

UPDATE

New UK legislation affects overseas companies holding UK property

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The UK Government has recently introduced legislation which aims to prevent the UK property market being used for money laundering by increasing the transparency of ownership of UK real estate.

On 15 March 2022, the UK Government passed the Economic Crime (Transparency and Enforcement) Act 2022 (the **Act**) which will require overseas entities owning UK real estate to register with the UK's Companies House. The Act, which was fast-tracked in response to Russia's invasion of Ukraine, also amends existing laws in relation to unexplained wealth orders and economic sanctions. Currently, only the provisions of the Act which relate to sanctions are in force. The other provisions of the Act will be brought into force through regulations.

Register of Overseas Entities

When it comes into force, Part 1 of the Act will create a new register (the **Register**) of overseas entities owning real estate in the UK (an **Entity**), which must include details of the beneficial owners of that Entity. For the purposes of the Act, an overseas entity means a non-UK body corporate, partnership or other entity that is a legal person under the law by which it is governed.

The public will be able to inspect certain information on the Register, including the identity of an Entity and its beneficial owners (but excluding information which would contravene UK data protection legislation). Once the Entity has been entered on the Register, it will be allocated an overseas entity ID number which will be required for any further transaction in relation to the UK property.

Identifying beneficial owners

Under the Act, an Entity must take reasonable steps to (1) identify its registrable beneficial owners (**RBO**) and (2) where RBOs are identified, obtain certain required information about each RBO (set out below). An RBO may be an individual, legal entity, government or public authority that:

- holds (directly or indirectly) more than 25% of the shares and/or voting rights in the Entity;
- holds (directly or indirectly) the right to appoint or remove a majority of the board of directors of the Entity; or
- has the right to exercise, or actually exercises, significant influence or control over the Entity.

An RBO may also be a trustee of a trust, member of a partnership or an unincorporated association or other entity that is not a legal person under the law by which it is governed, which meets any of the conditions listed above (the **RBO Conditions**) and has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or entity.

Where an entity has no RBO, or where an RBO has been identified but the Entity is unable to provide the required information in relation to that RBO, the Entity must provide a statement to that effect, together with

the required information regarding the Entity and each managing officer. For the purposes of the Act, **managing member** in relation to an Entity, includes a director, manager or secretary.

Steps required

Once an RBO has been identified, the Entity must give notice to the RBO. The RBO must then state whether or not they are an RBO in relation to the Entity and confirm, correct or supply the required information within one month from the day on which the notice was given. The Entity must then apply for registration on the Register and provide an updated statement annually thereafter.

Failure to comply with the duty to provide information and updates required by the Act is an offence, giving rise to liability on conviction to imprisonment or a fine (or both).

Information required for the Register

Entity

- Name
- Country of incorporation or formation
- Registered or principal office
- Service address
- Email address
- Legal form of the Entity and governing law
- Any public register in which it is entered and registration number

RBO Individual

- Name, date of birth and nationality
- Usual residential address
- Service address
- Date on which the individual became a RBO
- Why the RBO meets the RBO Condition(s) and if they meet that condition by virtue of being a trustee
- Whether the RBO is a designated person within the meaning of section 9(2) of the Sanctions and Anti-Money Laundering Act 2018

RBO Corporate

- Name
- Registered or principal office
- Service address
- Legal form of the RBO entity and the law by which it is governed
- Any public register in which it is entered and registration number
- Date on which the entity became a RBO
- Why the RBO meets the RBO Condition(s) and if they meet that condition by virtue of being a trustee
- Whether the RBO is a designated person within the meaning of section 9(2) of the Sanctions and Anti-Money Laundering Act 2018

Managing officer

If an individual:

- Name, date of birth and nationality
- Any former name
- Usual residential address
- Service address
- Business occupation
- A description of the officer's role and responsibilities in relation to the Entity

Where a managing officer is not an individual:

- Name
- Registered or principal office
- Service address
- Legal form of the officer and the law by which it is governed
- Any public register in which it is entered and registration number
- A description of the officer's role and responsibilities in relation to the Entity
- The name and contact details of an individual who may be contacted regarding the managing officer

Timing

The Register will have retrospective effect, applying to property purchased in England and Wales on or after 1 January 1999 and to property in Scotland purchased on or after 8 December 2014.

Overseas entities that already own UK real estate, or acquire property before Part 1 of the Act comes into force, will have a six month transitional period within which to apply for registration. From 28 February 2022 until the end of the six month transitional period, the registration requirements will apply irrespective of whether the overseas entity wishes to sell the property during that time. All overseas entities will, therefore, be caught by the requirement to register, unless they disposed of their UK real estate before 28 February 2022.

Once the Register is in force, an overseas entity will not be able to be registered as holding the title to UK real estate without being entered on the Register.

Second economic crime bill

A further Economic Crime and Corporate Transparency Bill, which will provide for wider reform of the UK's Companies House, is expected to be introduced in due course. The Bill is likely to empower Companies House to require identity verification from people who manage, own or control UK companies or other UK registered entities. Companies House also is also expected to be given more effective investigation and enforcement powers.

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