A&O SHEARMAN

The register of overseas entities – *what the real estate industry needs to know*

The Economic Crime (Transparency and Enforcement) Act 2022 (the **Act**) requires overseas entities that own, or wish to acquire, certain real estate in the U.K. (a **Qualifying Estate**) to register with Companies House and to provide (and keep up-to-date) information about their beneficial ownership. This note focuses only on how the regime applies to overseas entities owning, or wishing to acquire, real estate in England and Wales.

The Economic Crime and Corporate Transparency Act 2023 (**ECCTA**) extends the regime created by the Act. The date some of these changes will take effect has not yet been announced. Most changes made by the ECCTA to the regime are an attempt to close perceived loopholes, particularly where trusts and nominee structures are present in the beneficial ownership chain of overseas entities.

WHICH REAL ESTATE PLAYERS DOES THE ACT AFFECT?

The Act is particularly relevant to:

- overseas entities acquiring a Qualifying Estate;
- overseas entities that own a Qualifying Estate (and became registered proprietor of that Qualifying Estate under an application made on or after 1 January 1999);
- third parties taking certain dispositions from an overseas entity owner of a Qualifying Estate;
- real estate investors who propose to use or have used overseas entities as part of their transaction structure; and
- lenders providing secured financing to overseas entities acquiring or owning a Qualifying Estate.

In this context, a Qualifying Estate is a freehold interest in land or a lease granted for more than seven years from the date of grant. The definition of an overseas entity is wide. It catches all entities governed by a non-U.K. law, including any body corporate, partnership or other entity that is a legal person under the law by which it is governed. Some types of overseas entity will be exempt from the requirements of the Act, but the Government has not published details of these.

WHAT ARE THE REQUIREMENTS OF THE ACT AND WHAT ARE THE IMPLICATIONS OF NOT COMPLYING?

Any overseas entity acquiring a Qualifying Estate must register on the Register of Overseas Entities (ROE). The ROE opened for registrations on 1 August 2022. Since 5 September 2022, an overseas entity that is not registered on the ROE cannot register its acquisition of a Qualifying Estate at the Land Registry and therefore cannot obtain legal title to that Qualifying Estate.

On registering on the ROE, an overseas entity must supply extensive information about itself and its registrable beneficial owners. The ECCTA will extend this requirement, so that on registering and in its annual update an overseas entity must also disclose:

- the title numbers of all Qualifying Estates it is registered proprietor of; and
- more information about trusts.

In addition, when updating or applying to be removed from the ROE, an overseas entity will have to give details of changes in certain trust beneficiaries since the overseas entity registered on the ROE, or since its last update.

Once registered on the ROE, an overseas entity must update its beneficial ownership information at least annually. Not complying with this obligation is a criminal offence.

A new requirement to take effect on 31 July 2025 under the ECCTA is that some overseas entities must give Companies House further information about pre-registration period changes to their beneficial owners, trust beneficiaries and trustee beneficial owners. The pre-registration period is 28 February 2022 to 31 January 2023 (or the earlier date the entity registered on ROE), inclusive. This obligation applies to any overseas entity that was registered proprietor of a Qualifying Estate in the pre-registration period. Some overseas entities that committed an offence by not registering on the ROE by 31 January 2023 must also provide this information. Overseas entities must submit the information to Companies House in their first annual update due after 31 October 2025. An entity that on 31 July 2025 is no longer on the ROE, must provide the information to Companies House by 31 October 2025. Not complying with this new obligation is a criminal offence.

The Act also has retrospective effect. Any overseas entity that became registered proprietor of a Qualifying Estate under an application made on or after 1 January 1999 had to apply to be registered on the ROE by 31 January 2023. Failure to comply with the registration obligation is a criminal offence.

The Land Registry places a restriction on the title to any Qualifying Estate owned by an overseas entity, preventing the registration of certain dispositions by that overseas entity unless it is exempt or has complied with: (i) the registration requirement; and (ii) the updating requirements. The ECCTA added a third requirement: complying with a notice from Companies House obliging the overseas entity to supply further information. This took effect on 4 March 2024.

The dispositions prevented by the restriction on title 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 (Restricted Dispositions). Consequently, a failure to comply with the requirements of the regime will severely restrict how an overseas entity can deal with its Qualifying Estate. Making a disposition in breach of the restriction on title is a criminal offence.

There are, however, certain exceptions to the restriction on title, to protect third parties. Most notably these exceptions include:

- dispositions pursuant to a contract entered into before the restriction is entered on the title;
- dispositions made pursuant to a statutory obligation or court order or which occur by operation of law;
- dispositions which are made in the exercise of a power of sale or leasing by a registered chargee or its receiver; and
- dispositions made by a specified insolvency practitioner in specified circumstances.

Similar prohibitions (and exceptions to them) apply to Restricted Dispositions by an overseas entity exercising owner's powers where the overseas entity is not yet registered as the registered proprietor of a Qualifying Estate but became entitled to be registered as its registered proprietor on or after 5 September 2022.

ARE OTHER DISCLOSURES REQUIRED?

Yes. Any overseas entity applying to be registered on the ROE before 1 February 2023 had to disclose any Restricted Dispositions made by it between 28 February 2022 and the date it applied to be registered. In addition, even if an overseas entity did not otherwise have to apply to the ROE (because it did not hold a Qualifying Estate on 31 January 2023), if it had made any Restricted Dispositions between 28 February 2022 and 31 January 2023, it had to submit certain specified information to the registrar before 1 February 2023. In both of these situations, the information required included details of the overseas entity's beneficial ownership as it was at the time that the Restricted Disposition took place.

WHICH BENEFICIAL OWNERS OF OVERSEAS ENTITIES MUST BE REGISTERED?

Identifying the beneficial owners of an overseas entity entails looking up the chain of ownership of the overseas entity and working out if various thresholds of direct or indirect holdings are met.

In general terms, someone is likely to be a beneficial owner of an overseas entity if:

- they hold, directly or indirectly, more than 25% of the shares or voting rights in the overseas entity;
- they hold the right, directly or indirectly, to appoint or remove a majority of the board of directors of the overseas entity; or
- they have the right to exercise, or actually exercise, significant influence or control over the overseas entity.

Since the ECCTA changes came into effect on 4 March 2024, a person is also treated as a beneficial owner of an overseas entity if the overseas entity:

- is the registered proprietor of a Qualifying Estate;
- became the registered proprietor of that Qualifying Estate pursuant to an application to the Land Registry made on or after 1 January 1999; and
- holds the Qualifying Estate as nominee for that person or for an entity of which that person is a beneficial owner.

This means that certain beneficial owners of the land must be registered on the ROE, in addition to certain beneficial owners of the overseas entity.

The ECCTA also gives the government new powers to further expand the definition of registrable beneficial owner where the overseas entity is part of a chain of entities that includes a trustee. We await details of how the government will use this power.

A beneficial owner can be a natural person, a legal entity or a government or public authority. There are some exemptions to the requirement to be registered as a beneficial owner.There's more detail in our registrable owner flowchart. Please get in touch with your usual A&O Shearman contact for copies.

IS THE INFORMATION PROVIDED ON REGISTRATION PUBLICLY AVAILABLE?

Yes, most of the information that an overseas entity submits about itself, its managing officers and its registrable beneficial owners is displayed on the Companies House website. However, some details are not, including the day of the month of dates of birth, email addresses and trust details. Moreover, a registrable beneficial owner or managing officer (or the overseas entity on their behalf) can apply to have their details excluded from the public register. The only grounds for making an application are that the applicant reasonably believes that if protected information is available for public inspection or disclosed by the registrar, the individual or a person living with them would be at serious risk of violence or intimidation, that the individual's usual residential address is on the register, or that the individual is under eighteen or lacks capacity.

Although trust information is not on the public register, commencing 31 August 2025, the registrar may disclose certain trust information to anyone who requests it. Any person whose details could be disclosed in this way can apply in advance to have their details excluded from disclosure. These applications are only permitted on the limited grounds mentioned above.

WHAT STEPS SHOULD REAL ESTATE INVESTORS TAKE NOW?

The Act has a significant impact on both direct overseas property owners (current and prospective) and more complex real estate ownership structures that involve the use of overseas entities, such as offshore special purpose vehicles. Real estate investors must therefore identify where, as part of their portfolios, overseas entities have been used to hold the legal title to a Qualifying Estate. Equally, all overseas entities must identify any Qualifying Estates that they hold the legal title to. Overseas entities acquiring a Qualifying Estate must bear in mind that they cannot apply to be registered as registered proprietors at the Land Registry unless they are registered on the ROE.

Overseas entities that own or are acquiring Qualifying Estates should therefore identify and gather information about their beneficial ownership so that they can comply with the requirements of the regime. In doing this, they should bear in mind that they must serve certain notices on beneficial owners and wait up to a month for replies. Overseas entities should also identify and gather information about trusts involved in their chain of beneficial ownership. Finally, they should allow time for other pre-application steps, such as finding a verification agent authorised by Companies House and giving that agent independent and reliable documents and information to back up the information they plan to submit when applying to be registered on the ROE. The steps listed above equally apply to the annual updating requirements of the regime.

Some overseas entities that have been removed from the ROE must also still take action, as they must submit information about past changes in their beneficial owners, trust beneficiaries and trustee beneficial owners. The deadline to comply with this obligation is three months from the date on which the relevant provisions of the ECCTA come into effect. Failure to comply is a criminal offence.

Parties dealing with overseas entities should consider whether they need contractual protection in relation to the Act. This may be an issue particularly where there is a long period between exchange and the intended completion of a contract. Equally, where contracts have already been entered into, parties should consider whether the requirements of the Act will need to be addressed separately since the contract is unlikely to include tailored contractual protection.

WHAT STEPS SHOULD LENDERS TAKE NOW?

The Act has a significant impact on lenders where they are providing secured financing for the acquisition of a Qualifying Estate and the buyer/borrower, the seller or both are overseas entities.

In particular, if the buyer/borrower is an overseas entity, they will be prevented from:

- being registered as the new proprietor of the Qualifying Estate they wish to acquire (i.e. they will be prevented from acquiring the legal title to the Qualifying Estate); and
- granting a legal charge to the lenders,

until they have: (i) registered on the ROE, (ii) complied with their annual updating duty, and (iii) complied with any registrar's notice requiring them to supply further information; or unless they are exempt.

Lenders should therefore raise the matter of the ROE with their clients as early as possible on transactions, in order to ensure that their clients start dealing with it as soon as possible. This should minimise the risk of delays caused by the registration or updating process.

A&O Shearman means Allen Overy Shearman Sterling LLP and/or its affiliated undertakings. Allen Overy Shearman Sterling LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen Overy Shearman Sterling (Holdings) Limited is a limited company registered in England and Wales with registered number 07462870. Allen Overy Shearman Sterling LLP (SRA number 401323) and Allen Overy Shearman Sterling (Holdings) Limited (SRA number 557139) are authorised and regulated by the Solicitors Regulation Authority of England and Wales.

The term partner is used to refer to a member of Allen Overy Shearman Sterling LLP or a director of Allen Overy Shearman Sterling (Holdings) Limited or, in either case, an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen Overy Shearman Sterling LLP's affiliated undertakings. A list of the members of Allen Overy Shearman Sterling LLP and of the non-members who are designated as partners, and a list of the directors of Allen Overy Shearman Sterling (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD.

A&O Shearman was formed on 1 May 2024 by the combination of Shearman & Sterling LLP and Allen & Overy LLP and their respective affiliates (the legacy firms).
This content may include material generated and matters undertaken by one or more of the legacy firms rather than A&O Shearman.

© Allen Overy Shearman Sterling LLP 2025. This document is for general information purposes only and is not intended to provide legal or other professional advice.