

DOING REAL ESTATE DEALS UNDER THE NEW REGISTER OF OVERSEAS ENTITIES (ROE) REGIME

The Economic Crime (Transparency and Enforcement) Act 2022 (ECA) was passed into law on March 15, 2022. The government intends for the new Companies House system to open on August 1, 2022 and the land registration elements of the ECA will come into force on 5 September 2022. The aim of the ECA is to elicit disclosure of the beneficial (actual) owners or managing officers of entities holding UK property.

How the ROE will affect real estate transactions

There is a sea change affecting all transactions where:

- the buyer/tenant/borrower or the seller/landlord/lender is an overseas entity; and
- there is a transfer, grant of a lease of 7 years or more and/or the grant of a legal charge of real estate in any part of the UK.

Overseas entities holding UK real estate acquired on or after 1 January 1999 will need to:

- submit an application to Companies House and obtain an overseas entity ID;
- identify and disclose **beneficial owners or managing officers** (as such terms are defined in the ECA);
- keep the data on the ROE up to date by an annual submission; and
- demonstrate compliance to the relevant land registry (in England and Wales, the Land Registry).

It is important to understand that the definition of beneficial owner as defined in the ECA is different to how that same term is defined for the purposes of anti-money laundering legislation.

Existing property owners

Overseas entities which currently hold property within the scope of the ECA will have 6 months from, most likely, 1 August 2022 to register.

New property purchases

Overseas entities seeking to acquire an interest in new UK property (whether by transfer or taking a lease of 7 years or more) will need to obtain the same overseas entity ID prior to completing a transaction because the ECA will have immediate effect from, most likely, 5 September 2022.

Recent property disposals

Overseas entities which disposed of relevant real estate interests on or after 28 February 2022 must still register with the ROE whether or not such entities continue to hold relevant real estate interests. This is an anti-avoidance provision.

Lending transactions

Overseas entities seeking to borrow funds and grant a legal charge over newly acquired UK property will also need the overseas entity ID with immediate effect. Those current UK property owners seeking to borrow should expect secured lenders to impose additional layers above the ROE requirements. We suspect a lender will not release funds until such time as it is can be sure that the legal charge will be registrable at the Land Registry. Any intended borrower is advised to make its application to the ROE as soon as possible to avoid complications.

Practical restraints

The three UK land registries are being used as the gatekeepers to ensure compliance with the ROE. The ECA prevents dealings with property being registered at the Land Registry if it is not possible to demonstrate compliance with the ROE provisions of the ECA.

To put this in context, if an overseas entity buys a new UK property it will not be able to enter into derivative transactions (e.g., the grant of a legal charge to fund the buyer's purchase, the grant of a lease for a term of more than seven years, or a transfer of whole or part of the property acquired) until after it has been registered on the ROE and has its ID. This is more than a house keeping task. The ID cannot be obtained after the event to 'fix' the problem – such derivative transactions would be permanently incapable of being registered without some sort of subsequent confirmatory deed.

What should overseas entities be doing?

The provisions of the ECA apply with immediate effect to property acquired after 5 September 2022. Any overseas investor *intending to acquire* property in the UK should make an application to the ROE as soon as it can. The relevant disclosures should be compiled now.

Any overseas investor that *already holds* property in the UK will also need to make an application to the ROE but has six months from 1 August 2022 to do so. However, it should still be done sooner rather than later to avoid complications.

Does this apply to me? What is an overseas entity?

An overseas entity is any body corporate, partnership or other legal person or entity governed by the law of a country or territory outside of the United Kingdom.

Whilst there are certain specific exemptions each overseas entity that holds UK property should proceed on the basis that it will need to be on the ROE.

What are the consequences?

The ECA imposes criminal penalties for non-compliance, including fines which will quickly and easily aggregate to hundreds of thousands of pounds and, in certain cases, imprisonment.

Practical advice to property investors

Overseas entities should be gathering the details of their ownership now.

Once a complete application is submitted to Companies House and verified by a relevant person (a subset of persons supervised under the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017) which includes independent legal professionals (but not in-house legal teams), it should not be a lengthy wait to receive the overseas entity ID. However, there is likely to be an initial deluge for Companies House to manage so we recommend that you take steps to make applications as soon as practicable.

To satisfy the disclosure requirements, overseas clients might need help to gather all the relevant documentation. Overseas entities will not be able to complete the registration to the ROE without the support of a relevant person who is prepared to verify certain aspects of the application.

Further advice

Wedlake Bell has been working closely with BEIS, Companies House and HM Land Registry on the implementation of the new regime. If you require further advice or assistance in understanding the obligations which this new regime will impose on you and/or our assistance in complying with such obligations, please contact the person with whom you usually deal or, alternatively contact Philip Matthews, Gemma Cook or Edward Craft.

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