

Alert | Real Estate



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Economic Crime (Transparency and Enforcement) Bill 2022 Becomes Law – Practical Implications of UK Property Ownership by Overseas Entities

This GT Alert covers the following:

- The register of overseas entities and beneficial owners owning property in the UK (the “Register”), introduced by the UK Government’s Economic Crime (Enforcement and Transparency) Bill 2022, which received royal assent 14 March 2022 (the “Act”).
- Who the Register will cover.
- What is required of the overseas entity in order to comply with the Register.
- Why the Register is a significant change for overseas entities with UK property ownership.
- When the Act will come into effect and by when the reporting obligation will need to be satisfied.
- How to prepare for the Act’s passage.

In light of the current socio-political climate provoked by Russia’s invasion of Ukraine on 24 February 2022 (the Russian Ukraine Invasion), the UK government on 1 March 2022 set forth UK Government’s Economic Crime (Enforcement and Transparency) Bill 2022, which received royal assent 14 March 2022, becoming the Act. In doing so, it has expedited its efforts in reforming the laws on corporate criminal liability in the UK. Furthermore, and pertinent to UK lawyers acting on real estate transactions and non-UK owners of UK property, the Act introduces the register of overseas entities and beneficial owners owning property in the UK, a motion UK government first proposed in 2016. The Act aims to “to crack down on dirty money in the UK and corrupt elites”.

The agenda of the Act is threefold. First, to introduce registration obligations to increase transparency of non-UK ownership of UK land and property by way of the Register; second, to make provision about unexplained wealth orders (UWOs), allowing UK law enforcement more flexibility to investigate the origin of property and facilitate the recovery of proceeds of crime; and third, to make provision about sanctions (the Sanctions) proposing to introduce a ‘strict civil liability test’ in relation to sanctions breaches.

This GT Alert focuses on the Register and sets out the “*Who, What, Why, When and How?*” of the Act in this regard.

Who will be captured by the Register?

Overseas Entities, including their Beneficial Owners (and managing officers in the event there are no Beneficial Owners), holding Qualifying Estates will be captured by the registration and disclosure obligations of the Register, set out in Part 1 of the Act. Companies House will hold and maintain the Register, with support from UK Land Registries. Anyone will be able to inspect and obtain copies of the Register, with only certain personal information protected or redacted from public inspection (e.g., residential addresses, date of birth etc.). The Secretary of State shall also be permitted, pursuant to the Act, to issue further regulations regarding the form, content and verification of the information on Beneficial Owners and officers of Overseas Entities.

The Act defines “Overseas Entity” as “*a legal entity ...(body corporate, partnership or other entity that (in each case) is a legal person under the law by which it is governed)... that is governed by the law of a country or territory outside the United Kingdom*”.

A person is defined as a “Beneficial Owner”¹ of an Overseas Entity when one or more of the following criteria is met:

1. *Ownership of shares* – directly or indirectly holds more than 25% of the shares in the Overseas Entity.
2. *Voting rights* - directly or indirectly holds more than 25% of the voting rights in the Overseas Entity.
3. *Directors* – direct or indirect right to appoint or remove a majority of the board of directors of the Overseas Entity.
4. *Significant influence or control* – exercise or has the right to exercise significant influence or control over the Overseas Entity.
5. *Trusts* - (a) 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 the overseas entity, and (b) the beneficial owner has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or entity.

¹ Schedule 2, Part 2 of the Act.

The Act defines “Qualifying Estate”² as a freehold estate in land, or a leasehold estate in land granted for a term of more than seven years from the date of grant.

What is required of the Overseas Entity in order to comply with the Act?

The Overseas Entity must take *reasonable steps* to:

1. identify any registrable Beneficial Owners³ in relation to the entity; and
2. obtain and provide the “required information” including but not limited to name, incorporation details, registered address, legal form and governing law etc.⁴ as defined in Schedule 1 of the Act. Where there are no registrable Beneficial Owners, the Overseas Entity is required to provide information set out in Schedule 1, Part 4 of the Act pertaining to its managing officers.

To comply with the reporting obligations set out in the Act, an Overseas Entity is required to serve “*information notices*” on all persons it knows, or has reasonable cause to believe, are registrable Beneficial Owners (or managing officers). The information notice requires the recipient to respond within one month of receipt, stating whether or not it is a registrable Beneficial Owner and confirming the details of the required information. It shall also be required to supply any information that might help the Overseas Entity to comply with its obligations and to ensure all registrable Beneficial Owners have been identified and the required information is up-to-date and accurate.

Each Overseas Entity will have to provide one of the following three statements and related information to Companies House:

	Statement	Information
1.	(a) that the entity has identified one or more registrable beneficial owners and that it has no reasonable cause to believe there are others, and (b) that the entity is able to provide the required information about each registrable beneficial owner it has identified.	1. The required information about the entity. 2. The required information about each registrable beneficial owner that the entity has identified.
2.	A statement that the entity has no reasonable cause to believe that it has any registrable beneficial owners.	1. The required information about the entity. 2. The required information about each managing officer of the entity.

² Schedule 4A of the Act.

³ The Act defines “Registrable” Beneficial Owners as Beneficial Owners who are not exempt pursuant to Schedule 2, Part 4 of the Act. The relevant minister will define an exempt overseas entity at a later date.

⁴ The “required information” about an overseas entity will be: Name, country of incorporation or formation; registered or principal office; a service address; an email address; the legal form of the entity and the law by which it is governed; and any public register in which it is entered and, if applicable, its registration number in that register, the date on which it became a beneficial owner, whether the entity meets that condition by virtue of being a trustee and whether it is a designated person. Where a registrable beneficial owner is an individual, the required information about the owner will include name, date of birth and nationality; usual residential address; a service address; and the date on which the individual became a registrable beneficial owner in relation to the overseas entity, business occupation (if any) and a description of the officer’s roles and responsibilities in relation to the entity. In the case of a trust, the required information about the owner will include name of the trust or, if it does not have a name, a description by which it may be identified; the date on which the trust was created; in relation to each person who has at any time been a registrable beneficial owner in relation to the overseas entity by virtue of being a trustee of the trust - (i) the person’s name, (ii) the date on which the person became a registrable beneficial owner in that capacity, and (iii) if relevant, the date on which the person ceased to be a registrable beneficial owner in that capacity; (iv) in relation to each beneficiary under the trust, the information that would be required under paragraph 3(1)(a) to (c) or 5(1)(a) to (e) if the beneficiary were a registrable beneficial owner in relation to the overseas entity; (v) in relation to each settlor or grantor, the information that would be required under paragraph 3(1)(a) to (c) or 5(1)(a) to (e) if the settlor or grantor were a registrable beneficial owner in relation to the overseas entity.

	Statement	Information
3.	(a) that the entity has reasonable cause to believe that there is at least one registrable.	1. The required information about the entity.

Following disclosure of the required information, verification and registration of the same, Companies House will issue the Overseas Entity an overseas entity ID and record this ID in the Register. **Without an overseas entity ID an Overseas Entity cannot be registered at HM Land Registry as the owner of any UK land it acquires.**

Moreover, in order to retain its registered Overseas Entity status, an Overseas Entity⁵ must comply with the ongoing duty to update the Register at least every 12 months. The Overseas Entity must also notify Companies House, in the way prescribed by the Act, when it requires Beneficial Owners and/or managing officers to be removed from the Register.

Why is the Register a significant change for Overseas Entities' UK property ownership?

Where an Overseas Entity fails to comply with any of the above requirements, that Overseas Entity and every one of its officers will have committed an offence. Where recipients of information notices fail to comply or knowingly or recklessly make false statements in purported compliance with any of the obligations, this will also be an offence. Where such an offence is committed by a legal entity, the offence will also be committed by every officer of the entity in default. The obligations set out in Part 1 of the Act are backed by fines and criminal sanctions, with those who fail to comply facing up to five years imprisonment.

A crucial change for UK lawyers acting on Real Estate transactions and Overseas Entities owning UK property is that failure to comply with the reporting obligations will result in restrictions on title for the registration of disposals or transactions involving the property. The restriction will prevent sales, charges and leases of more than seven years from being registered, unless the entity is a registered Overseas Entity at the time of the transaction. Whilst a disposition itself will still be valid, it cannot be registered at HM Land Registry, and the Overseas Entity and every officer of the Overseas Entity shall be committing a criminal offence, making the disposition punishable by up to five years imprisonment or a fine or both.

The Chief Land Registrar must comply with the duty to enter a restriction under paragraph 3 of Schedule 4A to the Land Registration Act 2002 (as amended by Schedule 3, Part 1 of the Act).

When will the Act come into effect, and by when will the reporting obligation need to be satisfied?

The Act received royal assent 14 March 2022. Companies House, supported by the UK Land Registries, will now begin the work to implement the Register as soon as possible. The registration requirements will apply retrospectively to all Qualifying Estate bought by Overseas Entities and registered at HM Land Registry on or after 1 January 1999 for England and Wales, and for Scotland, all Qualifying Estate bought by Overseas Entities and registered on the Land Register of Scotland or after 8 December 2014 in Scotland.

⁵ Section 13 of the Act allows Overseas Entities to send an information notice to any person/entity it knows or has reasonable cause to believe has knowledge of the identity of a person or legal entity who is a registrable beneficial owner in relation to the Overseas Entity. In practice this will mean that law firms may be served notices. How this will coexist with legal privilege in practice remains to be seen, as the Act does expressly state that information need not be provided where such information is covered by legal professional privilege.

Transitional provisions will allow Overseas Entities that already own Qualifying Estates a six-month grace period to comply with the registration requirements.

How to prepare for the Act's passage?

The Register is designed to help tackle foreign money laundering, with the increased transparency the Act creates aiding UK authorities to identify and prosecute such activity. Given the retrospective nature of the Register and the consequential criminal penalties for breach and non-compliance, Overseas Entities owning UK property, with the assistance of their UK lawyers, in anticipation of serving information notices and providing the Companies House with the required information, should review their property portfolios and ownership and holding structures to identify Beneficial Owners and Qualifying Estates to ensure compliance.

Author

This GT Alert was prepared by:

- [Ashia D. Adams](#) | +44 (0) 203.349.8700 | Ashia.Adams@gtlaw.com

Additional Contacts

- [Danielle L. Martin](#) | +44 (0) 203.349.8719 | Dani.Martin@gtlaw.com
- [Matthew James Priday](#) | +44 (0) 203.349.8751 | Matthew.Priday@gtlaw.com
- [Elizabeth Ratcliffe](#) | +44 (0) 203.349.8700 | Beth.Ratcliffe@gtlaw.com

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