

# The Register of Overseas Entities - A Howard Kennedy Client Guide

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**Knowledge Team**

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## TABLE OF CONTENTS

	<b>Page</b>
1. INTRODUCTION .....	1
2. BACKGROUND .....	1
3. KEY DATES .....	1
4. KEY FACTS.....	1
5. WHAT DOES THE ACT DO? .....	2
6. WHAT IS A "QUALIFYING ESTATE".....	2
7. WHAT IS AN "OVERSEAS ENTITY".....	2
8. WHAT IS THE SCOPE? .....	2
9. WHAT INFORMATION IS REQUIRED? .....	3
10. WILL THE REGISTER INFORMATION BE PUBLICLY AVAILABLE?.....	4
11. HOW DOES THIS PROCEDURE RELATE TO REGISTERED LAND? .....	4
12. WHEN DID THESE PROVISIONS TAKE EFFECT AND WHAT ARE THE TRANSITIONAL PROVISIONS? .....	5
13. STEPS TO BE TAKEN NOW BY OVERSEAS ENTITIES HOLDING A QUALIFYING ESTATE .....	6
14. STEPS TO BE TAKEN BY BUYERS/TENANTS ACQUIRING FROM A REGISTRABLE OVERSEAS ENTITY .....	6
15. FURTHER READING.....	6
16. BASIS OF CLIENT GUIDE.....	6

# Economic Crime (Transparency and Enforcement) Act 2022: Register of Overseas Entities

## A Howard Kennedy Client Guide

### 1. INTRODUCTION

This is an overview of the Register of Overseas Entities at Companies House ("the ROE"), established under the Economic Crime (Transparency and Enforcement) Act 2022 ("the Act"). It is produced for clients of Howard Kennedy LLP. For advice in relation to a specific matter, please liaise with your usual contact at this firm.

### 2. BACKGROUND

The Act received Royal Assent on 15 March 2022 after being fast-tracked through Parliament. Under the Act, Companies House is to host a Register of Overseas Entities. The Act also makes reforms to the current statutory provisions on 'Unexplained Wealth Orders' as well as to sanctions legislation. These measures are supported by a White Paper published 28 February 2022 (see our news article [here](#) for details).

A second Bill, the Economic Crime and Corporate Transparency Bill, is making its way through Parliament. This will include additional anti money-laundering measures and will extend UK Government powers to seize crypto assets.

In this guide, we focus on the Register of Overseas Entities at Companies House in the context of land transactions in England and Wales. Note that the Act also applies in other parts of the UK but there are differences in how it affects land transactions outside England and Wales, which are outside the scope of this note.

### 3. KEY DATES

- **1 August 2022** – the Register of Overseas Entities went live at Companies House.
- **5 September 2022** – changes to Land Registry practice came into effect.
- **31 January 2023** – end of the "transitional period".
- For each registered overseas entity, there is an **annual updating requirement** (every year from the date of registration).

### 4. KEY FACTS

The following key facts apply in respect of any freehold or lease longer than seven years ("a qualifying estate") in England and Wales that has been or will be registered at the Land Registry to an overseas entity. In England and Wales, this goes as far back as overseas entities that applied to the Land Registry to be registered as proprietor at any time after 1 January 1999:

- **For overseas entities already registered as proprietor of a qualifying estate** - You were required to register (or apply to register) on the ROE by expiry of the transitional period on 31 January 2023. This involves providing details of the beneficial ownership of the overseas entity. A unique overseas entity identification number is issued by Companies House for Land Registry purposes. There is an annual updating requirement.

- **For overseas entities that have disposed of a qualifying estate** - If the disposal completed after 28 February 2022, then, unless an exclusion applies, you need to provide certain details of that transaction as well as information about the beneficial ownership of the overseas entity to Companies House. The deadline for doing so was the expiry of the transitional period on 31 January 2023.
- **For all parties to note** - The Land Registry has or will enter a restriction on the title registers of qualifying estates owned by overseas entities. The unique overseas entity identification number from Companies House will be required to satisfy the restriction on relevant dispositions of the property.

We look more carefully at these and other provisions in this guide. There are provisions of the Act that give rise to criminal liability and/or fines in the event of non-compliance.

## 5. **WHAT DOES THE ACT DO?**

The Act provides for the establishment of a Register of Overseas Entities at Companies House, which will record specific information about overseas entities that hold (or will hold) a qualifying estate in land registered in the UK.

## 6. **WHAT IS A "QUALIFYING ESTATE"?**

A qualifying estate for the purpose of the Act is a freehold or a leasehold interest with a term longer than seven years from the date of grant.

## 7. **WHAT IS AN "OVERSEAS ENTITY"?**

An "overseas entity" is a legal entity that is governed by the law of a country or territory outside the UK. For instance, a legal entity based in Jersey, Guernsey or the Isle of Man is an overseas entity. In this context, a legal entity is a body corporate or other such legal person (i.e. not an individual). The legislation is not directly concerned with overseas lenders, rather it targets overseas entities that are or will become registered proprietors of a qualifying estate at the Land Registry.

## 8. **WHAT IS THE SCOPE?**

The ROE will record certain prescribed information about the overseas entity, including its beneficial ownership. A "beneficial owner" is defined and will include a person (which may be an individual or other legal entity) that:

- holds, directly or indirectly, more than 25% of the shares in an overseas entity;
- holds, directly or indirectly, more than 25% of the voting rights in an overseas entity;
- holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of an overseas entity;
- has the right to exercise, or actually exercises, significant influence or control over the overseas entity;
- has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or other entity that is not a legal person under the law by which it is governed, where the trustees of the trust or members of the entity meet any of the conditions above in relation to the overseas entity.

## 9. WHAT INFORMATION IS REQUIRED?

The information required will depend on the nature of the overseas entity and its beneficial ownership. An overseas entity must provide the following:

- name;
- country of incorporation or formation;
- registered or principal office;
- a service address;
- an email address;
- the legal form of the entity and the law by which it is governed; and
- any public register in which it is entered and, if applicable, its registration number in that register.

A statement will be required (in the appropriate prescribed format) confirming the position regarding registrable beneficial ownership.

An individual beneficial owner must provide information including:

- name, date of birth and nationality;
- usual residential address;
- a service address; and
- the date on which the individual became a registrable beneficial owner in relation to the overseas entity.

Where the beneficial owner is a legal entity (other than a government or public authority), the required information will include:

- name;
- registered or principal office;
- a service address;
- the legal form of the entity and the law by which it is governed;
- any public register in which it is entered and, if applicable, its registration number in that register; and
- the date on which the entity became a registrable beneficial owner in relation to the overseas entity.

Further, where a trustee is a registrable beneficial owner for the purposes of the Act, information must be provided about the trust, the trustees, beneficiaries, the settlor and any "interested person". An "interested person" is one who, under the terms of the trust, has rights in respect of

the appointment or removal of trustees or the exercise by the trustees of their functions. This would potentially include a trust protector. However, the information about beneficiaries, settlors and interested persons will generally be restricted to HMRC and other persons with functions of a public nature and will not be on the public register at Companies House.

On completion of registration, Companies House will allocate a unique identification number to the registered entity, which is recorded in the register ("the OE ID"). The registered entity will be under a duty to update the information annually. Failure to do so will be a criminal offence committed both by the registered entity and every officer of the entity. The information supplied will need to be "verified" by a suitably qualified person who is supervised under specific money laundering regulations and has obtained an "assurance code" from Companies House. Verification is an important part of the process and there are third party verification agents that provide this service. Further information can be supplied on request.

#### 10. **WILL THE REGISTER INFORMATION BE PUBLICLY AVAILABLE?**

The Register of Overseas Entities will be publicly available.

However, some information will be "protected information" and will not be publicly available. For individuals, protected information will include their residential address and the day of the month on which they were born.

In appropriate circumstances, it will be possible to make an application to the registrar for other information also to be protected from disclosure. The grounds for applying for information to be so protected are limited and the applicant must show they reasonably believe that if the protected information is available for public inspection, or otherwise disclosed by the registrar, the activities of that overseas entity (or one or more characteristics or personal attributes of the relevant individual associated with that overseas entity) will put the relevant individual or a person living with them at serious risk of being subjected to violence or intimidation.

As noted above, where a trustee of a trust is a registrable beneficial owner, the overseas entity will be required to include information about the trust, trustees, beneficiaries, settlor and others. However, the information about beneficiaries, settlors and other interested persons will generally be restricted to HMRC or any other person who has functions of a public nature and is specified to receive such information by the Secretary of State. It will not be on the public register at Companies House.

#### 11. **HOW DOES THIS PROCEDURE RELATE TO REGISTERED LAND?**

Broadly, the Act provides that unless an overseas entity is registered with a unique identification number on the ROE:

- no application can be made to register the overseas entity as proprietor of a qualifying estate at the Land Registry; and
- a sale, lease or charge by such overseas entity of a qualifying estate cannot be registered at the Land Registry.

There are limited exceptions (the detail of some being expected in future regulations).

To give teeth to these provisions, the Land Registry is placing a restriction on the title of all qualifying estates in England and Wales owned by overseas entities that have been registered pursuant to an application since 1 January 1999. Note that the provisions are adjusted for Scotland so that it looks

back to 2014 instead, although consideration of the Act as it applies in Scotland is outside the scope of this note.

The Land Registry was to enter the restriction as soon as reasonably possible but in any event by expiry of the transitional period on 31 January 2023. The restriction on the title of properties already owned by overseas entities took effect following expiry of the transitional period on 31 January 2023.

The title restriction will not apply in certain situations, including when the disposition is made pursuant to:

- a contractual obligation pre-dating the restriction;
- a court order;
- a statutory obligation;

nor will the title restriction apply in the exercise of a power of sale or leasing conferred on the proprietor of a registered charge or a receiver appointed by such a proprietor. There will also be exceptions for such disposals by a specified insolvency practitioner in certain circumstances.

As a further anti-avoidance measure, the Act provides that where an overseas entity acquires a qualifying estate so that it is entitled to be registered at Land Registry, then even if it does not itself apply for registration, any party acquiring a qualifying estate from that overseas entity must supply the relevant OE ID to enable registration of the ultimate buyer/tenant to take place at the Land Registry. This will ensure that an overseas entity cannot circumvent registration requirements by failing to register its interest at Land Registry.

## 12. **WHEN DID THESE PROVISIONS TAKE EFFECT AND WHAT ARE THE TRANSITIONAL PROVISIONS?**

The ROE went live on 1 August 2022 and the changes to Land Registry practice came into force on 5 September (subject to certain transitional provisions). Any relevant application to the Land Registry made from 5 September 2022 must be accompanied by the unique OE ID.

Overseas entities (unless exempt) that already held qualifying estates in land had a transitional period of six months expiring on 31 January 2023 to apply for registration at Companies House.

During the transitional period the following applied:

- Overseas entities (unless exempt) should have applied to be registered on the ROE. The overseas entity (and every officer of that entity) commits an offence if at the end of the transitional period the entity (having a qualifying estate in land) has not registered or applied to be registered.
- In the event of a "relevant disposition" at any time from 28 February 2022 to the end of the transitional period, an overseas entity must deliver to the registrar at Companies House confirmation of the date of disposition as well as statements as to the beneficial ownership expressed by reference to the position immediately before the relevant disposition took place. Failure to do so by the end of the transitional period means that the overseas entity (and every officer of that entity) commits an offence. If that entity will still hold land in this jurisdiction after the disposition it will also need to apply for registration as above.

There are some key exceptions when considering what is a "relevant disposition", so the notification requirements are NOT triggered in the event of:

- dispositions made in pursuance of a statutory obligation or court order or occurring by operation of law; nor
- a disposition made by a specified insolvency practitioner in specified circumstances (yet to be defined in further secondary legislation).

13. **STEPS TO BE TAKEN NOW BY OVERSEAS ENTITIES HOLDING A QUALIFYING ESTATE**

Given the retrospective nature of the legislation, and the penalties for non-compliance, any overseas entity that acquired and holds a qualifying estate in England and Wales from 1 January 1999 should register on the ROE and maintain a valid registration. Details of beneficial ownership structures will be required. OE sellers/landlords involved in disposing of a qualifying estate can expect a well-advised buyer/tenant to require provision of a valid OE ID.

14. **STEPS TO BE TAKEN BY BUYERS/TENANTS ACQUIRING FROM A REGISTRABLE OVERSEAS ENTITY**

- Buyers/tenants (and their lenders) will want to know that on any sale or lease from an overseas entity they will be able to register the acquisition/lease at Land Registry. Provision of a valid OE ID will be required from any overseas seller/landlord entity and further confirmations that updating requirements will be dealt with may be required.
- Delays in registration may affect the timing of a transaction. Lenders are unlikely to accept registration as a condition subsequent and may require registration of an overseas entity seller/landlord on the ROE as a loan precondition.
- Representations/warranties may be required from an overseas entity seller/landlord that the ongoing reporting requirements are complied with.

15. **FURTHER READING**

We have a separate note looking at the impact on lenders of the provisions of the Economic Crime (Transparency and Enforcement) Act 2022 that relate to sanctions against Russia, for details of which, see [here](#).

16. **BASIS OF CLIENT GUIDE**

This note is made available to clients of Howard Kennedy LLP for educational purposes and general information. The content should not be used as a substitute for legal advice. For advice in relation to a specific matter please liaise with your usual contact at this firm.