

Economic Crime Act – what the real estate industry needs to know



On 15 March 2022, the Economic Crime (Transparency and Enforcement) Act 2022 (the **Act**) received royal assent following an expedited legislative process. It requires overseas entities who 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 regarding their beneficial ownership. This note focuses only on how the regime applies to real estate located in England and Wales. The provisions will come into force on a date specified in secondary legislation and we expect further information on this within the next six weeks.

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 the registered proprietor of that Qualifying Estate 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;
- lenders providing financing to overseas entities acquiring or owning a Qualifying Estate; and
- lenders taking or enforcing security over Qualifying Estates owned by overseas entities.

In this context, a Qualifying Estate is a freehold interest in land or a registrable 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 new public beneficial ownership register at Companies House. If the overseas entity does not comply, it will not be able to register the acquisition at the Land Registry so will not obtain legal title to the Qualifying Estate. Once registered on the beneficial ownership register, it must 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 the registered proprietor of a Qualifying Estate on or after 1 January 1999 must register its beneficial ownership within a six-month transitional period commencing on the date on which the relevant provisions come into force. Again, it must update its beneficial ownership information at least annually. Failure to comply with the registration and updating requirements is a criminal offence.

Furthermore, the Land Registry must 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 7 years from the date of grant or the grant of a registrable legal charge. Consequently, a failure to comply with the registration requirements will severely restrict how an overseas entity can deal with its estate. Making a disposition in breach of the restriction will also be 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 register; 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.

Can an overseas entity act now to avoid disclosing its beneficial owners?

No. The Act includes transitional disclosure provisions. Any overseas entity transferring a Qualifying Estate, granting a lease of more than 7 years from the date of grant or granting a registrable legal charge between 28 February 2022 and the full implementation of the new Overseas Entities Register must provide information about its beneficial ownership. This is the case, even if it does not otherwise have to be on the overseas entities register after the disposal.

Which beneficial owners of overseas entities need to be registered?

The concept of beneficial ownership is modelled on the concept of significant control in the “People with Significant Control” regime under the Companies Act. Determining the identity of the beneficial owners of an overseas entity will involve looking up the chain of ownership. Very broadly speaking, a person may be a beneficial owner of an entity if it:

- holds (whether directly or indirectly) more than 25% of the shares or voting rights in it;
- is able to appoint or remove a majority of its board;
- can or does exercise significant influence or control over it; or
- achieves control through a trust, partnership or other organisation.

A registerable beneficial owner can be a natural person, a legal entity or a government or public authority. Some exemptions apply (essentially, when a beneficial owner’s interest is held through another entity which is itself subject to similar disclosure requirements) and in order to be caught, indirect holdings are subject to a “majority stake” requirement.

What steps should real estate investors take now?

The Act will have a significant impact on not only direct overseas property owners (current and prospective) but also on more complex real estate ownership structures that involve the use of overseas entities, such as offshore special purpose vehicles. Real estate investors should therefore consider 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 currently hold.

Overseas entities should then begin the process of identifying and gathering information about their beneficial ownership so that they are ready to comply when the registration requirements come into force. In doing this, they should bear in mind the transitional disclosure requirements for certain transactions on or after 28 February 2022. Much of the detail is yet to be provided through secondary legislation and guidance. However, given the number of applications that Companies House is likely to receive, overseas entities should prepare in advance so that applications can be submitted in good time, soon after the new register is established. Moreover, putting appropriate structures in place now will pay dividends when dealing with the ongoing annual updating requirements in future.

Although the exact implementation timetable is not currently known, 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 the greatest impact on lenders who provide finance to structures where an overseas entity owns or will acquire a Qualifying Estate. In particular, lenders who are currently beneficiaries of security over Qualifying Estates owned by an overseas entity will want to ensure that the overseas entity complies with its registration requirements under the Act. Any failure to register may affect a lender's ability to enforce its rights under the security document.

We do not have all the detail at present. While we await the publication of further guidance and legislation (and the creation of the new overseas entities register at Companies House), lenders might want to start the process of reviewing their loan books to identify where they are beneficiaries of security granted by overseas entities over Qualifying Estates. It is not yet clear how news of the new registration regime will be communicated to the overseas entities. Lenders may therefore also wish to contact their counterparties to give them notice of the new registration regime.



Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy (Holdings) Limited is a limited company registered in England and Wales with registered number 07462870. Allen & Overy LLP and Allen & Overy (Holdings) Limited are authorised and regulated by the Solicitors Regulation Authority of England and Wales. The term partner is used to refer to a member of Allen & Overy LLP or a director of Allen & Overy (Holdings) Limited or, in either case, an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners, and a list of the directors of Allen & Overy (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD.

© Allen & Overy LLP 2022. This document is for general information purposes only and is not intended to provide legal or other professional advice.