

House of Representatives

Supplementary Order Paper

Tuesday, 20 March 2018

Overseas Investment Amendment Bill

Proposed amendments

Hon David Parker, in Committee, to move the following amendments:

New subpart 1 heading in Part 1

After the Part 1 heading (page 4, after line 2), insert:

Subpart 1—Residential land

New subpart 2 of Part 1

After *clause 5* (page 4, after line 24), insert:

Subpart 2—Forestry rights and other *profits à prendre*

5A Section 6 amended (Interpretation)

(1) In section 6(1), replace the definition of **exempted interest** with:

exempted interest means—

- (a) an easement; or
- (b) a *profit à prendre* that is not a regulated *profit à prendre*

(2) In section 6(1), insert in their appropriate alphabetical order:

forestry right means—

- (a) a right created in accordance with the Forestry Rights Registration Act 1983; or
- (b) any other *profit à prendre* that relates to trees in a forest

regulated profit à prendre—

- (a) means—
 - (i) a forestry right; or

- (ii) any other *profit à prendre*, if the area of land covered by the *profit à prendre* is (or will be) used exclusively or principally for the purposes of the *profit à prendre*; but
- (b) does not include—
 - (i) a *profit à prendre* that consists only of rights to take any mineral (as that term is defined in section 2(1) of the Crown Minerals Act 1991); or
 - (ii) a *profit à prendre* to which **paragraph (a)(ii)** would otherwise apply, if the *profit à prendre* is within a class set out in regulations as a class of *profits à prendre* not to be treated as regulated *profits à prendre*

5B Section 10 amended (Consent required for overseas investments in sensitive New Zealand assets)

After section 10(2), insert:

- (3) **Schedule 1A** applies special rules about when consent is required in relation to overseas investments in sensitive land involving regulated *profits à prendre*.

5C New Schedule 1A inserted

After Schedule 1, insert:

Schedule 1A
Special rules about when consent required in relation to overseas investments in sensitive land involving regulated *profits à prendre*

s 10(3)

Part 1
Forestry rights

1 Application of this Part and definitions

- (1) This Part applies to an overseas investment in sensitive land if the interest in land described in section 12(a) is a forestry right.
- (2) In this Part,—

area, in relation to a forestry right, means the area of land (in hectares) covered by the forestry right (including any right to have the original area increased)

relevant forestry investment means the overseas investment in sensitive land referred to in **subclause (1)**

relevant forestry right means the forestry right referred to in **sub-clause (1)**.

2 Area of relevant forestry right less than 1 000 hectares

- (1) If the area of the relevant forestry right is less than 1 000 hectares, consent is not required in relation to the relevant forestry investment.
- (2) **Subclause (1)** is subject to **clause 3**.

3 Annual accumulation test

- (1) **Clause 2(1)** does not apply if, immediately after the relevant forestry investment is made, the sum of the following areas is 1 000 hectares or more:
 - (a) the area of the relevant forestry right;
 - (b) the combined area of all other forestry rights—
 - (i) that related forestry investors acquire in the same calendar year as that in which the relevant forestry investment is made; and
 - (ii) that are for a term of 3 years or more (including rights of renewal, whether of the grantor or grantee).
- (2) For the purposes of **subclause (1)(b)**,—
 - (a) **related forestry investor** means—
 - (i) the person who makes the relevant forestry investment; or
 - (ii) any associate of that person; and
 - (b) a related forestry investor (**B**) is treated as acquiring a forestry right if—
 - (i) B acquires rights or interests in securities of a person (**C**) who owns or controls (directly or indirectly) the forestry right and, as a result of the acquisition, B has (either alone or together with B's associates) a 25% or more ownership or control interest in C; or
 - (ii) the forestry right comes under the ownership or control (direct or indirect) of a person in whom B has (either alone or together with B's associates) a 25% or more ownership or control interest; and
 - (c) it does not matter if a forestry right is acquired by a related forestry investor before the relevant forestry investment is made.

Part 2

Other regulated *profits à prendre*

4 Application of this Part and definitions

(1) This Part applies to an overseas investment in sensitive land if the interest in land described in section 12(a) is a regulated *profit à prendre* that is not a forestry right.

(2) In this Part,—

area, in relation to a regulated *profit à prendre*, means the area of land (in hectares) covered by the regulated *profit à prendre* (including any right to have the original area increased)

relevant profit means the regulated *profit à prendre* referred to in **subclause (1)**

relevant profit investment means the overseas investment in sensitive land referred to in **subclause (1)**.

5 Area of relevant *profit* less than 5 hectares

(1) If the area of the relevant *profit* is less than 5 hectares, consent is not required in relation to the relevant *profit* investment.

(2) **Subclause (1)** is subject to **clause 6**.

6 Accumulation test

(1) **Clause 5(1)** does not apply if, immediately after the relevant *profit* investment is made, the sum of the following areas is 5 hectares or more:

- (a) the area of the relevant *profit*;
- (b) the combined area of all other regulated *profits à prendre*—
 - (i) that are not forestry rights; and
 - (ii) that are held by related *profit* investors in respect of—
 - (A) the relevant land; or
 - (B) any land that is associated land in respect of the relevant land; and
 - (iii) that are for a term of 3 years or more (including rights of renewal, whether of the grantor or grantee).

(2) For the purposes of **subclause (1)(b)**,—

- (a) **related profit investor** means—
 - (i) the person who makes the relevant *profit* investment; or
 - (ii) any associate of that person; and

- (b) **held** includes owned or in the possession of by any means; and
- (c) a related *profit* investor (**B**) is treated as holding a regulated *profit à prendre* if the regulated *profit à prendre* is under the ownership or control (direct or indirect) of a person in whom B has (either alone or together with B's associates) a 25% or more ownership or control interest; and
- (d) it does not matter if a regulated *profit à prendre* is first held by a related *profit* investor before the relevant *profit* investment is made.

Clause 7

In *clause 7(1)*, new definition of **mandatory conditions**, *paragraph (c)*, replace “**16F**” (page 5, line 30) with “**16F(2) or (4)**”.

Clause 11

In *clause 11*, after the heading to *new section 16E* (page 11, after line 17), insert:

General test

In *clause 11*, *new section 16E(c)*, replace “**16F**” (page 11, line 28) with “**16F(1) and (2)**”.

In *clause 11*, *new section 16E*, insert as *subsections (2) to (10)* (page 11, after line 29):

- (2) **Subsection (3)** applies if the relevant Ministers are satisfied—
 - (a) that the interest in land described in section 12(a) is a freehold estate or a lease; and
 - (b) that the relevant land is not, and does not include, residential land; and
 - (c) that, throughout the investment period, the relevant land will be, or will likely be, used exclusively or principally for 1 or both of the following:
 - (i) forestry activities;
 - (ii) establishing a crop of trees otherwise than to replace a crop of trees that has been harvested.
- (3) For the purposes of **subsection (1)(a) and (b)**, the relevant Ministers may assess the benefit to New Zealand (or any part of it or group of New Zealanders) by comparing the expected result of the overseas investment with what is expected to happen in relation to the relevant land if—
 - (a) the overseas investment is not made; and
 - (b) there were to be no future changes to the ownership or control (direct or indirect) of—

- (i) interests in the relevant land; or
- (ii) rights or interests in securities of persons who own or control (directly or indirectly) interests in the relevant land.

Special test relating to forestry

- (4) Regulations may provide that the benefit to New Zealand test is also met if the relevant Ministers are satisfied—
 - (a) that 1 or both of the following applies:
 - (i) the interest in land described in section 12(a) is a forestry right;
 - (ii) the relevant land is used exclusively or principally for forestry activities; and
 - (b) that the relevant land is not, and does not include, residential land; and
 - (c) that, throughout the investment period, the following requirements will be, or will likely be, met:
 - (i) if the interest in land described in section 12(a) is not a forestry right, the relevant land will be used exclusively or principally for forestry activities;
 - (ii) the relevant land will not be used for any residential purposes; and
 - (d) that any requirements set out in regulations in accordance with **subsection (5)** will be, or will likely be, met; and
 - (e) that any other requirements set out in regulations are met.
- (5) Regulations may, for the purposes of **subsection (4)(d)**, set out requirements that must be met after the overseas investment in sensitive land is made, including the times at or by which, or the periods throughout which, the requirements must be met.
- (6) Requirements set out for the purposes of **subsection (4)(d)** may (without limitation) be about 1 or more of the following:
 - (a) activities that must, or must not, be carried out on the relevant land (including (without limitation) requirements about the establishing of crops of trees to replace harvested crops):
 - (b) the maintenance or protection of things that exist when the overseas investment in sensitive land is made (including (without limitation) requirements about maintaining any existing heritage, biodiversity, environmental, or public access commitments or existing commitments relating to the supply of logs):

- (c) outcomes that must result from the overseas investment in sensitive land.
- (7) The relevant Ministers may decide not to apply, or may modify, any requirement set out for the purposes of **subsection (4)(d)** if satisfied that the relevant overseas person will not have sufficient rights in respect of the relevant land to ensure that the requirement is met.
- (8) Regulations made for the purposes of **subsection (4)(e)** may (without limitation) require the relevant land (or any part of the relevant land) to have been offered to the Crown in accordance with regulations.
- Definitions*
- (9) In this section,—
- forestry activities** means any of the following:
- (a) maintaining a crop of trees:
 - (b) harvesting a crop of trees:
 - (c) establishing a crop of trees to replace a crop of trees that has been harvested
- held** includes owned or in the possession of by any means
- investment period** means the period that—
- (a) begins when the overseas investment in sensitive land is made; and
 - (b) ends when the interest in land described in section 12(a) is held by neither—
 - (i) the person who makes the overseas investment in sensitive land; nor
 - (ii) any associate of that person
- relevant land**, if the interest in land described in section 12(a) is a forestry right, means so much of the relevant land as is covered by the forestry right.
- (10) For the purposes of **paragraph (b)** of the definition of investment period in **subsection (9)**, a person (**P**) referred to in **subparagraph (i) or (ii)** of that paragraph is treated as holding the interest in land if the interest in land is owned or controlled (directly or indirectly) by a person in whom P (either alone or together with P's associates) has a 25% or more ownership or control interest.

In *clause 11*, heading to new section 16F, replace “**land:**” (page 11, line 30) with “**land or that is used for forestry:**”.

In *clause 11*, new section 16F(1), replace “This section” (page 11, line 32) with “**Subsection (2)**”.

In *clause 11*, new *section 16F(1)*, after “**16E**” (page 11, line 34), insert “in accordance with **section 16E(1)**”.

In *clause 11*, after new *section 16F(2)* (page 12, after line 5), insert:

- (3) **Subsection (4)** applies if an application for consent for an overseas investment in sensitive land is being considered under the benefit to New Zealand test in **section 16E** in accordance with **section 16E(4)**.
- (4) If granted, the consent must be made subject to conditions that attach to the requirements set out in—
 - (a) **section 16E(4)(c)**; and
 - (b) regulations made for the purposes of **section 16E(4)(d)** (subject to **section 16E(7)**).

Clause 12

In *clause 12(1)*, replace “**16E(a)** and **(b)**” (page 12, line 9) with “**16E(1)(a)** and **(b)** (including where **section 16E(3)** is being applied)”.

In *clause 12(2)*, replace “**16E(a)** and **(b)**” (page 12, line 11) with “**16E(1)(a)** and **(b)** (including where **section 16E(3)** is being applied)”.

Clause 13

In *clause 13*, after new *section 23(1)(ca)* (page 12, after line 26), insert:

- (cb) if the application is to be considered in accordance with **section 16E(1)** applying **section 16E(3)**, or in accordance with **section 16E(4)**, state that that is the case; and

Clause 14

In the heading to *clause 14*, replace “**section 23A inserted (Applications for “standing consent” in advance of transaction)**” (page 12, lines 27 and 28) with “**sections 23A to 23C inserted**”.

In *clause 14*, heading to new *section 23A*, after “**transaction**” (page 12, line 30), insert “: **residential (but not otherwise sensitive) land**”.

In *clause 14*, after new *section 23A* (page 13, after line 20), insert:

**23B “Forestry standing consent” in advance of transactions:
applications considered in accordance with section 16E(1)
applying section 16E(3)**

Application for forestry standing consent

- (1) A person may apply for consent to enter into an unspecified future transaction or transactions that fall within a class of transactions described in the application (a **forestry standing consent**) if the person applies—

- (a) for consent under the benefit to New Zealand test in **section 16E**; and
- (b) for the application to be considered in accordance with **section 16E(1)** applying **section 16E(3)**.

Grant of forestry standing consent

- (2) The relevant Ministers may, despite section 14(1), grant a forestry standing consent if the relevant Ministers are satisfied—
 - (a) that the criteria in section 16(1)(a) to (d) are met; and
 - (b) that the conditions referred to in **subsections (3) and (4)** of this section would be, or would likely be, met; and
 - (c) without limiting **paragraph (b)**, that the applicant, when deciding whether to enter into a transaction to which the consent would apply, can be relied upon properly to assess whether the benefit to New Zealand test is met for the transaction in accordance with **section 16E(1)** applying **section 16E(3)**.

Conditions of forestry standing consent

- (3) A forestry standing consent must be granted subject to the following conditions:
 - (a) a condition that the consent holder must not enter into a transaction in reliance on the consent unless the consent holder has assessed that the benefit to New Zealand test is met for the transaction in accordance with **section 16E(1)** applying **section 16E(3)**;
 - (b) a condition that—
 - (i) the consent holder must notify the regulator of each transaction to which the consent will apply, at the time, and in the manner, specified in the consent; and
 - (ii) the notification must include—
 - (A) a report detailing why the consent holder assessed that the benefit to New Zealand test is met for the transaction in accordance with **section 16E(1)** applying **section 16E(3)**; and
 - (B) any other information relating to the transaction, or to the consent holder's compliance with the conditions of the consent, required by the regulator (including for the purposes of the relevant Ministers' review under **subsection (7)**); and
 - (iii) the consent holder must provide the regulator with any other information relating to the transaction, or to the consent holder's compliance with the conditions of the

consent, as required by the regulator from time to time (including for the purposes of the relevant Ministers' review under **subsection (7)**):

- (c) a condition that, where a transaction is entered into in reliance on the consent, no activities referred to in **section 16E(2)(c)(i) and (ii)** may be carried out on the relevant land unless, and until, the relevant Ministers have notified the consent holder under **subsection (7)(a) or (b)**:
 - (d) other conditions for the purpose of ensuring that the benefit to New Zealand test in **section 16E** is met for each transaction to which the consent will apply in accordance with **section 16E(1)** applying **section 16E(3)**.
- (4) If regulations under section 61(1)(c) are in force, it is a condition of every forestry standing consent that, where the consent holder relies on the consent for a transaction, the requirements of those regulations must be met if applicable.
- (5) **Subsection (4)** applies—
- (a) whether or not the condition is stated in the consent:
 - (b) whether the regulations come into force before or after the forestry standing consent is granted.
- (6) A forestry standing consent may, in accordance with **section 25A**, be granted subject to additional conditions (including, for example, conditions limiting the size, or geographical areas, of any land in respect of which interests may be acquired in reliance on the consent or limiting the number of transactions that may be entered into in reliance on the consent).
- Relevant Ministers to review consent holder's assessment of benefit test*
- (7) The relevant Ministers must review each report referred to in **subsection (3)(b)(ii)(A)** and—
- (a) notify the consent holder that the relevant Ministers are satisfied with the consent holder's assessment; or
 - (b) notify the consent holder that the relevant Ministers are satisfied with the consent holder's assessment but subject to conditions, and make the forestry standing consent subject to those conditions; or
 - (c) direct the regulator to make an application under section 47 for an order to dispose of property.
- Expiry or revocation of forestry standing consent*
- (8) A forestry standing consent may specify a time at which the consent expires.

(9) The relevant Ministers may revoke a forestry standing consent at any time if they are no longer satisfied of any matter listed in **subsection (2)**.

(10) The expiry or revocation of a forestry standing consent does not apply to any transaction previously entered into in reliance on the consent.

Final provision

(11) A forestry standing consent is only a consent for a transaction for the purposes of this Act if the transaction—

(a) is notified to the regulator as required by the conditions of the consent; and

(b) meets the other conditions to which the consent is subject.

23C “Forestry standing consent” in advance of transactions: applications considered in accordance with section 16E(4)

Application for forestry standing consent

(1) A person may apply for consent to enter into an unspecified future transaction or transactions that fall within a class of transactions described in the application (a **forestry standing consent**) if the person applies—

(a) for consent under the benefit to New Zealand test in **section 16E**; and

(b) for the application to be considered in accordance with **section 16E(4)**.

Grant of forestry standing consent

(2) The relevant Ministers may, despite section 14(1), grant a forestry standing consent if the relevant Ministers are satisfied—

(a) that the criteria in section 16(1)(a) to (d) are met; and

(b) that the conditions referred to in **subsections (3) and (4)** of this section would be, or would likely be, met; and

(c) without limiting **paragraph (b)**, that the applicant has, and will continue to have, adequate processes in place for identifying existing things that regulations made for the purposes of **section 16E(4)(d)** require to be maintained or protected (*see* **section 16E(6)(b)**); and

(d) without limiting **paragraph (b)**, that the applicant has a strong record of 1 or both, or a combination of, the following:

(i) identifying existing things that regulations made for the purposes of **section 16E(4)(d)** require to be maintained or protected (*see* **section 16E(6)(b)**), and then maintaining or protecting those things as required:

- (ii) carrying out activities (whether in New Zealand or elsewhere) that are of a similar nature to those described in **subparagraph (i)**.

Conditions of forestry standing consent

- (3) A forestry standing consent must be granted subject to the following conditions:
 - (a) a condition that—
 - (i) the consent holder must notify the regulator of each transaction to which the consent will apply, at the time, and in the manner, specified in the consent; and
 - (ii) the notification must include any other information relating to the transaction, or to the consent holder's compliance with the conditions of the consent, required by the regulator; and
 - (iii) the consent holder must provide the regulator with any other information relating to the transaction, or to the consent holder's compliance with the conditions of the consent, as required by the regulator from time to time;
 - (b) other conditions for the purpose of ensuring that the benefit to New Zealand test in **section 16E** is met in accordance with **section 16E(4)** for each transaction to which the consent will apply.
 - (4) If regulations under **section 61(1)(bc)** are in force, it is a condition of every forestry standing consent that, where the consent holder relies on the consent for a transaction, the requirements of those regulations must be met if applicable.
 - (5) **Subsection (4)** applies—
 - (a) whether or not the condition is stated in the consent;
 - (b) whether the regulations come into force before or after the forestry standing consent is granted.
 - (6) A forestry standing consent may, in accordance with **section 25A**, be granted subject to additional conditions (including, for example, conditions limiting the size, or geographical areas, of any land in respect of which interests may be acquired in reliance on the consent or limiting the number of transactions that may be entered into in reliance on the consent).
- Expiry or revocation of forestry standing consent*
- (7) A forestry standing consent may specify a time at which the consent expires.

- (8) The relevant Ministers may revoke a forestry standing consent at any time if they are no longer satisfied of any matter listed in **subsection (2)**.
- (9) The expiry or revocation of a forestry standing consent does not apply to any transaction previously entered into in reliance on the consent.
- Final provision*
- (10) A forestry standing consent is only a consent for a transaction for the purposes of this Act if the transaction—
- (a) is notified to the regulator as required by the conditions of the consent; and
 - (b) meets the other conditions to which the consent is subject.

Clause 19

In *clause 19*, new *section 34(3)(ba)(iii)*, replace “**16F**” (page 14, line 25) with “**16F(2) or (4)**”.

New clause 27A

After *clause 27* (page 19, after line 35), insert:

27A Section 47 amended (Court may order disposal of property)

- (1) In section 47(1)(d), replace “exemption.” with “exemption; or”.
- (2) After section 47(1)(d), insert:
 - (e) not properly assessed whether the benefit to New Zealand test is met in accordance with **section 16E(1)** applying **section 16E(3)** for a transaction entered into in reliance on a forestry standing consent under **section 23B**.

Clause 33

In *clause 33(1)*, after *new section 61(1)(aab)* (page 23, after line 18), insert:

- (aac) prescribing classes of *profits à prendre* not to be treated as regulated *profits à prendre* in this Act:

In *clause 33(2)*, after *new section 61(1)(ba)* (page 23, after line 25), insert:

- (bb) making provision as referred to in **section 16E(4) to (8)**:
- (bc) without limiting **paragraph (bb)**, providing what is required for an offer of the relevant land (or any part of the relevant land) to the Crown to be sufficient for the purposes of a requirement referred to in **section 16E(8)**, including prescribing—
 - (i) the maximum period for which the offer must be open:

- (ii) at what price the land must be offered, and a valuation procedure for fixing that price:
- (iii) on what terms and conditions the land must be offered to the Crown, with the purpose of ensuring it is offered on terms and conditions equivalent to those offered to the overseas person:
- (iv) power for the relevant Ministers to reject an offer as not being sufficient for the purposes of a requirement referred to in **section 16E(8)** because it is not on terms and conditions equivalent to those offered to the overseas person:

Explanatory note

Introduction

This Supplementary Order Paper (the **SOP**) proposes amendments to the Overseas Investment Amendment Bill (the **Bill**) that was introduced into Parliament on 14 December 2017. The Bill contains amendments to the Overseas Investment Act 2005 (the **OIA**).

The OIA requires consent to be obtained for overseas investments in sensitive New Zealand assets. In particular, the OIA requires consent to be obtained for overseas investments in sensitive land (*see* Schedule 1 of the OIA) and sets out criteria that must be met for consent to be given.

Purpose of SOP

The purpose of the SOP is, first, to bring overseas investments in sensitive land that involve forestry rights or certain other *profits à prendre* within the scope of the OIA and, secondly, to set out new tests for consent where an overseas investment in sensitive land relates to forestry.

A *profit 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.

General policy statement

Forestry is a sector of strategic importance to New Zealand. Forestry accounts for around 3 percent of New Zealand's GDP and is New Zealand's third-largest export product earner behind dairy and meat. Forestry is a long term investment. Security of tenure and the ability to realise investment are both crucial to investment. The three main types of ownership are freehold, leasehold, and forestry rights.

A proprietor of land may create a forestry right under the Forestry Rights Registration Act 1983 (the **1983 Act**) that permits the holder of the right to carry out forestry activities on the land, for example, the right to establish, maintain, and harvest a crop of trees on the land. The 1983 Act deems a forestry right created under it to be a *profit à*

prendre. Rights related to trees in forests may also be created as *profits à prendre* on a non-statutory basis.

Just about any forest that can be sold as a freehold or leasehold in the land can alternatively be sold as a forestry right. Forestry rights can be for longer than one rotation of trees. While freehold and leasehold purchases of forests are screened under the OIA, purchases of forestry rights are not.

The forestry sector is reliant on direct overseas investment in a way that neither other rural land nor residential land are. Although current information on overseas investment in forestry is not definitive, research suggests that up to 70 percent of the plantation forest trees (including long term control of, but not always freehold ownership, of the underlying land) are in overseas ownership. Further detail on plantation forests in New Zealand is available at—

- <http://www.treasury.govt.nz/publications/informationreleases/overseasinvestment>

The proposed approach includes forestry rights under the OIA, but then imposes a very light-handed checklist screening regime, which will enable overseas purchases if the test is met. There is no evidence that this will have a substantial effect on commercial values. Overseas investors in forestry via freehold ownership, leasehold arrangements and forestry rights have welcomed the announcement, which suggests we will be stimulating rather than inhibiting forestry investment overall.

The one billion trees programme is an important component of this Government's strategy for driving regional economic growth. Encouraging high quality overseas investment is crucial to achieving the one billion trees programme.

Stakeholders have provided feedback that the existing screening regime for overseas investment in freehold and leasehold land involves lengthy delays and expense; investors complained of processes taking many months, with application fees of up to \$49,000 per transaction or up to \$54,000 where significant business assets are also included. They will also incur substantial legal costs in preparing their applications. The changes proposed in the SOP are designed to streamline and speed up processing of applications regarding forestry compared to using the current tests.

The SOP also removes a gap in the current screening regime where some interests in land, specifically easements and *profits à prendre*, are currently exempted from the OIA screening regime as an interest in land. Forestry rights (included those created under the 1983 Act) are a type of *profit à prendre* and are currently not screened. This is despite the fact that forestry rights can grant a high degree of control over large parcels of New Zealand land for large periods of time.

It is important that forestry rights are included within the screening regime prior to the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) entering into force. It will be possible to tighten or further loosen the criteria applied to forestry investment in the future if required.

Forestry rights brought within scope of OIA

Overseas investments in sensitive land that involve forestry rights, whether created under the 1983 Act or as *profits à prendre* on a non-statutory basis, are currently exempted from the scope of the OIA. This is because forestry rights fall within the definition of exempted interest in section 6(1) of the OIA. The SOP proposes replacing the definition of exempted interest with a new definition of that term (*see new clause 5A(1)*). Excluded from the new definition of exempted interest are regulated *profits à prendre*, which are defined to include forestry rights (*see the new definitions of forestry right and regulated profit à prendre inserted by new clause 5A(2)*).

The SOP proposes inserting *new Schedule 1A* into the OIA (*see new clauses 5B and 5C*). *Part 1 of new Schedule 1A* provides that consent for an overseas investment in sensitive land that involves a forestry right is not required if the area of land covered by the forestry right is less than 1 000 hectares (*see clause 2(1) of new Schedule 1A*). However, this threshold rule may be disapplied in a calendar year if, during the calendar year, the overseas investor (and any associated investors) invest (directly or indirectly) in forestry rights covering a combined area of 1 000 hectares or more (*see clause 3 of new Schedule 1A*).

Other profits à prendre brought within scope of OIA

Overseas investments in sensitive land that involve *profits à prendre* that are not forestry rights are also currently exempted from the scope of the OIA because they fall within the definition of exempted interest in section 6(1) of the OIA. As mentioned above, the SOP proposes replacing the definition of exempted interest with a new definition of that term (*see new clause 5A(1)*). Excluded from the new definition of exempted interest are regulated *profits à prendre* (*see the new definition of that term inserted by new clause 5A(2)*). A *profit à prendre* (that is not a forestry right) is a regulated *profit à prendre* if the area of land covered by the *profit à prendre* is (or will be) used exclusively or principally for the purposes of the *profit à prendre*. But a *profit à prendre* is not a regulated *profit à prendre* if it consists only of rights to take minerals.

The new definition of regulated *profit à prendre* also includes a power to provide, by regulations, that classes of *profits à prendre* (other than forestry rights) are not to be treated as regulated *profits à prendre*.

Part 2 of new Schedule 1A (*see new clauses 5B and 5C*) provides that consent for an overseas investment in sensitive land involving a regulated *profit à prendre* (that is not a forestry right) is not required if the area of land covered by the *profit à prendre* is less than 5 hectares (*see clause 5(1) of new Schedule 1A*). However, this threshold rule may be disapplied if the overseas investor (and any associated investors) hold (directly or indirectly) regulated *profits à prendre* in respect of the land in question, or any associated land, covering a combined area of 5 hectares or more (*see clause 6 of new Schedule 1A*).

Criteria for consent where overseas investment in sensitive land relates to forestry

The SOP proposes amending *new section 16E*, as inserted by *clause 11* of the Bill as introduced into Parliament. *New section 16E* sets out the benefit to New Zealand test that must potentially be met in order for consent to be given for an overseas investment in sensitive land. The SOP's proposed amendment does 2 things.

First, the amendment allows a modified benefit test to be applied in certain circumstances where the overseas investment in sensitive land relates to land that will be used for forestry (*see new section 16E(2) and (3) and (9) and (10)*). The modified benefit test provides for a comparison of the expected result of the overseas investment in sensitive land against what is expected to occur if the investment is not made and there are no future changes to the ownership or control of interests in the land. This is different to the counter-factual analysis that is currently applied for the purposes of the benefit test, which requires a comparison of the expected result of the overseas investment in sensitive land against what is expected to occur if the investment is not made. In some cases, this can involve a comparison against an alternative New Zealand investor, rather than assuming no future changes to the ownership or control of interests in the land.

Secondly, the amendment allows a special benefit test to be applied in certain circumstances where the overseas investment in sensitive land relates to forestry (*see new section 16E(4) to (10)*). Some of the requirements of the special benefit test will be set out in regulations. The requirements set out in regulations may include requirements that must be met after the overseas investment in sensitive land is made, including requirements about the following:

- activities that must, or must not, be carried out on the land that is the subject of the overseas investment in sensitive land;
- the maintenance or protection of things that exist when the overseas investment in sensitive land is made;
- outcomes that must result from the overseas investment in sensitive land.

There is also a power to modify these requirements if the overseas investor will not have sufficient rights over the land in question to ensure that the requirements are met.

The SOP proposes amending *new section 16F*, as inserted by *clause 11* of the Bill as introduced into Parliament. The amendment will require any consent granted under the special benefit test to be granted subject to conditions that attach to the requirements that must be met after the investment in sensitive land is made.

The SOP proposes amending *clause 14* of the Bill as introduced into Parliament to insert *new sections 23B and 23C* into the OIA. *New sections 23B and 23C* will enable standing consents to be granted in advance to overseas investors under the modified benefit test or the special benefit test, subject to certain conditions.

Consequential amendments

The other amendments proposed by the SOP are consequential on the amendments described above.

Departmental disclosure statement

The Treasury is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. The disclosure statement provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2018&no=19&>

Regulatory impact assessment

The Treasury produced a regulatory impact assessment on 27 February 2018 to help inform the new policy decisions taken by the Government relating to the contents of this SOP.

A copy of this regulatory impact assessment can be found at—

- <http://www.treasury.govt.nz/publications/informationreleases/ria>