



New Beneficial Ownership Register for UK Land launched on 1 August 2022

- > The Economic Crime (Transparency and Enforcement) Act 2022 has introduced a public Register of Overseas Entities (the “ROE”) to record beneficial ownership of overseas entities (“OEs”) that own UK land.
- > The ROE was launched by Companies House on 1 August 2022.
- > Land registration requirements follow on 5 September 2022.
- > Whilst there is a six-month transitional period, OEs which already own – or are planning to acquire – UK land must prepare and apply for registration as early as possible.

Who must take action now?

From 1 August 2022, OEs (being any legal entity governed by the law of a country or territory outside the UK) which meet any of the following criteria must take action, in advance of the 31 January 2023 deadline, by registering with Companies House and providing details of their registrable beneficial owner(s) (“**RBO(s)**”):

- > OEs which own freehold property or a leasehold property with a term of more than seven years from the date of grant in England and Wales acquired on or after 1 January 1999 (a “**Qualifying Estate**”);
- > OEs which acquire a Qualifying Estate;
- > OEs which acquired property in Scotland on or after 8 December 2014 (which is governed by a separate regime and outside the scope of this note); and
- > OEs which disposed of a Qualifying Estate after 28 February 2022.

What steps must OEs take and what information is required?

Before an OE makes an application to Companies House, it must:

- > identify its RBO(s) (if any) (see below);
- > obtain the required information about each RBO (and, where an RBO is a trustee, the relevant trust) by serving an information notice on any person that it knows, or has reasonable cause to believe, is an RBO. This information notice should require such person to state whether or not it is an RBO and to provide the required information about such RBO or trust (if applicable) within one month of the notice; and

- > arrange for such information to be verified by a UK-regulated agent (see more on this below).

The ROE registration application must include:

- > certain factual information in relation to the OE;
- > one of following three statements:
 1. the OE has identified one or more RBOs and it has no reasonable cause to believe there are others and the OE is able to provide the required information about each RBO it has identified;
 2. the OE has no reasonable cause to believe that it has any RBOs; or
 3. the OE has reasonable cause to believe that there is at least one RBO that it has not identified and/or the OE is unable to provide the required information about one or more of the RBOs it has identified;
 - > the identity of, and prescribed information about, the RBO(s) identified or (where there is no RBO) the managing officers of the OE (see Box 1);
 - > details of the UK-regulated agent who has verified the information, including its assurance code (see below);
 - > if any trustees of a trust are an RBO, prescribed information in relation to such trust (see Box 1); and
 - > if the OE disposed of UK property since 28 February 2022, details of that property, the disposition and the RBO and managing officers at that time.

Box 1: Information required to be supplied to Companies House

- > For each RBO who is an individual, the full name, date of birth, nationality, correspondence address and home address of that individual must be provided along with confirmation as to whether that individual’s personal information is protected at Companies House (or that the result of such an application is awaited).
- > For each RBO who is a legal entity, the name, legal form, governing law, correspondence address, registered office, public register it appears on and its registration number (if relevant) must be provided.
- > For all RBOs, the date on which they became a Beneficial Owner for the OE must be confirmed and details of the nature of control must be provided. Confirmation as to whether they are on the UK Sanctions List is also required.
- > For each managing officer (where such details are required), the applicable information above must be given and details of the officer’s role and responsibilities in relation to the OE must be provided.
- > If any RBO is a trust, information about the trust, including current or past Beneficial Owners, beneficiaries, settlors, grantors and interested persons must be provided.



Who is a UK-regulated agent?

The UK-regulated agent who verifies the information may be an individual or organisation supervised under the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017, such as a credit institution, financial institution, auditor, insolvency practitioner, external accountant, tax adviser, independent legal professional, trust or company service provider, estate agent or letting agent.

The person or organisation must have obtained an assurance code from Companies House and must have verified the information before the application is submitted (note that verification is valid for three months).

What information will be publicly available on the ROE?

Once the ROE registration application has been processed by Companies House, the Registrar of Companies will publish the information on the ROE (save for home addresses, full dates of birth and information regarding trusts) and issue an identification number to the registered OE.

Who is an RBO?

The question of who constitutes an RBO for an OE can be complex, although the analysis is broadly the same as that required under the Register of Persons with Significant Control regime (PSC Register) which has been in place for UK companies since 6 April 2016.

An RBO is any Beneficial Owner (see Box 2) who is:

- > an individual who is not exempt from being registered;
- > a legal entity “*subject to its own disclosure requirements*” (see Box 3) and which is not exempt from being registered; or
- > a government or public authority.

Any individual or legal entity subject to its own disclosure requirements which meets the Beneficial Ownership Criteria in relation to the OE will be an RBO, unless it is exempt from being registered. Exemptions are available to individuals or legal entities and are designed to limit duplication.

For example, in a group structure there might be multiple entities that meet the Beneficial Ownership Criteria indirectly, but only the first eligible entity (or entities, where not wholly owned) up the chain needs to appear on the ROE. Where there is no such entity, the individual Beneficial Owner(s) will be registered (and, where a government or public authority is within the structure, such government or public authority will always be registrable as no exemption is available to them).

How can an OE make an application to be registered?

Once all the required information has been compiled and verified by a registered UK-regulated agent, the majority of applications can be submitted online via the Companies House website (subject to a payment of a £100 fee) by a person who works at, or on behalf of, an OE or by the UK-regulated agent who verified the information. However, the online service cannot be used if any of the RBOs have their personal information protected at Companies House or if the OE has disposed of property since 28 February 2022. In these circumstances, the current advice is that Companies House should be contacted via email for further guidance (enquiries@companieshouse.gov.uk). The Companies House advice (published [here](#) on 25 July 2022) is helpful in setting out the administrative process and prescribed information required.

What ongoing obligations must OEs comply with?

Once an OE has registered itself and its RBO(s) on the ROE, it must provide an annual update of the information. Failure to do so will not only be a criminal offence but will also mean that the restrictions on registering dispositions mentioned below will apply to that OE until it has remedied the failure. Delivering misleading, false, or deceptive information is also a criminal offence.

Box 2: Beneficial Ownership Criteria

A “**Beneficial Owner**” for these purposes is a legal entity or individual (“X”) who meets one or more of the following conditions in relation to an OE or other legal entity (“Y”):

- > **Condition 1:** X holds, directly or indirectly, more than 25% of the shares in Y;
- > **Condition 2:** X holds, directly or indirectly, more than 25% of the voting rights in Y;
- > **Condition 3:** X holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of Y;
- > **Condition 4:** X has the right to exercise, or actually exercises, significant influence or control over Y; and/or
- > **Condition 5:** where there are trustees of a trust or members of a partnership, unincorporated association or other entity that is not a legal person under the law by which it is governed which meet any of the conditions specified above (in their capacity as such) in relation to Y, X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or entity.

Note that a person does not meet Condition 1, 2 or 3 in relation to an OE by virtue only of being, or holding a share in, a limited partner of a limited partnership registered under the Limited Partnerships Act 1907 (unless it takes part in the management of the business) or a foreign partnership which has characteristics prescribed by the Secretary.



What is the impact on land registration and on Relevant Dispositions?

Once the full suite of land registration elements comes into force on 5 September 2022, it will not be possible to submit an application to Land Registry to register an OE as proprietor of a Qualifying Estate without the OE being registered on the ROE (which is time-sensitive).

To add teeth to the regime, new Land Registry restrictions will be placed on the title to all Qualifying Estates owned by OEs which will prevent the registration of a: (i) transfer; (ii) grant of a lease of more than seven years; and/or (iii) legal charge (each a “**Relevant Disposition**”) by OEs who are not properly registered on the ROE or who have not complied with annual updating obligations (subject to certain exceptions) (the “**OE Restrictions**”).

The point at which the OE Restriction is entered on the title to a Qualifying Estate will depend on when the Qualifying Estate was acquired by the OE and it is not yet entirely clear when this will be in all cases. However, it is anticipated that:

> **For Qualifying Estates already owned by an OE:** Land Registry will put OE Restrictions onto each title currently owned by an OE “as soon as possible” during the transitional period (i.e. this will happen sometime between 5 September 2022 and 31 January 2023); however, these OE Restrictions will not take effect until 1 February 2023. Therefore, until 31 January 2023, the OE can freely deal with Qualifying Estates (which it already owns) without an OE identification number; however, from 1 February 2023, most Relevant Dispositions in respect of that Qualifying Estate cannot be registered without an OE identification number. **Therefore, whilst these OEs benefit from the transitional period, they would be well advised to submit their application for registration to Companies House sooner rather than later, particularly if there is any possibility of the OE entering into Relevant Dispositions in the first half of 2023.**

> **For OEs who acquire a Qualifying Estate between 1 August 2022 and 4 September 2022:** During this period, OEs will be able both to acquire a Qualifying Estate and submit an application to Land Registry to register itself as proprietor of the newly-acquired Qualifying Estate without an OE identification number (provided that such Land Registry application is submitted prior to 5 September 2022). However, simultaneous with completion of the registration of the OE as registered proprietor of the newly-acquired Qualifying Estate at Land Registry, Land Registry will put an OE Restriction on the title to the OE’s newly-acquired Qualifying Estate on or after 5 September 2022; such OE Restriction will take effect from completion of the Land Registry application and possibly even be deemed to take effect from 5 September 2022, even where the Land Registry application has not completed by that date.

From the point at which the OE Restriction bites, it will be a criminal offence for the OE to carry out a Relevant Disposition (or apply to register it) without an OE identification number (unless the Relevant Disposition falls within certain limited exceptions, such as in pursuance of a contract entered into prior to the OE Restriction being entered).

The key issue here is that, since it is not absolutely clear yet when the OE Restriction will bite and, consequently, when a Relevant Disposition will constitute an offence. **Therefore, an OE who acquires a Qualifying Estate in this period should submit its ROE application to Companies House as soon as possible.**

> **For OEs who acquire a Qualifying Estate on/from 5 September 2022:** Whilst OEs can acquire a Qualifying Estate without first obtaining an OE identification number, ROE registration will be required before:

- an application can be submitted to Land Registry to register the OE as proprietor of the Qualifying Estate which is acquired on/ from 5 September 2022; and
- the OE can make a Relevant Disposition (unless it falls within certain limited exceptions, such as in pursuance of a contract entered into prior to the OE Restriction being entered).

Box 3: When is a legal entity “subject to its own disclosure requirements”?

A legal entity is “subject to its own disclosure requirements” if it is:

- > required to maintain its own PSC register (i.e. a UK company, LLP or Societas or an eligible Scottish partnership) or it is registered as an ROE (i.e. it is a non-UK entity which itself is subject to these rules);
- > listed on a regulated market in the UK, EU or on certain prescribed markets in Israel, Japan, Switzerland or the US; or
- > of a description specified by the Secretary of State in regulations (which are, at present, unpublished).

In broad terms, this means that a legal entity may only appear on the ROE if that entity itself publishes information about those who control it (either through its PSC register or ROE, or because it is required to publish transparency information on those who have a material interest in voting rights – as is the case for companies listed on the prescribed markets). If a legal entity meets the Beneficial Ownership Criteria but is not “subject to its own disclosure requirements” then it cannot be registered on the ROE. Instead it is necessary to analyse the chain of ownership to see if there is another eligible individual, legal entity or government or public authority higher up.



As above, simultaneous with completion of the registration of the OE as registered proprietor of the newly-acquired Qualifying Estate, Land Registry will put an OE Restriction on the title to the OE's newly-acquired Qualifying Estate; such OE Restriction will take effect immediately. However, a crucial issue in these circumstances is that, with effect from the point at which the OE acquires the Qualifying Estate, the relevant OE Restriction is, essentially, deemed to be in effect in respect of the newly-acquired Qualifying Estate. **Therefore, with effect from the OE's acquisition of the Qualifying Estate, it will be a criminal offence for the OE to effect a Relevant Disposition until the OE identification number has been received** (unless the Relevant Disposition meets certain criteria - e.g. in pursuance of a contract entered into prior to the OE acquiring the Qualifying Estate or pursuant to a power of sale conferred on a chargee). This could create a significant block on some real estate transactions which do not benefit from the "prior contract exemption" or other exceptions.

What are the sanctions for non-compliance?

There are potential criminal sanctions for OEs and their officers if an OE makes a Relevant Disposition in breach of the new requirements and/or continues to own a Qualifying Estate without proper compliance (including by providing false information). These sanctions include daily fines of up to £2,500 for officers of the entity in default or prison sentences of up to 5 years for the most serious breaches.

Please speak to your usual Linklaters' contact to talk through the issues involved and what the new rules will mean for you.

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