

THE NEW UK REGISTER OF OVERSEAS ENTITIES IS NOW LIVE

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The register of overseas entities, created under the Economic Crime (Transparency and Enforcement) Act 2022, came into force in the UK on 1 August 2022.

"Overseas entities will now be prevented from acquiring UK property unless registered at Companies House on the new UK register of overseas entities. Failure to do so or to update the register will impact upon their ability to deal with their property"

Broadly, overseas entities will now be prevented from acquiring UK property unless registered at Companies House on the new UK register of overseas entities. Failure to do so or to update the register will impact upon their ability to deal with their property, i.e. transfer, grant leases or charge the property. This is relevant to all entities based outside the UK, including those based in the Channel Islands. Failure to comply with the Act is potentially a criminal offence for an entity and its officers, punishable by a fine and/or imprisonment.

The aim of the legislation is to identify who owns or controls overseas companies and other legal entities that hold UK property in a bid to enhance transparency and combat economic crime, such as money laundering.

The following briefing concerns property located in England and Wales only.

1. REGISTRATION AT THE LAND REGISTRY

From and including 5 September 2022, an overseas entity will be prevented from applying to become the registered owner of a UK freehold estate or a leasehold estate granted for more than seven years (a "qualifying estate"), unless it is a "registered overseas entity" or an "exempt overseas entity". An "exempt overseas entity" is yet to be defined by legislation.

An overseas entity is a company, partnership or other entity each being a legal person governed by the law of a country outside the UK.

Once the overseas entity is registered as owner, a restriction will be placed on the title register preventing the overseas entity from dealing with the property i.e. transferring, granting leases and charging the property, unless it is a "registered overseas entity" at the time of the disposition. This is subject to limited exceptions.

2. REGISTRATION AT COMPANIES HOUSE – BECOMING A "REGISTERED OVERSEAS ENTITY"

To become a “registered overseas entity”, an overseas entity will need to provide to Companies House information regarding its beneficial owners. Companies House has provided guidance on the information that needs to be submitted here.

A “beneficial owner” includes a person who:

- directly or indirectly holds more than 25% of the shares or voting rights in an entity;
- directly or indirectly can appoint or remove a majority of its directors; or
- has the right to exercise, or actually exercises, significant influence or control over the entity.

A UK-regulated agent must complete verification checks on all beneficial owners no more than three months before registration. The overseas entities register is public, except for certain information such as personal data and some information where the beneficial owner is a trustee.

Once Companies House has processed the information provided, they will provide the overseas entity with an “overseas identity ID” to enable the overseas entity to register the property at the Land Registry.

Overseas entities have a duty to confirm or update the register annually within 14 days of the anniversary of their original registration at Companies House, in order for them to continue to be a registered overseas entity.

3. EXISTING OWNERS OF A “QUALIFYING ESTATE”

An overseas entity that became the registered owner of a qualifying estate between (and including) 1 January 1999 and 31 July 2022 must become a registered overseas entity before 1 February 2023. The ability of the overseas entity to deal with the property will be subject to a restriction as described in point 1 above, with effect from 1 February 2023. This is subject to limited exceptions.

"Failure to comply with the Act is potentially a criminal offence for an entity and its officers, punishable by a fine and/or imprisonment."

4. DISPOSALS OF QUALIFYING ESTATES BETWEEN (AND INCLUDING) 28 FEBRUARY 2022 AND 31 JANUARY 2023

Overseas entities must disclose to Companies House dispositions of qualifying estates made between (and including) the dates above, with limited exceptions.

5. NEXT STEPS

Any overseas entity that is intending to acquire UK property will need to factor in time to obtain the “overseas entity ID”, i.e. for it to collect the required information about its beneficial owners, to have this information verified by a UK-regulated agent and for Companies House to process the information.

Those transacting with overseas entities should include contractual provisions to protect their position should the overseas entity not have its “overseas entity ID” at the relevant time.

Trainee Solicitor, Emily Harper also contributed to this article.

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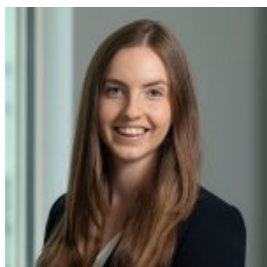
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