

ONPOINT / A legal update from Dechert's Finance group

Economic Crime (Transparency and Enforcement) Act 2022 (the "Act")

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October 2022

Dechert
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Introduction

This note summarizes those provisions of the Act applicable to England and Wales that deal with the new register of overseas entities ("**ROE**") that has been established at Companies House in the UK. It seeks to identify and, where possible, answer questions that have been raised in the weeks since key provisions of the Act have come into force.

Broadly, the Act requires disclosure of the beneficial ownership of certain types of land and property situated in the UK if this is held by an overseas entity ("**OE**").

The registration obligations introduced by the Act are intended to increase transparency of non-UK ownership of UK land and property.

Applicability criteria

An OE is a legal entity that is incorporated under the laws of a country or territory outside the UK.¹ The Act will apply to an OE that (subject to the Key dates below):

- applies to register an acquisition of Qualifying Land at the Land Registry; and/or
- is already a registered proprietor of Qualifying Land that was acquired after 31 December 1998; and/or
- disposed of Qualifying Land in the period commencing on 28 February 2022 and ending on 31 January 2023.

"**Qualifying Land**" is defined by the Act 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.²

If any of the above apply, an OE must:

- before making an application to the Land Registry to become the registered owner of Qualifying Land, register on the ROE and disclose details about its verified registered beneficial owner(s) ("**RBOs**"); and/or
- if it already owns Qualifying Land, register on the ROE and disclose details about its RBOs by 31 January 2023; and/or

¹ Section 2(1) of the Act.

² This is set out in the new Schedule 4A to the Land Registration Act 2002, inserted by the Act.

- if it already owns Qualifying Land, and registers on the ROE during the Transition Period (see below), include details of any legal mortgages or leases for more than seven years that were granted after 28 February 2022 (if any) with the registration;³ and/or
- if it disposed of Qualifying Land after 28 February 2022, submit details of the relevant disposal to Companies House, together with details of the registrable beneficial ownership as it was immediately prior to the disposition.⁴

How to register on the ROE is discussed in more detail later in this note.

Key dates

1 August 2022: The Act came into force.

5 September 2022: The provisions of the Act relating to land and property came into force.⁵

5 September 2022 onwards: If Qualifying Land (a) is owned by an OE, **and** (b) was acquired by that OE on or after 31 December 1998,⁶ the Land Registry is required to enter restrictions on the registered title preventing the OE from disposing of Qualifying Land, granting a lease of more than seven years out of Qualifying Land and/or creating a legal mortgage over Qualifying Land, unless it is registered on the OE.⁷

If there are ongoing Land Registry applications in progress, these will be dealt with in order of priority, and the restriction will be added when the ongoing applications have been dealt with – if the Qualifying Land has been sold to a UK entity in the interim period a restriction will not be added to the register.

The restrictions will be effective from 1 February 2023.

1 August 2022 – 31 January 2023 (the "Transition Period"): An OE that already owns Qualifying Land will be able to deal with it during this period without registering on the ROE – although there will be an obligation for the OE to submit details of a disposal, legal mortgage or lease of more than seven years to Companies House by 31 January 2023, as discussed above.

1 February 2023 onwards:

- The registration of a transfer of Qualifying Land, grant of a lease of more than seven years out of Qualifying Land and/or creation of a legal mortgage over Qualifying Land at the Land Registry by an OE

³ Section 41(3) of the Act.

⁴ OEs will not need to register or maintain registration under the Act unless they still hold other Qualifying Land but must submit details of the disposal to Companies House, together with details of the registrable beneficial ownership as it was immediately prior to the disposition.

⁵ The Act amends the Land Registration Act 2002 by inserting a new Schedule 4A and this comes into force on 5 September 2022 (see Paragraph 3 of Part 1 (Amendments to Land Registration Act 2002) of Schedule 3 (Land Ownership and Transactions: England and Wales) to the Act).

⁶ Paragraph 3 of Part 1 (Amendments to Land Registration Act 2002) of Schedule 3 (Land Ownership and Transactions: England and Wales) to the Act.

⁷ Paragraph 6 (3) (Registrar's duty to enter restriction in relation to qualifying estate) of Part 2 (Transition: Qualifying Estates registered pre-commencement) to Schedule 3 (Land ownership and transactions: England and Wales) of the Act

will be prohibited unless the OE is registered on the ROE, or the OE is exempt from registration – so far, no statutory exemptions have been created; and

- an OE cannot be registered at the Land Registry as the proprietor of any newly acquired Qualifying Land unless it is registered on the ROE or an exception under the Act applies. Such exceptions include:
 - where the disposal is made in the exercise of a power of sale by a mortgagee or receiver under a charge by way of legal mortgage that is already registered at the Land Registry; or
 - by a specified insolvency practitioner in specified circumstances (which will be specified in regulations made by the Secretary of State); or
 - the disposition is made in pursuance of a contract made **before** the restriction is entered in the register.⁸
- If a disposal is made in breach of a restriction, a criminal offence is committed by the entity and every officer of the entity who is in default, punishable by up to five years in prison and an unlimited fine.⁹ In addition, the disposal will not be registered at the Land Registry.

What must an OE do to comply with the registration requirements of the Act?

The OE must take reasonable steps to identify its RBOs, including serving "information notices" on all entities it knows, or has reasonable cause to believe, are RBOs in respect of itself. The information notice must instruct the recipient to respond within one month of receipt, stating whether (or not) it is an RBO in respect of that OE and confirming the required details in the information notice.¹⁰

Having established the identity of its RBOs, an OE must verify the information provided by the RBO using a "relevant person". An OE should identify the "relevant person" it intends to use at the outset of the information collection process.

"**Relevant persons**" includes a lawyer, accountant, regulated company-service provider, supervised agent from a credit institution, financial institution or an auditor, insolvency practitioner, tax adviser, estate agent and letting agent.¹¹

Following verification by a relevant person, the OE must apply to Companies House to be registered on the ROE and disclose details about its RBOs.

⁸ Paragraphs 3 (2) and 4 (2) (Restrictions on disposal) of the new Schedule 4A to the Land Registration Act 2002.

Other exceptions include:

- 1) the Secretary of State gave consent under paragraph 5 of the Economic Crime (Transparency and Enforcement) Act 2022 to the registration of the disposition; and
- 2) the disposition was made pursuant to a statutory obligation or court order, or by operation of law.

⁹ Paragraph 6 (Making dispositions that cannot be registered) of the new Schedule 4A of Land Registration Act 2002.

¹⁰ Sections 12 and 13 of the Act.

¹¹ A full list of "relevant persons" is set out in Regulation 8(2) of the Money laundering Terrorism Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

Provided the application is in order – for relevant information to be delivered, see below – Companies House will thereafter issue the OE with an overseas entity ID and shall record this ID in the register maintained at Companies House.

What is an RBO?

Broadly, an RBO is a company or individual that:

- directly or indirectly holds more than 25% of the shares in the OE; or
- directly or indirectly holds more than 25% of the voting rights in the OE; or
- directly or indirectly has the rights to appoint or remove a majority of the board of directors of the OE; or
- has the right to exercise, or actually exercises, significant influence or control over activities of an entity which is not a legal person under the law by which it is governed (e.g., a trust), and which meets any of the criteria above (e.g., the trustees of a trust).¹²

What information must be submitted to Companies House by the OE, and when must it be submitted?

An OE must submit relevant information – see below - about RBOs:

- on initial registration of the OE at Companies House; and
- within 14 days of the end of each 12-month period from the date of its original registration; and
- on an application to remove an OE from the ROE.

All information must be submitted to Companies House electronically in English.

Information about the OE¹³

The information to be provided in relation to an OE comprises:

- (a) name;
- (b) country of incorporation or formation;
- (c) registered or principal office;
- (d) a service address;
- (e) an email address;
- (f) the legal form of the entity and the law by which it is governed; and

¹² Schedule 2, Part 2 of the Act.

¹³ Schedule 1 to the Act.

- (g) any public register in which it is entered and, if applicable, its registration number in that register.

Information about RBOs¹⁴

The information to be provided where an RBO is an individual comprises:

- (a) name, date of birth and nationality;
- (b) usual residential address;
- (c) a service address;
- (d) the date on which the individual became a registrable beneficial owner in relation to the overseas entity;
- (e) which of the conditions in paragraph 6 of Schedule 2 of the Act is met in relation to the registrable beneficial owner, and a statement as to why that condition is met;
- (f) whether the individual meets that condition by virtue of being a trustee; and
- (g) whether the individual is a designated person (within the meaning of section 9(2) of the Sanctions and Anti-Money Laundering Act 2018), where that information is publicly available.

Where the RBO is a legal entity, other than a government or public authority, (although similar obligations apply where the RBO is a government or public authority), the information to be provided comprises:

- (a) name;
- (b) registered or principal office;
- (c) a service address;
- (d) the legal form of the entity and the law by which it is governed;
- (e) any public register in which it is entered and, if applicable, its registration number in that register;
- (f) the date on which the entity became a registrable beneficial owner in relation to the overseas entity;
- (g) which of the conditions in paragraph 6 of Schedule 2 of the Act is met in relation to the registrable beneficial owner and a statement as to why that condition is met;
- (h) whether the entity meets that condition by virtue of being a trustee; and
- (i) whether the entity is a designated person (within the meaning of section 9(2) of the Sanctions and Anti-Money Laundering Act 2018), where that information is publicly available.

¹⁴ If the OE does not have an RBO it must provide information about its individual or corporate managing officers.

Failure by an OE to register or update information at Companies House

If an OE that owns Qualifying Land fails to apply for registration on the ROE by 31 January 2023, a criminal offence is committed by the OE and every officer of the OE who is in default, punishable by a prison sentence of up to two years and an unlimited fine.¹⁵

If an OE disposed of an interest in Qualifying Land after 28 February 2022 and either (a) failed to apply for registration on the ROE, (if it holds other Qualifying Land), or (b) failed to submit details of the relevant disposal to Companies House by 31 January 2023, an offence is committed by the OE and every officer of the OE who is in default, punishable by a fine plus a daily default fine of up to £2,500 for every day of continued contravention.

If an OE fails in its obligation to update previously disclosed information at the end of each 12-month period, an offence is committed by the OE and every officer of the OE who is in default, punishable by a fine plus a daily default fine of up to £2,500 for every day of continued contravention.

In the event of any continued contravention, an offence is committed by every officer of the OE who may not have committed an offence under the initial contravention, but who is in default in relation to the continued contravention.¹⁶

Affected transactions

Transactions that could be impacted by the Act are therefore wide ranging and will include:

- the direct sale and purchase of Qualifying Land by an OE;
- the creation of a legal mortgage by an OE over Qualifying Land;
- the grant of a lease of more than seven years out of Qualifying Land; and
- the sale and purchase of shares in an OE that owns Qualifying Land.

The registration of a legal mortgage over Qualifying Land, where an OE is the **beneficiary** of the charge, will not be caught by the Act.

Counterparties dealing with an OE

All counterparties to affected transactions entered into with OEs, including tenants, lenders and purchasers, should ask the OE for evidence of compliance with the Act, (or evidence of exemption from registration under the Act), as a condition precedent to completion and/or funding.

Evidence can be satisfied by delivery of the form of the overseas entity ID and will give the counterparty comfort that either the counterparty's interest in the Qualifying Land (such as a legal mortgage), or the sale of the Qualifying Land by the OE, can be properly registered at the Land Registry.

In addition, lenders putting in place new financings should consider:

¹⁵ Paragraph 5 (Duty of proprietor to register as an overseas entity within transitional period), Part 2, Schedule 3 of the Act.

¹⁶ Section 8 (Failure to comply with updating duty) of Part 1 (Registration of overseas entities) of the Act.

- carrying out pre-completion due diligence checks and searches at Companies House and the Land Registry as a condition precedent to funding; and
- including separate representations and undertakings regarding the registration of the legal mortgage at the Land Registry and/or the annual updating obligations under the Act.

Additional Information

More information about the Act, and the information that needs to be verified as part of the registration process at Companies House, can be found in the following link to the government website:

<https://www.gov.uk/guidance/register-an-overseas-entity>

The Law Society has also issued guidance for solicitors about the verification process, which can be found at <https://www.lawsociety.org.uk/topics/property/register-of-overseas-entities-what-solicitors-should-know-about-verification>

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