

Real Estate Ownership and the Implications of the Economic Crime (Transparency and Enforcement) Act

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SUMMARY AND INTRODUCTION

The invasion of Ukraine by Russia has pushed forward a wider government agenda to encourage transparency in relation to how overseas entities own UK real estate. We first reported many years ago ([here](#) and [here](#)) on the details of the government's intention to introduce a public register detailing beneficial ownership of overseas entities which own UK real estate. The war in Ukraine has accelerated the legislation as part of a wider objective to deal with assets held by sanctioned individuals.

The Economic Crime (Transparency and Enforcement) Act 2022 (the Act) received Royal Assent on 15 March 2022. As [previously reported](#), the Act is divided into three parts:

- Part 1 relates to the requirement to register overseas entities which own land in the United Kingdom;
- Part 2 relates to unexplained wealth orders regime; and
- Part 3 amends the United Kingdom's existing legislation in relation to sanctions.

The purpose of this Alert is to focus on Part 1 of the Act. That Part is not yet in force¹ as at Royal Assent, but this is expected soon.

IMPACT OF PART 1 OF THE ACT

The key purpose of Part 1 is to enhance transparency by bringing overseas entities (i.e., legal entities governed by the law of a country or territory outside of the United Kingdom (which includes the Channel Islands)) that are proprietors of UK real estate more into line with similar transparency requirements already in place for UK companies.

1. Part 1 is not yet in force as it is likely that there are currently a number of difficult issues relating to the practical implementation to be discussed and resolved. Notably, infrastructure will need to be put in place at both Companies House and the Land Registry in order for the law to work in practice. Accordingly, the timing of the implementation of this Part is unclear although it is evident that it is a priority and is being fast-tracked.
2. Of particular relevance to our real estate clients is that Part 1 establishes a register of overseas entities at Companies House (the Overseas Entities Register). It will require overseas entities that own land in the United Kingdom to provide certain information about the entity, its registrable beneficial owners and, in certain cases, its managing officers, to Companies House. Registrable beneficial owners may be individuals or governments or public authorities, or can also be legal entities subject to similar disclosure requirements, e.g., English or Scottish companies.
3. There will be a grace period to comply with the legislation. Originally, the grace period was 18 months, but that has been shortened and will be six months from when Part 1 comes into force (the Transitional Period), which as noted is currently an uncertain date.
4. The Overseas Entities Register will be open for public viewing, although not all details reported to Companies House will be disclosed publicly.
5. The exact information to provide to Companies House in relation to registrable beneficial owners will depend on the nature of the beneficial owner. It will include the name, address, form/legal entity of the beneficial owner, as well as the control condition(s) that are met, directly or indirectly, by the beneficial owner. Apparently, although the legislation is not particularly clear and it is to be hoped that regulatory guidance will follow, there are cases where registrable beneficial owners may be trustees. In these cases information to be provided will include the name of the trust, the date it was created and certain information in relation to each beneficiary under the trust, and each settlor or grantor. Information in relation to anyone who has the power to appoint or remove trustees, or exercise certain rights over the trustees' powers, will also need to be included.
6. In some holding structures, beneficial owners may be exempt from having their information entered in the Overseas Entities Register. This will apply to certain beneficial owners that hold their interests directly or indirectly through a legal entity that is itself subject to similar disclosure requirements, e.g., English or Scottish companies subject to the existing persons with significant control regime for companies (the PSC Regime), or an overseas entity that is already registered in the Overseas Entities Register. Information on such beneficial owners may be made public in other ways, e.g., through public disclosure of information by Companies House in relation to persons with significant control under the PSC regime.
7. There was some concern expressed that the six months Transitional Period could still be too long a period, and that overseas entities may try to dispose of properties now to avoid the registration requirement. The House of Lords addressed this by introducing a provision which, when in force, will have some retrospective effect. It states that an overseas entity must

register on the Overseas Entities Register if it disposes of property between 28 February 2022 (the date the draft legislation was first introduced to Parliament) and the end of the Transitional Period. When registering, the overseas entity will need to submit information in relation to the sale date and title numbers in relation to any relevant disposal, as well as a statement confirming that all required information has been provided. If the requirements are not met then the overseas entity and its officers could face criminal penalties unless exempt (and note that any exemptions have not yet been confirmed by regulations).

8. The Overseas Entities Register has a further retrospective element in that it will apply to overseas entities that applied to become the registered proprietor of a relevant real estate in England and Wales on or after 1 January 1999 (and note that this retrospective element operates differently in relation to Scottish and Northern Irish real estate), and those overseas entities will need to apply for registration (including of their beneficial ownership) within six months of the legislation coming into force, i.e., during the Transitional Period. Failure to do that can have criminal sanctions.
9. The Overseas Entities Register will need to be updated annually and will include all individual beneficial owners who have the right to exercise, or actually exercise, significant influence or control over the relevant overseas entity. Individuals that hold, directly or indirectly, more than 25% of the shares or voting rights in the relevant overseas entity, or the right to remove or appoint a majority of the board of directors, will also generally be registrable beneficial owners (similar to the position under the PSC Regime).
10. The Land Registry will not be allowed to register overseas entities as owners of UK property unless those entities have registered on the Overseas Entities Register and received the associated identification number. Overseas entities not on the Overseas Entities Register will also be prevented from selling, mortgaging, or granting long leases of their properties. The Land Registrar will be required to enter a restriction against the land providing that, unless the overseas entity is registered on the Overseas Entities Register (or is exempt from such registration), the overseas entity will be prohibited from disposing of the land (save in certain exceptional circumstances). The effect of this is that overseas entities which hold registrable land will not be able to dispose of that land unless they have registered on the Overseas Entities Register.
11. It is notable that the Overseas Entities Register is not currently a register of the beneficial owners of the land in question. This is because, as drafted, it will only contain information about the overseas entity which holds the land and its beneficial owners (and, potentially, managing officers), and that entity may be holding the land as a nominee. It remains to be seen whether this point is addressed in future legislation.
12. The Overseas Entities Register will build upon existing measures to encourage transparency of ownership of UK businesses and real estate. A public “People of Significant Control” register has been operational for UK companies since April 2016 under the PSC Regime and is held at Companies House. In addition, HM Revenue & Customs’ Trust Registration Service (TRS), created to comply with the EU’s Money Laundering Directive, will operate as another register to capture certain ownership information in relation to trusts. Certain trusts, which have acquired UK land since 5 October 2020, are required to register in the TRS, even if they are not taxable in the United Kingdom. The deadline for TRS registration is 1 September 2022. This may have the effect that information regarding non-UK resident trustees who own or acquire UK land will need to be entered in both registers (i.e., the TRS and the Overseas

Entities Register).

NEXT STEPS

As noted, we do not know when Part 1 of the Act will come into force, but the government has indicated publicly that “Implementation will proceed at pace following Royal Assent ...” . The coming into force date will then set the clock running for the Transitional Period. One factor that may slow progress is the need for Companies House and the Land Registry to be ready. However, Companies House has said the following: “We know that the new Register of Overseas Entities is an immediate priority, and we’re working at pace to make sure this is implemented as soon as possible after Royal Assent”². So it seems prudent to assume that Part 1 will be in force soon.

If you may be affected by Part 1 you should therefore be looking to identify any overseas entities owning UK land, and the structure of ownership of those overseas entities up to ultimate beneficial owners, and, where relevant, be beginning preparations for registration.

Overseas entities disposing of or acquiring, UK land should be aware of the likely future registration obligations that those disposals or acquisitions will trigger and factor that into their planning.

FOOTNOTES

¹ Section 69 of the Act states that “Parts 1 and 2 come into force on such day as the Secretary of State may by regulations appoint”.

² <https://www.gov.uk/government/publications/economic-crime-transparency-and-enforcement-bill-2022-overarching-documents/factsheet-the-register-of-overseas-entities-web-accessible>. As noted above, Royal Assent was granted on 15 March 2022.

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