



## REGISTER OF OVERSEAS ENTITIES

The Economic Crime (Transparency and Enforcement) Act 2022 (ECTEA) received royal assent on 15 March 2022. Part 1 and Schedule 3 (the sections relevant to this briefing note) came into force in stages between 1 August 2022 and 16 January 2023.

This note deals only with the law as it relates to England and Wales as at 1 April 2024.

ECTEA provided for the creation of a register of overseas entities (ROE) to record the beneficial ownership of overseas entities which own certain property in the UK. ECTEA requires overseas entities which own, or wish to own, UK land within the scope of the regime to register on the ROE. Companies House is responsible for maintaining the ROE and ensuring compliance by overseas entities with the requirements of ECTEA.

The aim of the ROE is to increase transparency in UK land ownership. In order to register, an overseas entity must provide certain prescribed information to Companies House about its beneficial owners and this information must be updated on at least an annual basis.

### WHAT IS AN OVERSEAS ENTITY FOR THE PURPOSES OF ECTEA?

An overseas entity is a legal entity, such as a company, partnership or other organisation, that has legal personality and is governed by the law of a country or territory outside the UK. The Republic of Ireland, Isle of Man and the Channel Islands are overseas jurisdictions for the purpose of the ROE.

An overseas entity will be within the scope of ECTEA and liable to register on the ROE if it owns a "qualifying estate" in England and Wales and became registered proprietor of that estate at the Land Registry further to an application made on or after 1 January 1999, or it wishes to acquire a "qualifying estate". A qualifying estate is a freehold or a leasehold granted for a term of more than seven years from the date of grant.

### WHAT IS A BENEFICIAL OWNER?

A beneficial owner of an overseas entity is any individual or entity that:

- Holds, directly or indirectly, more than 25% of either the shares or the voting rights in the overseas entity
- Has the right, directly or indirectly, to appoint/remove a majority of the board of directors of the overseas entity
- Exercises/has a right to exercise significant influence or control over the overseas entity, or

Certain "relevant information" about an overseas entity's registrable beneficial owners and managing officers must be independently verified before an overseas entity can take certain steps.

- Is a trustee of a trust, member of a partnership, unincorporated association or other entity that fulfil one or more of the conditions above or someone who exercises/has the right to exercise significant influence or control over the activities of that trust or entity

In order to register in the ROE, an overseas entity only needs to tell Companies House about a beneficial owner if it is a "registrable beneficial owner". The following are registrable beneficial owners:

- An individual who is a beneficial owner of the overseas entity, provided they are not exempt from being registered
- A legal entity (apart from a government or public authority) if it is:
  - A beneficial owner of the overseas entity
  - Subject to its own disclosure requirements
  - Not exempt from being registered
- A government or public authority, in all cases where it is a beneficial owner of the entity

### **WHAT INFORMATION WILL COMPANIES HOUSE REQUIRE FOR REGISTRATION ON THE ROE?**

Companies House will require information about the overseas entity, including its name, country of incorporation, principal office, contact and service addresses and details of any public register in which it is entered along with its registration number. Companies House also requires details of all registrable beneficial owners and of the UK-regulated "verification agent" that carried out the verification checks. It may also ask the overseas entity to provide information about its managing officers where the overseas entity does not have any registrable beneficial owners, or it is not able to identify one or more of its registrable beneficial owners.

### **HOW IS THIS INFORMATION VERIFIED?**

Certain "relevant information" about an overseas entity's registrable beneficial owners and managing officers must be independently verified before an overseas entity can take certain steps, including applying for registration on the ROE, complying with the updating duty and applying for removal from the ROE.

The relevant information must be verified by a verification agent. The verification agent must be an individual or corporate entity, such as a financial institution or legal professional, based in the UK and supervised under the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017. The verification agent will need to provide Companies House with an agent assurance code and an overseas entity verification checks statement to confirm that it has the requisite authorisation to verify the relevant information.

There are many verification agents in the market able to carry out verification checks for an overseas entity. We, along with most law firms, are unable to offer this verification service, but we can provide details of verification agents who will be able to assist.

### **HOW DOES THE VERIFICATION/REGISTRATION PROCESS WORK?**

Once appointed, the verification agent will request and gather all necessary information from the overseas entity and its registrable beneficial owners and will then deal with the registration process on behalf of the overseas entity. In addition to the verification agent's fees, the overseas entity will be liable for the Companies House registration fee. Once the application has been submitted, verifiers have reported that registration can take anywhere from a minimum of two weeks (using a priority service), up to a maximum of five to six weeks.

Registration is dealt with via the online service at Companies House. The information gathered about the overseas entity will be delivered to Companies House along with a statement confirming that the overseas entity has complied with its obligations in section 12 of ECTEA requiring it to identify its registrable beneficial owners.

Detailed guidance on the registration process is available from Companies House, [here](#).

### WHAT HAPPENS ON COMPLETION OF REGISTRATION?

Once on the ROE, the overseas entity will be under an ongoing obligation to update the information held at Companies House at least annually, even if there is no change.

Once the registration process is complete, the overseas entity will be a "registered overseas entity" and it will be issued with a unique overseas entity ID number by Companies House. This unique ID number should be included in any transaction documents and Land Registry applications which are caught by ECTEA.

Once on the ROE, the overseas entity will be under an ongoing obligation to update the information held at Companies House at least annually, even if there is no change. Verification checks must be carried out by a verification agent on the occasion of each update.

If an overseas entity fails to comply with its updating duty within the required timeframe it will cease to be a registered overseas entity until it does comply. In the meantime, it will be prevented from registering the acquisition of a qualifying estate and it will not be able to make a "relevant disposition" (a transfer of a registered estate, grant of a lease for a term of more than seven years from the date of grant or the grant of a charge over a registered estate) unless it is an exempt overseas entity or an exception applies (see below).

### WHAT ARE THE LAND REGISTRATION IMPLICATIONS OF THE ROE?

The Land Registry has entered restrictions on the titles of all qualifying estates owned by overseas entities where the overseas entity became the registered owner of it at the Land Registry on or after 1 January 1999. Whenever an overseas entity acquires a qualifying estate, the Land Registry will place a restriction on the title.

The restriction will read as follows:

**"[After 31 January 2023] no disposition within section 27(2)(a), (b)(i) or (f) of the Land Registration Act 2002 is to be completed by registration unless one of the provisions in paragraph 3(2)(a) - (f) of Schedule 4A to that Act applies".**

The wording in square brackets would have been included if the restriction was placed on the title prior to 31 January 2023, i.e. during the transitional period before the restrictions on relevant dispositions came fully into force, and was not entered pursuant to an application to register the acquisition of a qualifying estate after the ROE became live (as in those instances, the restriction would have taken effect immediately on registration).

### WHAT IS THE EFFECT OF THE ROE ON LAND TRANSACTIONS?

If an overseas entity makes a relevant disposition, then, in order to be compliant with ECTEA, **at the time of the disposition** (not at the time of any application to register the disposition at the Land Registry), the overseas entity must be a registered overseas entity or an "exempt overseas entity" (at the time of writing, there are no regulations setting out what is an exempt overseas entity), unless an exception applies.

The exceptions are:

- The disposition is made further to a statutory obligation or court order, or occurs by operation of law
- The disposition is made further to a contract made before the restriction is entered in the register
- The disposition is made in the exercise of a power of sale by a mortgagee or receiver
- The Secretary of State gives consent to the registration of the disposition
- The disposition is made by an insolvency practitioner in specified circumstances

An overseas entity which owns or intends to acquire a qualifying estate should, if it has not already done so, register on the ROE as soon as possible.

If the relevant disposition doesn't comply with the above, then quite apart from any offence that is committed by the overseas entity or its officers, the disponee will be unable to register the disposition at the Land Registry.

An overseas entity will not be able to register the acquisition of a qualifying estate if they are not a registered overseas entity or an exempt overseas entity **at the time of their registration application**. Unlike in the case of an overseas entity making a relevant disposition, there are no exceptions here.

### WHAT ACTION SHOULD OVERSEAS ENTITIES TAKE?

An overseas entity which owns or intends to acquire a qualifying estate should, if it has not already done so, register on the ROE as soon as possible.

The deadline for registration on the ROE for overseas entities which acquired a qualifying estate before 1 August 2022 was 31 January 2023, so any registration made now by such an overseas entity will be late and civil and criminal penalties may follow.

### WHAT HAPPENS IF AN OVERSEAS ENTITY DOESN'T COMPLY WITH ECTEA?

Companies House can take enforcement action where an overseas entity fails to register on the ROE when it is required to do so or is in breach of the other requirements of ECTEA. Companies House is able to issue civil financial penalties as well as prosecute criminal activity.

ECTEA created a number of criminal offences, including an offence:

- Of failure to register on the ROE when the overseas entity is required to do so
- For the overseas entity to make a relevant disposition which is prohibited
- Of failure to comply with the updating duty
- Of failure to comply, without reasonable excuse, with an information notice
- Without reasonable excuse, to deliver (or cause to be delivered) to the registrar any document that is misleading, false or deceptive or to make to the registrar any statement that is misleading, false or deceptive

When an offence is committed, it is deemed to be committed by the overseas entity and every officer of that overseas entity who is in default.

Companies House has published guidance on how it will use its enforcement powers. This can be found [here](#).

### RECENT CHANGES TO THE ROE REGIME

#### The Economic Crime and Corporate Transparency Act 2023

The Economic Crime and Corporate Transparency Act 2023 (ECCTA) received Royal Assent on 26 October 2023 and makes significant changes to the ROE regime.

The Economic Crime and Corporate Transparency Act 2023 (Commencement No.2 and Transitional Provision) Regulations 2024 (the 2024 Regulations) brought a number of the provisions of ECCTA affecting the ROE regime into force on 4 March 2024.

The 2024 Regulations have, amongst other things, now increased the amount of information which needs to be provided to Companies House regarding certain beneficial owners and has expanded the definition of "registrable beneficial owner", bringing more beneficial owners within the ROE regime. These new rules bring many trustee and nominee beneficial owners within scope, where previously their details would not have needed to be disclosed to Companies House on registration.

The amendments relating to trusts and nominees will apply to any overseas entity registering for the first time from 4 March 2024. For any overseas entity allocated with an overseas entity ID prior to 4 March 2024, the amendments will not apply until the first occasion after 4

It is expected that a number of outstanding measures in ECCTA relating to the ROE will come into force later in 2024.

June 2024 on which that overseas entity delivers the necessary information to comply with its annual updating duty.

Another major change now in force is that the definition of “registered overseas entity” has been amended such that if an overseas entity fails to respond to a prescribed form of request for information from Companies House (a section 1092A notice), it will not be treated as a registered overseas entity until it has remedied the failure. This will mean that the overseas entity will be unable to acquire a qualifying estate or to make a relevant disposition until the notice has been complied with. It is understood that Companies House is likely to annotate the register to indicate where an overseas entity is non-compliant.

We have prepared an [ECCTA toolkit](#) to assist clients with understanding the wide-ranging implications of ECCTA.

### WHAT FURTHER CHANGES ARE PROPOSED TO THE ROE REGIME?

There remain a number of measures in ECCTA relating to the ROE that are yet to come into force, including the requirement to provide the title numbers of all qualifying estates owned by overseas entities on registration and for each annual update. It is expected that these outstanding measures will come into force later in 2024.

#### Consultation on the transparency of land ownership involving trusts

In addition to the changes being brought in by ECCTA, in December 2023 the government launched a consultation seeking views on how to improve the transparency of trust information. It also sought views on widening the access to the trust information held on the ROE and on how the ownership of land involving trusts can be made more transparent. The consultation closed on 21 February 2024.

Further details of the proposed plans can be found [here](#).

### HOW WE CAN HELP

If you have received a letter either from Companies House and/or the Land Registry relating to the ROE or any aspect of ECCTA, then please contact us and we can advise on next steps.

We will also be monitoring progress and providing regular updates on the implementation of ECCTA and the outcome of the government’s consultation on transparency of land ownership.

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