

### EMEA: UK

Fast-tracked through Parliament in response to the Ukraine/Russia conflict, the Economic Crime (Transparency and Enforcement) Act 2022 (Act) has given rise to a number of questions since it received Royal Assent on 15 March, not least in relation to the proposal for a new register documenting beneficial ownership of qualifying estates in UK properties.

The register sits alongside provisions for sanctions and unexplained wealth orders and is intended to “crack down on foreign criminals using UK property to launder money” by requiring an overseas entity holding UK property to identify its beneficial owner(s) and register them with Companies House.



Where an overseas entity owns a “qualifying estate”, registration with HM Land Registry (HMLR) of a disposition (required to establish legal title) will not be possible without a registration number.

Although the register is not yet up and running, the government has indicated that progress will be made “at pace”, suggesting that we will not be waiting long before the new law impacts property transactions.

The questions below are typical of those we are seeing. Given the speed at which the legislation was rushed through, leaving little time for detailed consideration and drafting, these are likely to be the first of many.

#### Registration – What Is the Basic Principle?

When dealing with a “qualifying estate”, where an “overseas entity” with “beneficial ownership” of UK property is involved, a Companies House registration number will be needed, without which title will not be able to be registered with HMLR when buying, selling or charging property.

When the provisions come into force, buyers, prospective tenants and lenders will need to identify:

- Whether any party in the transaction is an “overseas entity”
- If the estate is a qualifying estate
- Whether a (Companies House) registration number is required, to enable registration with HMLR to take place once the transaction has completed

#### What Is a Qualifying Estate?

A freehold title or leasehold interest of longer than seven years.

#### What Is an Overseas Entity?

An overseas entity is any legal entity governed by the law of a country or territory outside the UK.

Entities incorporated in the Channel Islands will fall within the definition. Non-UK trusts do not fall within the definition of overseas entity, not having a separate legal identity.

#### Who Is a Beneficial Owner?

A person who:

1. Holds, directly or indirectly, more than 25% of the shares in the overseas entity
2. Holds, directly or indirectly, more than 25% of the voting rights in the overseas entity
3. Holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the overseas entity
4. Has the right to exercise, or actually exercises, significant influence or control over the overseas entity
5. Has the right to exercise, or actually exercises, significant influence or control over a trust, partnership, unincorporated association or entity where the trustees of that trust, or the members of a partnership, unincorporated association or other entity (which may not be a legal person under the law by which it is governed), in turn meet any of the conditions above in relation to the overseas entity

## What Will Be on the Companies House Register?

Very broadly, information required includes details of:

- The overseas entity
- The beneficial owner (with different requirements applying to individuals, governments and public authorities and “other” legal entities)
- Managing officers (whether these are individual or corporate/other)

## When Will the Register Come Into Force?

We do not know yet. Officially, at a later date to be appointed by the Treasury and Secretary of State, but note the retrospective provisions.



## Are There Any Entities Not Caught by the Provisions?

Non-UK trusts do not fall within the definition of overseas entity, as they do not have legal personality.

There are only very few, limited exemptions. The Secretary of State may exempt a person if satisfied that this is necessary:

- In the interests of national security
- For the purposes of preventing or detecting serious crime

## Is It Retrospective?

Yes. The register will apply to any overseas entity that has purchased a qualifying estate in England and Wales since 1 January 1999 (or in Scotland since December 2014). An overseas entity that has purchased real estate in those periods will need to apply for registration of their beneficial ownership within six months of the legislation coming into force.

## How Often Does the Register Need to Be Updated?

Annually.

## What Are the Penalties for Failure to Comply?

Failure to comply is a criminal offence, punishable by imprisonment and fines.

## What Does It Mean for Buying/Selling, Leasing and Charging Property?

HMLR will not register an overseas entity as the registered proprietor of a qualifying estate unless beneficial ownership has been registered at Companies House and the registered proprietor has an associated ID number.

- Failure to comply will prevent an overseas entity making registrable disposals.
- HMLR must enter a restriction for every qualifying estate held by an overseas entity (as soon as reasonably practicable or within six months of legislation coming into force). This restriction will prevent the registration of a “relevant disposition” without evidence of compliance with the Companies House requirements (which must be presented to HMLR).

A “relevant disposition” is:

- Transfer of a freehold interest
- Grant of a lease for more than seven years
- Assignment or surrender of a registrable lease
- Grant of a legal charge

If a relevant disposal is made in breach of the restriction, registration will not be possible, and legal title will not pass.

## Will a Sale-off Now Prevent My Property Being Caught by the Legislation?

Not necessarily.

An overseas entity that disposes of qualifying estates between 28 February 2022 and six months from commencement of the relevant provisions still has an obligation to provide details of those dispositions.



## Are Existing Lenders Protected?

Yes, failure to comply with the requirements will not prevent enforcement of existing charges.

## Will the Register “Reveal All”?

Where the Act achieves its aims, privacy in relation to UK property ownership will become harder to achieve. However, the Act has been heavily criticised due to loopholes that potentially allow owners to circumvent it. Tighter drafting would have secured greater transparency.

For further information, see the government's "[Fact Sheet – The Register of Overseas Entities](#)".

## Contact



### Sally Coleman

Professional Support Lawyer, Birmingham

T +44 121 222 3136

E [sally.coleman@squirepb.com](mailto:sally.coleman@squirepb.com)

