



Register of Overseas Entities

Background

Since 1 August 2022, Companies House has been required to keep a register of overseas entities in accordance with the Economic Crime (Transparency and Enforcement) Act 2022. The aim is to increase the transparency of ownership of property in the UK. This note is primarily focused on the position in Northern Ireland but also draws upon some analogies with the position in England & Wales and Scotland.

Overseas entities that own any “qualifying estate” must register with Companies House on or before 31 January 2023. The following are important definitions for this purpose:

- Overseas entity – a legal entity governed by the law of a country or territory outside the UK. This includes, for example, the Isle of Man, Guernsey, Jersey and the Republic of Ireland.
- Legal entity – a body corporate, partnership or other entity that (in each case) is a legal person under the law by which it is governed. It includes LLPs.
- Qualifying estate – either (i) a freehold estate in land or (ii) a leasehold estate in land granted for a term of more than 21 years in Northern Ireland (or for a term of more than 7 years in England & Wales or 20 years in Scotland). Overseas entities only need to register property or land bought in Northern Ireland on or after 5 September 2022. In comparison, overseas entities need to register if they bought property or land in England or Wales on or after 1 January 1999 and in Scotland on or after 8 December 2014 so the Act has significant retrospective effect in those jurisdictions.
- Exempt overseas entity – an overseas entity exempt in accordance with regulations yet to be made. This is likely to be very limited.

It is important to note that a UK registered company or LLP with overseas owners is not affected by this legislation. Overseas owners of UK registered companies are already subject to the legislation relating to persons of significant control under Schedule 1A of the Companies Act 2006.

Key Points:

- Overseas entities that own any “qualifying estate” must register with Companies House on or before 31 January 2023.
- There are significant criminal penalties for non-compliance, which includes making a disposition of property or land in breach of an inhibition/restriction on title.
- The registration process is onerous and requires the application to be independently verified.
- Consideration should be given to including non-merger clauses in contracts to ensure that relevant provisions operate beyond completion.

Overseas entities are required to register at Companies House (unless they are an exempt overseas entity) and will receive an OEID (overseas entity ID number).

As part of the registration process, overseas entities will be required to provide information about their beneficial owners and officers. They will also be required to update the information annually to remain a registered overseas entity.

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Broadly speaking, a beneficial owner is an individual, legal entity, government body, public authority that directly or indirectly:

- holds more than 25% of the shares or voting rights in the overseas entity;
- has the right to appoint or remove the majority of the board of directors; or
- exercises (or is entitled to exercise) significant influence or control over the overseas entity.

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Real Estate Transactions

Land Registry:

From 5 September 2022, no Land Registry application may be made to register an overseas entity as the owner of a qualifying estate unless, at the time of the application, the entity is either (i) a registered overseas entity or (ii) an exempt overseas entity.

This means that sellers transferring property to overseas entities will be left holding the legal title on trust for the buyer until the buyer is a registered overseas entity. Landlords will also not be able to grant a lease (for more than 21 years in Northern Ireland) until the tenant is a registered overseas entity and the lease will only exist in equity until registered.

The Registrar will enter an inhibition against the title of any registered owner of a qualifying estate which is an overseas entity that became registered pursuant to an application made on or after 5 September 2022.

The inhibition will restrict transfers, the grant of a leasehold estate (for a term exceeding 21 years) and the creation of a charge on the land unless one of the following conditions are met:

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- the entity is a registered overseas entity or an exempt overseas entity (at the time of the disposition);
- the disposition is made pursuant to a statutory obligation, court order or by operation of law;
- the disposition is made pursuant to a contract made before the inhibition was entered in the register;
- the disposition is made in the exercise of a power of sale or leasing conferred on the owner of a registered charge or a receiver appointed by such an owner; or
- the disposition is made by a specified insolvency practitioner in specified circumstances.

In England & Wales and Scotland, the registrar will enter or effect a similar restriction where the overseas entity became registered as owner pursuant to an application made on or after 1 January 1999 (8 December 2014 in Scotland). This means that the legislation will also have retrospective effect in England & Wales and Scotland; although the restriction will not take effect until after 31 January 2023. The effect of this is that buyers/ tenants will not be able to acquire legal title from overseas entities unless the seller/ landlord has complied with the legislation.

Moving Forward:

It will be important to ensure that overseas entities who own, lease or grant security over UK land or property (or intend to) are aware of their obligations under the legislation. They will need to be registered at the relevant time and update their information annually.

Contracts for sale and agreements for lease will need to appropriately provide for the requirements of the legislation where an overseas entity is involved. This might include obliging an entity to register (or providing evidence of its exemption) and requiring an entity to maintain its registration until the relevant Land Registry application completes.

Parties should check that the benefit of a contract or an agreement cannot be transferred or assigned to an overseas entity unless it has complied with the relevant registration obligations. Consideration should also be given to including non-merger clauses in contracts to ensure that the provisions operate beyond completion.

“In Northern Ireland the legislation does not have retrospective effect... The position in England & Wales and Scotland differs in that the Land Registry is putting a transitional period restriction on titles owned by overseas entities (that is those that were registered pursuant to applications made on or after 1 January 1999 in England & Wales and 8 December 2014 in Scotland).”

Practical Examples For Northern Ireland

Acquisitions:

An overseas entity looking to acquire UK property or land (or in Northern Ireland enter into a lease for more than 21 years) must be a registered overseas entity (ie have an OEID) and have complied with its updating duties both at the time of the acquisition and at the subsequent date of the application to register the transaction at Land Registry.

Overseas entities intending to acquire, or which have recently acquired, qualifying estates of Northern Irish land or property must take urgent action to register at Companies House in order to obtain an OEID before the Land Registry will register that acquisition.

Disposals:

In Northern Ireland the legislation does not have retrospective effect. Therefore, overseas entities that already own property or land in Northern Ireland, or on a recent acquisition the Land Registry application was submitted prior to 5 September 2022, will not have an inhibition placed on title which would restrict any future disposal of that property.

However, particular care should be taken in relation to any Land Registry application made prior to 5 September 2022 by overseas entities where that application is cancelled, withdrawn or abandoned prior to completion of the registration. Otherwise, the overseas entity will have to comply with the legislation and be registered with Companies House at the time of the subsequent application.

The position in England & Wales and Scotland differs in that the Land Registry is putting a transitional period restriction on titles owned by overseas entities (that is those that were registered pursuant to applications made on or after 1 January 1999 in England & Wales and 8 December 2014 in Scotland). The restriction will only take effect after 31 January 2023 but will affect all relevant disposals of qualifying estates by overseas entities thereafter.

Guidance:

Please note that this briefing note has been prepared based on the current guidance from Companies House and the Land Registry of Northern Ireland. It therefore remains subject to change and further adaptation, in particular, as to the application of the legislation by the Land Registry in practice.

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If you require further information about anything covered in this briefing, please contact **Ross Davidson**, **Ben Fraser** or your usual contact at the firm on **+44 (0)28 9099 8207**. This publication is not designed to provide legal or other advice and does not deal with every important topic or cover every aspect of the topics with which it deals. Publication date: September 2022.

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