

Insights

ECONOMIC CRIME (TRANSPARENCY AND ENFORCEMENT) ACT 2022 – OBLIGATION TO REGISTER AT COMPANIES HOUSE FROM 1 AUGUST 2022

Jul 21, 2022

SUMMARY

The Government has now announced that it intends to launch the Register of Overseas Entities at Companies House (“ROE”) on 1 August 2022 with the land registration elements of the legislation to come into force on 5 September 2022. We await formal confirmation (in the form of a commencement order) but we anticipate the various transitional time periods referred to in the Economic Crime (Transparency and Enforcement) Act 2022 (**the Act**) will all run from 1 August 2022 (and dates in this insight are based on that assumption). We also anticipate that exemptions will be very rare (if any) and so assume below that these are not applicable to our scenarios.

In our latest insight on the Act we focus on the priority actions for overseas entities (**OE**) dealing with real estate in England & Wales, and their counterparties.

Duty to Register on the ROE

Overseas Entity with an existing interest in land (freehold or lease of over 7 years)

Assuming the OE became the registered owner on or after 1 January 1999, the OE must make its ROE application before 31 January 2023.

Overseas Entity acquiring a freehold or leasehold property (lease of over 7 years)

An OE acquiring such an interest cannot, on or after 1 August 2022, make an application to register their purchase at the Land Registry until they have completed their ROE registration. We would normally aim to complete the Land Registry application within a matter of weeks from completion of the transaction, in order to ensure that registration priority is given to that transaction above any that follow, so time is of the essence here.

Overseas Entity granting a lease of over 7 years, charging or disposing of a freehold or leasehold interest

An OE entering into such an arrangement:

- between 28 February 2022 and 31 January 2023 must have made an application to complete their ROE registration on or before 31 January 2023; and
- on or after 1 February 2023 must have completed their ROE registration.

Process for Registration on the ROE

The ROE registration application must include:

- prescribed information about the registrable beneficial owners (which itself requires careful analysis) and managing officers (which must be updated annually) (see below for more details),
- verification of the prescribed information by a “supervised agent” who may be from a credit institution, financial institution, auditor, insolvency practitioner, external accountant, tax adviser, independent legal professional, trust or company service provider, estate agent or letting agent. The supervised agent will need to obtain an assurance code from Companies House before they can verify the information (details of that process awaited).

Successful registration will result in an “Overseas Entity ID” which will then need to be used for Land Registry applications and prescribed forms such as transfers and leases. The Land Registry will in turn add the ID to the relevant proprietorship register.

NB Given the speed at which this legislation is now being pushed through and the lack of information on some of the practical aspects around the registration requirements (including the verification process), there are likely to be considerable delays on launch, even in the traditionally quieter Summer period.

Penalties

A failure to meet the ROE requirements may result in an offence being committed by both the entity in question and every officer who is in default. The penalties can include unlimited fines. Where there is continued contravention, a daily default fine of up to £2,500 can also be levied against the entity and every officer of the entity while it remains in default, regardless of whether that officer was responsible for the original contravention. For more serious offences (such as failing to comply with an information notice, or making false statements in purported compliance with the duties), convicted individuals could also face sentences of imprisonment for up to two years.

Land Registry Restrictions

The Land Registry will aim to add a restriction to all existing OE title registers (bar those where the proprietor has been constant since 31 December 1998) before 1 February 2023. The restriction will not bite until 1 February 2023, but will obviously raise awareness of the requirements during the transition period. Complying with the restriction will involve the production of a valid Overseas Entity ID or, in rare cases, a conveyancer's certificate.

Counterparties dealing with OEs

For counterparties dealing with an OE, the greatest risk comes after 31 January 2023 where there is a live restriction on the title which will, if the OE has not met its ROE requirements, prevent them from registering their newly acquired title at the Land Registry. However, there is potential reputational risk if dealing with an OE who has not chosen to meet the ROE requirements post 1 August 2022. We will expect to see the Overseas Entity ID being required for every OE together with contractual assurances on the maintenance of that registration (and annual updating obligations) until completion/registration of the transaction; and also OEs agreeing to assist counterparties with any additional requirements the Land Registry may impose.

Consider the impact on existing contractual arrangements, such as conditional contracts, options, rights of pre-emption and agreements for lease, already entered into and that may take a considerable time to complete. Are there circumstances where an existing onshore party may transfer their interest to an OE? Note that there is no transitional arrangement in the legislation to provide protection. Therefore, compliance issues raised due to the ROE may need to be addressed separately.

[Information to be provided to Companies House on a ROE application](#)

Previous insights on this topic:

- [The Economic Crime Bill: what is it and how much might change?](#)
- [Government expedites legislation on a register of overseas entities that own UK property in its Economic Crime \(Transparency and Enforcement\) Bill 2022](#)
- [Understanding the Economic Crime \(Transparency and Enforcement\) Bill](#)
- [Economic Crime \(Transparency and Enforcement\) Act 2022 ushers in the new overseas entities register with some late amendments of note](#)

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Victoria Duxbury

Co-Author, London

victoria.duxbury@bclplaw.com

[+44 \(0\) 20 3400 3190](tel:+442034003190)

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