

Going Live: Important Update about the Register of Overseas Entities





It is fair to say that the [announcement](#) made last week by Companies House stating the new Register of Overseas Entities is intended to go live on **1 August 2022** has come as quite a surprise to those in the professional world. While we have been closely monitoring the Government's fast-tracking of the new legislation through Parliament – the Economic Crime (Transparency and Enforcement) Act 2022 (“**the Act**”), which is aimed at tackling money laundering and addressing concerns about the lack of transparency in UK property ownership – we were expecting the relevant requirements to come into effect much later this year.

The impact of the Act on Overseas Entities wishing to own or deal with relevant property in the UK is significant and, those likely to be affected are advised to take steps now to identify what they need to do to comply with the legislation.

Summary of the Act

In broad outline, the Act requires any Overseas Entity (essentially, a non-UK company or other body) which:

- ▶ already owns a freehold or leasehold estate of more than seven years (acquired at any time since 1 January 1999);
- ▶ wishes to acquire a freehold or leasehold estate of more than seven years; or
- ▶ wishes to dispose of (or has, since 28 February 2022, disposed of) a freehold or leasehold estate of more than seven years (e.g. by selling, assigning, surrendering, granting a lease of more than seven years or granting a charge)

to register details of its “beneficial owners” on the newly established Register of Overseas Entities to be held by Companies House (and to then keep that Register updated).

Timescale

The Act introduces a transitional period of six months from the date on which relevant provisions come into force (so likely to be 1 August 2022 until 31 January 2023) (“**the Transitional Period**”) to give Overseas Entities the opportunity to comply with the registration requirements with respect to existing property ownership. However, some elements of the Act will bite more quickly following implementation of the relevant provisions and should be considered carefully and without delay.

It has now been confirmed that the land registration provisions of the legislation will come into force on 5 September 2022 (subject only to the commencement order being made) and accordingly:

- ▶ as from the date on which the land registration elements of the Act come into force (likely 5 September 2022) it will not be possible for an Overseas Entity to become legal owner of a freehold or leasehold interest of more than seven years unless [at the time of the Land Registry application](#) it has registered with, and provided relevant information to, Companies House; and
- ▶ the ability of an Overseas Entity to sell a freehold interest; to grant, assign or surrender a leasehold interest of more than seven years or to charge property may be impacted (and the transactional timetable affected); as from the end of the Transitional Period, any such dispositions will be prevented from being registered at the Land Registry unless the Overseas Entity is [at the time of the disposition](#) registered with Companies House.

Registration requirements

Any Overseas Entity to which the legislation applies will be required:

- ▶ to take *reasonable* steps to identify any registrable beneficial owners. This will involve, as a first step, giving an *information notice* (which requires the recipient to state whether or not they are a registrable beneficial owner) to any person that it knows, or has reasonable cause to believe, is a registrable beneficial owner in relation to the Overseas Entity;
- ▶ to register with Companies House and provide requisite information about itself and its registrable beneficial owners (or confirm that it has none, in which case the Overseas Entity is required to provide information about its managing officers); and



- ▶ to update the Register on an annual basis (or confirm that the information on the Register is up to date).

Penalties

If the Overseas Entity fails to comply with the provisions of the Act (by failing to register within the time frame, to update as necessary or by providing false information) the Overseas Entity itself and its officers may face criminal liability reinforced with tough penalties.

Some definitions

Firstly, some clarification on the terminology may help you ascertain whether you will be directly affected by these new requirements and, if so, the steps that you may need to take:

▶ Overseas Entity

For the purposes of the legislation, an “*Overseas Entity*” includes any company, partnership (including LLP) or other body with separate legal personality which is governed by the law of a non-UK country or territory. Unless falling within (yet to be published) exemptions, therefore, companies and LLPs incorporated in offshore jurisdictions such as Jersey, Guernsey and the Isle of Man, as well as other overseas jurisdictions, may be caught by the Act.

The Act does not apply to overseas individuals owning UK property directly or through a UK entity.

▶ Beneficial ownership

The information that an Overseas Entity must provide to Companies House and identity of relevant “Beneficial Owner” is closely modelled on the People with Significant Control (PSC) regime for UK-registered companies.

“Beneficial owners” are defined to include individuals, entities and government bodies. It is worth noting, though, that not all beneficial owners of Overseas Entities will need to be identified; the requirement to identify is limited, broadly, to those:

- who hold, directly or indirectly, more than 25% of the shares or voting rights in the entity;
- who have the right, directly or indirectly, to appoint or remove a majority of the board of directors of the entity; or
- who have the right to exercise (or in fact exercise) significant influence or control over the entity.

Where a beneficial owner is itself an overseas corporate entity, it will be necessary to go up through the ownership structure and consider whether each potential beneficial owner is registrable. The legislation provides that a corporate entity can only be registered as a beneficial owner of an Overseas Entity if it is itself already “subject to its own disclosure requirements” (i.e. it is already obliged to disclose information about its beneficial ownership via one of the specified regimes in the Act (including UK companies and LLPs and those quoted on specific other markets)). If none of the corporate entities in the ownership chain of an Overseas Entity are registrable, then information about the individuals at the top of the ownership chain will need to be disclosed on the Register if they meet the relevant requirements. In this way, the Act seeks to ensure that the Register captures the identity of the ultimate beneficial owner of the Overseas Entity.

Where the criteria are met by the trustees of a trust, members of a partnership or other entity that is not a legal person, there are additional provisions that bring within the scope of the definition of “*beneficial owner*” any person who has a right to exercise (or in fact exercises) significant control over the activities of that trust or entity.

▶ Qualifying Property

The Overseas Entity will have a “*relevant interest in land*” and so will fall within the ambit of the legislation if it is, or wishes to be, the registered proprietor of either a freehold estate or a leasehold estate of more than seven years.

Some more detail

▶ Existing ownership

Somewhat unusually, the Act has significant retrospective reach, encompassing relevant property acquired since 1 January 1999.

Any Overseas Entity that owns qualifying property will need to register with Companies House and obtain an ID number.

As mentioned above, once these rules come into force, there will be a Transitional Period of **six months** for the Overseas Entity to apply for registration (which is now likely to be from 1 August 2022 until 31 January 2023). Any Overseas Entity which owns relevant property (or which has owned relevant property but disposed of it at any time after 28 February 2022) and which has not been registered on the Companies House Register within the Transitional Period will be committing a criminal offence; the entity may be subject to a fine and



its officers may be fined or imprisoned.

As a further incentive to register, HM Land Registry will be placing restrictions on the titles of all relevant property prohibiting the transfer of freehold, grant of a lease of more than seven years; assignment or surrender of a lease of more than seven years or the grant of a charge unless the Overseas Entity is registered with Companies House or is exempt (details of exempt entities are awaited).

➤ **Future Acquisitions**

Once the land registration provisions of the Act come into force (likely to be 5 September), it will not be possible for an Overseas Entity to be registered as proprietor of land at HM Land Registry unless it is registered on the Register of Overseas Entities with Companies House or is exempt.

Information to be provided

The Act requires the Overseas Entity to provide, with its application for registration, information about itself (including name, country of incorporation and service address), together with specific information about each registrable beneficial owner, including:

- their name, date of birth and nationality;
- their usual residential address; and
- an address for service.

Whilst much of the information on the Register will be available for public inspection, specific material – including date of birth and residential addresses of private individuals – will not be made public.

Conclusion

The Act is likely to have broad implications across the property market and the implications will not just be felt by Overseas Entities themselves. Any party looking to buy, sell or lease property to or from an Overseas Entity may also find that the transaction is delayed, or even aborted, if the Overseas Entity that it is dealing with has not complied with the registration requirements of the Act.

At this point, there remains uncertainty on several significant points relating to the implementation of the Act, including as to exemptions from the registration requirement; guidance from each of the Law Society, Companies House and the Land Registry is still awaited.

We do know that the information required to be submitted to Companies House before an Overseas Entity can be registered needs to be verified by a UK agent who is supervised under the 2017 Money Laundering Regulations. The discrete list of supervised agents includes external accountants, trust or company service providers and independent legal professionals.

Furthermore, guidance provided by Companies House notes that it will be quicker and easier for the supervised agent to register on the Overseas Entity's behalf - as well as verifying the required information - and that it will take longer to process if the Overseas Entity seeks to complete the registration itself.

Whilst guidance and clarity on the verification process is outstanding, we are liaising with other professionals so as to ensure that registration can be achieved as quickly and smoothly as possible as soon as the Register goes live. We would be pleased to assist with the registration process or any other element of this new legislation.

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