
The Overseas Investment (Forestry) Amendment Act 2022

The Overseas Investment (Forestry) Amendment Act 2022 (*OIA Amendment Act*) is now in force.

The increasing financial attraction of forestry activities and accumulation of carbon credits caused by changes to the Emissions Trading Scheme and government afforestation incentives has triggered an escalation in the conversion of farm land to forestry blocks. The Government had been facing mounting pressure from the agricultural industry to ensure that overseas investments involving the conversion of land to forestry genuinely benefit New Zealand and that any associated risks (including the loss of productive farmland and threats to biodiversity) are better managed.

Those in the forestry sector and overseas investors were largely opposed to the changes. Investors view the changes as unnecessarily discouraging investment in New Zealand where there is little evidence of any real problem to address. However, the majority of submitters, particularly those submitting from an environmental and agricultural standpoint, were supportive of the amendments which aim to strike a better balance between encouraging foreign investment and protecting the production and amenity values of New Zealand's rural landscape.

The amendments apply to all agreements entered into following 16 August 2022. Agreements entered into before 16 August 2022 are still assessed under the previous rules, even if an OIO condition in those contracts is yet to be satisfied.

The "benefit to New Zealand" test in section 16A of the OIA now applies to overseas investments involving the conversion of existing farm land to forestry, adding a further threshold for overseas investors to meet.

Acquisitions of existing forestry assets will remain under the previous, and more streamlined, special forestry test. The special forestry test involves a lower threshold, and only requires evidence of the investor's financial acumen, proposed investment strategy for the property and wider business strategy generally, and a commitment to preserving existing third-party access arrangements, heritage and conservation on the property. It does not also require the investor to establish a benefit to New Zealand. It is almost considered a tick box checklist, with minimal discretion for the Minister to decline consent provided the criteria are met.

In contrast, for forestry conversions, the benefit to New Zealand test also requires an assessment of the benefit to New Zealand introduced by the overseas investment, compared to how the current property owner would continue to run the farming operation if they retained the property. This will involve a greater element of Ministerial discretion where the proposed benefits are seen as insufficient to mitigate the loss of farm land for forestry.

The key points worth noting from the OIA Amendment Act are:

1. Forestry conversions are removed from the previous special forestry test, so it will now only apply to acquisitions of existing forestry assets.
2. Forestry conversions will now be considered under the benefit to New Zealand test in section 16A of the OIA. This test considers the benefits to the economy, the natural environment, public access, protection of heritage features, advancing government policy, participation in the investment by New Zealanders, and other consequential benefits to New Zealand, which will be generated by the overseas investment. Any factors put forward must be property-specific and evidence based, and more highly productive pastoral farming land will generally require stronger benefits than marginal land due to its higher sensitivity.
3. The higher threshold applied to farm land in section 16A(1C) (where investors must prove a "substantial" benefit to New Zealand, and where economic benefit and New Zealand participation are given more weight than the other benefit factors above) will not apply to forestry conversions where:
 - the property will be used nearly exclusively for forestry activities;
 - any trees harvested will be replanted; and
 - the overseas person will not occupy the land for residential purposes.

Some submitters, including Federated Farmers, thought the amendments should have gone further and subjected forestry conversions to the higher farm land benefit test. However, most supporters of the OIA Amendment Act agreed that this would be a step too far and would be overly prohibitive to investment in New Zealand.

The OIO will require a high level of evidence of a long-term intention of carrying out forestry activities and harvesting trees, something that has not been required previously.

4. The land can be occupied for residential purposes provided it is by a New Zealander and not the overseas person (i.e. dwellings can be rented at market rental to a New Zealander on arms-length terms or used as accommodation for forestry workers).
5. The definition of forestry activities is narrowed to mean maintaining, harvesting or establishing a crop of trees (whether native or exotic, that are to be harvested to provide wood). "Forestry activities" therefore now excludes permanent carbon forests, which means investment in existing carbon forests is also now subject to the benefit test. Also, unlike farmland conversions to forestry, carbon forests will be subject to the stricter farmland benefit test, requiring a "substantial" benefit to New Zealand, and greater weight placed on the economic benefit and New Zealand participation.
6. Standing consents for forestry conversions granted before commencement of the OIA Amendment Act can continue to be used on the terms, and for the period, which they were granted, without needing to satisfy the additional benefit to New Zealand test. Most standing consents have been granted for a period of 3-4 years only so are likely to expire within the next 2 years in any case. New standing consents are only available for acquisitions of existing forest.
7. Decisions may be delegated to the OIO or decided by the Minister (delegation being more likely for larger properties) Differing assessment timeframes and application fees will apply.

If you have any questions, or if you are considering acquiring land or business assets in New Zealand, please get in touch with a member of our Overseas Investment team.
