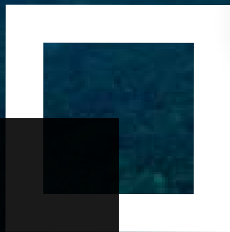

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M&A Forecast 2025

MinterEllisonRuddWatts.

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Overview:

Is the storm coming?

By Neil Millar, Partner Corporate M&A

"Dealmakers eye $4 trillion-plus M&A haul in 2025 on Trump boost." That was the headline published by Reuters in late December following a modest 15% uptick in global M&A volumes in 2024. With international pundits predicting the highest worldwide M&A activity in the post-COVID era, how did New Zealand fare in 2024 and are we going to see a similar rise in activity in 2025?

In this our ninth forecast, we look back at a topsy-turvy 12 months of New Zealand dealmaking and then outline why we think activity will increase in the year ahead.

The bumpy ride continued

In our 2024 M&A Forecast, we noted that deal volumes in 2022 and 2023 had subsided and that 2023 had been a "bumpy and grumpy" ride, with deals taking longer to negotiate and many processes faltering or even falling over completely. We also noted that there was plenty of money to invest but predicted that with so much uncertainty surrounding the global economy, the year would be another rocky one. 2024 did not disappoint.

The first three quarters were exceptionally bumpy

Deals were completed – with activity up slightly from 2023, reflecting, we think, that global 15% increase. But they continued to drag, with long, protracted due diligence processes and blown out negotiation timetables. Some deals took months to complete with many more stalling or falling over entirely. We read or heard about many businesses 'coming to market' but these pronouncements often came to nothing.

Private equity remained active during this time. Notably, Five V's newly established New Zealand team made its first two investments here in July (Habit Health and OrbitRemit), Pencarrow invested into Pet Direct, Direct Capital invested into

Overview:
Is the storm coming?

Active Refrigeration, Hiway Group and Wet & Forget and Waterman exited Fusion5. However, many of our private equity clients bemoaned a comparative dearth of investment opportunities in the first half of the year.

The ongoing trend towards more buyer-friendly terms continued. With so much economic uncertainty, buyers remained focused on downside protection. Earn-outs, deferred payments, extensive warranty and indemnity protection and material adverse change (MAC) clauses remained a feature of many deals. Due diligence was typically extensive. Warranty and indemnity insurance was often used as (with many new insurers entering the New Zealand market) premiums tumbled to much more attractive levels.

While PE (which one of our clients explained is conceptually happy to invest in all cycles) remained active, corporate buyers were more cautious and unless genuinely competitive pressure was brought to bear, seemed content to 'wait and see'. We have seen one large private company enter its eleventh month of 'preliminary discussions' with an international corporate buyer.

It's not hard to see why corporate (particularly international) buyers preferred a 'wait and see' approach. There were more than 50 elections around the world in 2024, including in the US and the UK. Commentators noted that dealmakers have waited for some time for clarity on two common bottlenecks for M&A, being monetary policy and regulation. That was clearly the case in the US and the UK, and was arguably the case here in New Zealand as well. Regulation remains a bugbear for dealmakers both here and globally, and inflation (albeit reduced) and high interest rates remained through much of 2024.

And with multiples and/or earnings down, sellers often preferred a 'wait and see' approach as well. That makes sense. Why sell at the bottom of the cycle if you don't have to?

The New Zealand Commerce Commission spoiled the party on a couple of occasions in 2024 – most notably by refusing clearances for the proposed merger of the North Island and South Island Foodstuffs' businesses and the acquisition of Serato Audio Research Ltd by AlphaTheta Corporation (listen to our podcast on these knock backs here and our article on the competition landscape in 2025 here).

While our distressed M&A team dealt with a steady stream of smaller divestments in 2024, there is still no tidal wave of insolvency related M&A. We doubt there ever will be. New Zealand banks remain willing to work with their customers through these difficult times, seemingly preferring long-term relationships over short-term pain.

Our pipeline is certainly looking very full, with many clients having instructed us on anticipated deals kicking-off in early 2025."

The market heats up

By October and November, most of those 50 plus elections had been decided. With geopolitical certainty restored and interest rates and inflation starting to fall, we have seen a huge increase in activity towards the end of the year. Those of us in the M&A industry often speak of the Christmas rush, as clients push to get deals done before New Zealand decamps to the beach. But this has been a larger than normal uptick. Deals that had been dragging throughout the year suddenly fired up and agreements were reached. In some cases, we saw transactions come out of nowhere and close very quickly. We were involved in a large divestment for one PE client where the deal closed within four weeks of us first being briefed.

This push appears to be reflecting a global trend and seems set to continue throughout 2025. The UK Guardian reported in early January that lawyers in the UK are bracing for the 'round-the-clock' work that will be required to service the expected M&A surge due to regulatory changes and the 'Trump effect'. Our pipeline is certainly looking very full, with many clients having instructed us on anticipated deals kicking-off in early 2025.

And there are significant tailwinds to back up the surge in activity here in New Zealand. The Government is now decided for at least the next two years. Inflation and interest rates have started to fall. In addition, towards the end of last year, the Government announced a series of significant corporate law reforms and an overhaul of our overseas investment laws. Our view is that the majority of these changes are designed to reduce regulatory costs and promote certainty. They should make New Zealand a more attractive place to invest and are largely to be welcomed. See our article which addresses these changes in more detail and what to consider when selling your business to an overseas buyer here.

It is interesting to note that in many cases, the ideal conditions dealmakers hope for have not fully materialised. But with things heading in the right direction, it seems that many buyers have decided to capitalise on current pricing and, as one commentator has put it, 'trade on hope, rather than to wait for reality'. President Trump has promised less regulation, lower taxes and a generally pro-business stance and that appears to be enough to generate the headline we started this year's Forecast with.

Given all the tailwinds and a healthy amount of 'trading on hope', we think that dealmaking in New Zealand will also increase significantly in 2025. Cautious buyers will still be a feature, as they try to understand the new business environment and the emerging trends. Thorough due diligence will remain paramount and buyers will need to consider new issues when conducting that due diligence. See our article on due diligence for AI driven companies here and the Inland Revenue's promised increase in compliance work here by way of example. Buyer friendly terms will also continue to be a feature of deals in the next 12 months. But despite the ongoing caution, with the dealmaking environment improving on a month-by-month basis, we are already seeing a large pipeline of activity for 2025 and we expect that to grow.

All the signs point to a bumper year for the M&A industry. We look forward to seeing you across the table in the year to come!

Hot sectors

New Zealand continues to be an attractive opportunity for international investors (both corporate and private) with technology, forestry and agriculture, energy, healthcare and financial services continuing to lead the way. We were involved in several transactions in these sectors including:

Health

- The sale of Habit Health (New Zealand's largest occupational health, personal welfare and physiotherapy rehabilitation provider) by Livingbridge to Five V Capital.
- Volpara Health Technologies' sale to Lunit Inc, the South Korea based software-Medical Technology company.

Technology

- Advent Capital's sale of Flintfox (a leading point of sale software provider) to Enable.
- Waterman Private Capital's sale of Fusion5 Group Holdings Limited, a full-service IT business, to Australian private equity firm, BGH Capital.

Financial services

- Entain's selection as the preferred partner to TAB NZ for a 25-year strategic arrangement.
- Five V Capital's acquisition of OrbitRemit Ltd, the New Zealand based software-financial technology company engaged with payment processing solutions.
- The merger of Jarden Wealth and JBWere to create FirstCape.

Forestry and agriculture

- Ngāi Tahu's sale of its West Coast forestry estate (by way of forestry right) to Fiera Comox.
- Investments by ASB, ANZ, BNZ and A2 Milk into AgrizeroNZ, the government backed investment vehicle seeking to get emissions reduction tools into New Zealand's farmers hands sooner.

We expect to see continued activity in these sectors during 2025 with many deals already being discussed. We also expect to see a continued uptick of M&A activity in the energy sector during 2025. See our thoughts on the renewable energy sector here.

M&A trends

A breakdown by numbers

Private equity

Based on traditional holding cycles of three to five years, there are at least 91 New Zealand investments ripe for divestment by private equity funds (both local and offshore).

M&A deals by the numbers

64

Domestic

92

Cross border

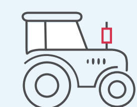
Commerce Commission merger activity

	2024	2023
Merger clearances	7	12
Declined	2	0
Withdrawn	1	0
Statements of issues given	1	0
Section 47 investigations*	0	0

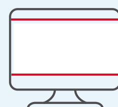
*Where acquisition would substantially lessen competition in a market.

Snapshot of sector deal activity

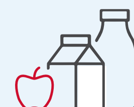
Where a three or more deals have occurred



Agriculture
13 deals



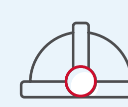
Computers (computer, services, hardware)
28 deals



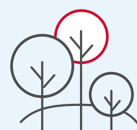
Consumer Food, retail
19 deals

Energy
10 deals

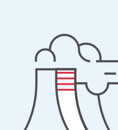
Financial Services
12 deals



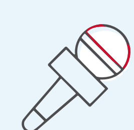
Industrial
8 deals



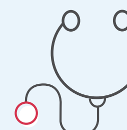
Leisure
11 deals



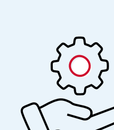
Manufacturing
3 deals



Media
5 deals



Medical
11 deals



Services
14 deals

Telecommunications
4 deals

Source: MergerMarkets (01/12/2023 – 30/11/2024)

Change is coming:

Regulatory reviews in the works

By Igor Drinkovic, Partner Corporate M&A

In the latter half of 2024, the Minister of Commerce and Consumer Affairs, Andrew Bayly, announced several significant corporate law reforms, and the Associate Minister of Finance, David Seymour, announced an overhaul of New Zealand's overseas investment laws.

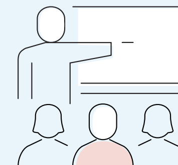
The corporate law reforms seek to address New Zealand's long-term productivity challenge and enhance economic growth by strengthening New Zealand's capital markets through the modernisation, simplification and digitisation of corporate law, amongst other changes.

The overhaul of the overseas investment laws seek to change their core premise – that it is a privilege to invest in New Zealand – and instead apply a risk-based regime.

Beyond this, a review by the Law Commission of New Zealand directors' duties and liabilities laws has also been announced and is set to begin in 2025. This will be a significant body of work which will include looking at where to strike the balance between legitimate business risk taking by directors and protection of creditors.

In our view, the changes proposed are largely to be welcomed. They seek to reduce regulatory costs, promote certainty and resolve uncontroversial problems with our corporate law so as to make it easier to do business and access capital markets.

We think that the review of overseas investment laws is particularly important. Given New Zealand's desire to attract foreign investment, it is imperative that the regime gives overseas investors certainty and stability of regulatory settings so that rules on entry and exit are clear and workable.



A number of the changes are yet to go through consultation, so we are keeping a close watch on developments and liaising with government officials. We will be issuing alerts and summaries of key developments as matters progress and can assist with submissions to consultations in due course.

Corporate law changes

The proposed reforms are lengthy. Set out below is a summary of the more significant changes:

Capital markets reforms

- **Forecasts no longer required for IPOs**: Undertaking an IPO requires the preparation of a product disclosure statement which sets out, amongst other things, information about an entity's business plans, drivers of returns, risks and key financial information. The latter generally includes a requirement to prepare prospective financial information for up to 2 years (PFI). This is typically the most expensive part of the listing process, generally carries the highest degree of risk and is anomalous globally. The Government is seeking to remove mandatory PFIs by May 2025.
- **PDS disclosure requirements review:** The Government has signalled that in 2025 it will be reviewing certain financial product disclosure requirements relating to equity and debt offers to ensure that the requirements balance benefits for retail investors against the costs on issuers. Essentially, this will be a review to assess what information is used and is needed by investors to better align documentation with those needs.
- **Climate related disclosure thresholds:** Listed entities need to comply with the climate related disclosure regime if they have a market capitalisation of NZD60m (or an equity value of the same amount), for two consecutive reporting periods. Climate related disclosures involve the preparation of statements that outline an entity's governance, climate impacts on its business, climate risks and opportunities, transition plans, climate risk management, and certain emissions information. Directors face potential liability for non-compliant statements in the same manner as they do for financial statements. A survey of NZX50 companies found the cost of preparation to be between NZD250,000 and NZD300,000.

  The Government is consulting on increasing the threshold so as to ease the burden, but also to align more closely to the Australian regime to reduce competitive disadvantage. It is considering increasing the thresholds to either:

  - NZD550m which would reduce the number of reporting listed companies from 107 to 54; or
  - NZD550m for 2 years and then dropping it to NZD250m, which would reduce the number of reporting listed companies to 81.

  Deemed director liability for climate statements is also being considered (including potentially liability for aiding and abetting an unsubstantiated representation), and could be removed altogether. Alternatively, a similar approach to Australia could be adopted – phasing liability settings in over time. The latter approach would be used to allow time for disclosure practice to settle.

General corporate reforms

- **Directors duties and liabilities review:** In the first half of 2025, there will be a Law Commission review of directors' duties, liability, offences, penalties and enforcement. This will include consideration of the issues raised in the Mainzeal case in respect of directors' insolvency duties (see our summary of the Supreme Court's decision here). The focus on insolvency duties reflects that our laws are more creditor friendly by comparison to the UK and Australia, the latter of which includes a safe harbour for restructurings undertaken to obtain an outcome better than liquidation. Beyond this, the Law Commission will consider overall directors' liability, not just under the Companies Act but across a range of other legislation. The Law Commission's work will be significant as it will involve assessing the balance between legitimate business risk taking by directors and creditor protection.
- **Director privacy:** The Government has decided to introduce director identification numbers, which is a change that the director community (and in particular, the Institute of Directors) has sought for some time. Once the number is obtained, directors could opt to show an address for service instead of their home address on the Companies Office Register. This will address long held privacy and safety concerns. The change also has the advantage of being able to track directors' histories and association with companies, including failed ones. This is helpful for both enforcement (combatting phoenix companies) and for due diligence.
- **Tidy ups:** These changes seek to update the Companies Act to address many outdated processes (such as those requiring paper filings, public notice in newspapers etc), improve consistency with other legislation, and fix errors in the legislation. The changes also update the insolvency provisions of the Act with certain changes proposed by the Insolvency Working Group in 2015 (such as extending the period during which transactions with related parties can be voided to four years when a business is insolvent). We summarise the changes in more detail here.

Overseas investment reforms

It is proposed that the overseas investment regime will be changed to become a risk-based regime. We think this will make it easier to invest in businesses and land in New Zealand.

The new starting point will be that an investment can proceed unless there is an identified risk to New Zealand's interests. In Hon. Minister Seymour's words, New Zealand should move to a position where "you can invest in New Zealand if you've got a willing buyer, a willing seller, and there are no dangers to New Zealand's interests". The Minister expects the changes to be made before the end of 2025, with consultation occurring during the year.

While the existing investment categories will be retained (sensitive land, significant business assets and fishing quota), the Act's core tests (the 'investor test' (ie that various criminal and civil penalties have not been committed), the 'benefit test' (ie that there are proportionate benefits created for investments in sensitive land), and the 'national interest' test) will be consolidated so as to fast track the consent process with the starting assumption being that investment can proceed unless there are risk factors identified.

This change in approach should be most felt for sensitive land investments. Currently a benefit (e.g. economic, environmental etc) to New Zealand proportionate to the "sensitivity" of the land being acquired must be shown. If this is changed to be focused only on the absence of risks, then obtaining consent would be considerably easier. It remains to be seen whether there will be exceptions for certain categories of land (e.g. farmland).

In any event, we expect the changes to result in a significant improvement for renewable infrastructure investments, particularly on exit. A significant challenge with the current regime is that where the benefits of an infrastructure project have been realised, it is difficult for a buyer to show a new benefit. This potentially jeopardises an investor's exit and therefore may make them question investing in New Zealand in the first place.

The Government has also referenced, in its announcement of the review, the recently announced reforms of the Overseas Investment Office's Australian equivalent, the Foreign Investment Review Board. Our colleagues at MinterEllison Australia have summarised the changes to the

Australian regime here. This reference suggests that the new regime would make it easier to invest for repeat investors with a track record of compliance, using clear ownership structures, that are investing in non-sensitive sectors. As to the latter, the Government may introduce a sector-specific approach to investment – the more critical or sensitive the asset, the higher the scrutiny. Data and technology and critical energy infrastructure will likely attract closer scrutiny in terms of national security and interest; housing and manufacturing sectors ought to face less rigour.

However the exact changes come through, the chance to holistically review the overseas investment regime is important given the significant and staggered changes to the regime in recent years. It will also be important that any changes made stand the test of time and show regulatory stability to foreign investors. Foreign investors, particularly those New Zealand is trying to attract for infrastructure investments, are investing for the long term. It will be crucial that they have comfort that the regulatory settings, once set, will remain consistent.

Merger knock backs:

The start of a trend or business as usual?

By Jennifer Hambleton, Partner
Competition

The year in review

2024 was generally quiet for regulatory reviews of M&A activity in New Zealand under anti-trust/competition law. There were only five clearance and authorisation applications (with one of those applications made under the authorisation provisions of the Commerce Act) filed, the quietest year in more than a decade and significantly fewer than the previous year's 16.

The Commerce Commission also issued its first merger decline decisions since 2018, declining to clear the proposed acquisition of Serato Audio Research Ltd by AlphaTheta Corporation and the proposed merger of Foodstuffs South and North Island. Listen to our podcast on these decisions here.
In addition, the Commission continued with the proceedings it filed in the High Court at the end of 2023 against Alderson Logistics and its related company alleging that historic unnotified acquisitions of rival businesses breached the Commerce Act.

We expect an increase in merger clearance applications as M&A activity increases.

Continued scrutiny by the Commission of contested deals

We expect to see greater scrutiny from the Commission in relation to M&A transactions, particularly those facing vocal opposition from market participants. This type of opposition was a significant factor in the Serato/AlphaTheta and Foodstuffs clearance decisions. We believe that it also played a significant role in the time it took for the Commission to come to a final decision on these transactions (almost 10 months for both applications). Foodstuffs is now appealing the Commission's decline decision, and we expect the High Court on appeal will provide more clarity on the approach to competition analysis in buy-side markets in its judgment.

We may also see the Commission taking more enforcement action to block deals from closing (or to unwind historic deals) if it considers that transactions substantially lessen competition in relevant markets. While enforcement action against mergers is uncommon, the Commission has received a direction from the Minister of Commerce and Consumer Affairs to fully utilise its allocated litigation fund and is in ongoing proceedings against Alderson Logistics over alleged anti-competitive acquisitions which were not notified.

Potential for merger reform

The Government has commenced a review of the Commerce Act with a focus on merger related provisions. We expect to see significant changes in the merger control space from this review. Notably, the Government stated that New Zealand's current voluntary merger clearance regime is working well, and that a mandatory and suspensory regime like Australia is not required (see more on the Australian regime from our colleagues at MinterEllison here). However, the Government is considering following other aspects of Australia's merger reform. Such considerations include clarifying the application of the substantial lessening of competition test and enabling the Commission to target serial or creeping acquisitions involving a series of small acquisitions (ie in the past three years) that may have the combined effect of substantially lessening competition. The Government is also considering amendments to give the Commission a 'call in' power for non-notified mergers and to allow the Commission to accept behavioural undertakings as a condition to granting clearance of mergers.

Update of Commission's Mergers & Acquisitions Guidelines

It is likely the Commission will publish an updated version of its Mergers & Acquisitions Guidelines for public consultation in 2025. While the Commission has not confirmed it will seek to update its guidelines, given the commencement of the reform process, it has sought preliminary feedback on the issues it should consider if it decides to update them. This will be an important opportunity to provide feedback on the Commission's substantive and procedural approach to merger reviews. These guidelines (while not binding) outline the general principles and frameworks the Commission uses when reviewing transactions under the Commerce Act and were last updated in 2022.

Increased focus on M&A in concentrated sectors

We expect to see an increased focus on M&A activity in highly concentrated sectors next year. The Minister of Commerce and Consumer Affairs has raised concern about the need to prevent anti-competitive oligopolies following the Commission's market studies into personal banking in 2023/2024 and grocery in 2021/2022. This could prompt the Government to explore new ways to manage competition in highly concentrated sectors similar to the approach adopted as part of the merger reforms in Australia where the Treasurer will be able to designate a class of acquisitions (e.g., in certain industries, such as grocery) as requiring notification to the competition regulator regardless of whether notification thresholds have been met.

IRD going "full throttle" in 2025

By Andrew Ryan, Partner Tax

In the lead-up to Christmas, Inland Revenue provided an overview of its increase in compliance work (e.g. tax investigations and audits) in 2024. Commencing almost 2,000 tax audits in Q1 alone, collecting more than NZD1 billion of overdue debt, and amending tax returns by almost NZD400 million, it was certainly a busy year for Inland Revenue. Perhaps having watched too much Fast & Furious, it has promised to go "full throttle" in 2025.

Tax issues in M&A transactions are always carefully considered and this will be especially important in 2025 as Inland Revenue has called out corporate restructures and the taxation of multinationals as particular targets for tax audits. Mitigation can go beyond tax indemnities and warranties, with more formal options available – including the voluntary disclosure of incorrect tax positions or seeking a post-completion binding ruling. The ability to claim legal privilege or other rights of non-disclosure should also be carefully considered.

Multinationals and corporate restructures pose "systemic risk" to the tax base

While many Government departments lost funding in Budget 2024, Inland Revenue was allocated an extra NZD116 million over four years to collect debt and improve tax compliance, targeting those people who – due to challenging circumstances or a deliberate decision – have not met their tax obligations. There are more people at Inland Revenue focused on investigations and audits, and it has also invested in its analytical capability.

With a KPI of collecting NZD8 of tax for every NZD1 spent, in 2025 tax investigations will be targeted at:

- the hidden economy and organised crime;
- electronic sales suppression tools;
- GST integrity;
- student loans to overseas based borrowers; and
- increased audit activity, especially of multinationals and corporate restructures.

Of relevance to M&A, Inland Revenue considers that multinationals and corporate restructures are areas of systemic risk, as the tax issues are complex and the amounts at risk are large. Inland Revenue will therefore increase audits of multinationals and corporate restructures.

Inland Revenue using data collection tools

In addition to mandatory information requests addressed directly to taxpayers, Inland Revenue has said that it will exercise its powers to trawl financial data for tax risks. The somewhat innocuous sounding Tax Administration (Regular Collection of Bulk Data) Regulations 2022 is a case in point.

The Regulations apply to Payment Service Providers, which are businesses that participate in an electronic payment system by facilitating payments for goods and services between customers and merchants. Examples include parties that act as intermediaries – for example facilitating credit card and debit card payments, such as an EFTPOS provider. Those providers are required to report to Inland Revenue every six months on a wide variety of data, including merchant identity and contact information and bulk transaction data. Inland Revenue receives that data and is now using it to target enforcement activity, for example auditing businesses that show a lot more sales in their payment service provider data than in their GST returns.

Make the most of legal privilege

It is important to ensure that information is protected from disclosure to Inland Revenue where there is a right to do so. Lawyers can claim legal professional privilege for all confidential communications with their clients or other lawyers about tax matters. That information is all subject to privilege and is not required to be disclosed to Inland Revenue. Meanwhile, tax and accounting advisors can claim a statutory right to not disclose certain confidential documents. This applies to communications between tax advisors and their clients for the main purpose of providing or receiving tax advice. However, the non-disclosure right is subject to several exclusions – such as for factual information and tax workpapers.

Addressing M&A tax risk

Tax risks, either from day-to-day business activities or a pre-sale restructure, are usually addressed in a share sale transaction by the tax indemnity and tax warranties. In addition, if a transaction is covered by warranty and indemnity insurance that should cover most tax issues, and specific tax risks can also be insured under a tax-only policy. Further, if an unforeseen tax liability is identified in due diligence, a voluntary disclosure could be made to Inland Revenue. This quantifies the tax shortfall and, if accepted by Inland Revenue, reduces some penalties. In addition, parties can seek post-completion binding rulings to lock in the tax treatment of transactions.

M&A in New Zealand's renewable energy sector

By John Conlan, Partner Corporate M&A

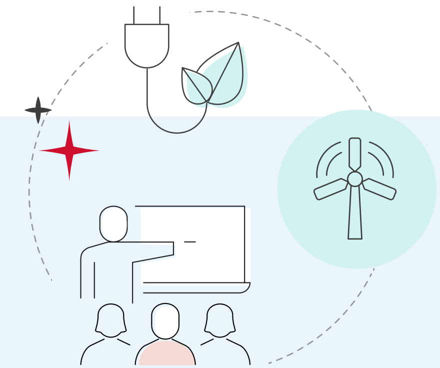
New Zealand's energy transition continued to be a hot topic in 2024, bringing both challenges and opportunities in the M&A space. We have seen a steady number of renewable energy projects with more than 150 projects publicly announced as at September 2024. We expect this to further increase in 2025 with a number of unannounced projects already in the pipeline.

We also expect an increase in M&A activity. First and foremost, New Zealand requires significant private investment to achieve its net-zero aspirations and meet projected electrification demand (acknowledging current demand side constraints). For a number of reasons, not all projects in the pipeline will complete (or complete under current ownership), so there remains scope for new entrants, strategic investment and, more relevantly, consolidation or sell down by existing investors/developers.

M&A in renewables in 2024

2024 was a busy year for M&A in the renewables sector. Of particular note:

- In June, SC Oscar, a Singapore-based fund management company specialising in renewable energy investments, acquired 100% of utility-scale solar developer Rānui Generation Ltd for an undisclosed sum. The acquisition included four development-stage solar projects in the North Island – construction of one, the 31MW Twin Rivers solar farm near Kaitaia, has since commenced. SC Oscar has stated that it is actively considering a number of investments in the Asia Pacific renewable energy space.
- Lodestone announced in August the acquisition of two grid level solar sites in the Manawatu from Kiwi Solar.
- In August, Genesis Energy secured an advanced stage, 127 MWp consented site near Edgecumbe in the Bay of Plenty from Helios Energy. The site is expected to start generating electricity in 2026.
- In September, Contact Energy Ltd entered into a Scheme Implementation Agreement to acquire up to 100% of the shares in generator and wholesaler Manawa Energy Ltd through a scheme of arrangement. The deal values Manawa at NZD1.86 billion and, with Contact assuming Manawa's debt, gives Manawa an enterprise value of NZD2.3 billion, representing a 47% premium. Contact's rationale for the acquisition is the portfolio synergies that would flow from Manawa's (mainly hydro and winter-weighted) generation assets, creating a more diversified, resilient, and efficient Contact business. If the deal goes ahead, Contact will become New Zealand's second-largest generator with 25% of the market. The deal is subject to Commerce Commission clearance with a decision due by 31 March 2025. Contact is targeting implementation in the first half of 2025.
- Lastly, Genesis Energy confirmed in October that it was taking a NZD64 million, 65% stake in EV charging company ChargeNet NZ Ltd. The move reflects Genesis' ambition to be one of the major players in EV charging networks – buying an established business is an efficient option to achieve this. ChargeNet has more than 400 fast-charging points in a nationwide network and Genesis' investment is expected to boost the pace of network development.



The year ahead

We expect M&A activity in the renewable energy sector to increase in 2025.

Following the outcome of the US election, the Asia Pacific region is seen as an attractive proposition for offshore funders seeking investments in the sector. With the Government's pledge to double renewable energy by 2050 and regulatory changes in train to achieve this (including listing 22 renewable energy projects in the Schedule to the Fast-track Approvals Act and a review of the Overseas Investment Act), New Zealand should see its share of this investment. That said, the lack of a deep Power Purchase Agreement (PPA) market and continued Overseas Investment Office scrutiny until at least the end of 2025 may be dampening offshore investment. There are also opportunities for domestic companies seeking synergies via strategic investments, such as those undertaken by Contact and Genesis in 2024.

There remain a large pipeline of renewable energy projects at varying stages of development in New Zealand (a number of which are publicly announced) and many will be looking at sell down or consolidation opportunities. The Electricity Authority's generation investment pipeline (as at September 2024) lists 164 projects, predominantly wind and solar. This pipeline will undoubtedly see M&A for a variety of reasons, including:

1. Independent developers may continue to struggle to secure bankable offtake arrangements, such as a PPA for a project. The New Zealand PPA market is immature, and a lack of offtake impacts funding decisions, so some projects may need to be sold.
2. A number of early-stage projects may, after investigation, be found unfit for their original development purpose, but grid connection queues and other valuable land rights may see opportunities for acquisition and re-purposing.
3. There can be a lack of cash flow to develop projects. Early-stage development activities are not without material cost (for example land rights fees, Transpower grid connection fees and bonds etc). As such, the longer a project takes to reach final investment decision, the more pressure goes onto developer cash flow, leading to developers needing to free-up certain projects.
4. A number of projects will secure sufficient rights to make them attractive to certain developers looking for ready to build projects (or almost ready to build projects).

Finally, outside of M&A in the new project space, amidst concerns about competition and electricity affordability, there have been calls (including recently by the OECD) for investigation into splitting the retail and generation arms of New Zealand's gentailers. If such a split were mandated, it would trigger a significant amount of M&A. At this stage, the Energy Competition Taskforce programme includes looking into "virtual disaggregation" (requiring gentailers to offer a minimum volume of their flexible generation base to buyers) only and as a back-stop measure to other initiatives. 2025 may see more clarity on if and when any such options might occur.

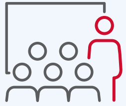
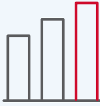
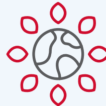
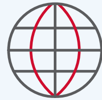
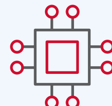
Overall, expect 2025 to see a further increase in M&A activity in renewable generation space. For those looking at options to buy or sell, it's important to have advisers well versed in the project development lifecycle (whether that be legal, commercial or technical). MinterEllisonRuddWatts' energy team is well placed to assist on all stages of project acquisition through to construction, completion, financing and commissioning.

Intelligent due diligence in an AI world

By Tom Maasland, Partner Technology

As artificial intelligence technologies reshape industries, investors considering investments in AI-driven companies should tailor their due diligence accordingly. There are many areas smart investors should evaluate – from technical integrity and data handling, to regulatory readiness, and even environmental impact. We set out 10 focus areas investors should consider.

Due diligence focus areas

 Clarity of the AI value proposition	Data integrity, quality, and governance	 Scalability and deployment infrastructure	Technical robustness and cybersecurity	Ethical, legal, and regulatory landscape
Intellectual property and competitive differentiation	Talent retention and organisational culture	 Environmental and sustainability	 Global competitive landscape and geopolitical context	 AI performance benchmarking and transparency

1. Clarity of the AI value proposition

When evaluating a company that has made a material commitment to AI, it is essential to understand precisely what AI does within the organisation. Is it a marketing tagline or a genuinely embedded capability delivering tangible results? Investors should seek a detailed breakdown of where, how, and to what extent AI is being used. This should include an understanding of the model scope and function (what specific problems the AI solution addresses and how central it is to the company's value proposition) and its quantifiable impact (whether there are clear metrics that demonstrate that the AI component is a meaningful driver of performance).

2. Data integrity, quality, and governance

AI performance is only as good as the data it is fed. The quality, structure, and origins of that data will determine the reliability and fairness of the outputs. Data quality issues can result in biased predictions, flawed insights, and reputational damage. Investors should examine where the data comes from, who owns it and how difficult would it be for competitors to replicate it. Investors should also look for how vigorously the data is validated, normalised and maintained.

The company should adhere to data privacy laws and industry regulations, ensuring compliance with frameworks like GDPR or emerging AI-specific policies. The investor should have a thorough understanding of the company's internal policies and practices regarding the collection, processing, storage and transfer of any personal information, and the company's privacy and information security measures.

3. Scalability and deployment infrastructure

Building a high-performing model in a lab environment is one thing. Deploying it at scale across geographies, customer segments, or product lines is quite another. Investors should:

- examine whether the company is AI reliant on a particular cloud provider or specialised hardware and if so, what the cost and scalability implications are. Hardware dependencies can limit growth if they can't easily be scaled or replaced.
- assess the ability of the company's technology to integrate seamlessly with CRM systems, ERP platforms, or e-commerce engines. AI solutions rarely operate in isolation and smooth integration is often a marker of the company's maturity and operational sophistication.
- examine how readily the company can be retrained and recalibrated as market conditions shift, consumer behaviours evolve, or competitors improve their own AI.

4. Technical robustness and cybersecurity

For AI investments, technical diligence extends beyond model accuracy. Robust engineering practices and security measures must also be in place. All too often, companies tout their AI credentials without ensuring that their solutions are robust and stable. Investors need to probe the technical underpinnings of the AI system and should look for stable and well-supported teams, clear documentation practices, and evidence of active model monitoring, testing, and performance tuning, as well as resilience to cyber risk.

5. Ethical, legal, and regulatory landscape

As AI matures, so do regulatory frameworks aimed at preventing the misuse of the technology. For instance, the EU's AI Act, along with evolving standards in other jurisdictions, will require certain levels of transparency, explainability, and human oversight. Investors must assess whether the company's products and processes can meet current demands and remain agile enough to adapt as regulations evolve.

The reputational risks associated with unethical AI usage can be significant. The best AI investments often lie in firms that have integrated an ethical lens into their development processes. Checking for robust policies on bias mitigation, fairness, transparency, and interpretability of AI models can indicate long-term sustainability and brand resilience.

Investors should also understand what safeguards and remediation frameworks are in place in the event the AI makes decisions that cause harm (risk assessments, insurance coverage, and compliance audits are essential here).

As AI matures, so do regulatory frameworks aimed at preventing the misuse of the technology."

6. Intellectual property and competitive differentiation

A company that can guard its AI technology or models via patents, trade secrets, or proprietary data sets may hold a competitive advantage. Investors should consider whether there are well-documented patents, a unique algorithmic approach, proprietary training data, or specialised model architectures that create a significant barrier to entry. Given AI evolves rapidly, companies that don't continue to innovate can quickly be overtaken. Investors should accordingly look for evidence of ongoing R&D initiatives and incentives that encourage internal innovation.

7. Talent retention and organisational culture

AI-savvy professionals – data scientists, machine learning engineers, and AI ethicists – are in high demand. Losing key staff can derail even the most promising AI ventures. Investors should confirm that talent is being appropriately managed and incentivised and that teams are cross-functional, collaborative, and productive.

8. Environmental and sustainability considerations

Sustainability is no longer a peripheral concern. Many investors now consider ESG factors integral to evaluating long-term value. Training large-scale AI models can be energy-intensive, particularly if they rely on extensive computer resources. Investors should look for metrics on energy usage and strategies for optimising model training efficiency. Companies that adopt greener hardware options, renewable energy sources, and efficient data centres can position themselves favourably in an increasingly eco-conscious market.

9. Global competitive landscape and geopolitical context

AI is a global race, influenced by regional regulations, talent pools and national interests. Investors should:

- consider how different jurisdictions (EU, US, Australia, China) may impose diverse standards on AI transparency, data transfer, or algorithmic accountability. International compliance complexity can affect scalability and operating costs.
- evaluate how well the company can navigate global challenges including restrictions on AI technology exports, visa limitations for skilled engineers, and shifting trade policies.

10. AI performance benchmarking and transparency

With AI's complexity, comparing performance across different companies or sectors can be challenging. Investors need consistent benchmarks and trustworthy evaluations. Sector-specific benchmarks or recognised industry tests will be helpful to gauge relative standing, while the third-party AI audits or certifications can confirm that a company's models meet certain standards. As AI-based decisions increasingly impact customers and clients, the importance of explainability grows. Transparent models that customers and regulators understand and trust may fare better in the long term.

In this evolving landscape, identifying promising AI investments demands a holistic lens – one that integrates technical competence, data stewardship, robust governance, and forward-looking ethics. By evaluating AI-specific financial ratios, scrutinising cybersecurity measures, considering global regulatory nuances, weighing sustainability factors, and insisting on meaningful performance benchmarks, investors can better discern which enterprises are genuinely harnessing the transformative power of AI. The result is a more strategic, informed, and future-proof approach to investing in companies that will shape – and reshape – our AI-driven world.

Selling to the world: Considerations when dealing with overseas buyers

By Tayla Johnston, Partner Corporate M&A

New Zealand remains an attractive place to invest due in part to its stable economy and the general ease of doing business. However, transactions with overseas buyers can be complex and often bring their own challenges. We outline some key considerations sellers should consider when transacting with an overseas buyer.

Regulatory and legal

When an overseas buyer is in the mix, New Zealand overseas investment rules are a key consideration. Top of mind where the buyer meets the definition of an "overseas person" (for the purposes of our Overseas Investment Act 2005), will be whether the transaction requires the consent of the Overseas Investment Office and if so, the impacts of this, particularly on timing and cost (see our earlier article for details on the reforms in this area).

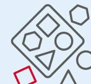
Thought should also be given to what licences and approvals may be required, any anti-money laundering compliance hurdles and the tax implications of the deal. When a buyer is less familiar with the New Zealand market, it will likely want to undertake a thorough due diligence process to ensure it understands the regulatory and legal framework the target business operates in. Sellers should be aware of this and consider what they can helpfully do to streamline the diligence process, including by considering what areas may be of heightened importance (for example, ESG, privacy compliance or intellectual property issues).

An overseas buyer with M&A experience in other jurisdictions is also likely to have different expectations with regards to how the sales process will be run, what the transaction documents will look like and what are considered market terms (and we saw this several times in our 2024 deal activity). For example, a US buyer may expect to draft the sale agreement in which case the style and length of the document is likely to be quite different to what we typically see in New Zealand. They will generally have a greater focus on warranties and indemnities and a different view as to how disclosure against the warranties will work, whether W&I insurance will be taken out and what scope of restraint is appropriate. Adept advisors can greatly assist here by clearly communicating the sales process (including who is expected to prepare first drafts) early in the deal to set expectations, explaining what is market in New Zealand, and negotiating favourable terms for sellers. The choice of governing law, and the processes and jurisdiction for settling disputes, in the sale agreement will also be key considerations for sellers.

Key considerations

Regulatory and legal

Financial



Strategic

Cultural

Practical

Financial

As always, sellers should consider the financial stability of the overseas buyer and its ability to pay come settlement day. Surety of payment is more important as it will be harder to chase an offshore party if it does not follow through with the deal. In addition, it is important to consider and deal with any likely exchange rate issues and how these will be resolved. This will be relevant not only for payment of the settlement amount but potentially also any purchase price adjustments or other deferred purchase price payments. An overseas buyer may use currency hedging to deal with this, or the parties can agree a formula for determining how to calculate the exchange rate on the relevant date. When settlement occurs may also be influenced by favourable exchange rates, although this will be more difficult for sellers to determine with certainty.

Strategic

There are various strategic considerations which may be of importance to sellers when selling to an overseas buyer, particularly where they are retaining some ownership of, or role in, the business following the sale. Broadly these considerations relate to reputation and relationships.

With respect to reputation, sellers should consider whether the target business' reputation will be enhanced or diminished. For example, what is the reputation of the buyer and how will the transaction be viewed here? Do the parties share the same values? Will the current branding remain or will be the business be rebranded? Is there potential for the business to grow with exposure to new markets?

These matters will also impact the target business' relationships. Sellers should think about how their employees, customers, suppliers and other key stakeholders will react and what impact the sale will likely have on them, positive or negative. Employees in particular are often exposed to changes in management and business practices when there is a change of ownership – these changes need to be carefully managed to ensure employees want to remain with the business and the change is viewed as a positive one.

These strategic considerations will be particularly important where sellers are 'rolling' or taking consideration shares in the buyer entity as part of their purchase price. In addition, rolling sellers should undertake due diligence on the overseas buyer to understand its operations and the rights and restrictions attaching to the consideration shares. Rolling sellers should also have a clear understanding of the strategy for the target business following settlement and their role in that strategy.

Cultural

The cultural differences between the parties should also be assessed. This will assist sellers to understand how their counterparty is likely to want to communicate and negotiate, as well as what their typical business practices are.

With communication, is more formal language preferred or should the emphasis be on open, informal discussion? Is seniority and who you address important? With negotiations, is your counterparty likely to prefer a more direct approach or do you need to focus on relationship building? What are your buyer's business practices – are there any customs (such as gift giving) or protocols (such as how to address people) that you need to be aware of? What are the buyer's work ethic and values?

A lack of cultural awareness and sensitivity is likely to lead to general confusion, misunderstandings between the parties and potentially also offense. Conversely, sellers who take the time to familiarise themselves with any cultural differences

and respect them throughout the deal will find themselves better able to manage relationships and expectations, ultimately leading to a smoother transaction. Cultural and language differences should also be carefully considered and managed as part of any integration planning.

Practical

Practical matters should not be forgotten by sellers given the impact they often have on deal timeframes. These include:

- Time zones: Time zones will be an important factor to consider throughout the transaction, particularly when arranging calls and meetings. Agreeing how, and how often, the parties (and/or their advisors) need to communicate will help avoid potential delays that may otherwise arise – for example, sellers should consider setting a weekly call at a time that works for all involved to streamline matters and reduce the administrative burden by avoiding the need to find new meeting times each week.
- Timetabling: When transaction timetables are being contemplated, a general buffer should be added for time zone delays as noted above. In addition, the public holidays of each party will need to be factored in, as well as the extra time required if the overseas buyer wishes to undertake site visits or meet management in person. While alternatives are possible (such as video walk-throughs and zoom meetings) some buyers will insist on in-person meetings and sellers need to be prepared for this. As we saw in 2024, time can kill deals where they are left to stall too long.
- Approvals: Often overseas buyers are larger organisations that will require various internal sign-offs before entering into a transaction. These can take time to obtain – for example, where the relevant board only meets monthly. It is helpful for the parties to identify these requirements upfront and make sure the relevant persons will be available when needed.
- Advisors: The New Zealand legal community is relatively small and generally deal advisors – and their preferred style of operating – will be known to one another. This can at times assist with deal negotiations. In contrast, overseas advisors may come with different negotiating styles and different views of what the deal terms should be (particularly depending on what is market in their home country). Sellers and their advisors should encourage the buyer to engage local counsel to assist them and explain what is typical or market here in New Zealand.
- Political landscape: The general political landscape and stability of the buyer's country should be considered to see whether there is anything that might disrupt the deal. Also relevant will be whether there are any pending legal or regulatory changes that could impact the buyer's willingness or ability to purchase. As noted in our Overview, 2024 saw geopolitical certainty restored in many countries and sellers would be well advised to understand the current landscape and what it could mean for their sale when considering engaging with overseas buyers.

The prospect of selling a New Zealand business to an overseas buyer presents both opportunities and challenges. With overseas interest expected to continue and even increase in 2025, understanding the key considerations noted above, and engaging knowledgeable, experienced advisors will help sellers navigate the complexities, maximise the benefits, and ultimately lead to a more successful transaction.

The prospect of selling a New Zealand business to an overseas buyer presents both opportunities and challenges."

Sample of our 2024 deals

AgriZero NZ
ANZ
ARMAGUARD
Channel
Flintfox by Enable
Fonterra
habit health
IBM
JARDEN
Kiwi bank.
NGĀI TAHU Forestry
OrbitRemit Online money transfer.
Southern Cross Health Insurance
sto
TAB
TOWER
VIRTUAL SUPERINTENDENT
Volpara HEALTH
Z ENERGY

Our M&A team

We are not afraid of a challenge or to innovate in the pursuit of our clients' goals.

With a reputation for tackling the most significant and complex transactions, our top tier M&A team continues to deliver excellent results to major international corporations, local trade buyers, listed companies, financiers and private equity funds on a variety of M&A and private equity transactions.

Home to one of the largest M&A teams in New Zealand, our Corporate team's expertise is recognised recognised internationally as top tier by The Legal 500, Chambers Asia Pacific and the IFLR1000. Our market-leading partners are backed by highly qualified and talented corporate lawyers, ensuring the seamless delivery of astute commercial advice and excellent client service.

"The team are very capable in handling complexity, with access to expertise in a wide range of practice areas to support multi-faceted transactions. They demonstrated a high level of expertise, professionalism, and attention to detail, providing practical and strategic advice that helped us navigate a challenging transaction and achieve our objectives."

Chambers and Partners,
Asia Pacific 2024

Speak to our experts

Corporate and M&A

Neil Millar
Auckland Head of Division & Partner
P +64 9 353 9977
M +64 21 495 565
neil.millar@minterellison.co.nz

Igor Drinkovic
Partner
P +64 9 353 9734
M +64 21 071 7628
igor.drinkovic@minterellison.co.nz

Mark Forman
Partner
P +64 9 353 9944
M +64 21 243 6954
mark.forman@minterellison.co.nz

Mark Stuart
Partner
P +64 9 353 9985
M +64 21 318 627
mark.stuart@minterellison.co.nz

John Conlan
Wellington Head of Division & Partner
P +64 4 498 5037
M +64 21 263 7111
john.conlan@minterellison.co.nz

Rodney Craig
Partner
P +64 4 498 5025
M +64 27 466 9788
rodney.craig@minterellison.co.nz

Tayla Johnston
Partner
P +64 9 353 9974
M +64 210 514 065
tayla.johnston@minterellison.co.nz

Isaac Stewart
Partner
P +64 9 353 9768
M +64 21 280 2426
isaac.stewart@minterellison.co.nz

Banking and finance

Steve Gallaugher
Head of Division and Partner
P +64 9 353 9949
M +64 27 667 5546
steve.gallaugher@minterellison.co.nz

Allison Hancock
Partner
P +64 9 353 9845
M +64 27 229 2139
allison.hancock@minterellison.co.nz

Kate Lane
Partner
P +64 9 353 9992
M +64 21 610 860
kate.lane@minterellison.co.nz

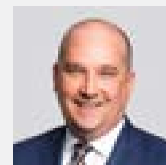
Michael Langdon
Partner
P +64 9 353 9981
M +64 21 435 055
michael.langdon@minterellison.co.nz

Chris O'Brien
Partner
P +64 4 498 5133
M +64 21 888 739
chris.o'brien@minterellison.co.nz

Competition

Jennifer Hambleton
Partner
P +64 9 353 9794
M +64 27 541 0994
jennifer.hambleton@minterellison.co.nz

Tax



Andrew Ryan
Partner
P +64 9 353 9950
M +64 21 606 170
andrew.ryan@minterellison.co.nz

Technology

Tom Maasland
Partner
P +64 9 353 9875
M +64 27 453 6511
tom.maasland@minterellison.co.nz

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