

Quick reference guide: Economic Crime

(Transparency & Enforcement) Act 2022 (the 'ECTEA')

Overview

The main aim of ECTEA, is to make ownership of property by overseas entities in the United Kingdom (note this guide only covers England and Wales) more transparent, by identifying the beneficial owners/people with control of that entity. Under the provisions of ECTEA, overseas entities owning qualifying estates in land were required to register (or at least apply to register) with Companies House on or before **31 January 2023, or face criminal penalties.**

- Overseas entities are **legal entities governed by laws of a country, or territory, outside of the United Kingdom** (this includes the Republic of Ireland and the self-governing Crown Dependencies of the Isle of Man, Guernsey, and Jersey).
- A **legal entity is a body corporate, partnership, or any other entity** that has **separate legal personality** under its governing laws.
- **Qualifying estates in land** are **freehold** estates (of both residential and commercial land and/or property), and **leases granted for a term of more than seven years** from the date of grant where the **overseas entity has been registered as proprietor since 1 January 1999.**
- **Overseas entities are required to submit information to Companies House** about the entity, its beneficial owners and its officers, **or risk significant criminal penalties.**
- A **beneficial owner** can be an individual, legal entity, a government body, or public authority that directly or indirectly:
 - holds **more than 25% of either the shares or the voting rights** in the overseas entity;
 - has the **right to appoint/remove a majority of its board** of directors;
 - exercises/has a right to exercise significant influence or control over the overseas entity;
 - 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 entity.
- OEs must also submit with the application to Companies House, details of any relevant dispositions of qualifying estates in land (including the date and the Land Registry title number(s)) that were made on or after 28 February 2022.

Although the measures introduced by **ECTEA were designed to help combat money laundering, ECTEA applies equally to all overseas entities.** This means, for example, that overseas entities incorporated in Guernsey for administrative purposes, such as some pension schemes, will be just as affected as overseas entities in Russia.

Companies House registration

Companies House created the register in 2022, (searchable through its website), which lists registered overseas entities, and provides links to any available documents relating to those entities (such as application forms, filed accounts, details of charges, annual returns etc.).

- **Overseas entities should have applied for registration at Companies House** within the six month 'transitional period', which started on 1 August 2022 and ended on **31 January 2023**.
- Companies House wrote to those overseas entities in August/September 2022 with invitations to register. Towards the end of 2022, Companies House also sent out reminders to overseas entities that had not yet registered (however, overseas entities owning qualifying estates in land should have applied to register even if they did not receive any letters from Companies House).
- **An overseas entity, and every officer in default, commits an offence** under Paragraph 5 of Schedule 3 of ECTEA 2022 if:
 - at the end of the transitional period, the overseas entity:
 - **is the registered proprietor of a qualifying estate in land, but**
 - the overseas 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 overseas entity became the registered proprietor of that qualifying estate in pursuance of an application for registration made on or after 1 January 1999.
 - A person guilty of an offence under this paragraph is liable to a **prison term not exceeding two years or a fine** (or both).
- **Overseas entities looking to acquire qualifying estates in land also need to register**
- An overseas entity can complete an online form to submit an application to Companies House and pay a registration fee of £100, or ask a 'relevant person' as an agent to complete and submit the application on its behalf.
- A 'relevant person', defined under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, includes credit/financial institutions, auditors, insolvency practitioners, accountants/tax advisers, independent lawyers, trust or company service providers, estate agents and letting agents.
- Certain information and documentation submitted in respect of beneficial owners/officers of the overseas entity must be verified by a 'relevant' person, even if the application is submitted by the overseas entity directly.
- Once an application for registration is completed, Companies House records the date of registration and the overseas entity ID in the register and issues the 'OEID' to the applicant.
- The register is available for public inspection, but certain personal information can be withheld.
- There is an ongoing annual duty to update the register (within a 14-day period of each anniversary of registration, or of the last update). Failure to comply with the updating duty will also constitute a criminal offence by the entity, and every officer of the entity in default, punishable by fine and in serious cases, imprisonment.
- An overseas entity can apply for removal from the register, when it can establish it is no longer registered as the proprietor of any qualifying estates in land.
- [Click here to access Companies House guidance for more information.](#)

Implications for land registration

HM Land Registry has entered restrictions in the registers of title of qualifying estates in land where satisfied:

- that an overseas entity was registered as the proprietor of the property, and
- that the entity became registered as the proprietor pursuant to an application made on, or after 1 January 1999.

Those restrictions took effect on 1 February 2023 and prohibit the registration of relevant dispositions (meaning sales, leases of more than seven years or legal charges) unless, at the time of application:

- the entity is either a **registered** overseas entity (and up-to-date with its filing requirements) or exempt, or
- the disposition is exempt from compliance with the restriction (for example the disposition is due to an earlier exchanged contract, or a court order or is made with consent of the Secretary of State. However, consent of the Secretary of State is only likely to be given in limited circumstances in the interests of national security, or to prevent or detect serious crime)

It is a criminal offence for an overseas entity to make a relevant disposition in breach of the provisions of the Land Registration Act 2002, as amended by ECTEA. The penalties would be imprisonment for a term not exceeding five years, or a fine (or both).

This means that **unless** the provisions of the ECTEA are complied with:

- buyers/tenants will not be able to acquire legal title to qualifying estates in land from overseas entities
- lenders will not be able to acquire legal charges when refinancing existing property owned by an overseas entity unless the overseas entity is a registered overseas entity
- lenders will also be unable to acquire legal charges over land purchased by an overseas entity, as the transfer of that land will not be capable of registration at HM Land Registry **until** the overseas entity is registered
- sellers transferring property to overseas entity buyers will be left holding the legal title on trust for the buyer until the buyer is a registered overseas entity (only the beneficial interest will transfer)
- landlords leasing property to overseas entity tenants (for a term of more than seven years) will not be able to grant a legal lease until the tenant is a registered overseas entity (the lease will only exist in equity)

Impact on transactions involving qualifying land and property:

- Transactions involving overseas entities will not be able to proceed unless that entity is registered as an overseas entity and up to date with its filing requirements
- Due to current backlogs of instructions to agents, and delays with Companies House processing applications, transactions involving overseas entities could be significantly delayed

Hints and tips:

- **Overseas entities that are not yet registered** and either already own qualifying estates in land, or intend to purchase/lease qualifying estates in land **must urgently**:
 - Give an information notice to any person that it knows, or has reasonable cause to believe, is a registrable beneficial owner in relation to the entity.
 - Appoint someone to deal with the registration and verification on your behalf. *Freeths cannot deal with the registration formalities directly, but can help you find a registered agent that can*
 - Get the information and documentation together for the application to Companies House including:
 - Official name, country of incorporation or formation, registered or principal office, address for service, an email address, details of the legal form of the entity (for example company or legal partnership) and the law by which the entity is governed.
 - Registration numbers for any official registers the overseas entity is registered under.
 - Information on the officers, beneficial owners, and persons with significant control.
 - Details of any transactions disposing of qualifying estates in land that completed since 28.02.22.
- This information notice requires the recipient to:
- State whether or not they are a registrable beneficial owner in relation to the overseas entity and if so, confirm the information in the notice about them is correct, provide any missing information, and provide further information in the event they are holding the interest as a trustee
 - Identify all land it holds in the UK
- Overseas entities must undertake a detailed and careful administrative exercise to obtain this information, as providing incorrect information could amount to a criminal offence committed by the entity and any officers in default, also punishable by up to five years imprisonment, or a fine, or both
 - Overseas entities should also ensure that they have a robust procedure in place to comply with the annual updating duties to avoid committing offences for non-compliance with the updating provisions.

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