



Lawyering through COVID-19: Closing the deal during lockdown

Bell Gully corporate partners Amon Nunns and Chris Goddard spent an early part of New Zealand's Alert Level 4 helping a client undertake a NZ\$100 million equity capital raising. Completing the transaction from home could have been a logistical nightmare. But 'technical difficulties' proved surprisingly limited. End-to-end, the process was far more seamless than anyone would have expected earlier this year.

Here we talk with **Amon Nunns, Partner at Bell Gully**
Wellington-based Amon Nunns was interviewed during the Alert Level 4 lockdown in New Zealand.



AMON NUNNS
Partner | Bell Gully
Corporate M&A

Closing the deal during lockdown

When COVID-19 hit it was evident that opportunities were likely to arise for some companies. Bell Gully's client, NZX-listed Investore Property Limited, is a commercial property owner with a focus on large format retail properties and in particular, supermarkets. Investore's portfolio was relatively resilient to the impacts of COVID-19 and its board sought to take advantage of market opportunities to raise capital to ready the company's balance sheet to provide the flexibility to undertake transactions as needed.

In a process that would normally involve face-to-face meetings, hard copy documents and 'drafting sessions' Amon, Chris and senior solicitor James Lansdown alongside Investore, its manager Stride Investment Management Limited, Goldman Sachs, Minter Ellison Rudd Watts and Harmos Horton Lusk successfully went to market without any individual having left their home. Investore sought to raise NZ\$100 million of equity capital - consisting of a NZ\$85 million underwritten placement to institutional and other investors and NZ\$15 million share purchase plan to existing Investore shareholders in New Zealand - under these unusual circumstances.

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With multiple parties involved, all under lockdown, how did you communicate?

Spread out across our homes in Auckland and Wellington, regular catch ups were key. We held regular video conference meetings within our team, the client and wider adviser team, where we would run through the status of the workstreams.

The daily working video conferences in the lead-up to the launch of the transaction were very effective, and when working in a compressed timeframe we see a place for them right from the start of the transaction. Visual clues were key to ensuring the meetings were quick and effective.

What technology was needed?

We employed a variety of online systems which were great to have. Some have been used regularly in the past, such as the various board paper management systems for distribution of materials (in this case Diligent). Others were new and have become more regularly used since the lock-down. In particular personal video conferencing – the ‘share screen’ function worked well on group calls where one person could ‘run’ the document and comments could be discussed and updated in real time.

Applications which permit a director to apply his or her electronic signature to resolutions or other documents were very useful to manage authorisations and execution of agreements.

Video calls add another dynamic, with the advisers, management team and directors all in their own homes. Although unusual at the outset, it created a deeper relationship between the participants due to the more personal nature of the interaction.

What were the key hurdles?

Timing

One challenge was timing. A number of capital raisings have been undertaken in response to COVID-19 so launching in the right window was important. Being close to the ‘front of the queue’ was helpful.

A ‘virtual-only’ environment

In a normal environment we would have completed many of the processes of the transaction face-to-face. One of the useful processes in a capital raising transaction is being able to have ‘drafting sessions’ as a group. Due to the current environment, instead we spent a lot of time on the phone and video calls discussing documents and drafting changes.

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We also had to consider how to best provide for shareholders to be able to accept the share purchase plan offer. A usual process is to allow shareholders to return hard-copy application forms, with payment by way of cheque. However, given the difficulties in banking cheques at the moment, the decision was made not to accept payment by cheque. Shareholders could still post application forms (although were encouraged not to, given the likely delay in postal systems) but all payments were made online.

Snail mail

The impacts of COVID-19 on the postal system generally was also a consideration. Shareholders who had not provided consent to receive documents electronically were required to have hard-copy offer materials posted to them. The potential delays in the materials arriving, and the ability for those shareholders to be able to accept the offer, went into the mix when it came to deciding the length of the offer period.

We did have to engage with NZX for specific waivers from certain Listing Rules (including for certain COVID-19 relief granted by NZX, which was not quite broad enough to provide for the offer we assisted with). Again, this was a relatively seamless process with NZX supportive once knowing the rationale and practicalities.

What capital markets processes were unique or unusual?

Public company capital markets transactions generally involve a 'due diligence committee' process, where directors, key members of management and advisers consider key areas of risk and information for disclosure purposes. Meetings of this committee are usually run in person, which provides a good way to test and share views and perspectives.

Running all of these meetings virtually was unusual, but actually worked well through video conferencing facilities. With everyone at home in lockdown we had the benefit of having all directors fully involved in the process and generally always available.

COVID-19 impacts

The due diligence committee spent a lot of time considering the impact of COVID-19 on the company. Given the current environment, where it is difficult to accurately predict the extent and duration of the impact of COVID-19 on businesses, some of the risk disclosures in the offer materials were quite unique when compared to pre-COVID-19 risk disclosures.

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What is your home workplace set up? Who is in your bubble?

I am lucky enough to have a separate space set up to work at home, which also helps to separate 'home' and 'work'.

I am also lucky that my "colleagues" (aged 7, 10 and 12) have been generally very tolerant of my sometimes odd hours.

Some of the key work needed to be carried out over Easter weekend and the long ANZAC weekend. With everyone working from their home offices, the working week merged into these long weekends, so it was difficult at times to remember there was a public holiday.

How did you instil a sense of normality into your days?

Some days ended up being longer than others – particularly towards the date of launch. Getting outside for exercise always helped to reset the brain and made the days go faster.

Our Bell Gully team know each other and the client really well, so sharing stories and keeping morale up in our regular calls was also key to making sure things felt as normal as possible.

Investore received the full amount of the placement (\$85 million), which settled on Tuesday 5 May 2020. The share purchase plan offer closed on 14 May 2020 oversubscribed.