

# The register of overseas entities – what the real estate industry needs to know

The Economic Crime (Transparency and Enforcement) Act 2022 (the **Act**) requires overseas entities that own, or wish to acquire, certain real estate in the UK (a **Qualifying Estate**) to register with Companies House and to provide (and keep up-to-date) information about their beneficial ownership. This note focuses only on how the regime applies to overseas entities owning or acquiring real estate in England and Wales. Many overseas entities need to take action now.

## Which real estate players will the Act affect?

The Act is particularly relevant to:

- overseas entities acquiring a Qualifying Estate;
- overseas entities that already own a Qualifying Estate (and became registered proprietor under an application made on or after 1 January 1999);
- third parties taking certain dispositions from an overseas entity owner of a Qualifying Estate;
- real estate investors who are proposing to use or have used overseas entities as part of their transaction structure; and
- lenders providing secured financing to overseas entities owning or acquiring a Qualifying Estate.

In this context, a Qualifying Estate is a freehold interest in land or a lease granted for more than seven years from the date of grant. The definition of an overseas entity is very wide. It catches all entities governed by a non-UK law including any body corporate, partnership or other entity that is a legal person under the law by which it is governed. Some types of entity will be exempt, but the Government has not yet published details of these.



## What are the requirements of the Act and what are the implications of not complying?

Any overseas entity acquiring a Qualifying Estate must register its beneficial ownership on the Register of Overseas Entities (**ROE**). The ROE opened for registrations today, 1 August 2022. From 5 September 2022, an overseas entity that is not registered on the ROE will not be able to register its acquisition of a Qualifying Estate at the Land Registry and will not therefore be able to obtain legal title. Once registered on the ROE, the overseas entity must also update its beneficial ownership information at least annually. Not complying is a criminal offence.

The Act also has retrospective effect. Any overseas entity that became registered proprietor of a Qualifying Estate under an application made on or after 1 January 1999 must apply to the ROE by 31 January 2023. Again, it must update its beneficial ownership information at least annually. Failure to comply with the registration or the updating requirements is a criminal offence.

The Land Registry is required to place a restriction on the title to any Qualifying Estate owned by an overseas entity, preventing the registration of certain dispositions by that entity unless it has complied with both its registration and updating requirements (or is exempt). These restricted dispositions are a transfer of the Qualifying Estate, the grant of a lease of more than seven years from the date of grant or the grant of a legal charge (**Restricted Dispositions**). Consequently, a failure to comply with the registration requirements will severely restrict how an overseas entity can deal with its estate. These restrictions will take effect immediately for new acquisitions and on 1 February 2023 for overseas entities that were proprietors of Qualifying Estates before 1 August 2022. Making a disposition in breach of the restrictions is also a criminal offence.

There will, however, be certain carve outs from the form of the restriction to protect third parties. Most notably these include:

- dispositions pursuant to a contract entered into before the restriction is entered on the registered title;
- dispositions made pursuant to a statutory obligation or court order or which occur by operation of law;
- dispositions which are made in the exercise of a power of sale or leasing by a registered chargee or its receiver; and
- dispositions made by a specified insolvency practitioner in specified circumstances.

Similar prohibitions (and carve outs to them) apply to Restricted Dispositions by overseas entities exercising owner's powers where the overseas entity is not yet registered as the registered proprietor of a Qualifying Estate but became entitled to be registered as the legal owner on or after 5 September 2022.

## Are other disclosures required?

Yes. Any overseas entity applying to the ROE before 1 February 2023 must disclose any Restricted Dispositions made by it between 28 February 2022 and the date it applies to the ROE. In addition, even if an overseas entity does not otherwise have to apply to the ROE (because it does not hold a Qualifying Estate on 31 January 2023), if it has made any Restricted Dispositions between 28 February 2022 and 31 January 2023, it will need to submit certain specified information to the registrar before 1 February 2023. In both of these situations, the information required to be provided to the registrar includes details of the overseas entity's beneficial ownership as it was at the time that the Restricted Disposition took place.

## Which beneficial owners of overseas entities are required to be registered?

Identifying the beneficial owners of an overseas entity will entail looking up the chain of ownership of the overseas entity and working out if various thresholds of direct or indirect holdings are met.

In general terms, someone is likely to be a beneficial owner of an overseas entity if:

- they hold, directly or indirectly, more than 25% of the shares or voting rights in the overseas entity;
- they hold the right, directly or indirectly, to appoint or remove a majority of the board of directors of the overseas entity; or
- they have the right to exercise, or actually exercise, significant influence or control over the overseas entity.

A beneficial owner can be a natural person, a legal entity or a government or public authority.

There are some exemptions to the requirement to be registered as a beneficial owner. In very general terms, a beneficial owner of an overseas entity is likely to be exempt from the requirement to be registered if:

- they hold their interest in the overseas entity through another legal entity;
- they are a beneficial owner of that other legal entity; and
- that other legal entity is itself subject to its own disclosure requirements.





## What steps should real estate investors take now?

The Act will have a significant impact on both direct overseas property owners (current and prospective) and more complex real estate ownership structures that involve the use of overseas entities, such as offshore special purpose vehicles. Real estate investors should therefore quickly identify where, as part of their portfolio, overseas entities have been used to hold the legal title to a Qualifying Estate. Equally, all overseas entities should identify the Qualifying Estates that they hold. Overseas entities acquiring a Qualifying Estate must bear in mind that commencing 5 September 2022, they cannot apply to be registered as legal owners at the Land Registry unless they are properly registered on the ROE.

Overseas entities that own or are acquiring Qualifying Estates should therefore begin as soon as possible the process of identifying and gathering information about their beneficial ownership so that they can comply. In doing this, they should bear in mind both the transitional disclosure requirements and that they must serve certain notices on beneficial owners and wait up to a month for replies. Overseas entities should also allow time for other pre-application steps, such as finding a verification agent authorised by Companies House and giving that agent independent and reliable documents and information to back up the information the overseas entity is submitting to the ROE.

Given the number of applications that Companies House is likely to receive, overseas entities should aim to submit applications as soon as practicable after today. Putting appropriate structures in place now will also pay dividends when dealing with the ongoing annual updating requirements in future.

Parties dealing with overseas entities should also consider whether they need contractual protection in relation to the Act. This may be an issue particularly where there is a long period between exchange and the intended completion of a contract. Equally, where contracts have already been entered into, they should consider whether the requirements of the Act will need to be addressed separately since the contract is unlikely to include tailored contractual protection.

## What steps should lenders be taking now?

The Act will have a significant impact on lenders where they are providing secured financing for the acquisition of a Qualifying Estate and the buyer/borrower, the seller or both are overseas entities.

In particular, if the buyer/borrower is an overseas entity, they will not benefit from the six month transitional period afforded under the Act to the overseas entities that were already the registered proprietor of a Qualifying Estate when the ROE opened today, 1 August 2022. As a result, the buyer/borrower will be prevented from:

- being registered as the new proprietor of the Qualifying Estate they wish to acquire (i.e. they will be prevented from acquiring the legal title to the Qualifying Estate); and
- granting a legal charge to the lenders, until they have registered on the ROE.

In light of the above, lenders should raise the matter of the ROE with their clients as early as possible on transactions, in order to ensure that their clients start dealing with it as soon as possible, thereby minimising the risk of delays that may be caused by the registration process.

