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Overseas Investment (Forestry) Amendment Bill:

Third reading

Legislative Statement

Presented to the House in accordance with Standing Order 272

Overview

The Overseas Investment Act 2005 (the Act) is New Zealand's principal tool for regulating foreign investment. It seeks to balance supporting high-quality investment with ensuring that the government has the tools available to manage risks.

The primary policy proposal in this Bill is to ensure that the conversion of land to production forestry by overseas investors continues to bring broad benefits to New Zealand when consent is required under the Act.

The Bill also makes several minor changes and technical clarifications to improve the Act's existing forestry provisions.

Proposals in the Bill

Change of requirements for overseas investment relating to forestry conversions

To achieve the policy outcome, the Bill removes forestry conversions from the special test relating to forestry activities, commonly known as the 'special forestry test.'

Instead, it requires forestry conversions to be considered under the 'benefit to New Zealand' test to obtain consent. The benefit to New Zealand test also applies if the investment involves farmland (that is, the Act's more stringent farmland benefit test will not apply to these forestry conversions). This applies to conversions where the:

- forestry activities relate to production forestry irrespective of the species of tree or the harvest length of a tree, and
- farmland will be used exclusively, or nearly exclusively, for these forestry activities. 'Nearly exclusively' allows for minor and ancillary use of the land beyond production forestry where this is appropriate (for example, maintaining an area of indigenous forest not suitable for planting a crop of trees).

Conversions relating to permanent carbon forestry were never considered under the special forestry test and the Bill does not change this position.



Transitional provisions

The overarching intent of the Bill's transitional provisions is to allow investors who have taken substantive steps towards completing a transaction in reliance on the old rules to continue to proceed under these. As such, the Bill proposes that investors who have applied for consent or entered into a transaction conditional on consent before the Bill's commencement can proceed under the old rules. Investors who have obtained a standing consent will not be impacted by the Bill.

Minor changes and technical clarifications

The Bill makes some minor changes and technical clarifications to improve the operation of the Act's forestry provisions.

It allows non-associates of an overseas investor to occupy existing dwellings on forestry land. This provides greater flexibility than the current rule (which requires dwellings only to be used for forestry activities). This will, for example, allow existing tenants to remain in their homes if the property is on forestry land acquired by an overseas investor.

In addition, the Bill repeals the effectively redundant 'modified benefits test for forestry activities' that has never been used.

It also clarifies that the Act's definition of forestry activities requires an intention to harvest regardless of the type of the species or harvest length.

Under the Act, overseas investors can acquire up to 1,000 hectares of forestry cutting rights before they require consent. The Bill clarifies that forestry rights granted consent under the Act do not count towards this threshold. It also clarifies that only activities directly connected to the forestry rights being acquired by an investor are captured by the Act's definition of relevant land.

Amendments recommended by the Finance and Expenditure Committee

To address minor and technical concerns raised either in submissions or by officials, the Finance and Expenditure Committee recommended some minor changes to the Bill:

- Applicants for forestry standing consents must demonstrate a strong record of compliance with the Act (or corresponding laws in other jurisdictions). However, the common practice of creating a local special purpose vehicle for an investment can be a barrier to demonstrating a record of compliance. The Bill clarifies that that when considering an application for a forestry standing consent, the regulator can also consider the compliance record of the applicant's wider group of associates and individuals with control.

Hon David Parker BCom, LLB

Attorney-General

Minister for the Environment

Minister for Oceans and Fisheries

Minister of Revenue

Associate Minister of Finance



- The Bill amends the special forestry test's existing restriction on using the land for residential purposes (other than for forestry workers) by replacing this restriction with the non-occupation outcome. One submitter raised that this change may create outcomes inconsistent with the policy intent, by restricting the ability for forestry workers to reside on the land. The Bill now clarifies that forestry workers may continue to occupy land acquired via the Act's forestry provisions, on the same terms as allowed under the Act's current restriction on residential use.
- In addition to the clarifications relating to the 1,000 hectare threshold mentioned above, the Bill now clarifies that forestry rights that were acquired in reliance on an exemption under the Act or the regulations are also not included (for example, following a merger of two companies, or a corporate restructure).
- To access the special forestry test or the general benefit to New Zealand test (for a conversion) the relevant land must be used (and will continue to be used) exclusively or nearly exclusively for forestry activities. One submitter indicated that plantings may be staggered, meaning parts of the land may at times sit outside the cycle of establishing, maintaining, and harvesting a crop of trees in the definition of forestry activities. To ensure these scenarios are captured, the Bill widens the definition of forestry activities to include maintaining the land between harvesting and establishing a new crop of trees.