

The Register of Overseas Entities is now 'live' – what are the implications for property transactions with overseas entities?

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Introduction

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In early March, the Government announced its intention to bring in a new Register of Overseas Entities (to be maintained by Companies House) recording the beneficial owners of any overseas entity owning property in the UK. This formed a key part of measures brought in to crack down on foreign criminals using property in this country to launder money. The Register has been set up from scratch by Companies House in a matter of months and went live on 1 August 2022.

What is an overseas entity for these purposes?

An overseas entity is any corporate body, partnership or other entity which is a separate legal person under its governing law and which is governed by the law of a country or territory outside the UK. So, despite the context in which this new Register has been expedited, its requirements are not limited to overseas entities from any particular jurisdiction - they apply to all non-UK entities owning property in the UK (including, for example, companies incorporated in the Channel Islands or the Isle of Man).

What is a beneficial owner for these purposes?

A beneficial owner is basically someone holding (directly or indirectly) more than 25% of the shares or voting rights in the overseas entity, someone holding the power to appoint or remove a majority of the directors of the overseas entity and someone having the right to exercise (or actually exercising) significant influence or control over the overseas entity.

The definition of a beneficial owner is largely modelled on the existing "People with Significant Control" regime, brought in under UK company law in 2016.

So what are the implications if I am selling a property to an overseas entity or granting a lease to it for more than 7 years?

From 5 September 2022, the overseas entity will not be able to apply to register the transaction at the Land Registry unless it has first registered its beneficial owner details on the Register of Overseas Entities (so that, using the terminology in the relevant legislation, it becomes a "Registered Overseas Entity"). Whilst this may at first sight appear not to be your problem, legal title in the property will not pass to the overseas entity (and will remain in your hands) unless and until registration has been effected at the Land Registry. You do want to be certain therefore that the overseas entity is a Registered Overseas Entity before completing the transaction.

What about if I am buying a property from an overseas entity, taking a lease from it for more than 7 years or taking a mortgage from it?

Where the overseas entity was registered at the Land Registry as owner of the property on 1 August 2022 (and was first registered on or after 1 January 1999), a restriction will be placed on its title which will take effect on 1 February 2023. This restriction will prevent a disposition by the overseas entity from being registered at the Land Registry unless (subject to certain exceptions) the overseas entity was a Registered Overseas Entity at the time of the disposition. Therefore, if your application for registration at the Land Registry is made on or after 1 February 2023, you will need to be certain that the overseas entity is a Registered Overseas Entity before completing the transaction. As mentioned, if you cannot register the transaction at the Land Registry, legal title will not pass to you.

So what should I do in those circumstances?

On becoming a Registered Overseas Entity, Companies House will allocate to the overseas entity an overseas entity ID (which will have to be supplied to the Land Registry in due course). You will therefore need to ask for this ID before completing the transaction.

You should also include in any sale and purchase agreement (or agreement for lease) clauses:

- requiring the overseas entity to register its beneficial ownership details at Companies House and to continue to be a Registered Overseas Entity up to completion (once registered, an Overseas Entity must update the details annually and will not qualify as a Registered Overseas Entity if it has not complied with this updating obligation);
- requiring the overseas entity to provide evidence of such registration; and
- excusing you from having to complete unless and until you are satisfied that the overseas entity has complied with these obligations.

It is believed that there are over 30,000 overseas entities that will need to apply to register their beneficial ownership details by 31 January 2023 (overseas entities will commit a criminal offence if they fail to do so). Registration is a complex process requiring verification of details by a professional falling within the scope of UK Money Laundering Regulations and it is believed that, at present, registration is a purely manual exercise at Companies House's end. There are therefore likely to be considerable delays in overseas entities effecting registration and the possibility of such delays should be taken into account when agreeing timescales for transactions at the outset.

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