



## REGISTER OF OVERSEAS ENTITIES OWNING UK REAL ESTATE - **UPDATE**

In our *Tax Alert* earlier this month we reported the Government's intention to bring forward legislation requiring foreign entities which own UK real estate to declare on a public register the identities of the individuals who own and/or control them.

The Economic Crime (Transparency and Enforcement) Act 2022, which contains the provisions for this register, received Royal Assent on 15 March 2022, after being rushed through Parliament. With the Bill having become law, we can now provide an update on the requirements which incorporates the amendments made in the passage of the Bill through the House of Commons.

Below, we provide answers to the key questions which overseas entities, those who manage them and the individuals who own them are likely to have on the requirements and practical effects of the register.

### Who or what is required to register?

An 'overseas entity' which owns or acquires UK land is required to register. For these purposes the interest in land will either be a freehold interest or a leasehold interest where the period of the lease at the date of grant was more than 7 years. The Act defines 'overseas entity' as being a legal entity governed by a non-UK jurisdiction, whilst a 'legal entity' means a company, partnership 'or other entity that is a legal person under the law by which it is governed'. A trust has no legal personality so is not required to register, but there may nevertheless be a requirement to provide information to the registrar where an overseas entity has a trust as beneficial owner (see below).

### How do you work out who the beneficial owners are of overseas entities?

The Act requires an overseas entity to identify its 'registrable beneficial owners' before applying for registration. A person holding (directly or indirectly) more than 25% of the shares or the votes in the entity is a beneficial owner, as would be a person holding the right to appoint or remove a majority of the board of directors. A person who has the right to exercise, or in practice does exercise, significant control over the entity is also regarded a beneficial owner. Finally, a person is a beneficial owner if a trust (or other entity not having legal personality, such as a partnership or unincorporated association) meets one of the above definitions of a beneficial owner, and the person can or does exercise significant influence or control over the trust or entity.

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## **Who will hold the register?**

The Registrar of Companies in England and Wales is named as the organisation which will maintain the register of overseas entities, and it is to Companies House that applications to register will have to be made, along with updates in information and annual confirmations as to the accuracy of data held.

## **What information will the overseas entity have to provide about itself to the registrar?**

The required information about the overseas entity itself is relatively basic: name; country of incorporation; the legal form of the entity and its governing law; its registered or principal office; a service address and email address; a note of any public register on which the overseas entity is registered, and the relevant registration number.

## **What information will the overseas entity need to provide about anyone it identifies as a beneficial owner?**

It depends on what type of person the beneficial owner is. If it is an individual, then name, date of birth, nationality, usual residential address, service address and the date on which the individual became a beneficial owner (in relation to the overseas entity) have to be supplied. It is also a requirement to disclose which of the above conditions is satisfied such that the individual is a beneficial owner, and report whether the condition is met by virtue of the individual being a trustee. Where the beneficial owner is a legal entity rather than an individual, then name, registered or principal office, a service address, the entity's legal form and governing law, any public register on which the entity appears and the date on which the entity became a registrable beneficial owner all have to be supplied, along with the condition which was satisfied such that the entity is a beneficial owner. It is also necessary to disclose whether the entity is a beneficial owner by virtue of being a trustee. There are similar requirements where the beneficial owner is a government or public authority.

## **What additional information will the overseas entity need to provide where the beneficial owner, whether an individual or legal entity, it is acting in a trustee capacity?**

There are additional reporting requirements where the beneficial owner has been identified as being a trustee. In that event, it is a requirement to provide the name of the trust, the date on which it was created, information relating to the trustees, basic information about the beneficiaries and the settlor, and information about anyone (such as a Protector) who has the right to appoint or remove trustees or has rights as to how the trustees exercise their powers. However, there is one very important difference between information provided about the overseas entity and beneficial owners, and information supplied additionally about trusts where the beneficial owner is acting as trustee. Whereas the former is information available to be inspected on the public register, the supplementary information about the trust itself will be on the register but available only to tax authorities.

## **Is any other information on the register not publicly available?**

In addition to the trust information noted above, residential addresses will not be available for inspection, nor will the day of the month on which an individual was born (the month and year of birth only will be available to the public).

## **What happens if the overseas entity considers that it has no beneficial owner or that it has one but cannot provide the required information?**

It nevertheless has a requirement to register and provide the necessary information about itself. If, in its application, it includes a statement that it has no registrable beneficial owners, it has to provide information about its Managing Officer, whether an individual or a legal entity. The information required to be provided about the Managing Officer is very similar to the information required to be provided for a beneficial owner (see above), but there is a further requirement to describe the officer's business occupation and role in relation to the entity. Where the overseas entity identifies that it has a beneficial owner but includes a statement in its application that it is unable to provide the required information, it is necessary to provide what information is available together with the same Managing Officer information.

## **When is it necessary to register?**

Overseas entities which own UK land will have 6 months from the date of the register provisions of the Act coming in to force (expected imminently) to make an application to the registrar. This transitional period was reduced from 18 months in the Bill's passage through Parliament. An exception to the requirement to register applies where the land was acquired prior to 1 January 1999 in England and Wales (or 8 December 2014 in Scotland).

### **What happens if the land is sold before the end of the 6 month transitional period?**

In another amendment to the Bill in its passage through Parliament, a transitional provision was bolted on to introduce a requirement to register details of a disposal of land between 28 February 2022 and the end of the 6 month transitional period. In these circumstances, it is necessary to disclose details of the date of disposal and the title number of the land sold.

### **Once registered, what are the ongoing requirements?**

Once an overseas entity has registered, it is issued with an ID. The Act provides for a continuing obligation to update the register by filing an annual statement which will either confirm no change in beneficial owner, or will provide the required information about the change in beneficial owner. The obligation relates to an 'update period', which will generally be on each anniversary of the original registration. The statement has to be filed with the registrar within 14 days of the end of the update period, so it is easily missed and a fine will be levied for failure to comply. The overseas entity can apply to be removed from the register by making a statement to the effect that it no longer has an interest in UK land and by providing details of any changes in beneficial owners in the time since the previous update period.

### **What happens if an overseas entity fails to register by the end of the transitional period?**

First and foremost, failure to register an overseas entity owning UK land before the end of the transitional period is a criminal offence which could result in a fine, a prison sentence or both. Furthermore, the Registrar has a duty to enter a restriction against the land on the Land Registry, which would in effect make it impossible for the property to be sold. This does not, however, apply to land which was acquired before 1 January 1999.

The Act, having been rushed through, does contain a number of defects and it is certainly possible that the Government may want to revisit the provisions and tighten them up in certain respects. Some criticism has arisen from the fact that land acquired before 1 January 1999 is outside the scope, and there are potential gaps in reporting requirements where a person or trust owns land via a separately owned nominee company. Also, the 'more than 25% of shares or votes' conditions in identifying a beneficial owner do not require the attribution of interests of connected parties, such as family members, making it relatively easy to spread interests around a family grouping and avoid having beneficial owners. However, for the majority of overseas entities the reporting requirements will be clear, and it would be sensible to start assembling the data which will need to be provided to support an application for the register. Some of the information which may be required to be reported in connection with trusts could overlap to a certain extent with reporting requirements under the separate Trust Registration Service. This would apply where a non-resident corporate trustee owns land directly and would therefore have a reporting requirement on the register as an overseas entity in addition to a reporting requirement on the Trust Register. Since many more non-resident trusts owning UK land will have to provide information for the Trust Register by 1 September 2022, action on both fronts may be needed around the same time.

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