

The Register of Overseas Entities

The Ukraine-Russia war has forced the UK Government to include the Register of Overseas Entities as part of the fast-tracked Economic Crime (Transparency and Enforcement) Act 2022 ('the Act').

The primary objective of the Act is to crack down on tax fraud and money laundering that involves UK property by making it harder to hide behind shell companies and to make it easier to seize properties that have been purchased illegally.

The Act is divided into three parts:

- Part 1 covers the requirement to register overseas entities which own land in the UK;
 - Part 2 covers certain changes to the UK's unexplained wealth orders regime; and
 - Part 3 amends the UK's existing legislation in relation to sanctions.
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- ❖ Part 1 is expected to come into force on 1 August 2022 and this note considers its impact on overseas entities that own land in England and Wales.
 - ❖ The register will only provide information about the beneficial owners and controllers of the overseas entity which hold the land. It is not a register of the beneficial owners of the land in question. These individuals may also be the ultimate beneficial owners, but this may not always be the case, for example, where the overseas entity is holding the land as a nominee.

What is an overseas entity?

- ❖ An overseas entity refers to a legal entity that is governed by the law of a country or territory outside the United Kingdom. In this context, a legal entity is a body corporate, partnership or other entity that is a legal person under the law by which it is governed.

The registration requirements:

- ❖ Any overseas entity that owns or intends to buy UK property must take reasonable steps to identify its "registrable beneficial owners" and obtain the categories of information about them that are specified in the Act. For example, where a registrable beneficial owner is an individual, the required information will include the name, date of birth and nationality of that individual and their usual residential address. The overseas entity must submit the details to Companies House to put on the Register.
- ❖ Once registered, the entity will be required to update its information annually, until such time as it successfully applies to be removed from the register.
- ❖ Overseas entities will need to provide an updated statement to Companies House within 14 days of the end of each 12-month period following the initial registration date. Overseas entities can apply to be removed from the register when they dispose of the relevant UK property interest.
- ❖ The register will be available to the public, although not all information will be available for inspection.

How does the registration requirement apply?

- ❖ Where an overseas company acquires property in England or Wales on or after 1 January 1999, the registrar will be required to enter a restriction against the land meaning that, unless the overseas entity is registered on the Overseas Entities Register (or is exempt from such registration), the overseas entity will be prohibited from disposing of the land.
- ❖ However, the Secretary of State can consent to the registration of a disposition if they are satisfied that the person to whom it was made did not know, and could not reasonably have been expected to know, of the prohibition, and that in all the circumstances it would be unjust for the disposition not to be registered. In practice, this is unlikely to be relied upon.

The Transitional Period

- ❖ An overseas entity (and its officers) must register its ownership of a qualifying estate (namely, a freehold estate or a leasehold estate granted for a term of more than seven years) (or has not made an application to do so which remains pending) by 31 January 2023.
- ❖ An overseas entity will still be required to make an application to register in respect of land if they dispose of registrable land between 28 February 2022 and the end of the Transitional Period.
- ❖ It is still a requirement to register the overseas entity which made the disposal, even if the restriction has not yet been entered against the land by the date of disposal (which would otherwise prohibit the disposal).

What does the registration requirement involve?

- ❖ As a means of gathering information about their beneficial owners, the overseas entity must serve an 'Information Notice' on any person that it knows, or has reasonable cause to believe, is a registrable beneficial owner in relation to the entity or any person who they believe will enable them to identify a beneficial owner.
- ❖ Failure to respond within a month to an information notice, can render an individual liable to a fine or imprisonment.
- ❖ The overseas entity can file its application for registration once all the required information has been obtained. The application must include all the required information in respect of the overseas entity and the beneficial owners, including a statement that the entity has identified one or more registrable beneficial owners. It must also make clear that it has no reasonable cause to believe that there are other beneficial owners.
- ❖ In certain circumstances, if, for example, an overseas entity cannot provide complete information about its registrable beneficial owners, information about its managing officers will be required instead.

Who is a beneficial owner?

- ❖ An individual, government, public authority or other legal entity who, either:
 1. Directly or indirectly holds more than 25% of the shares in the overseas entity;
 2. Directly or indirectly holds more than 25% of the voting rights in the overseas entity;
 3. Directly or indirectly has the right to appoint or remove a majority of the board of directors of the overseas entity; or
 4. Has the right to exercise or exercises significant influence or control over the overseas entity.

What information is required in respect of the beneficial owner?

- ❖ The information will depend on the nature of the beneficial owner which will include the name, address, form/legal entity of the beneficial owner, as well as which condition is met.

Sanctions for failing to register

- ❖ Failure to comply with the Act could result in a fine of up to £2,500 per day or a prison sentence of up to 5 years.
- ❖ A failure to register or to comply with the requirement to update the register annually will mean that an overseas entity:
 - cannot be registered at HM Land Registry as the legal owner of UK land; and
 - where already registered as legal owner, cannot sell, charge or grant a lease of the land for a term of more than seven years as any buyer, chargee or lessee will not be able to register the disposition at the Land Registry.
- ❖ Compliance will be enforced through restrictions on the title registers of land owned by overseas entities. There will also be criminal sanctions for non-compliance and for delivering misleading, false or deceptive information.

Does the register apply to trusts or partnerships?

If trusts and partnerships do not have legal personality under the law by which they are governed, but the trustees of a trust, or members of a partnership, meet any of the beneficial owner conditions above, then there will be a requirement to register and provide certain details about the trust.

Trusts may also be required to register with the Trust Registration Service (“TRS”), as well as on the Register, creating a degree of duplication. This would be the case where a corporate trustee that is not a UK resident, for example, acquires land directly in England and Wales and is thus required to register with both the TRS and on the Register.

What information is required for trusts?

- ❖ Additional details for trusts must be provided such as the name of the trust, the date it was created and certain information in relation to the current and historic trustees.
- ❖ If anyone has the power to appoint or remove trustees, or exercise certain rights over the trustees’ powers, their information will also need to be included.

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