

UK PROPERTY – FOREIGN OWNERSHIP AND TRANSPARENCY REQUIREMENTS

Background

In the current economic and political climate, there has been significant pressure on the Government to address the continuing use of opaque foreign companies to acquire property in the UK. The Government's response to these pressures took the form of the Economic Crime (Transparency and Enforcement) Act 2022 (ECTEA).

ECTEA may largely be seen as an anti-money laundering measure, since non-transparent overseas entities may be used in an effort to conceal funds derived from bribery, corruption, tax evasion or other unlawful conduct. ECTEA seeks to achieve its objectives by requiring overseas companies to comply with UK-equivalent transparency requirements before they can acquire real property in the UK.

This note is intended to provide a high-level overview of the new regulatory environment in this area.

ECTEA

- The Economic Crime (Transparency and Enforcement) Act 2022 will create a new registration requirement for overseas companies that own property in the United Kingdom and will create a new Companies House register known as the Register of Overseas Entities (the Overseas Register).
- ECTEA has not yet been brought into force, but the government has recently announced in Parliament that they hope to have the Overseas Register up and running by 1 August.
- ECTEA will require Companies House and the Land Registry to develop and implement certain information frameworks to enable these bodies to register the information that the Act will require overseas companies to provide to them.
- Frequently, overseas companies with foreign-resident directors will have limited incentive to comply with UK regulations, since they are beyond the scope of UK criminal jurisdiction. In the case of ECTEA, however, that incentive is provided by the effective freezing of the property, pending entry of the company onto the Overseas Register.

Criminal penalties

- These are wide ranging and severe. A deliberate failure to register the overseas entity at Companies House or providing false information may result in a fine and/or up to two years' imprisonment, while the failure to provide Companies House with an annual update of the information supplied carries a fine of up to £2,500 per day.

Land Registry restrictions

- The Land Registry will not (with some exceptions) register an acquisition or disposal of land in the UK by an overseas entity unless it has been entered on the Overseas Register. Foreign companies will therefore be unable to realise the value of their UK properties – whether by way of disposal or through mortgage finance—unless and until they are duly registered.
- This requirement will be enforced by the entry of a restriction on the overseas entity's legal title. The restriction will prohibit a "disposal" of the property until the Land Registry has been provided with the overseas entity's ID number, which will be proof that the overseas entity has been registered on the Overseas Register.

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- A “disposal” in this context means not just the sale of the property but also the grant of a lease for a term exceeding seven years and a legal charge.
- Similarly, an overseas entity acquiring registered UK property will be unable to register the acquisition at the Land Registry if they have not registered on the Overseas Register.
- The government appreciates that it will take time for Companies House to register existing overseas owners, so a grace period of six months has been built in from the date on which the Overseas Register comes into force for existing owners to register at Companies House. They should aim to do so as soon as possible, to avoid difficulty disposing of or acquiring land once the six months have expired.
- Overseas entities that have disposed of UK land since 28 February 2022 cannot rest easily either, as there are “look back” provisions that will require them to provide details of their beneficial owners at the time of the disposal.

The Verification Regulations

- The process envisaged through the use of the Overseas Register will of course only be effective if the information provided to Companies House is accurate. Again, this requirement may be difficult to enforce in practical terms where both the company itself and its directors are based outside the United Kingdom.
- In an effort to address this problem, the government has published regulations for the verification of information filed by an overseas company in the Register of Overseas Entities (Verification and Provision of Information) Regulations 2022 (the **Verification Regulations**).
- The Regulations will require certain information on beneficial owners and managing officers of overseas companies provided under ECTEA to Companies House to be verified. The list of target information is unsurprising. In the case of the company itself, it includes matters such as the place of incorporation and registered office. In the case of beneficial owners and managers, the list includes full names, addresses, dates of birth and similar details.
- Under the Verification Regulations the information described above must be verified through the use of independent sources (e.g., such as a companies registry or materials issued by other government authorities).
- The verification process must be conducted by (i) a regulated credit or financial institution, (ii) an auditor/insolvency practitioner/accountant/tax adviser, (iii) an independent legal professional, (iv) a trust or company service provider or (v) an estate/lettings agent. In each case, the person undertaking the verification must be carrying on business in the UK. The scheme of the Verification Regulations is therefore to minimise the risk of inaccurate information by placing responsibility on a regulated entity or a professional within UK jurisdiction.
- An entity that is included on the Overseas Register must provide an annual update to confirm that the previous information remains current or, as the case may be, give details of any changes to that information. Again, the annual update must be subjected to the same verification process.

Implications for Mortgage Lenders

- For obvious reasons, a restriction against disposals of properties held by overseas entities could be a source of concern for mortgage lenders in relation to the properties concerned.

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- ECTEA is however directed towards the overseas entity and not to any person who may previously have provided finance on it. Accordingly, **in relation to existing transactions**, a bank may enforce its power of sale as a mortgagee (either directly or through the appointment of a receiver). Alternatively, if the lender holds a floating charge over the company, it may be able to appoint an administrator. The lender can take these enforcement steps even though the owning company has failed to comply with its obligations in relation to the Overseas Register. The Land Registry is specifically authorised to register disposals in this type of case. This position seems to be broadly satisfactory from the perspective of mortgage lenders.
- As mentioned above, once ECTEA has been brought into force, there will be a grace period of up to six months for the overseas entity to comply with the registration obligations. However, as a practical matter, we would recommend that lenders should insist on completion of the entry onto the Overseas Register as a condition precedent to the drawdown of any mortgage funding.
- As a minor point, we would note that the new registration regime does not apply where the overseas entity acquired the relevant property before 1999.

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