



THE REGISTER OF OVERSEAS ENTITIES

YOUR QUESTIONS ANSWERED

The Register of Overseas Entities (ROE) was brought into being under the Economic Crime (Transparency and Enforcement) Act 2022 (the Act) and was introduced to address concerns regarding a lack of transparency around who ultimately owns land in the UK. The ROE, which will be kept at Companies House, will hold details of the beneficial owners of overseas entities which own “qualifying estates” in UK land.

There is a transition period for registration which began on 1 August 2022 and runs to 31 January 2023, by which date any overseas entity still owning a qualifying estate in UK land must have applied to be registered on the ROE.

Why should I care?

You only need to worry if you are an overseas entity that acquired or acquires a qualifying estate in land in England and Wales after 1 January 1999 (different dates apply to property in Scotland and Northern Ireland), and either still own it, or disposed of it after 28 February 2022. If you are you'll need to comply with the new regime, as you will be at risk of committing several different criminal offences if you don't.

What is an overseas entity?

An overseas entity (OE) is a legal entity that is governed by the law of a country or territory outside the UK, including non-UK incorporated companies, LLPs, foreign foundations and non-UK partnerships with legal personality. Non-UK trusts are not OEs as they do not have a separate legal personality. However, if a non-UK trust owns land through a non-UK legal entity, that entity would still be caught as an OE.

What is a qualifying estate?

A "qualifying estate" means an estate in land (whether commercial or residential) which:

- is freehold, or leasehold where the original term of the lease was more than seven years from the date of the grant (if this is the case, it is still a "qualifying estate" even if less than seven years now remain unexpired); and
- is owned by the OE under an application which was made (to the Land Registry) on or after 1 January 1999 (or other applicable date, in the case of property in Scotland or Northern Ireland).

What is a beneficial owner?

A beneficial owner is an individual, government, public authority or other legal entity who meets one or more of the following conditions in relation to the OE:

1. they hold (directly or indirectly) more than 25% of the shares in the OE;
2. they hold (directly or indirectly) more than 25% of the voting rights in the OE;
3. they have the right (directly or indirectly) to appoint or remove a majority of the board of directors of the OE;
4. they have the right to exercise or actually exercise significant influence or control over the OE; or

5. in relation to trusts, partnerships or other entities that are not legal persons under the law by which they are governed: if the trustees of the trust or members of the partnership, unincorporated association or other entity meet any of the conditions listed at i-iv, then the beneficial owner will consist of any person who has the right to exercise or actually exercise significant influence or control over the activities of that trust or entity.

This is based closely on the People with Significant Control (PSC) regime for UK companies. If the OE has either no beneficial owners, or has but has not been able to fully identify them, the OE must provide information relating to its managing officers. (The expression "managing officer" is not fully defined in the legislation, but includes directors, managers and company secretaries).

What do I need to do?

If you are an OE that acquired property after 1999 you must either have made an application to register on the ROE declaring your beneficial owners (or managing officers) or have disposed of that property before 31 January 2023. Once you have registered with Companies House you will be provided with an OE ID number which can be provided to the Land Registry to show compliance with the regime.

(Regarding disposal before 31 January 2023, see below "As an OE can I sell all the UK property I own before 31 January 2023 and avoid having to do anything?")

When do I need to do it by?

Any OE still owning a qualifying estate in UK property by the 31 January 2023 must have applied to be registered.

What if I don't?

From 5 September 2022 the Land Registry began adding restrictions to all registered qualifying estates in England and Wales where the OE became the registered proprietor pursuant to an application made on or after 1 January 1999. The restriction prohibits any disposition of the qualifying estate unless the ROE regime has been complied with. Dispositions include transfers, the granting of a lease, the creation of easements and the granting of a charge over the property.

In addition, the regime imposes numerous criminal sanctions including initial fines, daily default fines of up to £2,500 and custodial sentences of up

to two years. The fines apply to both the entity and every officer of the entity who is in default.

Are there any exemptions I can cling on to?

Not so much as the OE but there are a few the beneficial owners may be able to take advantage of. These include when the beneficial owner holds the interest in the OE through one or more legal entities, or their beneficial ownership is an indirect ownership through a beneficial owner of the OE and that beneficial owner is subject to its own disclosure requirements. The exemptions are similar to those of the PSC.

Is the ROE regime the same as the PSC regime?

It is similar in many respects but different in others. One of the key differences is the requirement under the regime to have the information on the beneficial owners verified by a regulated agent. Unlike the PSC regime where entities are able to provide information as to beneficial ownership to Companies House this information has to be verified prior to doing so. Verification is not a straightforward process and, particularly given the overseas nature, can be time consuming. In addition, overseas entities are not required to keep their own register of beneficial ownership information but must simply file it at Companies House and update it annually.

As an OE can I sell all the UK property I own before 31 January 2023 and avoid having to do anything?

If you disposed of all your qualifying property after 28 February 2022 you do not need to apply for registration but you are still required to disclose the beneficial ownership information to the registrar before the end of the transitional period. Failure to comply is a criminal offence committed by both the entity and every officer of the entity in default with sentences ranging from an initial fine and a daily default fine of up to £2,500.

As an OE can I buy property now and register it later but by 31 January 2023?

If you purchase a property or a lease of over seven years before 31 January 2023 the OE will need to be registered on the ROE in order to be registered as the legal owner of that qualifying estate.

Once I've registered is that the end of it?

Unfortunately not, you will need to deliver updated information, or confirm that the information held on the ROE in relation to you is up to date, annually. Failure to comply will be a criminal offence committed by both the entity and every officer of the entity who is in default. The maximum sentence is an initial fine and a maximum daily default fine of £2,500.

I don't really understand what I need to do, can I get help?

Of course, HFW are here and ready to advise you regarding your obligations under the ROE. Please get in touch if you'd like our help.

For more information, please contact the authors:



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