of the company's property may still enforce its security after administration has commenced, provided it does so within 10 working days of receiving notice that the company has gone into administration.

There are three possible outcomes from a voluntary administration, which are determined by the company's creditors:

- the company executes a deed of company arrangement (which is an agreement between the company and its creditors approved at a creditor's meeting under which the parties agree to give decision-making power to a deed administrator to compromise their debt, usually resulting in distributions to creditors);
- a liquidator is appointed; or
- the administration ends and control of the company is handed back to its directors.

Liquidation is provided for in Part 16 of the Companies Act. It is the final stage of a company's existence as a legal entity. Liquidation involves the appointment of a liquidator to realise and distribute a company's assets. Liquidation commences upon the appointment of a liquidator. A liquidator may be appointed by a special resolution of shareholders, the board of a company, the court or (during an administration) a resolution of creditors. In most cases, a liquidator is appointed by the company's shareholders or by the court on the application of a creditor. When the court appoints a liquidator, it must be satisfied that one of the statutory grounds is met. The usual ground upon application by a creditor is that the company is unable to pay its debts.

From the commencement of liquidation, the liquidator has custody of the company's assets and, unless the liquidator agrees or the court orders otherwise, a person must not commence or continue legal proceedings against the company or exercise or enforce a right or remedy over or against property of the company. However, the fact that the liquidator has custody of the company's assets does not affect the rights of a secured creditor in relation to secured assets, which do not form part of the property available to the liquidator to distribute to unsecured creditors. Subject to certain restrictions, where there is a charge over assets, a creditor will be entitled to take possession of, or otherwise deal with, those assets after liquidation has commenced. A receiver may be appointed, may continue to act, and may exercise all its powers in respect of property of a company that has been put into liquidation, unless the court orders otherwise. A liquidator can serve written notice on a secured creditor requiring it to elect its course of action upon the debtor company's liquidation. Where a secured creditor does not make an election within 20 working days, it will be deemed to have surrendered its charge for the benefit of all creditors.

In addition, an obligor's obligations may be affected by restrictions on creditors' rights during statutory management under the Corporations (Investigation and Management) Act 1989.

5.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g. tax debts, employees' claims) with respect to the security?

Yes. The obligations of a company are subject to various insolvency, moratorium, reorganisation or similar laws affecting creditors' rights. For example:

- Transactions and charges having preferential effect may be set aside.
- The liquidator may recover any excess benefit provided by a company under a transaction at undervalue.
- Dispositions of property that are made with an intent to prejudice a creditor, by way of gift or without receiving reasonably equivalent value in exchange may be set aside by the court.
- In a liquidation, preferential claims (as set out in the seventh schedule of the Companies Act) may be paid out of the proceeds of inventory and accounts receivable in priority to the secured claims of a secured creditor (except to the extent that the security interest is perfected and value provided by the secured creditor was applied by the company in acquiring rights in that collateral).
- Any provision in a document that confers or waives, or purports to confer or waive, a right of set-off, netting or similar right may be ineffective in a liquidation in certain circumstances.

5.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

No, bodies corporate and natural persons are generally subject to insolvency or similar proceedings under the relevant legislation.

5.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of the project company in an enforcement?

Receivership is a process that allows a secured creditor to appoint a receiver to realise assets or manage the business of a company for the secured creditor's benefit. Receiverships are governed by the Receiverships Act 1993. A receiver has the powers and authorities expressly or impliedly conferred by the deed or agreement governing its appointment, or court order, together with default powers under the Receiverships Act (subject to the appointing document) such as managing property in a receivership and recovering income of the property in receivership to satisfy creditor debts. The powers given to the receiver in the security agreement usually include the power to sell the company's assets.

Please also see questions 2.1 and 2.2 above in relation to exercising remedies upon enforcement, including the power of sale.

5.5 Are there any processes other than formal insolvency proceedings that are available to a project company to achieve a restructuring of its debts and/or cramdown of dissenting creditors?

New Zealand law provides for creditors' compromises and schemes of arrangement as available reorganisation procedures. Creditors' compromises are governed by Part 14 of the Companies Act. A creditors' compromise is a compromise made between a company and its creditors, in respect of debts owing. The definition of "compromise" is relatively wide and flexible. The Companies Act provides that a compromise includes cancelling all or part of a debt, varying the rights of creditors or terms of a debt, and altering the constitution of a company in a way that will affect the likelihood of the company being able to pay the debt. If a company is or will be unable to pay its debts, a compromise may be proposed by either the company's directors, a receiver or liquidator of the company, or a creditor or shareholder with leave of the court. There is no automatic moratorium on enforcement of debts once a compromise is proposed. A meeting of creditors is held and the compromise proposal will be approved if a majority in number representing 75% in value of the creditors voting vote in favour. Creditors may be divided into classes for the purposes of voting. Each class votes separately, and all classes must vote in favour of the compromise for it to be approved.

Schemes of arrangement are governed by Part 15 of the Act. The court may order that an arrangement or amalgamation or compromise shall be binding on the company. Arrangement includes rearranging the share capital of a company, but also extends to anything that could be the subject of an agreement between a company, its shareholders and its creditors.

5.6 Please briefly describe the liabilities of directors (if any) for continuing to trade whilst a company is in financial difficulties in your jurisdiction.

There is a general policy that requires directors of insolvent or near insolvent companies to consider the interests of creditors. This policy is formally applied in sections 135 and 136 of the Companies Act. Section 135 provides that a company director must not agree to, allow or cause the business of a company to be carried out in a manner likely to create a substantial risk of serious loss to the company's creditors. Whether a manner of trading is likely to risk causing losses to creditors under section 135 is assessed objectively. Section 136 provides that a director must not agree to a company incurring obligations unless the director believes at the time on reasonable grounds that the company will be able to perform the obligations when required to do so.

Directors who breach either section 135 or 136 can be found personally liable for obligations that the company incurred while in breach of either provision. A recent decision by the Supreme Court of New Zealand found former directors of a failed construction company liable to pay NZ$39.8 million to the company's liquidators for breaches of their duties (see *Yan v. Mainzeal Property and Construction Ltd (in liq)* [2023] NZSC 113, [2023] 1 NZLR 296).

Directors also have a general duty to act in good faith and in the best interests of the company under section 131 of the Companies Act. Serious breaches of this duty are an offence with a maximum sentence of five years imprisonment or a fine up to NZ$200,000. In an insolvency or near insolvency situation, the creditor duty is triggered, and creditors' interests are captured within the meaning of the best interests of the company (see, for example, *Sojourner v. Robb* [2006] 3 NZLR 808 (HC)).

6 Foreign Investment and Ownership Restrictions

6.1 Are there any restrictions, controls, fees and/or taxes on foreign ownership of a project company?

Investments by overseas persons are regulated by the Overseas Investment Act 2005 ("**OIA**"), which is administered by the Overseas Investment Office ("**OIO**").

Consent will be required from the OIO where an "Overseas Person", being a non-resident or overseas company, acquires "Significant Business Assets" and/or "Sensitive Land". The purchase of the relevant assets or land is conditional on OIO consent being received. "Significant Business Assets" include the purchase of assets or 25% or more of a business or the set-up of a New Zealand business, at a cost greater than NZ$100 million. "Sensitive Land" includes non-urban land and other land given particular significance in New Zealand (such as conservation land).

Prospective purchasers under the OIA must satisfy a test that shows they meet certain character requirements (business experience, financial commitment to the investment, good character, etc.). If the investment is in "Sensitive Land", a second test must be satisfied that proves their investment will likely result in benefit to New Zealand. This benefit test is counterfactual, assessed against the consequences of the investment not going ahead.

The OIO will then review the application and decide whether it consents to the proposed transaction. The outcome of this process is then released publicly on the OIO website.

6.2 Are there any bilateral investment treaties (or other international treaties) that would provide protection from such restrictions?

There are treaties that provide some exceptions from the OIA regime in relation to residential land for Australian and Singaporean nationals. These exceptions are not relevant to project finance transactions and related security.

6.3 What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

The Public Works Act 1981 ("**PWA**") gives powers to the Crown to acquire land from private landowners for public works, such as transport infrastructure and schools. The PWA sets out a process for compulsory acquisition, including determination of the compensation that is payable (based on a general principle that the private landowner's financial position should be no better and no worse than before the acquisition). In early 2025, the Government announced plans to update and streamline the PWA. The changes are intended to accelerate land acquisition for critical public projects while providing enhanced compensation for affected landowners in some circumstances. There are no general laws regarding nationalisation or expropriation of project companies or project assets.

7 Government Approvals/Restrictions

7.1 What are the relevant government agencies or departments with authority over projects in the typical project sectors?

A number of government agencies have some degree of oversight over projects in New Zealand. These include:

- the procuring department or agency in relation to a PPP;
- the Treasury, the Infrastructure Commission and National Infrastructure Funding and Financing Limited in relation to government-procured infrastructure projects;
- the Ministry of Business, Innovation and Employment in relation to regulation of business generally and the management of specific regimes such as Crown minerals;
- the Electricity Authority in relation to regulation of the electricity industry; and
- local authorities in relation to resource management and building codes.

7.2 Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

No, there is no requirement to file or register financing or project documents or to complete other legal formalities (other than general matters of contract and corporate law and registration of security interests (covered above)). Other disclosure requirements may apply depending on the nature of the project and the parties involved.

7.3 Does ownership of land, natural resources or a pipeline, or undertaking the business of ownership or operation of such assets, require a licence (and if so, can such a licence be held by a foreign entity)?

Landowners, developers and infrastructure operators need to obtain resource consents under the Resource Management Act 1991 ("**RMA**"), which is the main legislation for environmental management in New Zealand. The RMA determines how natural and physical resources may be used, developed and protected and seeks to promote sustainable management of resources. Regional and district plans promulgated under the RMA specify objectives, policies and rules relating to land use. Activities that are permitted under a plan may be undertaken as of right, whereas other activities require a resource consent. The length and complexity of the application process depends on the type and number of consents involved, the information required by the consent authority and the extent of public participation.

Various other licences may be required for the ownership or use of land and natural resources. For example, building consents are required to carry out specific building work under the Building Act 2004 and the Building Code and permits are required for the exploration and extraction of petroleum and mineral resources under the Crown Minerals Act 1991.

Comprehensive due diligence on the applicable regulatory regimes is typically carried out at the beginning of a project. Decisions will be made as to which key licences and consents need to be in place at financial close, with others being obtained as and when needed during the course of a project.

As a general matter, licences may be held by a foreign entity, but foreign investment is subject to the Overseas Investment Act (summarised in question 6.1).

7.4 Are there any royalties, restrictions, fees and/or taxes payable on the extraction or export of natural resources?

Royalties may need to be paid to the Crown by holders of mineral permits depending on the type of permit granted. All permits are subject to application fees as well as ongoing annual fees based on the area that the permit covers.

7.5 Are there any restrictions, controls, fees and/or taxes on foreign currency exchange?

No, there are no such restrictions.

7.6 Are there any restrictions, controls, fees and/or taxes on the remittance and repatriation of investment returns or loan payments to parties in other jurisdictions?

There are generally no restrictions on payments to parties in other jurisdictions, but non-resident income tax is payable on interest payments or dividends.

7.7 Can project companies establish and maintain onshore foreign currency accounts and/or offshore accounts in other jurisdictions?

Yes, there are no restrictions on a project company maintaining an onshore foreign currency account and/or an offshore account (other than compliance with usual know your client, anti-money laundering and countering of terrorism requirements). However, it would be unusual for a project company to have offshore accounts.

7.8 Is there any restriction (under corporate law, exchange control, other law or binding governmental practice or binding contract) on the payment of dividends from a project company to its parent company where the parent is incorporated in your jurisdiction or abroad?

The main restriction is the procedure for authorising a distribution under section 52 of the Companies Act 1993. The board of a company cannot authorise a distribution unless it is satisfied on reasonable grounds that the company will satisfy the solvency test immediately after the distribution is paid. The solvency test has two limbs, being balance sheet solvency and cash flow solvency (ability to pay debts as they fall due). The directors who vote in favour of making a distribution must sign a certificate stating that, in their opinion, the company will satisfy the solvency test immediately after the distribution is made (including grounds for their opinion). The financing documents for a project will typically impose contractual restrictions on distributions.

There are no exchange control or similar restrictions that would prevent distributions being paid to a shareholder abroad.

7.9 Are there any material environmental, health and safety laws or regulations that would impact upon a project financing and which governmental authorities administer those laws or regulations?

Please see question 7.3 in relation to the Resource Management Act 1991, which is the main legislation for environmental management in New Zealand. It is administered by local authorities.

New Zealand's health and safety regime is heavily regulated under the Health and Safety at Work Act 2015 ("**HSW Act**"), which is administered by the government regulator, WorkSafe. The primary duty of care under the HSW Act is that a person carrying out a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of any person is not put at risk from work carried out as part of the conduct of the business or undertaking.

7.10 Is there any specific legal/statutory framework for procurement by project companies?

There is no specific legal framework for procurement by project companies. Procurement by project companies themselves is not covered by any government procurement rules. Restrictions on procurement processes may be contractually required in a PPP by the head government agency.

8 Foreign Insurance

8.1 Are there any restrictions, controls, fees and/or taxes on insurance policies over project assets provided or guaranteed by foreign insurance companies?

The details of insurance law are outside the scope of this overview but there are no general legal restrictions, controls, fees or taxes on insurance policies over project assets.

The Reserve Bank of New Zealand is the regulator and supervisor of insurance businesses in New Zealand. Insurance providers who carry on insurance business in New Zealand must be licensed as an insurer in New Zealand.

8.2 Are insurance policies over project assets payable to foreign (secured) creditors?

Generally, the benefit of the security package including insurance policies is held by a New Zealand security trustee rather than by the lenders directly, so any amounts would be paid to the security trustee in the first instance and then distributed to the lenders. However, there are no restrictions on foreign creditors receiving the benefit of payments under the insurance policies.

9 Foreign Employee Restrictions

9.1 Are there any restrictions on foreign workers, technicians, engineers or executives being employed by a project company?

Aside from standard visa requirements, there are no restrictions on employing foreign workers.

10 Equipment Import Restrictions

10.1 Are there any restrictions, controls, fees and/or taxes on importing project equipment or equipment used by construction contractors?

New Zealand does not have import licensing or foreign exchange controls or consent requirements applicable to project or construction equipment. Customs duty may be payable (depending on the nature and source of the equipment) and goods and services tax is also payable.

10.2 If so, what import duties are payable and are exceptions available?

Goods and services tax is payable at a rate of 15%. Customs duties, if applicable, depend on the nature and source of the equipment being imported.

11 *Force Majeure*

11.1 Are *force majeure* exclusions available and enforceable?

Force majeure provisions are commonplace in New Zealand law governed project agreements. *Force majeure* provisions are enforceable provided that their scope is well drafted. New Zealand also has the doctrine of contractual frustration, but contractual *force majeure* provisions are preferable and enable the parties to have more control over the financial consequences and other relief for unexpected events.

12 Corrupt Practices

12.1 Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

There are no rules relating to bribery and corruption that target the project sector specifically. General anti-bribery rules apply to the project sector. New Zealand's bribery and corruption laws (contained in part 6 of the Crimes Act 1961 for the public sector and in the Secret Commissions Act 1910 for the private sector) prohibit:

- offering bribes to public officials (including judicial officers, Ministers of the Crown, members of Parliament, law enforcement officers and all other government officials);
- accepting bribes as a public official;
- offering bribes to an agent without the consent of the principal; and
- accepting bribes as an agent without the consent of the principal.

The scope of a bribe is interpreted broadly and can include any benefit whether it passes directly or indirectly to the recipient of the bribe. Bribes must be given in connection with an identifiable course of action (which can be inaction). The course of action need not actually be followed for the offence to occur, and an offence still occurs if the course of action to which the bribe relates was already going to occur or has in fact occurred.

The maximum sentence for all forms of bribery and corruption (for both offerors and recipients of bribes) under both the Crimes Act and the Secret Commissions Act is seven years' imprisonment. The only exception to this is that judicial officers who receive bribes are liable to a maximum sentence of 14 years' imprisonment.

13 Applicable Law

13.1 What law typically governs project agreements?

Project agreements are typically governed by New Zealand law.

13.2 What law typically governs financing agreements?

Financing agreements are typically governed by New Zealand law.

13.3 What matters are typically governed by domestic law?

In New Zealand project financings, most matters are governed by New Zealand law. International investors are usually comfortable with New Zealand law governing all matters. Even if some matters are governed by foreign law, the security in relation to New Zealand assets should be governed by New Zealand law.

14 Jurisdiction and Waiver of Immunity

14.1 Is a party's submission to a foreign jurisdiction and waiver of immunity legally binding and enforceable?

The choice of a foreign law to govern a contract would generally be given effect to by the New Zealand courts if the choice is made in good faith, is legal and there is no reason for avoiding the choice of law on the grounds of public policy. Even if a court determined that a dispute should be heard in New Zealand, the court would be required to decide the dispute according to the relevant foreign law. However, if the dispute is heard in New Zealand, a remedy will not be granted under the relevant foreign law if no comparable remedy is available under New Zealand law.

An exclusive submission to the Australian courts in a commercial contract will be considered valid by the New Zealand courts provided that the submission is not null and void under Australian law. The exclusive jurisdiction will entitle a party to a stay of proceedings unless the court is satisfied that:

- giving effect to it would lead to a manifest injustice or would be manifestly contrary to New Zealand public policy;
- the relevant Australian courts have decided not to determine the case; or
- for exceptional reasons beyond the control of the parties, the submission to jurisdiction cannot reasonably be performed.

An effective exclusive submission to foreign jurisdiction (other than the Australian courts) will be considered valid by the New Zealand courts. It will entitle a party to a stay of any proceedings in a New Zealand court, except where a party can show strong reasons why specific proceedings should be brought in New Zealand.

A non-exclusive submission to foreign jurisdiction in a commercial contract will be considered valid by the New Zealand courts. The submission will be considered a factor in favour of a party seeking to obtain a stay of any proceedings in New Zealand. However, it will not be conclusive if there are other factors that suggest that it is more appropriate for the dispute to be heard in New Zealand.

New Zealand will generally uphold provisions waiving immunity.

15 International Arbitration

15.1 Are contractual provisions requiring submission of disputes to international arbitration and arbitral awards recognised by local courts?

Under the Arbitration Act 1996, an arbitral award (irrespective of the country in which it is made) must be recognised as binding and, on application in writing to the court, must be enforced by entry as a judgment in terms of the award, subject to certain procedural requirements. The party relying on the award or applying for its enforcement must supply the duly authenticated original award (or a duly certified copy), the original arbitration agreement (or a certified copy) and translations into English if the award or arbitration agreement are not made in English.

Recognition and enforcement of an arbitral award may be refused on the grounds set out in the Arbitration Act. These grounds mirror the grounds set out in Article V of the New York Convention and apply to domestic and foreign arbitral awards in the same way.

15.2 Is your jurisdiction a contracting state to the New York Convention or other prominent dispute resolution conventions?

New Zealand is a contracting state under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

15.3 Are any types of disputes not arbitrable under local law?

Section 10 of the Arbitration Act 1996 provides that arbitration agreements contrary to public policy or any other law are not capable of arbitration. The bar is high for an arbitration agreement to be contrary to public policy.

15.4 Are any types of disputes subject to mandatory domestic arbitration proceedings?

No, there are not.

16 Change of Law / Political Risk

16.1 Has there been any call for political risk protections such as direct agreements with central government or political risk guarantees?

There have not been any calls for political risk protections or guarantees in relation to projects generally. It is, however, usual for lenders to have the benefit of direct agreements for a PPP project and for the PPP documentation to apportion change of law risk.

17 Tax

17.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

New Zealand has two types of withholding tax that apply to interest:

- non-resident withholding tax (“**NRWT**”); and
- resident withholding tax (“**RWT**”).

Non-resident withholding tax

Subject to certain exceptions, New Zealand sourced interest derived by a non-New Zealand tax resident to foreign lenders, who are not lending through a New Zealand “fixed establishment” (as that term is defined in the Income Tax Act 2007), will generally be subject to NRWT at the rate of 15%. This rate may be reduced to 10% (or similar concessionary rates) in cases where the lender is resident in a country with which New Zealand has a double tax agreement.

A borrower may elect to reduce the rate of NRWT to 0% and instead register for and pay an approved issuer levy (“**AIL**”) at a rate of 2% of the gross amount of interest. The AIL regime is not available where interest is derived jointly by a resident and a non-resident, paid between associated persons (unless the approved issuer is a member of a New Zealand banking group), or in relation to instances of “related party debt” (as that term is defined in the Income Tax Act 2007).

Resident withholding tax

RWT must be withheld on payments of “resident passive income”, which includes interest, made by New Zealand tax residents or non-residents carrying on a taxable activity in New Zealand through a fixed establishment in New Zealand where NRWT is not applicable (i.e., where the relevant interest is derived by a non-resident not lending through a New Zealand fixed establishment). Resident passive income includes payments to non-residents for the purpose of a business they carry on in New Zealand through a fixed establishment, and offshore registered banks which operate through a New Zealand branch (who are not associated with the payer).

RWT is generally required to be withheld at the marginal tax rate of the payee of the interest (i.e., 28% for companies). If the relevant payee of the interest holds RWT-exempt status, RWT is not required to be withheld on the interest payment.

Guarantee payments

In certain situations, payments made under a guarantee may be treated as "interest" for New Zealand income tax purposes and, therefore, could be subject to RWT or NRWT. The definition of interest includes "a payment made to the person by another person for money lent to any person". Where a payment made under a guarantee is made in respect of unpaid interest, this may be regarded as a payment "for money lent". This would therefore satisfy the statutory definition of interest and could require RWT or NRWT to be withheld.

Proceeds of enforcing security

There are no requirements to deduct or withhold tax from the proceeds of enforcing a security.

17.2 What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

There are no incentives that are offered to foreign investors or creditors preferentially. There are no stamp taxes or other taxes, duties or charges that are relevant for lenders making loans to entities incorporated in New Zealand.

18 Other Matters

18.1 Are there any other material considerations which should be taken into account by either equity investors or lenders when participating in project financings in your jurisdiction?

New Zealand is a well-established jurisdiction for project financing. New Zealand has a stable common law legal system and rule of law. It is usual for equity investment and debt finance for project financing to be documented under New Zealand law and for dispute resolution (either arbitration or court litigation) to take place in New Zealand.

It is common for project financings in New Zealand to have limited partnerships as the project SPV. Limited partnerships are a hybrid between a company (for example, they are a body corporate and offer limited liability) and a traditional partnership. Limited partnerships consist of at least one general partner and limited partners. Limited partnerships are constituted through a limited partnership agreement that is not accessible by the public (unlike the constitution of a company) and the identity of the limited partners is not publicly available. A key advantage of a limited partnership for a project financing is that it combines limited liability (for the limited partners only) with a "look through" tax treatment in the same way as a partnership. The income of the limited partnership is treated as the income of the partners (in proportion to their interest in the limited partnership) and, unlike companies, limited partnerships are not taxed themselves.

There are no general restrictions on foreign lenders providing loans. However, depending on the extent and nature of a foreign lender's activities in New Zealand, it may be required to comply with certain registration and other requirements.

18.2 Are there any legal impositions to project companies issuing bonds or similar capital market instruments? Please briefly describe the local legal and regulatory requirements for the issuance of capital market instruments.

To date, debt finance for projects has been in the form of loan facilities provided by banks or non-bank institutional lenders. However, it is possible for project entities to issue debt securities in the debt capital markets.

The issuance of capital markets instruments in New Zealand (including bonds) is regulated by the Financial Markets Conduct Act 2013 ("**FMCA**"). Regulatory requirements vary considerably depending on whether the offer of debt securities is made to retail or wholesale investors. A wholesale investor includes a person who falls within at least one of the following categories:

- "investment businesses";
- people who meet specified "investment activity" criteria;
- "large" entities (those with net assets over $5 million or consolidated turnover over $5 million in each of the two most recently completed financial years);
- "government agencies";
- "eligible investors" – who are people who certify that they are eligible to invest without the formal disclosure that would be provided in a product disclosure statement based on prior investing experience; and
- persons paying a minimum of $750,000 for the financial products on offer.

An offer to at least one non-wholesale investor (being a retail investor) is a regulated offer and will come with additional disclosure requirements.

The disclosure requirements for regulated offers include:

- preparing and lodging a product disclosure statement ("**PDS**") – this document will contain the key terms of the offer as well as other information prescribed under the FMCA. Preparing a PDS is a lengthy and onerous process. A PDS is similar to what most jurisdictions would call a prospectus; and
- creating a register entry on the Disclose Register – the Disclose Register is an electronic database maintained on the New Zealand Companies Office website containing the details of regulated offers made in New Zealand. The register entry must contain all material information not contained in the PDS.

Issuers of debt securities that are listed on a public exchange will also have to comply with the listing rules that prescribe how an issuer is governed and can operate. New Zealand also has continuous disclosure, insider trading and market manipulation regimes which apply to listed debt securities.

19 Islamic Finance

19.1 Explain how *Istina'a, Ijarah, Wakala* and *Murabaha* instruments might be used in the structuring of an Islamic project financing in your jurisdiction.

Islamic project financing has not been used in New Zealand, though there are no particular impediments to structuring a transaction using these concepts.

19.2 In what circumstances may *Shari'ah* law become the governing law of a contract or a dispute? Have there been any recent notable cases on jurisdictional issues, the applicability of *Shari'ah* or the conflict of *Shari'ah* and local law relevant to the finance sector?

Shari'ah law would not be the governing law of a contract or dispute in New Zealand.

19.3 Could the inclusion of an interest payment obligation in a loan agreement affect its validity and/ or enforceability in your jurisdiction? If so, what steps could be taken to mitigate this risk?

The inclusion of an interest payment obligation does not affect the validity or enforceability of a loan agreement. There are no formal rules limiting the amount of interest that may be charged. However, the Credit Contracts and Consumer Finance Act 2003 gives courts a broad power to reopen a credit contract that is considered to be oppressive, but a court would not usually reopen the amount of interest payable under a contract entered into between sophisticated commercial parties. In addition, a default interest rate that is regarded as a penalty will not be enforceable.

Bevan Peachey is a partner at Russell McVeagh. He is an infrastructure and project finance specialist and acts for international and domestic financial institutions, sponsors and government agencies on a wide range of infrastructure and project finance transactions.
He has close relationships with the main players in the project finance market and has advised on some of the largest project finance transactions in New Zealand (including six of the eight PPPs in New Zealand) and complex transactions in the United Kingdom.
He recently advised a joint venture between Genesis Energy and FRV Australia on the development of the Lauriston solar farm, which is shortlisted for the Project Finance Deal for the Year award at the *IFLR Asia Pacific*-Awards 2025. Bevan was named 'Lawyer of the Year' for Project Finance and Development in the *Best Lawyers*® 2025 and 2023 guides, and 'Lawyer of the Year' for Banking and Finance Law in the 2024 guide.
Client feedback includes: "Bevan Peachey's project finance knowledge is second to none in the New Zealand market. His in-depth analysis and ability to view issues from a commercial perspective is a valuable asset for his clients" – *Chambers and Partners* 2025 Guide.

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Russell McVeagh is a premier law firm in New Zealand, employing approximately 370 staff and partners across its Auckland and Wellington offices, and is expanding to the South Island with the opening of a Queenstown office in 2025.
The firm operates on the cutting edge of legal practice and boasts award-winning lawyers who are internationally recognised for their thought-leadership, depth of experience, and ability to translate complex legal issues into client success stories. Specialties include banking and finance (including project finance), corporate and commercial, competition/antitrust, employment, health and safety, environment and resource management, litigation, restructuring and insolvency, property and construction, tax, technology and digital, and public law and regulation.
The top-tier banking and finance team advises local market participants, inbound lenders and investors, and inbound financial service providers, and has significant experience advising on leveraged and other acquisition financing, takeover finance, securitisations and repackaging transactions, structured derivatives, and project and asset finance.

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