

United Kingdom: Economic Crime (Transparency and Enforcement) Act 2022 - Real estate implications for overseas entities

In brief

The introduction of the Economic Crime (Transparency and Enforcement) Act 2022 has significant implications for overseas investors who own or acquire an interest in UK real estate, and will prevent registration of freehold or leasehold acquisitions and (following a transitional period) freehold or leasehold disposals and charges at the Land Registry if the overseas entity has not been registered at Companies House.

Key takeaways

- The **Economic Crime (Transparency and Enforcement) Act 2022 ("Act")** passed into law on 15 March 2022. The commencement date for the Act's provisions is awaited.
- The Act requires overseas owners or acquirers of a relevant interest in UK property to be registered at Companies House, and to disclose their beneficial owners.
- A transitional period of 6 months will apply for overseas entities which already hold relevant UK real estate interests to complete their Companies House registration.
- Dispositions by way of sale, lease or mortgage (after the transitional period) and acquisitions of freehold or leasehold interests in UK property by an overseas entity which has not registered itself at Companies House will not be capable of registration at the Land Registry.
- The restrictions on land dispositions will apply retrospectively for property acquired since 1 January 1999 in England and Wales (8 December 2014 in Scotland).
- Sanctions for failure to register, the provision of false information, failure to update registered information annually and to dispose of property in breach of the Act will include a fine (including a daily fine of up to GBP 2,500 for continued contravention) and/or a prison sentence.
- Existing powers in the Proceeds of Crime Act 2002 will be strengthened to enable law enforcement agencies to investigate the origin of property and recover proceeds of crime.

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Key takeaways

In more detail

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- Where must registration take place?
- What are the real estate implications?
- Will these restrictions have immediate effect?
- What are the implications of failure to comply with the Act?
- Any other measures which impact upon property ownership?



In more detail

Under discussion, but stalled, for some years, the new Economic Crime (Transparency and Enforcement) Act 2022 received Royal Assent and passed into law on 15 March 2022.

The Act requires any overseas entity which owns, or seeks to own, a relevant property interest in the United Kingdom to:

- a. be registered at Companies House, and
- b. disclose the identity of its beneficial owners as part of that registration.

This alert uses terminology applicable to England and Wales, but the legislation will apply to real estate across the United Kingdom, with some variations for property interests held in Scotland and Northern Ireland.

Who must register?

The measures apply to the following foreign owners (and acquirers) of relevant, registrable interests in UK property:

- any company or similar legal entity that is governed by the law of a country or territory outside the UK (an "**overseas entity**"). This can include any corporate body, partnership or other entity that is a legal person under its governing law; and
- registrable beneficial owners. A "**beneficial owner**" (who may be an individual, legal entity or a government or public authority) is a person who:
 - holds, directly or indirectly, 25% or more of the shares or voting rights in the overseas entity; or
 - holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the overseas entity; or
 - has the right to exercise, or actually exercises, significant influence or control over the overseas entity; or
 - in the case of trusts or partnerships etc:
 - are the trustees of a trust, or the members of a partnership, unincorporated association or other entity, that is not a legal person under its governing law who meet any of the above conditions (in their capacity as such) in relation to the overseas entity, and
 - is the person having the right to exercise, or actually exercises, significant influence or control over the activities of that trust or entity.

Where must registration take place?

Each relevant overseas entity must make its application for registration at Companies House, and submit required information (in English) for verification, including incorporation details, and details of its beneficial owners and, in some cases, its managing officers. Criminal liability arises from failure to make an application where required, or from the making of false statements in connection with the application.

The overseas entity must then update the submitted information annually. Again, failure to update will incur criminal liability for the entity and each defaulting officer of that entity. Continued contravention will render all officers of that entity liable.

Once registration has been completed, the overseas entity will be provided with an overseas entity identification number, and will be included in the new Overseas Entities Register. The information on the register will be made publicly available, except in relation to very sensitive information (such as dates of birth or residential addresses).

What are the real estate implications?

Once its provisions come into force, the consequences of the Act are two-fold in relation to UK real estate:

- **Acquisition or lease by overseas entities**

An overseas entity acquiring a relevant interest in land in the UK (meaning, in the case of England and Wales, a **freehold estate or a leasehold interest granted for a term in excess of seven years**) will need to have (a) registered itself at Companies House, (b) obtained its overseas entity ID number and (c) complied with any necessary statutory updating requirements before it can become the registered proprietor of that asset at the Land Registry.



- **Disposals by overseas entities**

The Act prevents registration at the Land Registry of disposals by overseas entities by way of **transfer, lease for a term in excess of seven years or legal charge** unless that entity has (at the point of disposal, and subject to the exceptions set out below) registered at Companies House, obtained its overseas entity ID number and complied with any statutory updating requirements.

To aid enforcement of the Act's requirements, the Land Registry will, within six months of the Act's commencement, note a restriction against the title to all relevant UK land interests registered in the name of an overseas entity on or after 1st January 1999 (or 8 December 2014 in relation to Scottish property)). The restriction will prohibit the registration of disposals by way of sale, lease or charge UNLESS:

- a. the overseas owner is registered at Companies House and included in the Overseas Entities Register, or is exempt (and an exempt overseas entity will be one designated as such in any Regulations made by the Secretary of State under the Act), or
- b. if one of five other grounds is satisfied, namely: disposals by operation of law or court- or statute-mandated disposals, disposals pursuant to contracts made prior to entry of the restriction on the title register, disposals by mortgagees/receivers in exercise of a power of sale, sales sanctioned by the Secretary of State, or disposals by insolvency practitioners in specified circumstances.

If the overseas entity is not a registered overseas entity (or exempt) at the time of the disposition, it will not be possible to register that disposition subsequently, unless the Secretary of State consents on the grounds that (a) at the time of the disposition the person to whom it was made did not know, and could not reasonably have been expected to know, of the prohibition, and (b) that in all the circumstances it would be unjust for the disposition not to be registered.

Will these restrictions have immediate effect?

This will depend upon the nature of the transaction.

There is a transitional period of six months for Companies House registrations to be concluded for existing owners. Any restriction entered by the Land Registry onto the title register of an overseas owner will not take effect until the expiry of those six months. Therefore, an overseas entity is able to make a registrable disposition of its land prior to the registration of that restriction (though it will, notwithstanding the disposal, still be required to complete its overseas registration and disclose specified details of any land disposal occurring after 28 February 2022 to Companies House).

The transitional period will not, however, apply to:

- disposals by overseas buyers (unless exempt, or subject to one of the five exceptions referred to above) whose own prior acquisition of the land (completed after the Act came into force) has not yet been registered, or
- overseas entities who acquire a freehold or registrable leasehold interest in UK property from the date of the Act.

In those cases, overseas entities will have to comply with the requirements for Companies House registration with immediate effect.

What are the implications of failure to comply with the Act?

Dispositions falling foul of the new restrictions will not in themselves be invalid. However, they will be incapable of registration at the Land Registry, which is required to perfect the title. Legal title does not pass to the transferee until it is registered as owner at the Land Registry. The transferee is merely the owner in equity until registration. Such title will not be acceptable to any future buyer, tenant or lender.

After the six-month transitional period, any overseas entity (and any of its officers in default) which has not applied for registration at Companies House and

- a. holds property, or
- b. holds and disposes of property or grants a registrable lease in breach of a title restriction requiring prior registration of the seller at Companies House

commits a criminal offence, punishable by a fine (including a daily fine of up to GBP 2,500 for continued contravention) and/or prison term.



Any other measures which impact upon property ownership?

The new Overseas Entities Register will increase the information available to law enforcement agencies to help them identify entities laundering money through UK properties. Therefore, the Act also reforms the UK's Unexplained Wealth Order (UWO) regime, to further enable those agencies to investigate the origin of property and recover the proceeds of crime. An UWO requires a person who is a Politically Exposed Person or reasonably suspected of involvement in, or of being connected to a person involved in, serious crime to explain the origin of assets that appear to be disproportionate to their known lawfully obtained income. Existing arrangements under the Proceeds of Crime Act 2002 are strengthened by the Act, and UWOs may now be sought against property held in trust and other complex or opaque ownership structures. Law enforcement agencies will also benefit from additional time to review material provided in response to an UWO.

The Act is one of the most significant pieces of legislation to affect the real estate market in recent years. Whilst its introduction is founded in a governmental desire to further constrain opportunities for money laundering through UK property transactions, its administrative requirements will be broadly felt across all landowning and investing overseas entities, who must act promptly to comply with Companies House registration requirements once the Act's provisions take effect. The commencement date for the Act is not yet known, and guidance is awaited from both Companies House and the Land Registry as to their procedural requirements for registrations and compliance.

The Act contains considerable detail. For further information and to discuss what these measures might mean for you, please get in touch with your usual Baker McKenzie contact.

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