

EdwinCoe LLP

GUIDE

Registration of overseas entities – a register for overseas owners of UK property

The Economic Crime (Transparency and Enforcement) Act 2022 (the "Act") came into force on 1 August 2022.

The Act will be of major significance for any non-UK companies or other entities that own UK property.

The Act sets out the requirement for overseas entities to register details of their beneficial owners (the "Register"). The majority of the information provided will be publicly available at Companies House

What is the purpose of the Register?

The aim of the Register is to increase the transparency of the beneficial ownership of UK property.

Whilst many people and companies choose to hold UK property through an overseas entity for legitimate purposes, the UK Government is seeking to clamp down on those who may use such structures to disguise ownership for illegitimate purposes (for example, money laundering).

What is an overseas entity?

An overseas entity is a company, partnership or foundation that is governed by law outside of England and Wales.

If UK property is held by trustees of an offshore trust, then the trust should be registered with the HMRC Trust Registration Service ("TRS") and not at Companies House. Where there is a mixture of an overseas entity and an offshore trust, the officers of the entity and trustees of the trust must make sure that the structure is registered correctly.

If there is a chain of overseas entities then steps are required to be taken to identify the relevant beneficial owner(s) in that chain.

What type of UK property is within scope?

UK property is any freehold property, or any leasehold property where the lease is originally granted for longer than 7 years.

The Act requires that overseas entities wishing to buy, sell or transfer property or land in the UK will be required to register from 1 August 2022.

The Act also applies retrospectively and any overseas entities that have held UK property since 1 January 1999, for England and Wales, or 8 December 2014, for Scotland are in scope. Historic registrations will be required by 31 January 2023.

Who are the beneficial owners?

The beneficial owners of an overseas entity are those who *"have significant influence or control over the entity"*, for example:

- those who hold 25% (or more) of the ownership or voting rights in the entity; or
- those who have the right to appoint or remove a majority of the board of directors.

The rules are complex and determining beneficial ownership, and indeed identifying situations where there is no (registerable) beneficial owner, is likely to be quite involved for a number of typical property ownership arrangements (for instance, trust and company ownership structures).

It is the responsibility of the officers of the overseas entity to identify who are its beneficial owners. The Act provides the timescales for registration (as explained below). There is also a requirement to update the Register annually, and to take steps to ensure the position as recorded on the Register remains accurate

We hold a property through an overseas entity, what should we do?

If you, or one of your clients, holds a UK property through an overseas entity then you will have to establish whether it has to be registered, and declare its beneficial owners by 31 January 2023 (unless the entity is exempt).

All new transactions involving UK land and an overseas entity are likely to have to register.

Failure to register the overseas entity or submitting false information is a criminal offence which could result in daily fines up to £2,500 or possible imprisonment for up to 5 years.

Conclusion

The Register is the latest in a line of steps taken in recent years to increase the transparency of beneficial ownership, with similar measures already in place in relation to UK entities, through the PSC register and with trusts through the Trust Registration Service.

However, while most of the existing registers remain largely accessible only to the relevant government authorities, the new Register will contain publicly available information. There are concerns that the privacy of property owners who use these structures for perfectly legitimate reasons, is being unfairly treated by the new regime. Unfortunately, the effort to increase transparency to help identify potential nefarious activities will inevitably bring structures with no such activities into scope.

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