



THE TREASURY

Kaitohutohu Kaupapa Rawa

Overseas Investment in Forestry

Workshop on Proposed Changes

This material was pro-actively released by the Treasury in July 2018. It was prepared in June 2018 to support consultation hui on the changes to overseas investment in forestry.

Overview of the session

1. The purpose of this workshop (5 mins)
2. Some brief background on our previous engagement (5 mins)
3. The policy proposals (10 mins)
4. What these proposals will mean in practice – worked examples (60 mins discussion)
5. Process from here, including how your feedback will be addressed (5 mins)

Purpose of this workshop

- To follow up on previous engagement with additional information to respond to specific scenarios raised.
- To test further proposed changes to address concerns raised, including on Crown Forestry Licences.
- To get your feedback on impacts for you and any outstanding issues or concerns.

Brief background

- The Overseas Investment Act is changing to include forestry rights. Forestry rights, which are currently exempt, will become subject to the Act. So too will some other non-forestry profits à prendre. Crown Forestry Licences are not included in the changes to the Act.
- The changes will also introduce new ‘lighter-touch’ pathways for obtaining consent where an overseas investment relates to forestry. These pathways are *intended to be more permissive, to streamline the processing of applications and to create more certainty for investors.*
- Due to the significant amount of forestry assets in Māori ownership, the Government has conducted a specific consultation process with iwi and Māori groups.

Brief background

- A purpose of the change is to ensure similar types of forestry investments (ie, the right to maintain, establish, and plant forests) are treated similarly.
- The changes ensure that forestry rights are treated (and therefore screened) in the same way as leasehold and freehold arrangements for forestry land.
- The pace and timing of the changes has been driven by the importance of including forestry rights within the screening regime prior to the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) entering into force. Making these changes now will better preserve policy options for future governments in relation to forestry investment.
- This policy is being developed in parallel with signalled Government initiatives, including the One Billion Trees initiative.

Brief background – consultation to date – January hui

The feedback:

- Most participants were concerned that the *cost, time and uncertainty of OIA screening* would impact negatively on commercial negotiations around overseas investment in forestry rights.



The outcome:

- The new proposed pathways for OIA screening of forestry assets are intended to be cheaper, faster and more certain than the current 'benefits test'.
- Raising the screening threshold for forestry rights from 50 to 1000 hectares per calendar year.

Brief background – consultation to date - April hui

The feedback was mixed:

- Some support for the revised proposals.
- Some were concerned that impacts in specific circumstances were not clear (especially around Crown Forestry Licences (CFLs)).
- Some remained concerned about cost, time, uncertainty and impact on investor behaviour and asset values.
- Some opposed due to those concerns, or in principle due to a new regulatory burden on commercial arrangements.

The outcome:

We have:

- clarified the implications for CFLs.
- done more work on OIO application costs & timeframes under the proposed changes.
- developed proposals to ‘grandparent’ some existing arrangements so they don’t need screening as soon.
- clarified that ‘pre-existing arrangements’ will not need screening (unless some changes are made).
- clarified that qualifying overseas investors will be able to use ‘standing consents’ - no OIO consent needed for individual transactions.
- Ministerial agreement to establish a reference group intended to support implementation and give feedback on impacts.

The proposals

- In most cases, overseas investors will require consent from the Overseas Investment Office before acquiring a new forestry right.
- However, there are a range of circumstances where negotiations will not be impacted as consent is not required:
 - If the overseas investor (and its associates) is purchasing **less than 1,000 hectares** of forestry rights per calendar year, or any forestry right of **less than three years duration**.
 - If the overseas investor already has a '**standing consent**' that covers the transaction.
 - If there is a **pre-existing 'arrangement'** between a landowner and an overseas investor prior to the legislative changes taking effect.
 - **Crown Forestry Licences** are exempt (as they are not an interest in land).
 - **Exemption provisions** allow new forestry rights agreements to replace existing agreements with the same key terms [New].
 - **Transitional provisions** will allow Crown Forestry Licences to be replaced with forestry rights on the same key terms [New].

OIO consent is not needed for Crown Forestry Licences

- Crown Forestry Licences (CFLs) are **not included** under the screening regime as the Crown Forest Assets Act 1989 states that a CFL is not an 'interest in land'. The Overseas Investment Act screens interests in land.
- Under the Crown Forest Assets Act 1989, only the Crown can establish, extend or renew a CFL. After a CFL is transferred from the Crown, if the terms and conditions of a CFL are changed by mutual agreement of the parties, then it likely stops being a CFL.

OIO consent is not needed for Crown Forestry Licences

- If you want to change the commercial terms of an arrangement / forestry right that was previously subject to a Crown Forestry Licence, in some circumstances OIO consent will not be needed.
- This requires that **ALL** of the following conditions apply:
 - The new forestry right involves the same licensee (ie, the overseas investor is the same).
 - The forestry right covers only land that formed all or part of the previous CFL.
 - The termination date of the new forestry right is up to 35 years after the land is transferred to iwi (ie, maximum period of a CFL) and can be extended by up to a further three years.
 - No new rights of renewal are granted.

OIO consent is not needed if the investor already has a 'Standing Consent'

- The legislation proposes a new 'standing consent' regime.
- A standing consent allows that investor to obtain a 'prior approval' to enter into future forestry transactions, within the scope defined in that particular consent.
- The test for granting a standing consent is based in part on investors showing a strong track record of identifying and acting on similar regulatory requirements in the past.
- This is designed to speed up and simplify the process for you and the investor, in cases where an investor is likely to be entering in to a number of different transactions.
- A standing consent for forestry acquisitions (including conversions) is only available alongside the special benefits test. *(more information on the special benefits test is included later in this presentation)*

OIO consent is not needed if there is a pre-existing arrangement prior to OIA changes

- If you have pre-existing forestry rights / arrangements in place with an overseas investor before the changes to the Overseas Investment Act come into force, these will not be affected.
- This applies for the duration of forestry right / arrangement, including any pre-existing arrangements or understanding regarding rights or renewal options.
- But OIO consent would be needed if you make any of the following changes:
 - increased the land covered by the right / arrangement
 - increased the duration by three years or more
 - granted new or more generous rights of renewals, or
 - changed overseas investor.
- Once existing rights / arrangements expire then any subsequent forestry rights on that land granted to an overseas investor would require OIO consent.

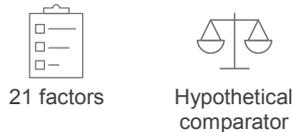
If the overseas investor **does** need to apply for consent

- It is primarily the responsibility of the overseas investor to manage their application and comply with the screening regime.
- Complying with the screening regime will require the investor to pass two tests:
 - **The investor test:** a test of their business experience and acumen, character and financial commitment.
 - **The benefits test:** a test showing how the investment will be of benefit to New Zealand.
- Two new benefits tests are being introduced as part of the changes (*more detail on the next slide*).
- These new benefits tests are intended to be more permissive, streamline processing of applications and create more certainty for investors.

More about the Benefits Tests

If your overseas investor requires consent, they have a choice between three different benefits tests.

EXISTING BENEFITS TEST



- Investor must first pass “investor” test
- Investor must show investment will likely result in a substantial and identifiable benefit to NZ.
- Investor can use 21 factors to show benefit (including increased employment, exports, domestic processing, public access, protection of biodiversity and historic sites).
- The benefit assessment compares:
 - a) what would happen if the investment proceeds vs
 - b) A hypothetical comparator ie, what would happen if the investment does not proceed and the land was purchased by a hypothetical investor instead.

MODIFIED BENEFITS TEST



- Retains the existing investor test, and 21 benefit factors.
- The requirement to demonstrate a substantial and identifiable benefit to NZ from the investment is also retained.
- Benefits assessment compares:
 - a) what would happen if the investment proceeds vs
 - b) the **real comparator**, ie, what would happen if the land was retained by you, the current owner/s. This means the comparator (counter-factual) test in the modified test is clearer than the existing test for the investor to understand and apply.

SPECIAL BENEFITS TEST



- Investor must first pass “investor” test
- Designed to be **simpler and easier to self-assess**, than the existing or modified test.
- The benefit test is considered met if investor meets all conditions specified in a **checklist**, ie, there is **no comparator**.
- The check-list currently has six points, but may be added to or reduced by regulations.
- Details of the checklist will be provided in regulations. Draft regulations include requirements for ensuring that the investor:
 - maintains existing commitments regarding historic, biodiversity, environmental or public access features of the land;
 - replants felled areas, where the investor’s interest in land allows this;
 - maintains existing protections of wāhi tapu sites;
 - maintains existing contractual commitments to provide logs to domestic processors; and
 - if the relevant land includes foreshore, seabed, or a bed of a river or lake to be sold to the overseas investor, offers that land to the Crown under the procedure set out in the Overseas Investment Regulations 2005.

- These tests can be used by overseas investors in forestry rights, as well as acquisitions of leasehold and freehold forestry land.

What about land being converted into forestry?

- If an overseas investor requires consent, the application process for conversions of land to forestry is the same as buying interests in existing forests.
- The overseas investor will be required to pass two tests:
 - **The investor test:** a test of their business experience and acumen, character and financial commitment.
 - **The benefits test:** a test showing how the investment will be of benefit to New Zealand. The overseas investor can choose to apply through the existing benefits test, modified benefits test or special benefits test.

Time and cost of OIO application

- The new proposed 'tests' for OIA screening of forestry assets are intended to be cheaper, faster and more certain than the current test.
- The processing times and fees are not yet confirmed for the new regime.
- The current fees range from \$22,500 to \$49,500 with processing time of 12-20 weeks.

What information does the landowner need to provide?

- For forestry freehold and leasehold transactions, **vendors fill out a vendor information form**, which includes information to do with the sales process and your intentions if the transaction doesn't go ahead.
- You will need to fill out the same form for forestry rights transactions, though this is likely to be somewhat simplified for the new streamlined “special benefits” test.
- The OIO may want to talk to you to confirm information about the existing land arrangements.

What are the obligations on the landowner?

- The primary responsibility for complying with the Act falls on the overseas investor acquiring the assets.
- A landowner that enters into a transaction in good faith, unaware of the breach by the other party to the transaction, is unlikely to be exposed to any criminal or civil liability.
- However, there may be commercial consequences if the transaction does not proceed. In these circumstances, you may be able to pursue the purchaser for damages.
- OIO consent is not a substitute for your commercial due diligence and contracting processes.

What happens if you don't provide full information?

- There is the possibility for criminal prosecution and civil penalties against a person who is a party to (criminal) or involved in (civil) a breach of the Act.
- A person who acts on behalf of an overseas person may also be an 'associate' of the overseas person, and may have to comply with the Act in their own right.
- Again, a landowner that enters into a transaction in good faith, unaware of the breach by the other party to the transaction, is unlikely to be exposed to any criminal or civil liability.

Process from here

- The Government is aiming to pass the legislation before the Comprehensive and Progressive Trans Pacific Partnership enters into force.
- The Bill as introduced will come into effect 10 days after the legislation is passed. The new screening requirements will not have a retrospective effect.
- Select Committee consideration of these changes is still underway. The Bill is expected to be reported back to the House by 21 June and will be public then.
- Your feedback through this process will be summarised for Ministers and will inform:
 - guidance to support implementation of the changes, and
 - any further proposed changes via the remaining stages of the legislative process (Committee of the Whole House) and to the final regulations supporting the special benefits test.
- The Government also intends to:
 - establish a reference group to provide feedback on the implementation of the changes, and
 - conduct a review of the effect of the changes two years after they come into force.

Overseas Investment in Forestry

Scenarios for Iwi/Māori Workshop hui

Scenarios that we're going to workshop

- 1. Crown Forestry Licences:** You have land that is currently subject to a Crown Forestry Licence and you want to know how these changes will affect your dealings with the licensee (pages 23 to 25)
- 2. Existing Forestry Rights:** You have an existing forestry rights agreement with an overseas investor and you want to change the terms, or renew or extend the rights (pages 26 and 27)
- 3. New Forestry Rights:** You have existing forestry land and want to enter into a forestry rights arrangement with a *new* overseas investor (pages 28 and 29)
- 4. Leasing (or selling) your forestry land:** You want to lease (or sell) your existing forestry land to an overseas investor (pages 30 and 31)
- 5. Converting your land to forestry:** You have land that is not currently being used for forestry and want to enter into an arrangement with a new overseas investor, using forestry rights (page 34)

Scenario One: Crown Forestry Licences

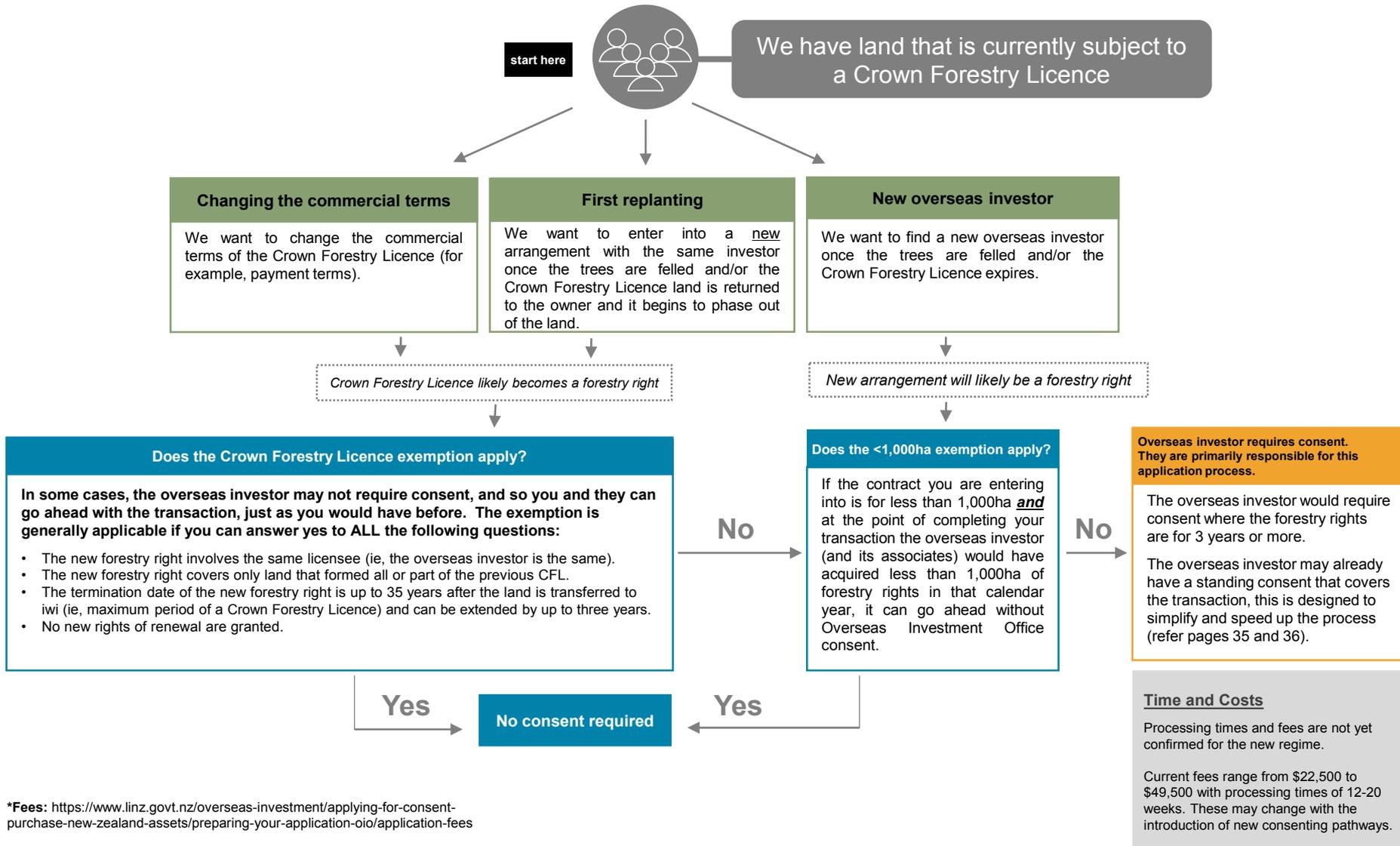


We have land that is currently
subject to a Crown Forestry Licence

Key messages:

- Crown Forestry Licences (CFL) will not need to be screened, as the Crown Forest Assets Act states that CFLs are not an interest in land.
- When you want to change the commercial terms of the CFL, it will likely become a forestry right.
- There is a transitional exemption that may mean your investor won't need to get consent for the first replanting (the next slide explains further).
- Forestry rights resulting from arrangements before the legislation comes into effect won't need consent.
- At any point, if you decide to enter into a new arrangement with a new overseas investor, they will need to get consent from the Overseas Investment Office (unless the overseas investor is purchasing less than 1,000 hectares of forestry rights per calendar year, or the forestry right is less than three years duration).

Scenario One: Crown Forestry Licences



*Fees: <https://www.linz.govt.nz/overseas-investment/applying-for-consent-purchase-new-zealand-assets/preparing-your-application-oiio/application-fees>

Scenario One B: Crown Forestry Licences

We have land that is currently subject to a Crown Forestry Licence. How long until our investor needs consent?

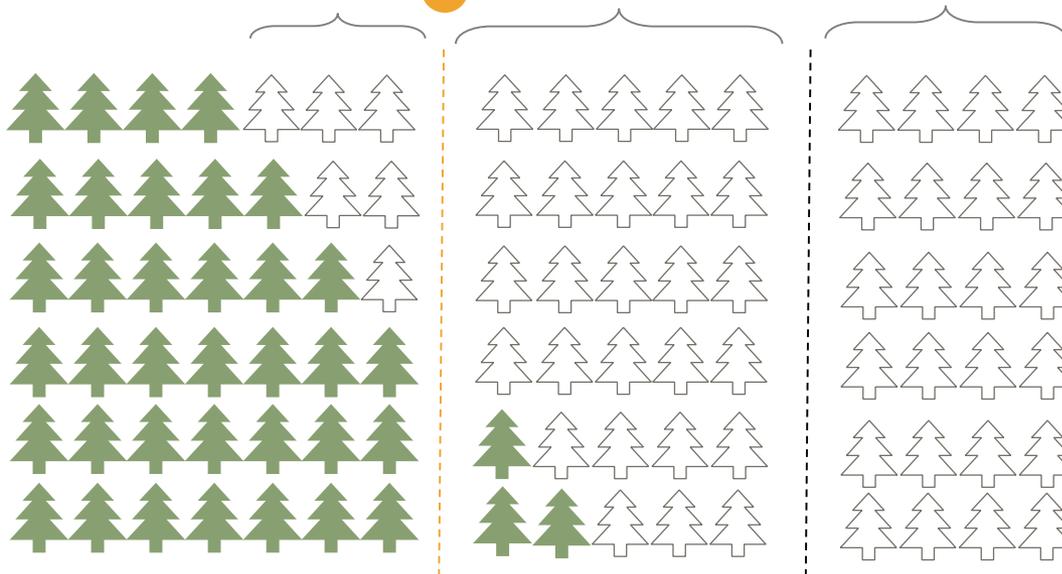


Forestry rights resulting from arrangements before the legislation comes into effect are not affected

Forestry rights granted **before** the legislation comes into effect as the CFL incrementally expires are not affected.

Forestry rights granted **after** the legislation comes into effect as the CFL incrementally expires are not screened if they would expire **within 35 years since the freehold estate was transferred from the Crown** (and can be extended by up to 3 years).

Forestry rights granted after the legislation comes into effect, and extend 38 years after the freehold estate was transferred from the Crown, would be screened.



Year 0

Legislation comes into effect

Year 35

Year 38

Freehold estate transfers from the Crown (following Treaty settlement)

The maximum term of a CFL is generally a maximum of 35 years or until the trees are felled

+3 years

Crown Forestry Licences

- In general, whether an overseas investor will require consent depends on:
 - The date your iwi/ hāpu receives the land following Treaty settlement, and
 - The date the overseas investment legislation comes into effect.
- In general CFLs have a term of 35 years or until the trees are felled.
- Forestry rights / arrangements granted after the legislation comes into effect over land that was subject to a CFL to the same overseas investor are exempt from screening until the last area subject to that CFL expires plus 3 years.(refer: A)
- Forestry rights / arrangements granted before the legislation comes into effect over land that was subject to a CFL will not be screened for the duration of the term contemplated in the arrangement (including any renewal rights).



Land subject to a CFL



Forestry right / arrangement

Scenario Two: Existing Forestry Rights

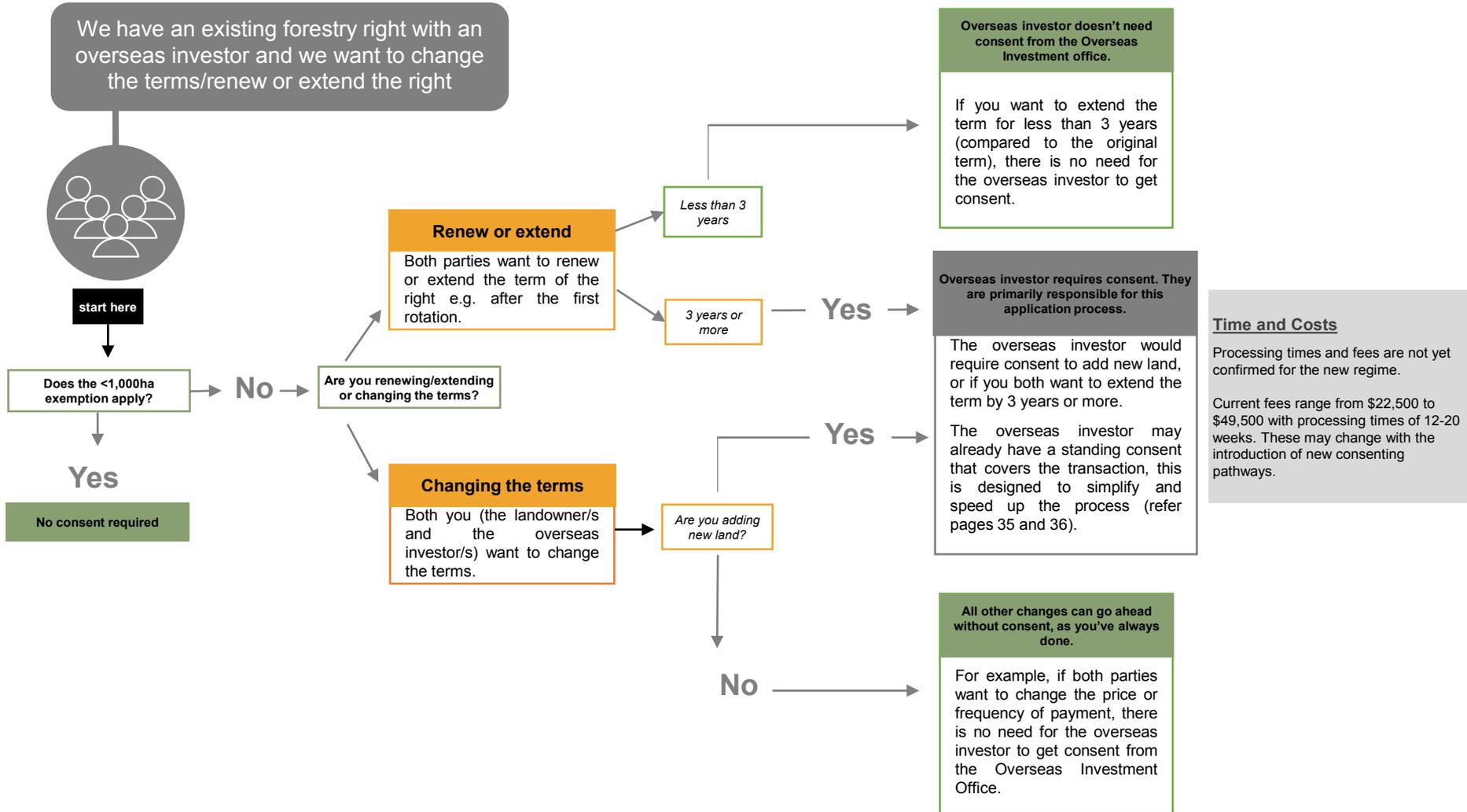


We have an existing forestry right with an overseas investor and we want to change the terms/renew or extend the right

Key messages:

- If your forestry right, plus the investor's other acquisitions in that calendar year, is for less than 1,000 hectares, then you can make the changes without the investor needing to get consent from the Overseas Investment Office.
- If your forestry right is for more than 1,000 hectares then the overseas investor will only need consent if you are making the following changes:
 - 1) adding new land
 - 2) extending the term for three years or more, from the original term
 - 3) adding a new right of renewal or more generous right of renewal
- Changes to forestry rights resulting from arrangements before the legislation comes into effect won't need consent.

Scenario Two: Existing Forestry Rights



Scenario Three: New Forestry Rights



We have existing forestry land and want to enter into a forestry right arrangement with a new overseas investor

Key message:

- If the forestry right you want to enter into:
 - a) plus the investor's other forestry rights acquisitions in that calendar year, is for less than 1,000 hectares, *and/or*
 - b) is for less than 3 years

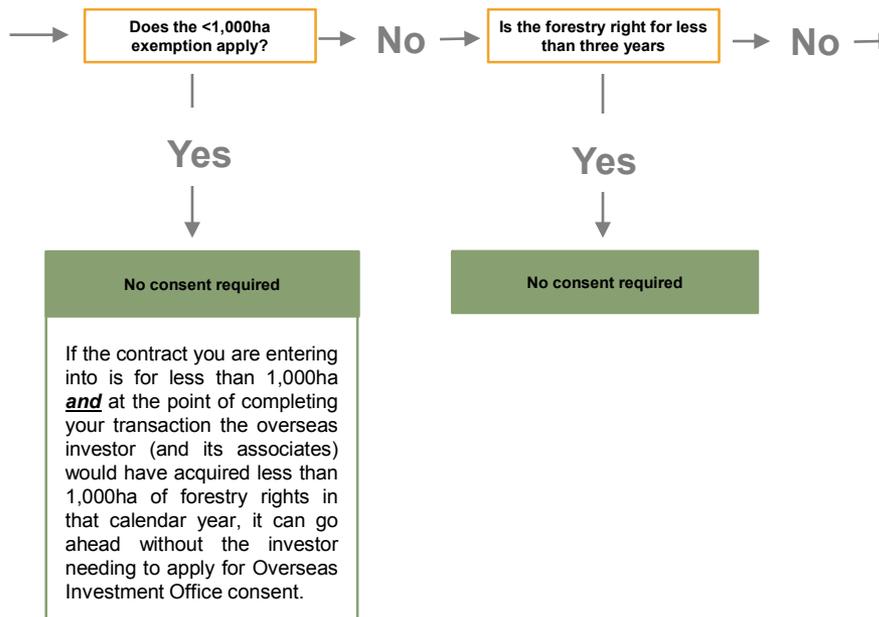
then you can make the changes without the investor needing to get consent from the Overseas Investment Office.

Scenario Three: New Forestry Rights

We have existing forestry land and want to enter into a forestry right arrangement with a new overseas investor



start here



Scenario Four: Leasing (or selling) your forestry land

We want to lease (or sell) our existing forestry land to an overseas investor



Key message:

- If the land you want to sell or lease is less than 5ha*, (and if you are leasing, it is for less than 3 years) then you can make the changes without the investor needing to get consent from the Overseas Investment Office.

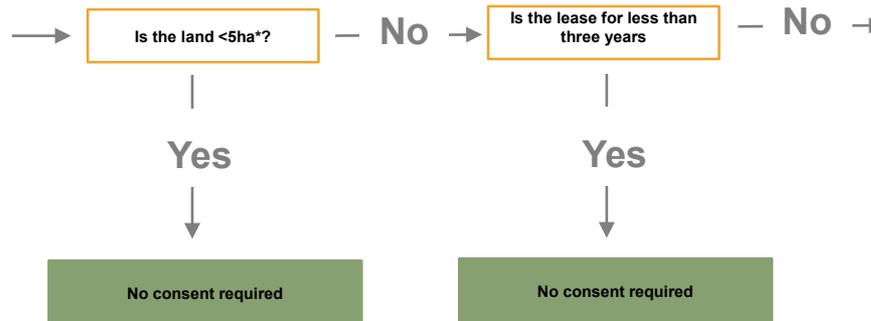
* or less in a few circumstances

Scenario Four: Leasing (or selling) your forestry land to an overseas investor

We want to lease (or sell) our existing forestry land to an overseas investor



start here



No consent required

If the land for lease (or sale) is smaller than 5 hectares, including any adjoining land already owned or leased by the overseas investor, and it is not otherwise 'sensitive' (according to Schedule 1 of the Act) then it can go ahead without the investor needing to apply for Overseas Investment Office consent.

No consent required

If your overseas investor requires consent, they have a choice between three different benefits tests: the existing test, the modified benefits test, or the new streamlined special benefits test pathway

Overseas investor requires consent. They are primarily responsible for this application process.

The overseas investor would require consent where the land is 5ha* or more, and it is either for sale or the lease is for 3 years or more.

The overseas investor may already have a standing consent that covers the transaction, this is designed to simplify and speed up the process (refer pages 35 and 36).

Time and Costs

Processing times and fees are not yet confirmed for the new regime.

Current fees range from \$22,500 to \$49,500 with processing times of 12-20 weeks. These may change with the introduction of new consenting pathways.

Scenario Five: Converting your land to forestry

We have land that is not currently being used for forestry and want to enter into an arrangement with a new overseas investor, using forestry rights



Key message:

- This situation is very similar to *Scenario Three*, ie, the situation where your land is already being used for forestry and you want to enter into a forestry right with a new overseas investor.
- If the forestry right you want to enter into:
 - a) plus the investor's other forestry rights acquisitions in that calendar year, is for less than 1,000 hectares *and/or*
 - b) is for less than 3 years

then the Overseas Investment Act doesn't apply, and so you can enter the arrangement without the investor requiring consent.

Scenario Five: Converting your land to forestry

We have land that is not currently being used for forestry and want to enter into an arrangement with a new overseas investor, using forestry rights



start here

Does the <1,000ha exemption apply?

No

Is the forestry right for less than three years

No

Yes

Yes

No consent required

No consent required

If the contract you are entering into is for less than 1,000ha **and** at the point of completing your transaction the overseas investor (and its associates) would have acquired less than 1,000ha of forestry rights in that calendar year, it can go ahead without the investor needing to apply for Overseas Investment Office consent.

If your overseas investor requires consent, they have a choice between three different benefits tests: the existing test, the modified benefits test, or the new streamlined special benefits test pathway.

Overseas investor requires consent. They are primarily responsible for this application process.

The overseas investor would require consent where the forestry rights are for 3 years or more, and the <1,000ha exemption does not apply.

The overseas investor may already have a standing consent that covers the transaction, this is designed to simplify and speed up the process (refer pages 35 and 36).

Time and Costs

Processing times and fees are not yet confirmed for the new regime.

Current fees range from \$22,500 to \$49,500 with processing times of 12-20 weeks. These may change with the introduction of new consenting pathways.

Our overseas investor requires consent – what does this mean for us?



What is a standing consent?

A standing consent allows that investor to obtain a 'prior approval' to enter into future forestry transactions, within the scope defined in that particular consent.

This process is designed to speed up and simplify the process for you and the investor, in cases where an investor with a strong track record is likely to be entering in a number of different transactions.

What is a standing consent?

Does the investor have a standing consent*?

Yes

No

Investor must get consent from the Overseas Investment Office approval, which involves them passing one of the Benefits Tests.

Proceed with transaction

Once they have a standing consent, the responsibility will be on the investor to do a self-assessment against the Special Benefits Test. This will require some input from you to ensure they fully understand the existing arrangements on the land and therefore can commit to maintaining them.

The investor will need to notify the Overseas Investment Office of how they plan to continue meeting these obligations.

The Overseas Investment Office may want to discuss these arrangements with the you/the vendor, and/or the investor.

The Benefits Test/s

- The investor has a choice between three different benefits tests: the existing benefits tests, the modified benefits test, and the special benefits test.
- Each test includes an investor test, (which assesses their business acumen, character, and financial commitment) as well as a number of criteria related to the particular transaction they are seeking consent for.
- The Special Benefits Test is a new streamlined pathway that we've introduced to make it easier for you and the investor to assess whether they will get consent.
- If the investor doesn't meet the requirements for this test – there is still the option of either:
 - a) using the new Modified Benefits Tests *or*
 - b) meeting the current requirements (ie, the existing benefits test).
- The responsibility sits with the overseas investor to meet the test requirements, however they will require information from you to understand the existing arrangements on the land.



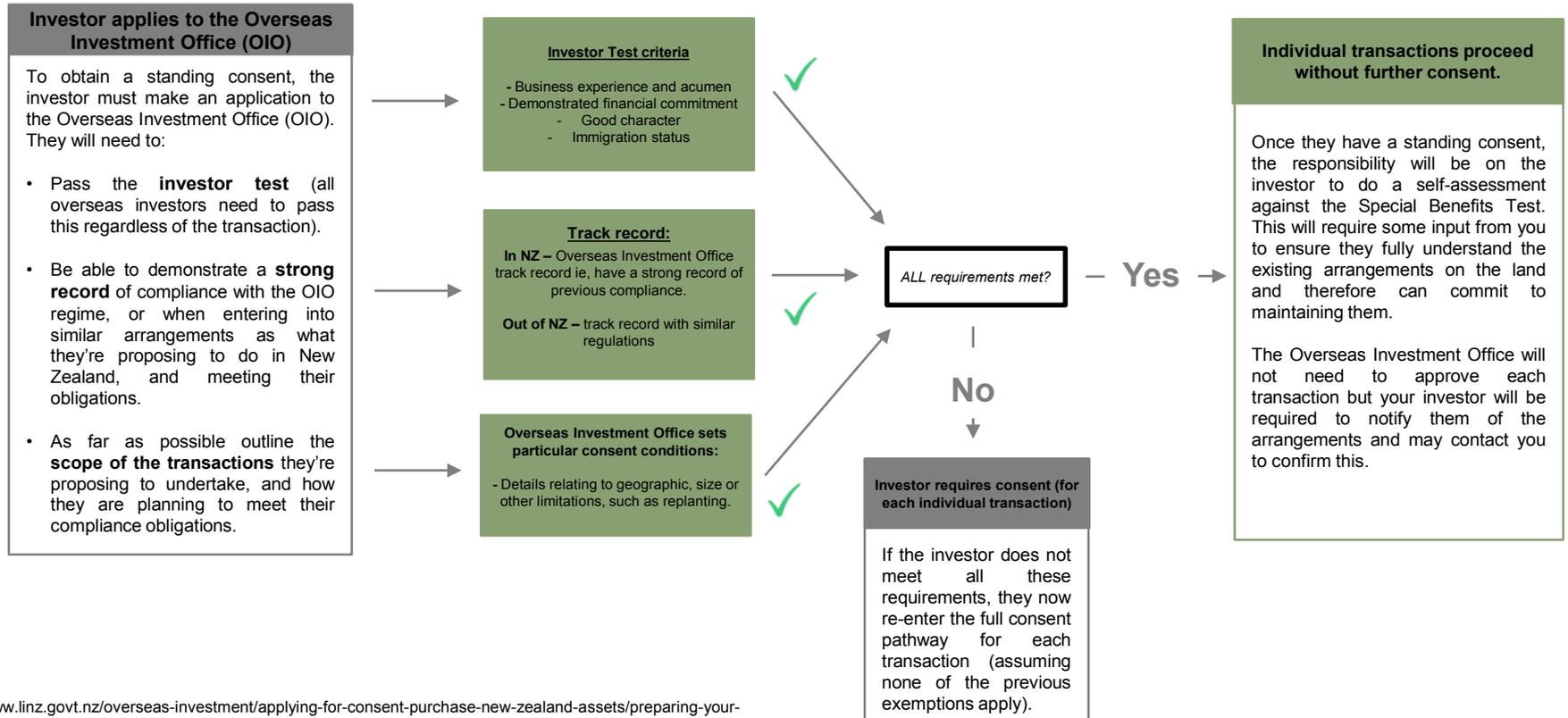
Once one of the benefits tests are passed, the transaction can proceed.

* that covers this particular transaction.

More about Standing Consents



I am entering into an arrangement with an overseas investor who wants to enter into multiple forestry transactions. How do standing consents work?



More information

- LINZ website – Overseas Investment section: <http://www.linz.govt.nz>

<https://www.linz.govt.nz>

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Annex: key terms and background information

Key terms

- ‘Forestry rights’ include the right to maintain, establish (plant) and harvest trees on someone else’s freehold land.
- An ‘overseas person’ is defined in the Overseas Investment Act. Broadly speaking, this is a person who is not ‘ordinarily resident in New Zealand’, or an entity or trust that is 25% or more owned or controlled by overseas persons.
- ‘Sensitive land’ is defined in Schedule 1, Part 1 of the Overseas Investment Act 2005.
- A ‘profits à prendre’ is a type of interest in land that gives the holder of the interest the right to take part of the land, for example, to cut and remove timber from the land or to remove parts of the soil such as coal, gravel, or stone.

- Transaction includes:
 - (a) the sale or transfer of property or securities; and
 - (b) the issue, allotment, buyback, or cancellation of securities; and
 - (c) the entering into, or the giving of effect to a provision in, a contract or arrangement; and
 - (d) the arriving at, or the giving of effect to, an understanding.

Background: Overseas Investment Act 2005

- The Overseas Investment Act acknowledges that it is a privilege for overseas persons to own or control sensitive New Zealand assets. The Act ensures quality investments in New Zealand's valued assets bring benefits to the country.
- It does this by setting the criteria for overseas persons investing in certain New Zealand land, high value businesses or fishing quota, and the power to impose conditions on those investments.
- Currently, overseas persons seeking to purchase or lease forestry land over 5 hectares must normally be screened to get consent for investments, but this isn't necessary for overseas persons seeking to acquire forestry rights up to a value of \$100 million.
- The Overseas Investment Office administers functions under the Act and has a statutory function to consider applications for consent, advise Ministers how applications should be decided, and enforce breaches of the Act.

Background: The changes to the Overseas Investment Act

There are two main components:

- To make forestry rights and certain other types of profit à prendre subject to screening under the Overseas Investment Act; and
- To provide a new, more streamlined and certain, pathway for obtaining consent an overseas investment in sensitive land relates to forestry activities.

Contact details

Further feedback can be mailed to:

Overseas Investment Act Reforms

The Treasury

PO Box 3724

Wellington 6140

New Zealand

Or emailed to overseasinvestment@treasury.govt.nz

Any feedback may be released under the Official Information Act. Please state if you have any objection to any information being released.

