

The Overseas Investment Amendment Act 2018 – What it means for the forestry industry

On 22 October 2018, the much publicised Overseas Investment Amendment Act 2018 (Amendment Act) and the Overseas Investment Regulations 2018 (Regulations) came into force.

The Amendment Act represents a dramatic shift in how overseas investment in forestry will be considered under the overseas investment regime. We summarise the key changes specific to overseas investment in forestry below:

Forestry rights

Under the previous legislation, the acquisition of forestry rights by overseas persons did not require consent under the Overseas Investment Act 2005 (OIA). The Amendment Act now requires overseas persons to obtain consent prior to acquiring a forestry right, unless the forestry right being acquired, together with any other forestry rights acquired during that same calendar year, is for an area of less than 1,000 hectares.

Special forestry test

The Amendment Act introduces an alternative to satisfying the "benefit to New Zealand test" for acquisitions of land which will be used exclusively or nearly exclusively for forestry activities and does not include residential land. Under the Amendment Act, the "benefit to New Zealand test" for forestry acquisitions will be satisfied if the criteria for the "special forestry test" are met. These criteria are as follows:

- Any existing arrangements prior to the proposed acquisition in relation to:
 - protecting indigenous vegetation, specified wildlife, historic places or wahi tapu; or

- providing public access to the relevant land,

must be continued by the overseas purchaser.

- Any conditions of previous OIA consents in relation to the relevant land must be continued by the overseas purchaser.
- Existing supply obligations to any New Zealand based processor will continue in effect for as long as the original contract remains in place.
- The relevant land will be replanted after harvesting (if the applicant is permitted to do so).

This is a significant shift from the position under the previous legislation which required an overseas purchaser to demonstrate that its proposed acquisition would result in substantial and identifiable benefit to New Zealand measured against a hypothetical New Zealand based purchaser. The new "special forestry test" is much more permissive and should enable overseas purchasers for forestry assets to obtain OIA consent in a much more time and cost efficient manner than has previously been the case.

Modified benefits test

If the particular circumstances mean that an existing arrangement in relation to any of the categories set out above for the special forestry test cannot be continued by an overseas person, the overseas person may apply for consent under the modified benefits test. To satisfy this test the overseas person will need to demonstrate that its acquisition of the relevant land will result in a substantial and identifiable benefit to New Zealand measured against the 21 benefit factors set out in the existing OIA.

The key difference between the modified benefits test and the benefits test under the existing regime is that rather than being assessed against a hypothetical New Zealander, the benefit of the proposed investment will be compared against the benefits likely to occur if the current owner continued to own the land.

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Standing consents

The Amendment Act establishes a process for overseas persons to apply for "standing consents". A standing consent will enable overseas persons to purchase forestry assets that would normally require OIA consent without going through the full OIA consenting process. To be granted a standing consent by the OIA, the applicant will need to:

- meet the investor test (the overseas person and individuals with control must show sufficient business experience and acumen, financial commitment, good character; and absence of ineligibility under the Immigration Act 2009);
- satisfy the Overseas Investment Office (**OIO**) that it has processes in place for meeting the categories set out above in relation to the special forestry test; and
- demonstrate that the applicant has a good record of historic compliance with the OIA and any conditions of consent.

The OIO has indicated that standing consents are likely to be granted subject to a number of restrictions, including:

- duration – we expect that initially standing consents will continue in effect for a maximum period of three years;
- type of interest – freehold, leasehold and/or forestry rights;
- maximum area of land to be acquired using the standing consent;
- maximum area of land to be acquired per separate transaction;
- maximum number of transactions over the life of the standing consent; and
- regional limits.

Each time the standing consent is used, the overseas person will need to:

- notify the OIO of the transaction;
- set out to the OIO how the categories noted above in relation to the special forestry test will be met for the transaction; and
- pay a fee of \$13,000.

Having a standing consent in place will likely be a significant competitive advantage for overseas persons tendering for forestry assets as they will be able to submit tenders without having to be conditional on OIA consent.

Want to know more?

Please contact Anderson Lloyd's [specialist forestry team](#) if you have any questions about applying for consent under the new OIA regime or how these changes will affect your business.