

FOREIGN OWNERSHIP OF UK REAL ESTATE UNDER SCRUTINY

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UK Real Estate Alert

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The UK Government has recently introduced the Economic Crime (Transparency and Enforcement) Bill 2022 (the Bill). Amongst other objectives, the Bill proposes the setting up of a register of overseas entities and their beneficial owners and will require overseas entities that own land in the United Kingdom to register their ownership at the UK Land Registry. There will be a grace period of six months to comply with the legislation once it becomes law. However, those who own UK land through non-UK companies, partnerships, and other entities should consider their structures now and how they will comply with the law.

WHAT IS AN OVERSEAS ENTITY?

In the Bill, an overseas entity is a legal entity that is governed by the law of a country or territory outside the United Kingdom. Legal entity means a body corporate, partnership, or other entity that (in each case) is a legal person under the law by which it is governed.

WHERE WILL AN ENTITY REQUIRE TO BE REGISTERED AND WHAT INFORMATION WILL BE REQUIRED?

UK Companies House will be ordered to keep a register of overseas entities. Each entity will have to provide one of the following three statements and related information:

	Statement	Information
1	A statement: (a) that the entity has identified one or more registrable beneficial owners and that it has no reasonable cause to believe there are others, and (b) that the entity is able to provide the required information about each registrable beneficial owner it has identified.	1. The required information about the entity. 2. The required information about each registrable beneficial owner that the entity has identified.
2	A statement that the entity has no reasonable cause to believe that it has any registrable beneficial owners.	1. The required information about the entity. 2. The required information about each managing officer of the entity.
3	A statement: (a) that the entity has reasonable cause	1. The required information about the entity.

to believe that there is at least one registrable beneficial owner that it has not identified, (b) that the entity is not able to provide the required information about one or more of the registrable beneficial owners it has identified, or (c) that paragraphs (a) and (b) both apply.	2. The required information about each managing officer of the entity. 3. The required information about each registrable beneficial owner that the entity has identified or so much of that information as it has been able to obtain.
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The required information about an overseas entity will be:

- Name;
- Country of incorporation or formation;
- Registered or principal office;
- A service address;
- An email address;
- The legal form of the entity and the law by which it is governed; and
- Any public register in which it is entered and, if applicable, its registration number in that register.

Where a registrable beneficial owner is an individual, the required information about the owner will include:

- Name, date of birth and nationality;
- Usual residential address;
- A service address; and
- The date on which the individual became a registrable beneficial owner in relation to the overseas entity.

Where the registrable beneficial owner is a legal entity other than a government or public authority, the required information about the owner will include:

- Name;
- Registered or principal office;
- A service address;
- The legal form of the entity and the law by which it is governed;
- Any public register in which it is entered and, if applicable, its registration number in that register; and
- The date on which the entity became a registrable beneficial owner in relation to the overseas entity.

WHO IS A BENEFICIAL OWNER?

A person (X) will be defined as a “beneficial owner” of an overseas entity or other legal entity (Y) if one or more of the following conditions are met.

- *Ownership of shares:* X holds, directly or indirectly, more than 25% of the shares in Y.
- *Voting rights:* X holds, directly or indirectly, more than 25% of the voting rights in Y.
- *Right to appoint or remove directors:* X holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of Y.
- *Significant influence or control:* X has the right to exercise, or actually exercises, significant influence or control over Y.
- *Trusts, partnerships, etc.:* (a) The trustees of a trust, or the members of a partnership, unincorporated association, or other entity, that is not a legal person under the law by which it is governed meet any of the conditions specified above (in their capacity as such) in relation to Y; and (b) X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or entity.

WHAT TYPE OF LAND WILL BE AFFECTED?

In relation to land in England and Wales, the following types of real estate ownership will be affected:

- A freehold estate in land; or
- A leasehold estate in land granted for a term of more than seven years from the date of grant.

HOW WILL THE PURCHASE OF LAND BE AFFECTED?

In relation to registration of new ownership, no application may be made to register an overseas entity as the proprietor of a qualifying estate unless, at the time of the application, the entity:

- Is a registered overseas entity; or
- Is an exempt overseas entity (this type of entity will be defined by regulation of the relevant minister at a later date).

HOW WILL THE DISPOSAL OF LAND BE AFFECTED?

There will be restrictions on disposals or change of ownership. The land registrar must enter a restriction in the register in relation to a qualifying estate if satisfied that:

- An overseas entity is registered as the proprietor of the estate; and
- The entity became registered as the proprietor in pursuance of an application made on or after 1 January 1999.

The restriction will prohibit the registration of any disposition unless:

- The entity is a registered overseas entity, or is an exempt overseas entity, at the time of the disposition;
- The disposition is made due to a statutory obligation or court order, or occurs by operation of law;
- The disposition is made due to a contract made before the restriction is entered in the register;

- The disposition is made in the exercise of a power of sale or leasing conferred on the proprietor of registered security over the land or a receiver appointed by such a proprietor;
- The relevant minister gives consent to the registration of the disposition; or
- The disposition is made by a specified insolvency practitioner in specified circumstances.

WHAT ARE THE POSSIBLE OFFENCES AND PUNISHMENTS?

If an overseas entity does not follow the procedures above an offence is committed by the entity and every officer of the entity who is in default. Such individuals may be subject to imprisonment for up to five years or a fine or both.

Overseas entities and every officer of the entity who is in default, commits an offence if:

- At the end of the period of 18 months beginning with the commencement date of the Bill coming into force as an Act of Parliament, the entity:
 - Is the registered proprietor of a qualifying estate; but
 - The entity is not registered as an overseas entity, has not made an application for registration as an overseas entity that is pending and is not an exempt overseas entity; and
- The entity became the registered proprietor of that qualifying estate in pursuance of an application made on or after 1 January 1999 but before the commencement date.

Such individuals may be subject to imprisonment for up to two years or a fine or both.

CONCLUSION

Given the stringent anti-money laundering regulations in the United Kingdom, the ownership of UK land and non-UK entities has previously been in the spotlight for solicitors acting on real estate transactions. If passed into law, this Bill will mandate visibility of ownership of companies, partnerships, and trusts that own UK land. Non-UK owners of UK land should review their structures to ensure they will be able to comply with this additional scrutiny.

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