

Private Equity 2026

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New Zealand: Law and Practice

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Law and Practice

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Contents

1. Transaction Activity P.4

- 1.1 Private Equity Transactions and M&A Deals in General p.4
- 1.2 Market Activity and Impact of Macro-Economic Factors p.5

2. Private Equity Developments P.5

- 2.1 Impact of Legal Developments on Funds and Transactions p.5

3. Regulatory Framework P.7

- 3.1 Primary Regulators and Regulatory Issues p.7

4. Due Diligence P.10

- 4.1 General Information p.10
- 4.2 Vendor Due Diligence p.10

5. Structure of Transactions P.11

- 5.1 Structure of the Acquisition p.11
- 5.2 Structure of the Buyer p.12
- 5.3 Funding Structure of Private Equity Transactions p.12
- 5.4 Multiple Investors p.12

6. Terms of Acquisition Documentation P.12

- 6.1 Types of Consideration Mechanism p.12
- 6.2 Locked-Box Consideration Structures p.13
- 6.3 Dispute Resolution for Consideration Structures p.13
- 6.4 Conditionality in Acquisition Documentation p.13
- 6.5 "Hell or High Water" Undertakings p.14
- 6.6 Break Fees p.14
- 6.7 Termination Rights in Acquisition Documentation p.15
- 6.8 Allocation of Risk p.15
- 6.9 Warranty and Indemnity Protection p.15
- 6.10 Other Protections in Acquisition Documentation p.16
- 6.11 Commonly Litigated Provisions p.16

7. Takeovers P.16

- 7.1 Public-to-Private p.16
- 7.2 Material Shareholding Thresholds and Disclosure in Tender Offers p.17
- 7.3 Mandatory Offer Thresholds p.17
- 7.4 Consideration p.17
- 7.5 Conditions in Takeovers p.17
- 7.6 Acquiring Less Than 100% p.18
- 7.7 Irrevocable Commitments p.18

8. Management Incentives P.18

- 8.1 Equity Incentivisation and Ownership p.18
- 8.2 Management Participation p.18
- 8.3 Vesting/Leaver Provisions p.18
- 8.4 Restrictions on Manager Shareholders p.18
- 8.5 Minority Protection for Manager Shareholders p.19

9. Portfolio Company Oversight P.19

- 9.1 Shareholder Control and Information Rights p.19
- 9.2 Shareholder Liability p.19

10. Exits P.19

- 10.1 Types of Exit p.19
- 10.2 Drag and Tag Rights p.20
- 10.3 IPO p.20

Russell McVeagh employs approximately 350 staff and partners across its Auckland, Wellington and South Island offices. The firm's private equity team is a market leader in New Zealand and has represented some of the largest and most high-profile domestic and offshore private equity funds. The team has significant experience in advising on all aspects of private equity-led transactions, including acquisitions,

divestments, bolt-ons, financing and tax issues associated with structuring and fund formation. Russell McVeagh has a deep understanding of the key drivers and issues faced by private equity sponsors, and collaborates with experts across its full-service practice to manage any issues that arise from complex, high-value private equity transactions.

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1. Transaction Activity

1.1 Private Equity Transactions and M&A Deals in General

This chapter provides an overview of the key trends and features of a private equity transaction in New Zealand – that is, an acquisition (or disposal) of a target business where the buyer or the seller is a special-purpose vehicle that is ultimately owned by a fund or funds that are managed and/or advised by a private equity fund manager.

The New Zealand Private Capital Monitor 2025 reported that total private equity and venture capital activity reached NZD2,500.7 million in 2025 – a decrease from NZD3,765.2 million in 2024, driven primarily by lower buy-out values. Total investment activity decreased to NZD1,777.1 million in 2025, compared to NZD2,769.1 million in 2024, although the total number of transactions remained broadly consistent (276 in 2025 compared to 307 in 2024).

Overall M&A activity was mixed in 2025, with a significant increase in mid-market investment activity (50 deals in 2025 compared to 27 in 2024) and record venture capital investment of NZD687 million, offset by a decrease in buy-out transaction values.

Various economic conditions, including macro-economic volatility, high interest rates and geopolitical developments (further expanded on in **1.2 Market Activity and Impact of Macro-Economic Factors**), contributed to a more constrained environment for

transaction activity and exits in 2025 and 2026. However, 49 deals were announced for the start of 2026, which was a 36% increase from the start of 2025 and unchanged from the end of 2025, suggesting a cautious optimism in the market.

Similar to 2024, bid-ask valuation gaps continue to impact transaction volumes, with valuation pressure continuing to constrain deal flow, although lower valuation multiples may present opportunities for well-capitalised buyers. The outlook for the New Zealand private capital market over the next six months remains neutral; however, the medium-term outlook is encouraging.

In the current market, the authors have observed an increase in deals implemented by way of private treaty/a bilateral process. Additionally, the authors are seeing an increase in contracts featuring earn-out provisions to bridge valuation gaps, as well as buyer-friendly protections such as material adverse change (MAC) clauses, enhanced security packages and more extensive conditions precedent.

While slower than in previous years, the current private equity market remains relatively strong due to:

- the availability of quality domestic assets;
- a perception of New Zealand as a relatively safe and stable governmental/regulatory environment;
- an abundance of “dry powder” (ie, available committed capital) on the part of domestic, regional and international private equity funds; and

- amendments to the Overseas Investment Act 2005 (OIA) resulting in quicker and more streamlined consenting processes for applicants.

1.2 Market Activity and Impact of Macro-Economic Factors

In terms of types of transactions, as noted in **1.1 Private Equity Transactions and M&A Deals in General**, there has been a reduction in formal sale processes.

From a sector perspective, in recent years there has been a particular increase in transactions in:

- infrastructure – for example, TPG’s acquisition of a 70% interest in Australia, New Zealand and UK bus operator Kinetic;
- technology, software and digital infrastructure – for example, The Riverside Company’s acquisitions of The Instillery (through its portfolio company Virtual IT Group), a provider of technology services and digital security solutions, and Workbench International, which operates a cloud-based project management and job-costing platform; and
- energy transition and clean technology – for example, Direct Capital’s acquisition of Active Refrigeration and Thermal Solutions, and Pacific Equity Partners’ acquisition of Spark’s data centre business and establishment of TenPeaks.

More broadly, venture activity also included NZD18.4 million of investment in clean technology across 16 transactions and NZD10.8 million of investment climate technology across 11 transactions.

Renewable energy and telecommunications, media and technology (particularly artificial intelligence (AI)) are also continuing to attract investor attention in 2026. Private capital participants within the New Zealand market identify health, biosciences, IT, software, environmental technology and clean technology as sectors which they are optimistic about, while also identifying AI, digital transformation and automation as key opportunities. The authors are also seeing an increase in inquiries for take-privates generally, with a number of listed issuers having their share price depressed as a result of a challenging New Zealand consumer economy – however, the consequent gap between bid ask spreads in engagement with target

companies is tending not to result in takeover transactions being announced.

As mentioned in **1.1 Private Equity Transactions and M&A Deals in General**, macro-economic conditions continue to affect private equity activity in New Zealand, including not only overall deal volumes but also how deals are being executed. Global uncertainty, including shifts in US tariff settings and the conflict in the Middle East, has disrupted trade and adversely affected business valuations and investment risk profiles. Higher borrowing costs and volatile capital markets conditions have compounded these pressures, making buyers more selective, prompting more rigorous diligence on downside cases and contributing to a more constrained transaction environment. Although sponsors continue to deploy capital, they are focusing more closely on quality assets, resilient sectors and businesses with a clear path to growth and operational improvement.

At the same time, the exit environment remains constrained. Divestment activity was lower in 2025 than in 2024, and a cautious capital markets backdrop is expected to continue weighing on trade sales and listing pathways.

2026 is also an election year in New Zealand (the election being set for 7 November 2026), which generally leads to a more cautious M&A outlook.

2. Private Equity Developments

2.1 Impact of Legal Developments on Funds and Transactions

New Zealand’s Overseas Investment Regime

The most significant recent legal development in New Zealand for private equity investors is the reform of the OIA and its associated regulations, overseen by the Overseas Investment Office (OIO), which were enacted at the end of 2025 and came into force on 6 March 2026.

These reforms represented the most comprehensive overhaul of New Zealand’s overseas investment regime in over 20 years, and formed part of the New Zealand government’s broader strategy to promote

foreign direct investment by making it easier to invest and faster to obtain investment consent, while also ensuring that New Zealand's national interests are protected where appropriate.

The reforms comprised a range of improvements to the OIA and the overseas investment consent process. Most notably, the former "investor test" and "benefit to New Zealand test" that investors previously had to meet when acquiring "significant business assets" and "sensitive land" in New Zealand have been replaced with a single national interest test for almost all applications for consent. This streamlined pathway represents a significant improvement for most investors.

The starting assumption is that investment can proceed unless a national interest risk is identified. Review timeframes have also been materially reduced, and in many cases consent can now be granted in as little as five working days.

The new national interest test that has been introduced operates through a three-stage process, as set out below.

Stage 1: Initial National Interest Risk Assessment

The OIO will undertake an initial risk assessment to identify any potential national interest risks with the transaction. If the OIO has reasonable grounds to consider that the transaction may pose a risk to New Zealand's national interest, it will be classified as a transaction of national interest and a Stage 2 assessment will be required. If no such risks are identified, the OIO will grant consent at this stage. The statutory timeframe for completing the Stage 1 assessment is 15 working days. However, the OIO has been directed to complete at least 80% of Stage 1 reviews within five working days. The OIO expects that the majority of applications for significant business assets and non-farmland sensitive land will be processed at this stage.

Stage 2: Full National Interest Risk Assessment

Where Stage 1 identifies a potential national interest risk with the investment, or where the investment is automatically deemed a transaction of national interest (where it involves a "non-New Zealand government investor" or a "strategically important business" (see

3.1 Primary Regulators and Regulatory Issues)), the transaction will require a full national interest assessment as part of Stage 2 of the national interest test. As part of a full national interest assessment, the OIO must consider a series of factors including risks to national security and public order, and whether risks can be managed by other regulatory regimes.

The OIO may also consider other factors such as investor characteristics (replacing elements of the former investor test), whether risks can be managed through conditions, and whether benefits of the transaction may offset identified risks. Critically, the OIO cannot decline consent at Stage 2 and can only either grant consent to the investment or refer the application to the Minister of Finance if there are reasonable grounds to consider that the transaction may be contrary to New Zealand's national interest, which forms Stage 3 of the national interest test.

Stage 3: Ministerial Decision

Only the Minister of Finance (not the OIO) can decline an investment under the national interest pathway. The Minister will consider whether the transaction is contrary to New Zealand's national interest and must have regard to any relevant directions in the Ministerial Directive Letter as well as the mandatory factors above, and may consider the non-mandatory factors. The statutory timeframe for the OIO and the Minister to complete the full national interest risk assessment and, if required, the ministerial decision, is 55 working days. This is in addition to the initial 15-working-day risk assessment as part of Stage 1. However, the OIO has been directed to complete the review of least 80% of Stage 2/3 applications within half of the statutory review period.

A full summary of the regime is set out in **3.1 Primary Regulators and Regulatory Issues**.

The Commerce (Promoting Competition and Other Matters) Amendment Bill

The New Zealand government has also introduced the Commerce (Promoting Competition and Other Matters) Amendment Bill, which is relevant to private equity buyers with existing portfolio companies in the same or adjacent sectors. The Bill proposes six key changes to the Commerce Act.

First, it proposes to clarify that a transaction may be anti-competitive if it creates, strengthens or entrenches a substantial degree of market power in a market.

Second, the Bill grants Commerce Commission New Zealand (NZCC) the power to require parties proposing an acquisition to apply for clearance or authorisation if the NZCC has reasonable grounds to believe that the acquisition would be likely to substantially lessen competition in a market.

Third, the Bill grants the NZCC power to assess the cumulative effect of a series of acquisitions by any party to the current acquisition within a three-year period.

Fourth, the Bill allows the NZCC to accept behavioural undertakings (eg, a commitment to keep supplying competitors or refrain from bundling certain products together) as a condition to granting clearance. The NZCC would only be able to accept behavioural undertakings where it is reasonably practicable for the NZCC to monitor and enforce the undertaking and it has already been established that a structural remedy (eg, a commitment to divest certain assets or businesses) would be insufficient on its own or would reasonably require a behavioural undertaking to work.

Fifth, the Bill grants the NZCC power to require parties to keep a transaction separate for 40 working days while it assesses potential competition law concerns.

Finally, the Bill extends the timeline for clearances and authorisations of business acquisitions to 140 and 160 working days respectively (extendable in 20 working-day increments in certain circumstances) and allows a formal “clock stop” mechanism where the NZCC is awaiting information from a third party or an overseas review is ongoing. Taken together, these significant proposed reforms to the Commerce Act would give the NZCC broader oversight of acquisitions and could lengthen acquisition timelines.

3. Regulatory Framework

3.1 Primary Regulators and Regulatory Issues Primary New Zealand Regulators

Two key questions govern the regulation of share acquisitions in New Zealand.

- Does the acquisition constitute “takeover activity” regulated by the Takeovers Act 1993 and the Takeovers Code (the “Code”)?
- Is the acquisition otherwise regulated in New Zealand?

These are summarised as follows.

Does the Acquisition Constitute “Takeover Activity” Regulated by the Code?

What is a Code company?

The Code regulates the change in control of voting rights in companies (“Code companies”) that:

- are listed on a regulated market, including the New Zealand Stock Exchange (NZX);
- have been listed on a regulated market in the last 12 months; and/or
- have 50 or more shareholders and 50 or more share parcels and are at least medium-sized.

Accordingly, private companies (unless recently delisted or widely held) will generally not constitute Code companies.

The “fundamental rule” under the Code

The fundamental rule under the Code prohibits any person (or persons acting jointly or in concert, or as associates) from acquiring an interest of 20% or more in a Code company (a “control transaction” and “control interest”) other than through a takeover offer or other transaction approved under the Code.

Who are the relevant regulators from a Code perspective?

The New Zealand Takeovers Panel (the “Panel”) regulates takeovers of Code companies, the underlying principle of this regulation being that all shareholders (no matter their relative size or influence) have an equal, informed opportunity to participate in major share transactions. The Panel has the power to

exempt persons from a provision of the Code and/or modify the application of the Code in a particular case. If the target Code company is listed on the NZX, the NZX also has powers of supervision over a takeover under the NZX Listing Rules. The Panel and NZX work together collaboratively.

If the target company is dual-listed on the Australian Securities Exchange (ASX), as is reasonably common for NZX-listed companies, the ASX and, potentially, the Australian Securities and Investment Commission, will also have a regulatory role in the matter. However, the Panel remains the principal regulator if the target company is incorporated in New Zealand, irrespective of where it is listed.

If the proposed control transaction is structured by way of a scheme of arrangement (see later in this section), the New Zealand High Court will be required to review and sanction that scheme.

Is the Acquisition Otherwise Regulated?

The NZCC

The NZCC is New Zealand's regulator of competition, fair trading and consumer-credit contracts. Its main role is to enforce New Zealand's main anti-trust legislation, the Commerce Act 1986, alongside a list of additional legislation.

The NZCC works under a voluntary notification regime, meaning that there is no legal requirement for a seller or buyer to notify the NZCC in respect of a potential acquisition. However, notification is encouraged, especially when the relevant transaction could substantially lessen competition in a market. A buyer can apply to the NZCC either for clearance (that is, the NZCC is satisfied the merger will not substantially lessen competition in the market) or for a formal authorisation (allowing an acquisition even if it does substantially lessen competition in a market). In these circumstances, the sale and purchase agreement (SPA) for the transaction will normally include a condition stating that NZCC approval is required before the transaction can go ahead.

Depending on the level of complexity of the clearance application, the NZCC will typically take between 40 and 130 days to make a decision and issue a state-

ment (however, these timeframes may be subject to change under the proposed reforms – see **2.1 Impact of Legal Developments on Funds and Transactions** for further detail on these). In the NZCC's last financial year (2024/2025) it decided six clearance applications, with the average time taken to make a decision being 65 days. Three of the clearance applications were simple cases (being those where no Statement of Issues was issued) and were decided just outside the 40 working-day timeframe. The NZCC seeks to be as transparent as possible, which means that its decision and any submissions made are published on its website. However, a party may request that certain information remain confidential.

The Financial Markets Authority

The Financial Markets Authority (FMA) is New Zealand's regulator for securities law and financial reporting. Most of the FMA's work is carried out under the Financial Markets Conduct Act 2013 (FMCA). The FMA generally has a limited practical role in M&A, in that there is no requirement to consult with the FMA in relation to a proposed transaction or seek its consent. However, depending on the nature of the target business and the acquisition (by way of example, the form of consideration to be provided), the FMCA may be relevant.

The OIO

Private equity buyers proposing to invest directly or indirectly in New Zealand will need to be aware of the country's inbound foreign direct investment regime, contained in the OIA.

New Zealand's overseas investment regime is known as one of the more complex at the global scale; however, in the vast majority of cases, well-advised buyers can generally expect to navigate it successfully. OIO consent is not always required, but when required the application process is relatively intensive, and the time required to obtain consent will need to be factored into the relevant transaction's overall timetable.

Where it is determined that OIO consent is required, the SPA will need to be expressly conditional on the receipt of the relevant OIO consent. Current market practice is to file an OIO consent application shortly after signing the SPA. OIO consent can take from as

little as five business days to two-and-a-half months (or longer, in some cases) to obtain, depending on the nature of the target asset, the consent required and the buyer. The regime is structured to ensure that the OIO has the power to review a relatively large proportion of transactions for the purpose of ensuring that New Zealand's interests are adequately protected, but at the same time to encourage beneficial overseas investment.

Whether a transaction requires consent depends on one or a combination of the value and/or nature of the New Zealand assets that are affected by the transaction. A transaction that will directly or indirectly result in the acquisition of more than 25% ownership or controlling interest in a New Zealand business, or New Zealand assets, will require OIO consent if the gross value of the New Zealand assets or the purchase price for (or which is attributable to) the New Zealand business or assets exceeds NZD100 million. Higher monetary thresholds apply for buyers from countries with trade agreements with New Zealand that meet certain requirements.

OIO consent will also be required if a buyer directly or indirectly acquires more than 25% ownership or controlling interest in an entity that holds a qualifying interest in "sensitive land" (what constitutes "sensitive land" is relatively complex, but broadly speaking includes any residential land, land directly adjacent to the foreshore, any non-urban land over five hectares and certain forestry rights).

The consent requirement is triggered even if the acquisition occurs offshore, further up the corporate chain.

In each case, consent is also required if a buyer proposes to increase its existing direct or indirect ownership of more than 25%, or its controlling interest, in "significant business assets" or "sensitive land" to or over the 50% and 75% control thresholds, up to 100%. This consent requirement for creep transactions can catch out upstream investors in global businesses that have significant downstream assets or land interests in New Zealand, where the buyer increases its proportionate interest by participating in a non-pro rata fundraising or buy-back transaction.

The primary test that applies to almost all applications for OIO consent is the "national interest" test, where the regulator considers whether the transaction or investment could be contrary to New Zealand's national interest. More comprehensive regulatory scrutiny will be given where either the buyer is a "non-New Zealand government investor" or the transaction involves land or assets that are used in a "strategically important business". The definition of a "non-New Zealand government investor" is complex, but in broad terms the test will apply if the buyer is, or its upstream owners are, more than 25%-owned, directly or indirectly, by one or more government-related entities (such as sovereign wealth funds, state-owned enterprises (SOEs), public pension funds and their associated entities) from a single country. This will often apply to private equity funds, depending on the size and composition of their limited partners.

Even in cases where OIO consent is not required under the usual significant business assets or sensitive land pathways, buyers will still need to consider whether the transaction involves New Zealand land or assets that are used in a "strategically important business". If so, the transaction will be subject to the "national security and public order call-in power", which allows the Minister of Finance to call in the transaction for review and to block, impose conditions on or unwind the transaction if the Minister considers it to pose a significant risk to New Zealand's national security or public order. This power is intended to be used very rarely. Notification is voluntary, except in certain specific cases.

The Reserve Bank

The Reserve Bank of New Zealand (the "Reserve Bank") is New Zealand's regulator of banking, insurance and non-bank deposit-takers. Its main purpose is to promote the maintenance of a sound and efficient financial system. In instances where there is to be a significant acquisition by a New Zealand incorporated registered bank, Reserve Bank approval will be required. This approval can be incorporated into transaction documentation as a condition to the contract being completed.

NZX

In a transaction involving a sale or purchase by an NZX-listed entity, the NZX will have a role in monitoring compliance with the NZX Listing Rules (for example, rules relating to continuous disclosure and approval of material transactions).

Other sector-specific regulation

Depending on the nature of the target business, other New Zealand regulators may be relevant in the context of a transaction.

4. Due Diligence

4.1 General Information

Private equity buyers in New Zealand will typically carry out detailed due diligence investigations. The extent of this review will vary, however, depending on the following factors:

- the nature of the target business;
- the buyer's existing sector expertise, and the extent to which it is already familiar with the business;
- the proposed level of shareholding to be acquired by the private equity buyer (ie, a minority or controlling stake);
- the buyer's overall risk appetite and its budget for advisory fees;
- the extent to which detailed seller due diligence has been undertaken and provided to the buyer; and
- whether the buyer is required to obtain warranty and indemnity (W&I) insurance in the SPA.

Due diligence will typically be undertaken in respect of financial, tax and legal aspects. In some cases (depending on the factors previously outlined), private equity buyers will undertake diligence in respect of commercial, insurance, environmental, engineering (eg, where the target has specific critical tangible assets), ESG, anti-bribery and corruption/anti-money laundering and IT aspects.

A typical legal due diligence review for a private equity buyer will focus on the following areas:

- corporate structure;
- regulatory and compliance matters;
- material contractual obligations (focusing on terms underpinning key revenue streams and the identification of material provisions such as termination rights (including on change of control), exclusivity provisions/restraints of trade and liability under warranties and indemnities);
- finance arrangements (noting that this will probably be a limited review, given that existing external debt will be refinanced as part of the transaction);
- real estate;
- employment (focusing on accrued employee benefits, contractual terms for key executives and the involvement of any relevant unions);
- intellectual property;
- information technology; and
- privacy/data protection, litigation and investigations.

4.2 Vendor Due Diligence

As noted previously, New Zealand private capital activity has become more selective, with valuation pressure, slower exits, liquidity constraints and macro-economic uncertainty continuing to affect decision-making. As a result, sponsors and vendors are increasingly favouring targeted bilateral or private-treaty processes, which can lead to longer deal timetables and more detailed buyer due diligence.

Prior to this (ie, in 2021 and 2022, when M&A activity was high), there were a large number of formal sale processes whereby it was common for a private equity seller to provide vendor due diligence (VDD) reports to a shortlisted group of bidders (typically accounting, tax and legal – and often commercial and insurance reports as well).

The provision of a VDD report benefits the seller in that:

- it permits the due diligence process to be truncated (also, the process is more attractive to bidders as it reduces their transaction costs) and reduces the workload of the management of the business during the buyer due diligence phase;
- key issues that may impact transaction implementation, or the value of the target business, are

- identified up front and potential solutions can be investigated, or the issue can be explained away; and
- such a report generally helps ensure that any W&I underwriting process is straightforward.

The existence of VDD reports, however, does not replace the need for a buyer to conduct due diligence. External buyer advisers will customarily conduct a full review of the VDD, including verification of sample materials and a “gap analysis” (aside from being prudent, this will generally be required as a condition to any bank financing and as part of any W&I underwriting).

Reliance on VDD reports will customarily be notified to the successful bidder via reliance letters provided by the relevant VDD advisers.

5. Structure of Transactions

5.1 Structure of the Acquisition

The typical structure of a private equity acquisition depends on whether the target is public or private.

Non-Code Companies

As noted in **3.1 Primary Regulators and Regulatory Issues**, a widely held or recently delisted private company may constitute a Code company, in which case the acquisition structure will generally be the same as for a publicly listed target, as set out in this section (unless an exemption from the Code is granted by the Panel). Otherwise, the acquisition of a non-Code company will typically be effected through a negotiated SPA.

Business/asset purchases are fairly rare in this space, as the seller will inevitably wish to divest itself of target business liabilities via a share sale.

The current economic downturn means that there has been an increase in deals implemented by way of private treaty/a bilateral process.

In a formal process, competitive tension inevitably impacts on the form of the sale documentation – typically, the SPA will be more seller-friendly than might be

the case in a private treaty sale (in particular, sellers will be very focused on the certainty of closing and will be averse to conditionality – see also **6.4 Conditionality in Acquisition Documentation**).

Code Companies

A “Code Transaction” will be effected:

- as a takeover offer under the Code, which may be a full or partial offer;
- by the acquisition or allotment of voting securities above the control threshold, which has been “white-washed” by an ordinary resolution of the target;
- pursuant to “creep” provisions for holders of more than 50% and less than 90% (less than an additional 5% in a 12-month period); or
- by a court-approved scheme of arrangement (“scheme”) approved by 75% of the votes of the shareholders of the Code company entitled to vote (and with 75% approval by any separate interest group).

If a buyer acquires 90% or more of the voting securities of a target, it can rely on compulsory acquisition provisions to acquire the balance of the voting shares.

Increasingly, schemes are becoming the preferred (though not exclusive) route for private equity public acquisitions, in view of the following factors:

- the lower shareholder consent threshold to obtain 100% ownership of the target compared with a takeover (generally 75% for a scheme versus 90% for a takeover); and
- the fact that schemes generally permit a longer time period to obtain any requisite regulatory approvals (eg, OIO or NZCC approval), although regulators will generally try to adhere to timeframes prescribed by the Code (it is also possible to obtain a limited set of warranties, backed up by W&I, for a scheme).

It is usual for control transactions in New Zealand to be conducted on a consensual, “friendly” basis, as opposed to hostile takeovers (which are very rare). In this context, the buyer and seller will often enter into an agreement that contains deal protection mecha-

nisms, such as “no-talk” and “no-shop” provisions, the requirement for irrevocable undertakings, any break fee arrangements and the key terms of the offer to shareholders (see also **7.1 Public-to-Private**).

5.2 Structure of the Buyer

The buyer in a New Zealand private equity transaction is typically a New Zealand-incorporated special-purpose vehicle (Bidco) established by the private equity buyer specifically for the purpose of the acquisition. A Bidco will normally have a holding company and an interposed entity for funding (Finco). Other intermediary special-purpose vehicles may be interposed if required (by way of example, there may be a secondary Finco if it is proposed that mezzanine debt is introduced into the structure). Typically, these companies will all be incorporated in New Zealand and are almost always incorporated as limited-liability companies.

The only capacity in which a private equity fund will enter into transaction documentation is as a party to an equity commitment letter (see also **5.3 Funding Structure of Private Equity Transactions**).

5.3 Funding Structure of Private Equity Transactions

In New Zealand, private equity transactions are generally financed by a mixture of equity funding and senior debt.

Certainty of equity funding is customarily evidenced by an equity commitment letter provided by the private equity fund, customarily enforceable by the seller. This provides comfort to the buyer that there will be committed funds available to a Bidco at closing.

Where the private equity fund also intends to use debt, it will typically provide a debt commitment letter at signing from the relevant lender(s), attaching either a term sheet or a facility agreement. Despite the current market uncertainty (see **1.2 Market Activity and Impact of Macro-Economic Factors**), lenders remain willing to support private equity deals involving strong sponsors and quality assets. Further, a growing availability of debt financing has been identified which may support private equity deals in New Zealand.

Private equity buyers customarily acquire some or all of the shares in a target entity, to ensure that it has control of the target business post-completion.

Where a non-control stake of a target is being acquired, this would typically be funded via equity only (senior lenders will be reluctant to advance funding where there is no clear control on the part of the investor, unless it is provided directly to the target business).

5.4 Multiple Investors

Examples of domestic and offshore funds partnering together are becoming more common (by way of example, BGH Capital and SixthStreet’s acquisition of Pushpay). Consortium bids on larger transactions such as take-privates and deals in the infrastructure space have also been seen.

Generally, however, given the relatively small size of the New Zealand market and the comparatively smaller deal sizes, consortium bids are less common than in other jurisdictions, and it is more typical for private equity sponsors to seek sole ownership of portfolio companies. That said, it is not unusual to have co-investment from other investors alongside the private equity fund (generally in the form of a passive stake as a limited partner).

6. Terms of Acquisition Documentation

6.1 Types of Consideration Mechanism

In the current economic climate, corporate and private equity buyers tend to prefer transactions structured by way of a completion accounts mechanism (though locked-box structures are not uncommon).

Two key factors are relevant when considering appropriate consideration structures in the current climate:

- if OIO or other regulatory consents are required as a condition to completion of the acquisition, the time periods required to fulfil that condition may mean that completion is set to occur a significant time after the latest audited accounts (noting that these will customarily be the basis of the locked-box balance sheet referenced in the SPA); and

- with the ongoing impact of macro-economic factors such as inflation and geopolitical concerns, buyers are either demonstrating an ongoing concern around the risk of business disruption between the locked-box date and completion or unease in assuming the economic risk over that period, given that the changing market conditions may mean the locked-box accounts no longer accurately reflect the target's position at completion.

Where a completion accounts mechanism is used, corporate sellers may be prepared to accept that a portion of the purchase is placed into escrow (or retained) to cover relevant adjustments. Private equity sellers will resist this, though it may be a matter for negotiation (again, in a competitive bid situation, this would impact negatively on a bid).

In the current climate, where there is significant uncertainty due to potential business disruption (often resulting in significant gaps between a seller's perceived deal value and what a buyer is prepared to pay), earn-outs and deferred consideration are increasingly being seen in SPAs. These are, by their nature, complicated arrangements, and care needs to be taken in terms of drafting to ensure that any such provision properly protects the commercial position of both parties.

6.2 Locked-Box Consideration Structures

From time to time, locked-box consideration structures may include a requirement for the buyer to pay to the seller an additional amount from the date of the locked-box accounts being established until completion. This will typically be based on an interest rate on the enterprise value or equity value of the target business (to be negotiated), or on a rate reflecting the cost of capital for the target business.

In some circumstances (for example, where there is a long period between the locked-box date and completion due to OIO requirements), the parties may negotiate the rate to ratchet upwards after a certain time period.

It is not common to see interest charged on any leakage payment.

6.3 Dispute Resolution for Consideration Structures

It is uncommon to have a separate dispute resolution regime for locked-box disputes. These are typically only subject to the dispute resolution provisions in the SPA (customarily New Zealand courts). However, it is common for there to be a requirement that any dispute in relation to completion accounts should be referred to an independent expert for determination (which will be binding on the parties, except in the event of manifest error or omission).

6.4 Conditionality in Acquisition Documentation

This section covers non-Code transactions. For transactions involving Code companies, see **7.5 Conditions in Takeovers**.

The objective of any seller in New Zealand, whether corporate or private equity, will be to have as few conditions as possible. There are two customary categories of conditions, as follows:

- any conditions required from a legal/regulatory standpoint – for example, OIO or NZCC consent, or shareholder approval for a listed entity in accordance with the NZX Listing Rules (a regulatory condition); and
- assuming a regulatory condition is required, the buyer will usually seek protection for the period between the signing and closing of the SPA in the form of a MAC clause (although in a competitive bid situation it may look to differentiate its bid by limiting or omitting this concept, depending on the nature of the target business and its appetite for any related risk).

If there is a regulatory condition, a seller will typically require that as much of the work as possible that is required to satisfy that condition be done prior to the signing of the SPA, to minimise the conditional period. By way of example, in a competitive bid situation where the acquisition is subject to OIO approval, the seller will usually expect the buyer to have progressed its OIO application in parallel with the SPA, in order that it can submit this as soon as possible following signing (or alternatively, in advance of signing).

MAC clauses are generally highly negotiated and tied to specific value impacts. Potentially, a MAC may be tied to breach of warranty or breach of a pre-completion covenant. In negotiating a MAC clause, parties will focus carefully on carve-outs relating to force majeure-type events (noting the impact of the COVID-19 pandemic).

Other types of conditions – for example, board/investment committee approval, shareholder approval (other than in a listed company scenario), or financing conditions – are very unusual in the private equity transaction space (although they may be negotiated on a case-by-case basis).

6.5 “Hell or High Water” Undertakings

As in other jurisdictions, it is unusual in New Zealand for a private equity buyer to accept a “hell or high water” undertaking in respect of a regulatory condition. This type of undertaking (most typically seen in provisions regarding antitrust) requires a buyer to take whatever steps need to be taken – which could include divestments or compliance with onerous undertakings – to ensure that the relevant regulatory approval is granted. This can be particularly difficult for a private equity fund, which is likely to have a number of different businesses across its portfolio, as to do so would potentially place it in breach of its fiduciary obligations to other investors.

In the scenario of a highly competitive bid, however, a private equity buyer may seek to strengthen its position by accepting a “hell or high water” undertaking (or something close to that) if it has had the benefit of advice and is comfortable with that position.

If there is a known substantive issue arising in relation to the portfolio, a strategy in relation to this will generally be negotiated upfront.

It should be noted that this can be a complicated issue in the context of an OIO application, given the range of potential undertakings that may be required, particularly where sensitive land is involved; accordingly, it is vital that legal advice be taken on this point.

For the purposes of these undertakings, New Zealand’s legal system continues to distinguish between

merger control (enforced by the NZCC) and foreign investment conditions (enforced by the OIO).

6.6 Break Fees

In the context of a private company acquisition, it is not usual to see break fees or cost reimbursement. There are occasional exceptions to this, however, as follows:

- a seller may agree to a break fee in the context of an exclusivity breach; or
- a seller may agree to cost coverage in the context of a competitive bid (in lieu of exclusive “preferred bidder” status, in order to keep several bidders in the race).

However, these exceptions are relatively uncommon.

It should be noted that any arrangement in this context needs to be considered carefully in view of the unenforceability of penalty clauses. A clause will be an unenforceable penalty if the consequence it imposes for breach is out of all proportion to (that is, exorbitant when compared with) the legitimate interests of the innocent party in performance. Generally, this can be dealt with by tying the payment obligation to a genuine commercial interest and ensuring that it is not exorbitant relative to that interest (for example, by expressing it as reimbursement of costs or as liquidated damages). Recording, at the time of contracting, the interests the clause is intended to protect will assist enforceability.

Code Transactions

In control transactions that are being conducted on a friendly basis (with deal protections incorporated into an implementation agreement or similar), it is common for the target to agree to pay a break fee in respect of any breach of key target obligations, if there is a breach by the target of key obligations (director recommendations, no-shop, no-talk, etc), and if the transaction does not complete. There is no formal guidance from the Panel on this point, but New Zealand tends to follow other jurisdictions and limit any break fee to 1% of the value of the target business.

Reverse break fees are also becoming reasonably common in New Zealand – generally where there is a

failure to complete because of the buyer's breach or failure to obtain a requisite regulatory consent.

As is the case with non-Code transactions, in agreeing any break fee arrangements, consideration must be given as to whether these could constitute a penalty.

6.7 Termination Rights in Acquisition Documentation

As is the case with conditionality (see **6.4 Conditionality in Acquisition Documentation**), any seller will wish to minimise any termination rights. Accordingly, termination is usually limited to failure to satisfy any condition precedent (including any MAC).

Note that, in this context, the buyer will usually ensure that material breach of warranty or pre-closing covenants falls within the ambit of a MAC (by way of example, insolvency). Alternatively, a specific termination right in this regard might be sought. Outside these termination triggers, and in the absence of a material breach at closing, other termination rights are typically excluded.

The long-stop date generally depends on the nature of the transaction, what is reasonable in the circumstances and the conditions – for example, whether OIO consent and/or NZCC clearance is required.

6.8 Allocation of Risk

A private equity seller in New Zealand will normally seek to minimise or exclude altogether any post-completion liability for breaches of warranties by requiring the buyer to obtain W&I insurance. W&I insurance is a common feature in any proposed transaction by a private equity seller. Private equity buyers are also generally happy to accept W&I insurance, subject to there being some “skin in the game” on the part of the seller (eg, backstop coverage for any gaps in W&I coverage).

Trade sellers may be inclined to bear more risk than their private equity counterparts, and are often more able to do so. That said, W&I insurance is being utilised by different types of sellers (including smaller-sized corporates and family-owned businesses) where there is a desire to ring-fence risk and obtain a clean exit.

Unlike some other jurisdictions, generally, members of management teams in New Zealand will not provide any warranties to the buyer in their personal capacity (unless they are also sellers, in which case they tend to provide the same warranties as the private equity seller, albeit on a limited-recourse basis given the use of W&I).

Any matters that are known to the buyer (customarily including those that are deemed to be known via the due diligence disclosure process) will be excluded from warranty protection; to the extent that the buyer seeks protection in respect of disclosed matters, it will need to seek specific indemnification for the matter or make an adjustment to its price.

See **6.9 Warranty and Indemnity Protection** and **6.10 Other Protections in Acquisition Documentation** for further details of the allocation of risk between sellers and buyers in New Zealand.

6.9 Warranty and Indemnity Protection

Private equity sellers in New Zealand will generally only directly stand behind fundamental warranties as to title and capacity. These will usually be capped based on the value of the underlying business and will be subject to a time limitation (usually two to three years).

To the extent that the buyer requires further protection in the form of business warranties, as previously noted in **6.8 Allocation of Risk**, this will usually be provided by the seller on the basis that the buyer's recourse is solely against the W&I insurance (and not against the seller, in the absence of fraud). The relevant policy will usually cover business warranties and an indemnity for pre-completion tax. The policy will typically be valid for three years for business warranties and seven years for the tax indemnity.

The W&I insurer will not generally be liable for warranty claims unless the amount recoverable meets a specified threshold. The generally accepted market position (for both insured and non-insured deals) is that an individual claim must exceed 0.1% of the purchase price, and the aggregate amount recoverable must exceed 1% of the purchase price (although insurers are offering de minimis and basket thresholds of

0.05% and 0.5%, respectively, or “tipping” or “partial tipping” arrangements in certain circumstances with a corresponding increase in the premium). Claims will also be subject to an overall cap (these can vary in size, depending on the overall deal size, but are typically in the range of 20–40% of the total consideration for the target business).

The W&I policy will contain limitations; as previously noted in **6.8 Allocation of Risk**, it will not cover matters known (or deemed to be known) to the buyer, or matters that arise (and which the buyer becomes aware of) in the period between signing and closing, and certain of the covered warranties will be subject to knowledge qualifiers. As per other jurisdictions, it is possible to obtain “add-ons” to a W&I policy to address these points (for example, “new breach” cover and “knowledge scrape” provisions) – however, this will generally result in a significant increase in the premium payable.

There are also a number of common exclusions in W&I policies in New Zealand (price adjustment, environmental contamination issues, etc).

To the extent that specific issues are identified as being a part of due diligence (by way of example, a specific litigation risk), it may be possible to obtain specific coverage from a W&I insurer in respect of that risk. However, this will be assessed on a case-by-case basis and will generally result in a significant increase in the premium.

6.10 Other Protections in Acquisition Documentation

As noted in the foregoing, W&I insurance is commonly used in private equity transactions in New Zealand. This would customarily cover fundamental and business warranties, and tax matters (warranties and tax indemnity).

Having escrow or retention mechanisms in place to back the obligations of a private equity seller is not common. The exception to this would be in respect of an indemnity for a known liability (eg, specific litigation risk), and where deal dynamics warrant the seller agreeing to such a mechanism.

6.11 Commonly Litigated Provisions

Generally speaking, New Zealand is not as litigious as other jurisdictions (such as the USA), and disputes are uncommon in private equity transactions. Disputes arising in relation to leakage under a locked-box mechanism will typically be dealt with between the parties, rather than litigated, and any issues in relation to completion accounts are typically referred to an expert. Experience shows that the most typical categories of claims under W&I policies are in relation to warranties regarding the accuracy of information disclosed, accounts and material contracts.

7. Takeovers

7.1 Public-to-Private

While not as common as private deals, public-to-private transactions are a feature of the private equity deal landscape in New Zealand and may become more frequent as private equity fund managers search for deal opportunities at an undervalue in the context of the current economic downturn.

There are two potential structures for a take-private transaction in New Zealand:

- a contractual takeover offer pursuant to the terms of the Code, which may be a full or partial takeover offer; and
- a court-approved scheme, which will also be subject to certain requirements under the Code.

The role of the target company and its board in both a takeover offer and scheme is to provide its shareholders with a recommendation and reasoning regarding whether to accept or reject a takeover offer, or whether to vote for or against a scheme. In respect of a takeover offer, although approval of the target board is not necessary, a recommendation typically carries significant weight in terms of assisting shareholders with assessing the relevant proposal. In a scheme, the co-operation of the target company’s board is needed for the scheme to be put before shareholders. Therefore, the role of the target company and its board in both instances is important.

Hostile takeovers are permitted in New Zealand but are very uncommon, particularly with private equity buyers. Private equity bidders customarily wish to effect take-private transactions via a scheme, which (as noted in the foregoing) can only be facilitated in a consensual transaction.

Relationship agreements between the bidder and the target in relation to consensual deals are common in New Zealand, regardless of the method of acquisition. To increase the likelihood of a successful transaction from the outset, the bidder would customarily:

- obtain irrevocable undertakings (for a takeover offer) or voting undertakings (for a scheme) from substantial shareholders; and
- enter into a bid implementation agreement (for a takeover offer) or a scheme implementation agreement (for a scheme).

See **3.1 Primary Regulators and Regulatory Issues**, which includes a summary of the rules related to public-to-privates in New Zealand.

7.2 Material Shareholding Thresholds and Disclosure in Tender Offers

The primary material shareholding disclosure threshold and filing obligation under the NZX Listing Rules and FMCA is the “substantial product-holder” notification: persons who obtain voting power of 5% or more in an NZX-listed company must immediately disclose this fact (as well as other details about their interests and their name and address) by filing a “substantial product-holder” notice.

In circumstances where a person’s voting power exceeds 5%, a substantial holding notice must also be filed each time the voting power increases or decreases by 1%.

7.3 Mandatory Offer Thresholds

New Zealand law prohibits the acquisition of a controlling interest (as defined in **3.1 Primary Regulators and Regulatory Issues**) in the issued voting shares in a Code company that would result in a person’s voting power equalling or exceeding 20%. Acquisitions above this level must be effected through one of the prescribed exceptions.

7.4 Consideration

In a Code transaction (whether transacted as a takeover offer or a scheme), a bidder may offer any form of consideration, including a cash sum, securities or a combination of cash and securities (which may include rollover equity in a Bidco). For a takeover offer, the same consideration (ie, the same choices with regard to consideration) needs to be offered to every shareholder.

In a scheme, where different forms of consideration are offered to shareholders, including rollover equity for some shareholders only, interest class issues may need to be considered as a means of ensuring that the interests of all relevant shareholders are adequately protected. New Zealand does not have any minimum price rules.

The FMCA does not provide a standing exemption for exchange offers in a New Zealand takeover transaction – so if an acquirer wishes to offer scrip to retail investors, it would need to comply with the requirement to prepare a product disclosure statement (PDS), or seek a specific exemption from the FMA, satisfying the FMA that a PDS is not required. There are various exemptions to allow New Zealand shareholders in a foreign company that is being taken over to participate in scrip consideration offered for the shares in that foreign company. In each case, compliance with securities laws needs to be carefully considered.

7.5 Conditions in Takeovers

A control transaction implemented by way of a takeover offer will be conditional upon a minimum interest threshold; the bidder must offer to acquire a certain percentage of the shares in the target (eg, 90%, so that the target can acquire the target compulsorily, or 51% so that it has voting control).

It is common for both takeover offers and schemes to include other conditions, such as regulatory conditions (NZCC and/or OIO) and a MAC condition. However, in a takeover offer scenario, the Panel will limit a buyer’s ability to enforce conditions that are within the buyer’s sole control or based on subjective opinion. In a scheme context, the target is unlikely to agree to any such conditions.

See 6.6 **Break Fees**, which includes the circumstances where break fees can be negotiated between the bidder and the target in both non-Code transactions and Code transactions.

7.6 Acquiring Less Than 100%

A bidder is able to acquire a target compulsorily if it has obtained a controlling interest in 90% or more of the voting securities in the target. In the event that greater than 50%, but less than 100%, of the target is acquired, a private equity buyer will largely have control over the target through its ability to control the board. However, for as long as the target remains listed, it will continue to be subject to the NZX Listing Rules – which will, among other things, require shareholder approval for certain transactions (including related-party transactions).

A debt pushdown would constitute financial assistance, which is regulated by the Companies Act 1993 and/or the NZX Listing Rules (depending on whether the company is private or listed).

7.7 Irrevocable Commitments

Pre-bid undertakings from existing shareholders – whether taking the form of irrevocable undertakings (in relation to a takeover offer), voting undertakings (in relation to a scheme) or public statements of intent – are a common feature of New Zealand takeovers. These are normally obtained prior to the announcement of the control transaction. Any such undertaking may, however, allow the shareholder to take advantage of any superior offer that may emerge (either absolutely or within a certain increased value range).

8. Management Incentives

8.1 Equity Incentivisation and Ownership

Equity incentivisation of the management team (usually by way of a management incentive plan; MIP) is a common feature of private equity transactions in New Zealand due to the desire to ensure that management retain “skin in the game”. While each transaction can differ substantially, management will typically hold only a small level of equity ownership in the target – generally 5% to 10%.

8.2 Management Participation

In New Zealand, management equity generally takes the form of options or loan-funded shares. Often, these will be realised via a cashless exercise mechanism in the event of an exit. Cash-funded investment by senior managers is also common.

Preferred instruments are not typically used in management equity structures (these are generally reserved for the private equity buyer), so management will usually be issued ordinary equity (or a separate class of equity with largely the same rights as ordinary equity).

8.3 Vesting/Leaver Provisions

New Zealand leaver provisions generally contemplate “good” and “bad” leavers, consistent with other jurisdictions (eg, the United Kingdom and Australia). In most MIPs, a person will be designated as a “bad leaver” unless their employment is terminated without cause, or they die or are incapacitated. However, the board will customarily retain a discretionary right to permit management to be designated as a “good leaver” outside the prescribed regime.

It is common for MIPs to include vesting provisions, particularly where the participants are being issued equity in the form of either options or ordinary shares. In contrast to other jurisdictions, in New Zealand it is usual for management equity to vest on issuance; however, where the management equity being issued is options, typically such options will only become exercisable on an exit or on an exit where a specified value has been achieved.

8.4 Restrictions on Manager Shareholders

MIPs will normally include provisions preventing management shareholders from competing with the target’s business.

Any such non-compete clauses are generally limited, geographically and temporally, typically for about 12 months after the relevant manager’s exit from the business (although longer periods may be possible, depending on the nature of the transaction and the position held by the manager, as well as the size of the equity stake held by the manager – particularly

where the restraint is given in the manager's capacity as shareholder rather than purely as an employee).

It is also common for these clauses to extend to a prohibition on soliciting key employees, suppliers and customers of the target. These clauses are generally included in both the MIP documentation and the relevant manager's employment agreement (in the latter case to the extent that a new contract is put in place contemporaneously with the MIP documentation).

8.5 Minority Protection for Manager Shareholders

Manager shareholders often do not have the benefit of anti-dilution protections. In certain scenarios, such as where the manager shareholders hold a significant majority stake or the management team roll over their existing vested interests in the target, the manager shareholders may be able to negotiate the addition of certain basic protections to the shareholders' agreement, such as veto rights over specific matters that would materially prejudice their interests (eg, amendments to the company's constituent documents). However, it would be very unusual for manager shareholders to have a meaningful influence over a private equity owner's exit strategy/rights.

9. Portfolio Company Oversight

9.1 Shareholder Control and Information Rights

For wholly owned portfolio companies, the private equity owner will have complete control over the company.

For portfolio companies that would be wholly owned by the private equity owner but for a management shareholder group and/or an employee shareholder group holding a minority stake, the private equity owner will generally have substantial control over the company (eg, majority board-appointment rights), and its control will be tempered only by certain minority veto rights set out in the shareholders' agreement, as noted in **8.5 Minority Protection for Manager Shareholders**. However, typically, the private equity owner will have full visibility over every aspect of the portfolio company's business.

9.2 Shareholder Liability

In New Zealand, similar to many other jurisdictions, shareholders of a company will generally not be held liable for the company's acts and omissions. However, the corporate veil may be pierced in certain situations, such as where:

- a person or entity is using the relevant company to avoid existing legal or contractual duties, obligations or liabilities;
- the company is being used as a sham or façade, masking the real purpose of the relevant corporate controller; and
- where the relevant shareholder has acted as a shadow director of the company, and therefore will be subject to the same duties and liabilities as a director of the company (including any duties and liabilities in relation to trading while insolvent).

10. Exits

10.1 Types of Exit

In New Zealand, transaction- and fund-specific private equity owners typically hold investments for a period of three to six years.

Private sales (whether by way of a formal sales process or a treaty/bilateral process) are the most common form of exit, although private equity-backed IPOs are seen from time to time.

Private equity sellers will often consider both a public and private exit; they will usually make a determination as to which route to pursue at a fairly early stage in the process (thus, a true "dual-track" process, whereby an IPO and sale process are run concurrently to conclusion, is unusual). Potentially, recapitalisation could be considered at the same time, but "triple-track" processes are uncommon in New Zealand.

It is becoming more common for private equity sellers to reinvest upon exit, selling to a larger or more global private equity fund and reinvesting by rolling a portion of its proceeds into a shareholding position in the new holding company. Separately, continuation funds are starting to appear in the New Zealand market. These allow a manager to hold on to business it still sees

value in, by moving it into a new fund while returning cash to the investors in the original fund.

10.2 Drag and Tag Rights

Almost all shareholders' agreements relating to investments majority-owned by a private equity fund will include drag rights to enable the private equity fund to sell 100% of the investment. The drag threshold is generally set at the level of the cornerstone fund's own shareholding, so it can exercise the drag without relying on other shareholders; customarily the drag right threshold for a sale is 75%, but can be as low as 50.1% where the fund holds a smaller majority.

The inclusion of drag rights is commonly understood and accepted by minority shareholders (eg, management, co-investors, rolling sellers) on the basis that they understand that they are "along for the ride", and that the private equity fund must exit at some point in order to generate a return for its investors. However, in practice, drag rights are very rarely relied upon by private equity sellers, demonstrating the high level of trust and co-operation that often develops between the private equity fund manager (and their representatives at the portfolio level) and other shareholders.

Similarly, almost all shareholders' agreements relating to investments that are majority-owned by a private equity fund will feature tag-along rights, although these are only exercisable where the majority private equity fund shareholder has not exercised its drag rights. These tag rights provide the minority shareholders with the right to tag along or "piggy-back" onto a sale of shares by the majority private equity fund shareholder, by requiring the purchaser to buy out their minority shareholding as well. Typically, tag-along rights will only be triggered by a complete exit by the majority private equity fund shareholder, although they can sometimes be triggered on a pro rata basis if a control transaction (ie, at least 50.1% of the shares) is being sold by the majority private equity fund shareholder.

Notwithstanding the foregoing, while not overly common, MIPs will sometimes preclude management from tagging in the event of an exit by the majority private equity fund shareholder.

Drag rights apply to all shareholders; however, tag rights generally only apply to institutional co-investors.

10.3 IPO

IPO activity has remained relatively subdued in recent years, reflecting ongoing market uncertainty (see also **1.2 Market Activity and Impact of Macro-Economic Factors**). The market remains cautious, and there has not yet been any meaningful increase in capital markets activity.

Voluntary escrow arrangements – and, in certain circumstances, mandatory escrow arrangements enforced by the NZX – are almost always a feature of exits undertaken by way of an IPO. These escrow or "lock-up" arrangements may allow for a partial release of shares from escrow after the company's results are announced, and generally will be effective for a period of 12–24 months from the listing date. Where not mandatory, investment banks advising on the IPO will typically advise that, from a pricing and marketability perspective, it is preferable for the private equity seller to agree to some form of escrow or lock-up arrangement.

Relationship agreements between the private equity seller and the target company are a typical feature. These relate, among other matters, to seats on the board of the company and information rights.

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