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The Economic Crime (Transparency and Enforcement) Act 2022: New Rules for Overseas Entities Owning Land in the UK

by Melissa Moyle

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The Economic Crime (Transparency and Enforcement) Act 2022 (“**Act**”) introduces new measures to tackle illicit wealth in the UK property market. The Act is comprised of three parts and Part 1 of the Act (“**Part 1**”), which became effective on 1 August 2022, is the focus of this update.

Part 1 requires any Overseas Entity which owns or acquires property in the UK to be entered on a new Register of Overseas Entities (“**Register**”) held at Companies House. An overseas entity is a legal entity (corporate body, partnership or other entity) governed by the law of a country or territory outside the UK (“**Overseas Entities**”).

Overseas Entities are required to take reasonable steps to:

- identify any registerable beneficial owners; and
- ·obtain the required information in respect of each registrable, beneficial owner and in respect of any registrable beneficial owner who is a trustee, the trust. Required information includes personal information (where an individual), the basis for being a beneficial owner, and whether an individual is a “designated person” for the purposes of certain sanctions and anti-money laundering legislation.

The Act defines registerable beneficial owners as an individual, legal entity, government or public authority with (directly or indirectly):

- more than 25% of the shares or voting rights in the Overseas Entity.
- the right to appoint or remove a majority of the board of directors of the Overseas Entity.
- those who actually do, or hold the right to, exert significant influence or control, over the Overseas Entity.

The Overseas Entity must then submit an application of registration with the Register to Companies House containing a specific statement which best describes its beneficial ownership, together with details of its beneficial owner(s) as required by the Act. As part of the application the Overseas Entity must serve an information notice on each beneficial owner to confirm their details and subsequently ensure the information in the application is independently verified by a UK-based agent.

Overseas Entities are also subject to an annual “update period” beginning with the date of an Overseas Entity’s entry on the Register. Every twelve months, within 14 days after the end of each update period, the Overseas Entity must update the registrar as to its beneficial ownership and confirm ongoing compliance with the Act.

The Act will apply retrospectively to Overseas Entities that acquired property interests of (a) freeholds or leases of seven years or more in England and Wales (b) freeholds or leases of twenty-one years or more in Northern Ireland and (c) freeholds or leases of more than twenty years in Scotland (a **“Qualifying Estate”**):

- ·on or after 1 January 1999 in England & Wales; or
- ·on or after 8 December 2014 in Scotland; or
- ·on or after 1 August 2022 in Northern Ireland.

An Overseas Entity must also apply to be added to the Register where:

(1) it wishes to sell, grant a lease of more than seven years, or grant a legal charge of a Qualifying Estate it already owns when the related application to the Land Registry will be submitted on or after 1 February 2023; or

(2) it wishes to buy or become the tenant of a Qualifying Estate where its application to the Land Registry has been submitted on or after 5 September 2022.

As a transitional measure, Overseas Entities that own a Qualifying Estate in England & Wales or Scotland will have a six-month window ending on **31 January 2023** to become registered. Where an Overseas Entity has made a disposition of a Qualifying Estate between 28 February 2022 and 31 January 2023, the Overseas Entity must disclose the details of such dispositions to Companies House.

Key Points to Note:

1. The Act prevents an Overseas Entity from acquiring or dealing with a Qualifying Estate if they are not registered on the Register. In England & Wales those Overseas Entities that purchased a Qualifying Estate on or after 1 January 1999 must become registered by 31 January 2023 or they will be committing a criminal offence under the Act.
2. Entry upon the Register at Companies House is now necessary for Overseas Entities to acquire ownership of UK property. Failure to do so will prevent an Overseas Entity from being registered as the new owner of a property at the Land Registry.
3. The Land Registry will also place a restriction on the title to a Qualifying Estate which will prevent the Qualifying Estate from being transferred, charged or let in the future unless registration at Companies House as an Overseas Entity is maintained.
4. It is possible for any member of the public to inspect the register or request a copy of any material on the register, subject to certain personal information which will be kept confidential.
5. **Failure to comply with the Act is a criminal offence punishable by fines and**

imprisonment. Compliance should therefore be taken very seriously.

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