

## Overseas Investment (Forestry) Amendment Bill

### Parliament has recently introduced the Overseas Investment (Forestry) Amendment Bill (Bill) which is currently at the select committee stage.

The main purpose of the Bill is to prohibit overseas investors who plan to convert farm land to forest in New Zealand (**Forestry Conversion**) from using the special forestry test in the Overseas Investment Act 2005 (**Act**) and instead, requiring them to apply under the (more stringent) benefit to New Zealand test.

In 2018, the Government introduced the special forestry test in order to make it easier for overseas investors to acquire an interest in productive forestry in New Zealand. This test was designed to stimulate forestry investment, and could be used in respect of any land that was, or was *likely* to be, used exclusively, or nearly exclusively, for forestry activities (including Forestry Conversions). Click [here](#) to read our article which details how the special forestry test works.

Since 2018, the Government has recognised the consequential increase in forestry investment in New Zealand, including an increasing number of Forestry Conversions by both domestic and overseas investors. Growing investment in forestry has been further accelerated by the increasing price of carbon credits, emissions trading scheme reforms and Government afforestation schemes.

#### Key changes to the Act

##### 1. Forestry Conversions

As mentioned above, the Bill removes Forestry Conversions from the special forestry test. When the Bill comes into force (being the date it receives royal assent, expected to be mid to late August), the

special forestry test may only be applied to land which is already being used exclusively, or nearly exclusively, for forestry activities (unless an application for consent is received by the Overseas Investment Office (**OIO**), or a transaction is entered into which is conditional upon consent, before the date of royal assent). Forestry Conversions will instead need to be considered under the benefit to New Zealand test (except for Forestry Conversions that rely on standing consents granted or applied for before the date the Bill receives royal assent).

The benefit to New Zealand test is more stringent as it requires applicants to demonstrate benefits to New Zealand that will occur if the applicants purchase the property, as opposed to the existing state of affairs. For acquisitions of farm land, there is a higher benefit threshold where the relevant Ministers must consider different factors with high relative importance e.g. economic factors (retention of jobs), introduction of technology or business skills etc.

The OIO has not indicated if there will be specific fees or timeframes for applications concerning Forestry Conversions. However, we expect the fees and timeframes will be akin to those already set for benefit applications. Currently, it costs between \$68,200 – \$74,000 for a benefit to New Zealand test application (or \$74,000 – \$82,700 where it involves farm land) compared to \$33,800 for a one off special forestry test application, noting that these fees are for standard decisions. Applications under the benefit to New Zealand test also takes longer. The current timeframes for a benefit to New Zealand test is 70 days (or 100 days where it involves farm land) compared to 55 days for a one off special forestry test.

##### 2. Forestry Conversions that involve farm land

If an application for consent for a Forestry Conversion involves farm land, the Bill provides that if certain conditions are met, then the higher benefit thresholds for farm land (as outlined above) will not

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apply. The conditions that are required to be satisfied under the Bill to avoid the higher thresholds are that:

- the relevant land will be, or is likely to be used, exclusively, or nearly exclusively for forestry;
- whenever a crop is harvested on the relevant land, a new crop will be, or is likely to be established on the relevant land to replace the crop that is harvested (this condition being subject to the ministerial power to not apply, or to modify, certain requirements); and
- the Non-Occupation Outcome (as that term is defined immediately below) will, or is likely to, occur in respect of the farm land.

The Non-Occupation Outcome is that, for so long as the overseas investor has an interest in the relevant farm land, no person associated with the relevant overseas person is permitted to occupy the land for residential purposes. Other overseas persons may occupy the land for residential purposes if it is on an arms-length basis (i.e. for market rent) (**Non-Occupation Outcome**). There are no restrictions for New Zealanders in relation to the occupation of farm land.

### 3. Non-residential use

The Act currently prohibits land that is being acquired for forestry from being used, or held for use, for residential purposes under the special forestry test. The Bill provides that this prohibition is replaced with the Non-Occupation Outcome mentioned above.

### 4. Carbon Farming

The definition of 'forestry activities' has been amended with the effect that trees (whether exotic or native) must be harvested to provide wood. This change is intended to clarify that forestry activities can include any species of trees, for any rotation

length, provided the intention is to harvest. This means that 'forestry activities' do not include permanent carbon forests that are not intended to be harvested. While we understand that the OIO had already decided the existing definition of 'forestry activities' did not include carbon farming, the Bill is seeking to clarify the situation. For overseas investors looking to invest in land for carbon farming purposes (whether the existing use of the relevant land is for carbon farming or not) they will not be able to apply through the special forestry test and will instead be required to apply through the benefit to New Zealand test. Given carbon farms are inherently passive investments, if the Bill is enacted in its current form, it will likely be quite difficult for overseas investors to acquire carbon farms in New Zealand.

### 5. Forestry rights with an area less than 1,000 hectares

The Act currently provides that an overseas investor is exempt from obtaining OIO consent where they are acquiring forestry rights that have a total area of up to 1,000 hectares per calendar year (including forestry rights already consented to by the OIO in that same calendar year). The Bill amends the Act so that forestry rights that have already been consented to by the OIO are no longer included in the calculation of the 1,000 hectare annual cap. This change means that overseas investors can still use the exemption to acquire smaller scale forestry rights where they have already obtained consent to the acquisition of other forestry rights within the same calendar year.

### Want to know more?

Anderson Lloyd's specialist forestry team will be keeping a close watch on developments with these proposed changes.

If you have any questions about the special forestry test, applying for consent to invest in forestry in New

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Zealand (whether it is currently being used as a forest or not), or you wish to explore forestry investment options in general, please contact our [Specialist Forestry Team](#) who can assist with forestry acquisitions and disposals, OIA applications, advice on the emissions trading scheme and carbon projects.