

UPDATE

# Registration of Overseas Entities holding UK Property

Update prepared by Carl McConnell, Mourant Governance Services, Jersey.

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On 15 March 2022 the Economic Crime (Transparency and Enforcement) Act 2022 (the **Act**) was given Royal Assent. The Act aims to (1) set up a register of overseas entities and their beneficial owners and require overseas entities who own land to register in certain circumstances; (2) make provisions in relation to unexplained wealth orders; and (3) make provisions in relation to sanctions.

This briefing note focuses on Part 1 of the Act regarding overseas entities.

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## What you need to know

The register of overseas entities and their beneficial owners (**Overseas Entities Register**) requires relevant entities to register with Companies House in the UK and provide details of their beneficial owners or 'persons of significant control'. This is intended to mirror the way that UK companies currently provide information, and will therefore create a public record searchable on the Companies House registry.

The Overseas Entities Register officially came into force on 1 August 2022, and further changes to the Overseas Entity Register regime was announced in the Economic Crime and Corporate Transparency Act 2023 (**ECCTA**). These changes come into force in 2024.

There was a six-month transition period, by the end of which overseas entities that are the registered proprietors of freehold or leasehold properties had to have been entered on the Register or be subject to a pending application. The land registration elements of the Act came into force on 5 September 2022, meaning they have the ability to put a restriction over the title on the land registry until such time as the overseas entity obtains an Overseas Entity ID from Companies House.

## What is classified as an overseas entity?

'Overseas Entity' is defined as '*a legal entity that is governed by the law of a country or territory outside the United Kingdom*'. A 'legal entity' means a body corporate, partnership or other entity that (in each case) is a legal person under the law by which it is governed.

This would therefore capture any overseas companies, LLCs, corporate GPs of limited partnerships, and foundations regardless of their tax residency. For example, there are a number of Jersey incorporated but UK tax resident companies that may not be registered with UK Companies House, but will now be subject to the registration requirements if they hold UK property.

Although trusts would not be captured under this definition, an overseas corporate trustee holding real estate would need to register. It is worth noting however that the trust itself would need to register separately with HMRC under the **Trust Registration Service**, which requires any trustee holding property directly to register if they are liable to a tax charge or have acquired land or property after 6 October 2020 (the deadline for registration for existing trusts was 1 September 2022).

There is on-going discussion as to whether certain overseas partnerships, such as Jersey or Guernsey limited partnerships or Luxembourg special limited partnerships, are out of scope as, like trusts, they do not

have separate legal personality and may not therefore be regarded as a 'legal person'. Their overseas corporate general partner is, however, likely to be captured in any event.

### **What property is classed as 'qualifying estate'?**

The Act provides that no application can be made to the Land Registry to register an overseas entity as the proprietor of a 'qualifying estate' unless at the time of the application the overseas entity is registered on the Overseas Entities Register or is an exempt overseas entity.

A qualifying estate is either freehold or a lease of over 7 years from the date of grant. The legislation will apply to overseas entities that acquired a qualifying estate on or after 1 January 1999 (in England and Wales) or 8 December 2014 (in Scotland).

Overseas entities will therefore need to apply to Companies House for registration on the Overseas Entities Register ideally in advance of exchange, and in any event prior to completion, of an acquisition.

The House of Lords made a late change to the Act obliging foreign owners to disclose beneficial ownership where they have sold a UK property at any point between 28 February 2022 and the end of the transition period. This was to avoid beneficial owners of overseas entities disposing of land to avoid the disclosure requirements during the transition period.

### **What information is required to be registered?**

The overseas entity will need to provide information on:

- pertinent details such as its name; place of incorporation; registered office; service address; contact details; its legal form and its registered number.
- its registerable beneficial owners (as detailed below); and
- information on its managing officers (note that this information is only required if an overseas entity has no reasonable cause to believe that it has any registrable beneficial owners, or if an overseas entity has been unable to provide all the required information about a registrable beneficial owner).

It will then be issued with a Companies House 'overseas entity ID'.

The ECCTA changes will require land registry title numbers will need to be provided at the time of registration too.

### **Consequences of failing to register**

#### **On the acquisition of a qualifying estate**

If an overseas entity fails to register with Companies House and provide the required information of its registrable beneficial owners then, unless it is an 'exempt overseas entity' (see below), it will not be registered as the legal owner of the qualifying estate.

#### **On the disposition of a qualifying estate**

If an overseas entity fails to register with Companies House a restriction will be placed on the overseas land register so that no disposition by the overseas entity will be registered (unless the disposition is itself exempt).

In addition to the above, no security charges will be registered over the property with the land registry and therefore the registration will undoubtedly be a condition precedent for any borrowing by a lender to an overseas entity.

The same does not apply to lenders who have already registered a security and wish to enforce it. In these circumstances, the land registry would allow a disposition without a registration.

### **Updating Duty**

The overseas entity must update the information annually, commencing 12 months from the date of when it is initially registered, and every 12 months thereafter. The overseas entity must do so within 14 days after each 12 month period.

There is a process for overseas entities or registerable beneficial owners to apply to have information protected from public disclosure in certain circumstances, and when they no longer own the UK land, so as to remove the relevant details from the register.

When an overseas entity no longer owns real estate, they can notify Companies House and there will no longer be a requirement to file annual updates, however, the overseas entity will still be searchable on Companies House in a similar way to dissolved companies. Companies House will only action this if the title has first been changed on the land registry, so it is important to ensure that process is completed first (noting there is often a delay between submitting forms to the land registry and the land registry title being updated).

### **Non Compliance**

It will be an offence both for the entity and its officers if:

- (1) the overseas entity makes a disposition in contravention of a restriction;
- (2) it fails to provide an annual update of the information on the register; or
- (3) it knowingly delivers false, misleading or deceptive information to the Registrar.

A daily fine of up to £2,500 may be imposed on the entity or any of its officers.

Furthermore, any person knowingly or recklessly delivering false or deceptive information would commit an offence punishable by up to two years' imprisonment.

### **Who is a registerable beneficial owner?**

Qualifying overseas entities must 'take reasonable steps to identify any registrable beneficial owners in relation to the entity'.

The test for a 'beneficial owner' follows that used in the UK Persons with Significant Control (PSC) regime, although there are some fundamental differences as the Overseas Entity Register intends to capture more trustee relationships.

Effectively the test looks to establish who the key controller is by virtue of their (direct or indirect) equity interest in the overseas entity or by virtue of their voting powers. Anyone with 25% or more ownership or voting rights will be registerable, but the test will look more widely to those with 'significant influence or control'. This would potentially capture those individuals who can exert a significant sway over decisions as a result of provisions in the overseas entity's constitution, rights attached to shares or interests that a person holds, whether under a shareholders' agreement, under some other agreement or otherwise.

A registrable beneficial owner may be:

- an individual;
- a legal entity; or
- a government or public authority.

A legal entity (other than a government or public authority) is a registrable beneficial owner in relation to an overseas entity if it:

- (a) is a beneficial owner of the overseas entity;
- (b) is subject to its own disclosure requirements; and
- (c) is not exempt from being registered.

The reference to 'subject to its own disclosure requirements' is aiming to ensure that a third party can find the necessary information through public sources without adding a substantial disclosure burden on the overseas entity.

For example, if an overseas entity was owned by a UK company, which in turn was owned by an individual, the overseas entity could simply disclose details of that UK company on the basis that third parties will be able to inspect that company's own UK registry entry to ascertain the identity of the relevant individual.

If the parent of the overseas entity is not required to register on the overseas entity register, or is not part of its own disclosure requirements (for example a private holding company holding only shares), then the

overseas entity would be required to disregard that entity and instead provide details of the individual who ultimately owns it.

This test set out as follows:

A person (X) is a beneficial owner of an overseas entity or other legal entity (Y) if one or more of the following conditions are met:

#### **Ownership of shares**

1. X holds, directly or indirectly, more than 25% of the shares in Y;

#### **Voting rights**

2. X holds, directly or indirectly, more than 25% of the voting rights in Y;

#### **Right to appoint or remove directors**

3. X holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of Y;

#### **Significant influence or control**

4. X has the right to exercise, or actually exercises, significant influence or control over Y; or

#### **Trusts, partnerships, etc**

5. the trustees of a trust, or the members of a partnership, unincorporated association or other entity, that is not a legal person under the law by which it is governed meet any of the conditions specified above (in their capacity as such) in relation to Y, and X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or entity.

(Note: A limited partner would not be regarded as an owner able to control the overseas entity (regardless of their percentage interest) unless they meet the criteria under part 5 above. They may however satisfy the first limb of the test)

#### **Persons treated as beneficial owners where the entity holds land as nominee**

ECCTA has introduced a new sixth condition that will result in a person being deemed a beneficial owner of an overseas entity where the overseas entity holds the land as nominee for (a) that person directly or (b) an entity that that person is a beneficial owner of (applying the other five conditions of ECTEA), as follows:

1. Y holds land in England or Wales, Scotland or Northern Island as nominee for X, and X is to be treated as the beneficial owner if Y—
  - (i) is registered in the register of title as the proprietor of a qualifying estate within the meaning of Schedule 4A to that Act; and
  - (ii) holds the qualifying estate as nominee for—
    - (a) X; or
    - (b) an entity of which X is a beneficial owner.

If such beneficial owner is 'registrable', then they will need to be disclosed on the register of overseas entities in the same way as other registrable beneficial owners.

This was introduced to tackle a shortfall within the initial test whereby beneficiaries of nominee arrangements were not identified as per the strict application of the test. There are a number of companies which hold property as nominee for other entities, and this is to provide certain legitimate property law protections to give certainty of title (for example where 2 entities hold as nominee to protect against overreaching provisions). This new limb of the test will mean that it will be necessary to look up the legal ownership chain of the nominee as well as the beneficial ownership chain that is created by the nominee arrangement.

#### **Capturing Trustee relationships**

Previously, a corporate trustee that was a beneficial owner of an overseas entity by virtue of being a trustee met the definition of a 'legal entity' and would be registrable if it is 'subject to its own disclosure requirements' (and this includes most regulated non-UK corporate trustees). The qualification has now

been removed such that all such corporate trustees will be registrable even if it does not have its own disclosure requirements.

In addition, any trustee of a trust within the ownership structure would need to be disclosed, regardless of whether there is a registerable beneficial owner that has been identified under the trust. For example if an overseas entity is owned by a UK company, which in turn is owned by a trust, previously it would only be a requirement to disclose the UK company. However, it would now be a requirement to also disclose the trust relationship.

### **Exempt Overseas Entity**

If a certain jurisdiction introduces its own equivalent beneficial ownership register, the Government might allow overseas entities from that jurisdiction to simply provide the details of that register rather than submit the information again in the UK.

The Secretary of State can also, by giving written notice to someone (without any parliamentary procedure) exempt them from the registration requirement. An exempt person is not considered a registerable beneficial owner so wouldn't be disclosed on the register and wouldn't have to respond to any information notice submitted to them. But the Secretary of State can only grant exemptions for three reasons: in the interest of national security, the economic wellbeing in the UK, or for the purpose of preventing or detecting serious crime.

### **What should officers of overseas entities acquiring UK property be doing?**

Officers of overseas entities should be taking steps to ensure:

- that they have identified any 'registerable beneficial owners' through applying the Persons of Significant Control test as described above, and ensure they hold the relevant information that is required to be disclosed such as their name, date of birth and nationality of that individual and their usual residential address (note that not all of this will be publicly searchable);
- that they issue an 'information notice' to any person that it knows or has reasonable cause to believe is a registerable beneficial owner and give them one month to confirm their ownership and provide information for the register;
- that the deadline for updating Companies House within 12 months and 14 days of the initial registration (and annually thereafter) is captured and complied with in a timely manner (as well as any updates); and
- that any overseas entities with upcoming acquisitions, disposals or financings are ready to submit or procure registrations as a priority as this could hold up the transaction if a disposition is not removed from the land registry once live.

### **Next Steps**

Before an overseas entity registers its beneficial owners or managing officers on the new Register of Overseas Entities, a UK-supervised 'relevant person' will need to verify the required information about them - as set out in the Act.

These verification checks must be carried out by a UK-based agent that's supervised under the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017 (the MLRs), of which Mourant Governances Services (UK) Limited is duly authorised.

### **Final Thoughts**

The Act aims to '*deliver transparency about who ultimately owns and controls overseas entities that own land in the UK*' and will undoubtedly place an additional layer of compliance on overseas entities.

As the [Chartered Institute of Taxation](#) have explained in an open paper to the UK Government, when there is a corporate trustee, general partner or nominee involved in an ownership structure, the PSC analysis would be correctly applied to the beneficial owners of that corporate entity, and not necessarily against the person or entity that has the ultimate economic interest of those assets. Recent changes under ECCTA have

sought to address that gap. In addition, the 25% ownership threshold could easily be circumvented by a group of known individuals each owning less than the required threshold.

There are therefore still some legitimate question marks from the industry on the effectiveness of such sweeping administrative measures. However, well-regulated offshore jurisdictions are already required by their AML regulations to verify who the ultimate beneficial owners are.

As a regulated service provider we are well placed to assist our clients through the new legislative changes and can provide the verification services from our UK office.

## Contacts

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