The New State of M&A: Australia and New Zealand

Case Study: Gilbert + Tobin

Data-driven insights to enhance advice and decision-making

Similar to some other markets, M&A activity in Australia has rebounded over the past few months and deal volumes are expected to remain robust throughout much of 2021.

Key factors driving this include expectations for a strong economic recovery, buoyed by Covid-19 vaccination plans, attractively low financing rates and cash-rich companies and private equity firms. It is a resurgent appetite for deals that Neil Pathak, Partner and Co-Head of Gilbert + Tobin's Corporate Advisory Group, says is happening across most sectors, whether in mining and natural resources, in industrials more generally, or, on other side, among technology companies.

"Appetite feels really strong right across the board," says Pathak. He adds that while the pursuit of growth is a primary objective of acquisitions, other important strategic issues such as climate change and digital transformation are also influencing deal activity, particularly divestments.

"Some companies are certainly looking to rollout of 'old world' businesses such as coal that impact the environment. To some extent we see that happening in the infrastructure and telecoms sectors, where businesses are being divested and the proceeds re-invested in new technologies. It feels like we're at an inflection point for this," says Pathak.

Gilbert + Tobin is a leading corporate law firm, providing a full-service legal offering to corporates and governments throughout Australia, and around the world.

Neil Pathak
Partner and Co-Head of Corporate Advisory Group

Costas Condoleon
Partner and Co-Head of Corporate Advisory Group

GILBERT + TOBIN

Digital transformation: Slowly but surely

To be sure, digital transformation is now a boardroom priority for almost all companies across industries, requiring substantial investment. Law firms are no exception, although their need to transform their operations are not as acute as companies in other industries.

In more specific areas, especially advising on M&A, Costas Condoleon, Partner and Co-Head of Gilbert + Tobin's Corporate Advisory Group, says digital transformation has been happening, but that "the pace of change has not been as quick as what we would have expected, especially around AI".

He explains that while AI is being applied to various repetitive tasks or processes, such as reviewing information and searching contracts for keywords or clauses, the technology is not yet helping lawyers in a more valuable way.

"AI can help us find where the change of control or termination clause is," says Condoleon. "But it won't actually tell us whether it has been triggered or in the context of the transaction, whether it's relevant. We still need the lawyers to do that."

Technology to bring more disruption in the future

Lawyers are still heavily involved in the advisory process, and that is unlikely to change. Yet Condoleon does believe some areas of the M&A process, such as due diligence, are going to be more disrupted by technology in the future.

For its part, Gilbert + Tobin already uses a proprietary digital platform or tool called 'DDI' that assists their lawyers on various aspects of due diligence, from project management to deal data collation and analysis, which Condoleon says is probably the most valuable capability.

"It has enabled us to create a database of all the deals that we have worked on over a number of years, which is powerful because it means we can look at, say, the last 20 deals we've done, and analyze their characteristics and the issues that arose in each and all of the transactions," he says.

"That's probably where the real value and advantage is in technology, around collating and analyzing data and being able to use insights from the analysis to inform the advice we provide."

Pathak agrees, adding that this can support clients in their decision making and ultimately in making the right call. It is this human judgement, however, that he says will be hard for AI or any other technology to replicate at least for some years to come.

"And that's probably a good thing to keep us all employed," he quips.

Case Study: Pencarrow

Small steps towards a more technological future

The need to invest in and use advanced technology in the investment or M&A process is not unilateral. Some large, global private equity firms, for instance, are likely spending substantial sums in this area to enhance efficiencies and give them a competitive advantage over their rivals.

For many smaller, local-market-focused private equity firms, the need is unlikely to be as great. They are also unlikely to have the technology investment budget of their larger peers.

This is the case for Pencarrow, New Zealand's oldest private equity firm. While a sophisticated investor, using sophisticated investment processes and technologies such as virtual data rooms, the firm would be the first to admit that it's not pushing technological boundaries.

But then, it doesn't have to in order to succeed.

This is partly due to the small size of the firm, says Nigel Bingham, Managing Partner of Wellington-based Pencarrow. It is also because there isn't such a great need for technology to help them in certain key areas, such as sourcing or identifying potential investments.

Pencarrow is one of the most experienced private equity managers in New Zealand. Since its founding, the firm has invested over NZ$500 million of equity capital in mid-sized New Zealand businesses.

Nigel Bingham
Managing Partner

PENCARROW
PRIVATE EQUITY

Personal connections still outweigh need for digital networking

New Zealand is a "small and well-networked country, which means deals tend to be sourced through personal connections," says Bingham.

He explains that Pencarrow's sweet spot for investments are small to medium sized companies with an enterprise value of between NZ$20 million (US$14.5 million) and NZ$100 million (US$72.3 million). As such, he reckons the investment universe Pencarrow targets probably composes around 5,000 companies in the country, which while quite large, is small enough for the firm to leverage their connections.

In addition to this, "we'll identify interesting sectors to invest in through good old desktop research among our team," says Bingham.

He adds that they are supported in the investment process by a software platform called Dynamo Software, which, among other capabilities, enables them to log and track potential deals, helping give them better visibility on the opportunities they are pursuing.

"We might have done that sort of tracking on spreadsheets in the past, so this is a small advancement, making us a little more sophisticated," says Bingham. "We're just not yet at the level of using AI or advanced analytics."

Pragmatic approach to adopting new technologies

He does, however, see the potential for these technologies to be used in due diligence, albeit used at this time by their financial or legal advisors instead of the firm.

Pencarrow runs its own commercial due diligence on deals, bringing in advisors once their conviction is solid. From beginning to end, Bingham says the diligence process takes about six weeks on average, adding they will always take the time they need to ensure the deal is the right for the firm.

Looking to the future, Bingham does believe Pencarrow will, in time, invest in and use more advanced technologies in their investment process, some perhaps similar to those used at large, global private equity firms. Part of the reason for this is because techniques and experiences led and developed at the upper end of the scale tend to get transferred down to the smaller end over time.

"So, for instance, we adopted and adjusted the operating partner model Blackstone and KKR developed some time ago. I suspect we'll take a similar approach to technology, where we will see what works for them, bring it in and adjust it for us," says Bingham.