

## Client guidance note

### Implications of the Economic Crime (Transparency and Enforcement) Act 2022 on UK property transactions

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The Register of Overseas Entities (**ROE**) came into force on **1 August 2022** through the Economic Crime (Transparency and Enforcement) Act 2022 (the **Act**). The '*transitional period*' will run from 1 August 2022, for 6 months, and will expire on 31 January 2023.

The Act requires Overseas Entities (**OE**s) that own, or wish to acquire, a UK '*Qualifying Estate*' (meaning a freehold estate or a lease granted for a term of more than 7 years from the date of grant) acquired on or after 1 January 1999, to register with Companies House and to provide (and keep up-to-date) information about the entities' beneficial ownership.

The ROE will be a public register and anyone may inspect and request copies of material kept on the ROE (unless protected from inspection by application under the Act).

The definition of an OE is very wide. It catches all entities governed by a non-UK law including body corporates, partnerships or other entities that are legal persons under the law by which they are governed. This includes companies incorporated in one of the Channel Islands (commonly Jersey or Guernsey), the Isle of Man and the Republic of Ireland (companies incorporated in Northern Ireland are UK companies and therefore do not fall within the scope of the Act).

Although the Act provides for certain entities to be designated as **exempt** by way of regulations made by the Secretary of State, no such Regulations have been made to date.

The ROE registration requirements introduce an enhanced governance regime for OE's to increase transparency in the ownership of OE's that own UK land helping to expose those engaging in criminal activity and allow the appropriate action to be taken. However, it is important to understand that the land registration requirements under the Act, which come into force on **5 September 2022**, will also have significant implications for UK property transactions.

The phased commencement provides a window for OE's to register on the ROE before the property restrictions bite. However the timeframes remain tight and OE's and those contracting with OE's in UK property transactions need to consider how the Act may apply as a matter of priority.

Failure to comply with the registration requirements by the end of the transitional period is a criminal offence as is the making of a disposal in breach of a restriction. The land registration provisions also mean that transactions made in breach of the Act will not be registrable at the Land Registry. The legal title to the land interest will not pass and will leave both parties to the transaction in an exposed position.

The table below provides a summary of some of the practical points specific stakeholders in the UK property market should be considering.

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This publication gives general guidance only. It may not always apply and should not be relied on in place of specific legal advice.

- **OE's which own a Qualifying Estate (acquired on or after 1 January 1999): Register on the ROE within the 6 month transitional period.** The OE must have completed its registration and obtained an OE ID by 31 January 2023 to avoid committing a criminal offence. A restriction will be placed on the OE's title after 5 September 2022 however the OE will be able to make dispositions during the transitional period (as long as the Land Registry application is submitted in this period) without the Land Registry restriction biting.
- **OE's acquiring a Qualifying Estate: Register on the ROE as soon as possible.** After 5 September 2022 any application to the Land Registry by an OE which relates to the acquisition of a Qualifying Estate will be rejected and the OE will not be able to obtain legal title unless the OE can supply an OE ID (even if the transaction completes before 5 September 2022). Take steps now to identify registrable beneficial owners, collate the required information, serve the requisite information notices on those beneficial owners and identify an organisation who can verify the information and if so required make the application to Companies House.
- **OE's disposing of a Qualifying Estate that they already own: Register on the ROE within the 6 month transitional period.** The OE must have completed its registration and obtained an OE ID by 31 January 2023. A restriction will be placed on the OE's title after 5 September 2022 but this restriction will not bite until 1 February 2023. The OE will therefore be able to make dispositions during the transitional period (as long as the Land Registry application is also submitted in this period). OE's should however start to gather the information required about dispositions made in the period from 28 February 2022 up to the date at which they make the application as this information will need to be provided as part of the ROE registration. Note that details of dispositions in the transitional period will need to be provided to Companies House even if the OE no longer holds a Qualifying Estate as at 31 January 2023.
- **Lenders providing secured finance to OE's owning or acquiring a Qualifying Estate:** Overseas lenders/security agents **do not need to register on the ROE** in order to take a legal charge. However any such lender will want to make sure that an OE borrower is compliant in order to be able to register their security at the Land Registry. This is particularly important because the legislation is drafted in such a way that where an OE buyer is obtaining finance, the OE must have an OE ID before completing the charge (i.e. at the time of the disposition). Buyers and lenders must be aware of this requirement because it cannot be satisfied by obtaining the OE ID at a later date. Lenders should therefore be making enquiries of their clients as early as possible to avoid the risk of non-compliance with the Act delaying the transaction.
- **UK entities contracting with OE entities:** UK incorporated entities are already required to file information at Companies House about their beneficial ownership, through the register of people with significant control (PSC) regime, and so they are not covered by the new regime. However, if the counterparty to a transaction is an OE it is important that enhanced due diligence is carried out and that contractual protections are in place (by way of additional drafting in the contract or the inclusion of warranties or undertakings) to oblige the OE to comply with the Act.
- **OE landlords and tenants:** Although the Act will not apply to leases granted for a term of 7 years or less, parties may still wish to consider some of the wider consequences of a failure to comply with the Act. For example, if the landlord is an OE that has failed to comply with the initial obligation to register on the ROE or the annual updating duty then it will be committing a criminal offence. The Act will not prevent such a landlord from entering into short leases, but the tenant may be concerned about entering into the transaction due to reputational damage and regulatory concerns.

## Acquisitions

Any OE acquiring a Qualifying Estate must register its beneficial ownership on the ROE and obtain an OE ID.

From **5 September 2022**, an OE that has not successfully completed its registration on the ROE and obtained an OE ID number will not be able to register its acquisition of a Qualifying Estate at the Land Registry and will not be able to obtain legal title. This will apply to both registered land and to any applications for first registration. There is no transitional period.

The Act also has retrospective effect. This means that any OE that became a registered proprietor of a Qualifying Estate under an application made on or after 1 January 1999 must apply to register on the ROE during the **six month transitional period**.

Failure to register by 31 January 2023 is a criminal offence, potentially subjecting the OE and its officers to a fine or imprisonment.

## Disposals

From 5 September 2022, the Land Registry will be entering a restriction on the title to any Qualifying Estate owned by an OE (save where the OE became the registered proprietor pursuant to a Land Registry application made before 1 January 1999). This restriction will prevent the registration of certain dispositions by that entity unless it has successfully registered on the ROE, obtained its OE ID from Companies House and complied with the updating requirements as appropriate (or is exempt).

These restricted dispositions are:

- a transfer of the Qualifying Estate;
- the grant of a lease of more than seven years from the date of grant; or
- the grant of a legal charge.

For OE's that were the proprietors of Qualifying Estates before 1 August 2022, the Land Registry will enter a '*transitional restriction*' on the title. The wording of this restriction reflects the transitional period during which an OE can dispose of their property without having to register on the ROE (as long as the Land Registry application is also submitted before the end of the transitional period). The restriction will bite on 1 February 2023.

Where an application is lodged by an OE at the Land Registry in respect of an acquisition of a Qualifying Estate on or after 1 August 2022 the Land Registry will enter an '*OE restriction*' on the register. This restriction will take effect immediately from when it is entered on the title.

Making a disposition in breach of either type of restriction is a criminal offence.

There are certain carve outs from the form of the restriction specifically to protect third parties. These include, where the disposition is made in pursuance of a contract made before the restriction is entered in the register and where the disposition is made in the exercise of a power of sale or leasing conferred on the proprietor of a registered charge or a receiver appointed by such proprietor.

## OE's that disposed of a Qualifying Estate after 28 February 2022

OE's are also obliged to notify Companies House of any disposals of a Qualifying Estate they have made since 28 February 2022 and make during the transitional period up to 31 January 2023.

Some OE's may have made relevant dispositions since 28 February 2022 that mean that they no longer have to make an application to register with Companies House as an OE (i.e. they have disposed of all relevant UK land interests by 31 January 2023). However any OE that has made a relevant disposition between 28 February 2022 and 31 January 2023 must make a statement to Companies House about the disposition and include information about the land in question by 1 February 2023. The information required is largely the same as that required to register on the ROE and this application will also need to be made by initially logging into the ROE digital platform. The information will then be available for inspection for a minimum of two years.

### Registrable beneficial owners and information requirements

Before making an application to register, an OE must take reasonable steps to identify its registrable beneficial owners and obtain the required information. Identifying the beneficial owners of an OE will entail looking up the chain of ownership of the OE and working out if various thresholds of direct or indirect holdings are met.

There are specific and complex rules which determine whether someone is a registrable beneficial owner. In very broad terms, a person will be registrable if, in relation to the OE, they (or a trust or firm which they control) own more than 25% of the shares or voting rights, have the right to appoint or remove a majority of the board of directors or they have significant influence or control over the OE. In this respect the new requirement is similar to the existing requirement for UK companies to register under the PSC regime.

Certain information must be provided in respect of each registrable beneficial owner identified and OE's should begin the process of collating such information as soon as possible in order to be in a position to apply to the ROE. An OE must give an information notice to a person it knows, or has reasonable cause to believe, is a registrable beneficial owner. The person on whom an information notice is served has one month to comply with the notice. Failure to comply with a notice, or making a false statement, is a criminal offence.

### Verification

An OE will not be able to apply to register on the ROE unless a '*relevant person*' has verified the information. The '*relevant person*' must be a UK-based person who is supervised under the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017 and may include independent **legal professionals**, auditors and external accountants and trust and company service providers.

Whilst the verification mechanism has been designed to strike a balance between providing assurance to users of the ROE that the information is accurate whilst avoiding placing onerous burdens on OE and professionals performing the verification checks, the nature of the verification obligation is draconian and verifiers may face criminal liability if they deliver (or cause to be delivered) false or misleading information to Companies House.

**Following careful consideration of the verification requirements and in light of the Law Society Guidance, Cripps LLP have taken the decision not to apply for an assurance code and will not therefore be in a position to conduct ROE verification. Cripps LLP are however in the process of identifying organisations who will take on this verification role and if you wish to discuss this further we can provide you with the latest information that we have.**

Once information has been verified, applications may be made by completing the online form to submit the information to Companies House and a fee of £100 will be payable.

### What to do now

The tight timescales and administrative burdens of implementation not only on OE's but also on Companies House and the Land Registry, are likely to present significant challenges to some corporate, real estate and banking transactions in the coming months.

Companies House will soon be writing to all OE's captured by the Act and who currently own land in England, Wales and Scotland to make sure they know about their new responsibilities. However, we would not advise entities to wait for these letters as the obligation to report comes from the Act and not from the letter.

We anticipate that Companies House will be overwhelmed in the initial stages with ROE applications and some delay is likely. OE's should therefore aim to submit applications as soon as possible and factor in any potential delays into acquisition timetables.

Practical steps that can and should be taken now include:

1. **Seeking professional advice** to confirm whether an entity falls within the scope of the new legislation and needs to register on the ROE.
2. **Identifying beneficial owners** by looking up the chain of ownership and working out if various thresholds of direct or indirect holdings are met.
3. **Collating the information** that will be required by Companies House in relation to registrable beneficial owners. As part of this process information notices need to be served on beneficial owners and those beneficial owners have a period of one month in which to respond.
4. **Making initial contact with advisers** who can provide the required verification statement to Companies House and obtain their agreement to provide such verification. As the process for registration is complex, Companies House have advised that it would be quicker and easier for a supervised agent, in addition to acting as the verifier, to make the application to register on the OE's behalf to avoid delays.
5. **Applying to register** in the ROE as soon as possible. Those with active properties such as large commercial portfolios or shopping centres where it is likely that a number of dispositions have been made since 28 February, may find the Companies House application process more prolonged at the outset so should factor that in when seeking to meet the registration deadline.
6. **Liaising with professional advisers to review recent and current acquisitions** and ensure that Land Registry applications have been submitted in relation to any completed acquisitions and, where possible, pending acquisitions are completed and an application made to the Land Registry before 5 September 2022.
7. **Checking the terms of contracts currently being negotiated** and consider building in contractual protections around potential delays that could arise due to the introduction of the registration regime.
8. **Diarising annual review dates** to ensure OE's have gathered and submitted the necessary information in good time to comply with the annual updating obligation.

### How we can help

A second Economic Crime Bill is expected later in 2022 which we hope will provide further clarity and iron out any issues in the current regime. We will keep you updated of developments.

In the meantime, the Act is complex, and this note is only a simplified guide to some of the most important issues. If you'd like assistance preparing for registration or would like to discuss the implications of the Act in more detail please contact [Christobel Smales](#) or [Alix Lee](#) or a member of the Cripps LLP Real Estate Team.