



Economic Crime (Transparency and Enforcement) Act 2022 – Register of Entities

August 30, 2022

The Economic Crime (Transparency and Enforcement) Act 2022 (the “ECA”) came into force on 1 August 2022 and places new obligations on overseas entities holding real estate in the United Kingdom.

Pursuant to the ECA, all overseas entities owning either freehold property in the UK or leaseholds that are more than seven years at the date of grant must now register on a new register of overseas entities (“ROE”) maintained by Companies House and provide further information regarding their beneficial owners.

Further, an overseas entity that acquires property in the UK will need to be registered in the ROE before an application can be made to register the acquisition in any of the UK land registers on or after 5 September 2022.

Where the overseas entity already owns property in the UK, and it acquired that property (i) after 1 January 1999 in England and Wales, (ii) after 8 December 2014 in Scotland, or (iii) after 5 September 2022 in Northern Ireland, it must submit an application to register in the ROE by 31 January 2023. The overseas entity cannot transact with its UK property on or after 1 February 2023 until it is registered in the ROE.

Background

In 2016, the UK introduced a register of beneficial owners of UK companies – this is known as the register of people with significant control (“PSC Register”). The PSC Register is publicly accessible but does not apply to companies that are incorporated outside the UK.

There have long been concerns that UK property assets were being used to facilitate money laundering or the investment of illicit funds. The ECA was fast-tracked partly in response to Russia's invasion of Ukraine and became law on 15 March 2022.

The ECA aims to make public the identities of people who either own a company, or who control the running of a company, that owns a property in the UK. The new requirement to file an ROE at Companies House (including details of an overseas entity's beneficial owners) aims to improve the transparency of overseas entities who invest in property in the UK and to assist in the Government's drive to act against sanctioned individuals and their assets.

Key Features of the New ROE Regime

The key features of the ROE regime implemented under the ECA are as follows:

- What is the obligation on overseas entities? All “overseas entities” that own UK real estate must apply for registration on the new ROE maintained by Companies House.
- What is classified as UK real estate? For the purposes of the ECA, UK real estate includes: commercial and residential freehold transfers; commercial and residential leasehold property (where the lease is granted for a term of more than seven years); and granting a legal charge.
- What is an “overseas entity”? An “overseas entity” is any legal entity that is governed by the law of a country or territory outside the UK (the Isle of Man and the Channel Islands are all classified as outside the UK). The ECA is widely and purposively drafted to capture all types of legal structures, including companies, partnerships, corporations, governments and public authorities. Trusts are excluded from the definition of an overseas legal entity as they do not usually have separate legal personality, but they are caught by a separate regime. Where the beneficial owner of real estate is a trustee, details about the trust will need to be supplied.
- What is a registerable beneficial owner? The test to establish beneficial ownership under the ECA is similar to the People with Significant Control regime (the regime applicable to UK incorporated companies). A person will be a

registrable beneficial owner if they meet any one of the following conditions:

- it holds, directly or indirectly, more than 25 per cent of the shares in the overseas entity;
 - it holds, directly or indirectly, more than 25 per cent of the voting rights in the overseas entity;
 - it has the right, directly or indirectly, to appoint or remove a majority of the board of directors of the overseas entity;
 - it is able to exercise, or actually exercises, significant influence or control over the overseas entity; or
 - it is able to exercise, or actually exercises, significant influence or control over the activities of a trust, a partnership, unincorporated association or entity that is not a legal person under the law by which it is governed, and the trustees of that trust or members of that entity meet any of the conditions specified above (in their capacity as such) in relation to the overseas entity.
- Registration at Companies House. Overseas entities must take reasonable steps to ascertain whether they have a registerable beneficial owner and, if so, identify and notify them and provide the requisite details in a statement to Companies House. The overseas entity must also provide certain information about itself to Companies House. The information supplied by the overseas entity will need to be verified by a verification agent. The verification agent can be a UK-based entity that is supervised under the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017. Once the information is verified and complete, the overseas entity will then be issued with an overseas entity ID by Companies House.
 - Obligation to keep ROE up to date. Overseas entities will be required to update the information provided to Companies House on an annual basis or when a beneficial owner and/or managing officer is required to be removed from the ROE. Failure to do so may result in criminal sanctions. Overseas entities will be able to apply to be removed from the ROE if they no longer hold an interest in UK property (the updating obligation remains even if it no longer owns UK real estate).

Enforcement

Failure to comply with the ECA is a criminal offence on the part of the overseas entity and its officers. The ECA contains a variety of offences for non-compliance, which are punishable by daily fines for the overseas entity itself and imprisonment of up to five years for its officers.

The ECA only applies to registerable property interests. If an overseas entity does not comply with its obligations under the ECA, then it will be unable to deal with its property, and the Land Registry will place a restriction on the title preventing dispositions. This means that the property cannot be sold, charged or have a lease granted out of it. The ECA also allows the Government to impose a charge on the property to secure unpaid fines.