

New beneficial ownership register for overseas owners of UK real estate

(Update November 2022)



The much anticipated Economic Crime (Transparency and Enforcement) Act 2022 was passed on 15 March 2022. It was rushed through Parliament in just over two weeks in response to the war in Ukraine and pressure to crack down on Russian oligarchs and (amongst other measures) introduced (1) a new Register of Overseas Entities operated by Companies House and (2) an obligation on “overseas entities” who currently own or wish to buy UK real estate to disclose details of their beneficial owners.

The Act came into force on 1 August 2022 and the requirement to register took effect from 5 September 2022.

The Act imposes an obligation on overseas entities that currently own a freehold or leasehold interest of over 7 years in England and Wales (“a qualifying estate”) that was acquired after 1 January 1999 or that acquire such interest after 5 September 2022 to be registered on the Register of Overseas Entities at Companies House (there are corresponding provisions in Scotland and Northern Ireland).

As a result,

- overseas entities who are already owners of a qualifying estate in land will have a restriction put on their Land Registry title. This will prevent them from dealing (selling, charging or granting a lease of seven years or longer) with the land unless they are registered on the Register at Companies House or are exempt from registration;
- no overseas entity can be registered at the UK Land Registry as the proprietor of a new qualifying estate in land unless it has first been registered on the Register at Companies House or is exempt from registration.

Anyone purchasing land or taking a lease for seven years or longer from an overseas entity or lending against such interests will therefore need to ensure that the seller/landlord’s beneficial ownership registration is up to date before they commit to a purchase, lease or loan. If not the purchaser, tenant or lender will be unable to register their own interest due to the restriction on the overseas owner’s title prohibiting dealings.

Overseas Entities should therefore be acting now to obtain an OE ID Number.

[Our commercial property team have put together a summary of the main points of the legislation relating to the Overseas Register:](#)

1. New register for overseas entities

The “register of overseas entities” applies to any non-UK legal entity (as opposed to an individual or a UK entity) who currently owns (*) or wishes to acquire UK property which is required to be registered at HM Land Registry (ie freehold titles or leasehold titles of longer than seven years in England and Wales). For these purposes a ‘legal entity’ includes any entity which is a legal person under the law by which it is governed and is not therefore limited to non-UK incorporated companies but would include, for example, LLPs; foreign foundations, non-UK partnerships with a legal personality and some trusts.

(Slightly different rules will apply in Scotland and Northern Ireland.)

An “overseas” entity is defined as a legal entity that is governed by the law of a country or territory outside of the UK. This would therefore include entities formed in the Channel Islands.

(*only those overseas entities who acquired land after 1 January 1999 are affected).

2. Effective date

The implementation date was 1 August 2022. The requirement to register took effect from 5 September 2022 for any overseas entity acquiring a new qualifying interest, however overseas entities who already own land in the UK will have until 31 January 2023 to become registered, after which date they will be unable to make any disposition of a qualifying estate until they have an OE ID.

In addition, overseas entities will need to disclose details of all dealings (sales, charges and the grant of leases with a term of seven years or more) of UK real estate since 28 February 2022, even if they no longer own any qualifying estate.

3. Applies to (most) existing landowners as well as new purchasers

The requirement to register applies to any overseas entity which holds UK real estate ie both those making new acquisitions and those with existing holdings, unless the land was acquired pre-1 January 1999, in England and Wales (NB different dates apply in Scotland and Northern Ireland) or the overseas entity is exempt.

4. How to obtain an OE ID

An application has to be made online to Companies House listing all of the entities registrable beneficial owners (“RBOs”) and providing ID for them, together with a list of any disposals of UK land since 28 February 2022.

Prior to making the application the overseas entity will therefore need to serve notice on all of its RBOs, giving them 1 month to provide the necessary ID information. This ID will need to be verified by an independent UK regulated professional (ie a solicitor, accountant,

specialist regulated agent etc) and criminal sanctions will apply if there is a false verification.

The Law Society has advised against solicitors proving this verification service so we expect accountants and specialist verifying agents to be the main parties dealing with this. Companies House has provided a list of agents who are able to deal with this which can be found at www.gov.uk/government/publications/find-a-uk-regulated-agent-to-verify-information-for-an-overseas-entity.

The information needs to be updated annually or re-confirmed, otherwise the OE ID will expire.

5. What details have to be disclosed

Overseas entities need to disclose the name and address of their registrable beneficial owners (“RBOs”). They will also need to state the date on which the person became an RBO and the nature of the person’s ownership. The question of who is an RBO will depend on the legal entity in question but broadly follows the definition used in the PSC regime, which is derived from international anti-money laundering definitions.

Entities unable to provide their beneficial ownership information will have to provide information on their managing officers instead and where the RBO is a trustee, information about the trust must also be filed.

6. Public Register

The registered information is publicly available (except for the date of birth and residential addresses of individuals; information about trusts which is only disclosable to HMRC and to other relevant bodies and a limited protected disclosure regime which be set out in separate regulations).

7. Ongoing Obligation

Registered overseas entities will have to update their beneficial ownership information at least every 12 months or certify that there are no changes.

Once a registered overseas entity stops being a registered proprietor of a qualifying estate, it can apply to be removed from the register.

8. What will the restriction look like

Some time between now and 31 January 2023 HMLR will add a restriction against all relevant titles held by an overseas entity which will prevent HMLR from registering any disposition unless one of the exemptions to the Act, as set out in Schedule 4A of the Land Registration Act 2002, apply.

9. Transitional Provisions

Any application to register a disposition of land by an overseas entity between 5 September 2022 and 31 January 2023 will not be caught by the Act, so there will be no need to provide an OE ID.

On any application made on or after 1 February 2023 to register a disposition/charge/lease of 7years + by an overseas entity, the buyer, lender or tenant will have to provide HMLR with an OE ID at the time of the application, otherwise the application will be rejected (unless an exemption applies).

10. The Exemptions

There are however certain exemptions from the need to comply with the restriction as follows:

- an OE ID was in place at the time of the disposition
- the disposition is made by operation of law; court order or statutory obligation
- the overseas entity is "exempt" (no information has been provided to date as to which entities will be exempt!)
- the disposition was made under a contract entered into before the restriction was entered on the title to the land
- the disposition was made under a power of sale
- the disposition was made with the consent of the secretary of state
- the disposition was made by a specified insolvency practitioner in specified circumstances (which are yet to be confirmed)

If an exemption applies the applicant will have to send Form OE1 or OE2 with its application, specifying the exemption.

Moorcrofts commercial property team provides legal advice to owners and occupiers of commercial property. Our highly skilled team offers both professional and practical expertise allowing our clients to have confidence in the advice provided.

If you would like to discuss the impact of the introduction of the Oversea Register further, please contact our head of commercial property – **Julia Ferguson**.

11. Failure to comply

- Failure to comply will result in criminal sanctions for the overseas entity and every officer, ranging from fines of £2,500 a day (for example, for failure to update the register) to unlimited fines (for example, for making materially false statements) and prison sentences of up to 5 years.
- Although a disposition in breach of the restriction will still be valid the applicant will be unable to register the disposition at HMLR.

A buyer or tenant acquiring a qualifying estate from or a lender charging a qualifying estate of an overseas entity should therefore ensure that the seller/landlord/borrower has an OE ID before they exchange, otherwise these dispositions will be incapable of registration at HM Land Registry.

An overseas entity looking to acquire new property in the UK should ensure that it has a current Overseas Entity ID otherwise it will be unable to register as the legal owner of such property at HM Land Registry.



JULIA FERGUSON

Head of Commercial Property

Julia.Ferguson@moorcrofts.com
+44 1628 470009 (DDI)



www.moorcrofts.com



team@moorcrofts.com



+44 (0) 1628 470000



twitter.com/moorcroftsllp



[linkedin.com/company/moorcrofts-llp/](https://www.linkedin.com/company/moorcrofts-llp/)



Thames House, Mere Park, Dedmere Road,
Marlow, Bucks SL7 1PB