

The Register of Overseas Entities – key points for lenders

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In our previous [REF Insights](#), we wrote about the forthcoming register of overseas entities (the “ROE”) which was set to be introduced by The Economic Crime (Transparency and Enforcement) Act 2022 (the “Act”). The Act came into force on 15 March 2022 and the ROE went live at Companies House on 1 August 2022.

An overseas entity which currently owns, or wishes to acquire, a qualifying estate in UK land (i.e., a freehold interest or a leasehold interest of more than 7 years) must identify its beneficial owner(s) and apply for registration on the ROE. Once registered, the overseas entity will be allocated an overseas entity ID (“OEID”).

The introduction of the ROE will impact finance transactions involving an overseas entity owning UK property. We set out below the key points, from a lender’s perspective, of the overseas entity registration requirements:

Financing an acquisition

If a lender is financing the acquisition of a UK property and the borrower is an overseas entity, the borrower must get registered on the ROE at Companies House for the transfer of the property and the lender’s security to be registered at the Land Registry. From 5 September 2022, the Land Registry ceased to register the transfer or the security unless the overseas entity has been provided its OEID.

In this context, a lender should request the OEID of the borrower as a condition precedent to drawdown, to ensure that the lender’s security is capable of being promptly registered on completion.

Refinancing

During the 6-month transition period (i.e., until 31 January 2023), if a borrower (who is an overseas entity) already owned the property on 1 August 2022 and is refinancing, it will be possible to register new security over that property at the Land Registry, even if the borrower has not yet obtained its OEID.

The borrower must, however, obtain its OEID by the end of the transition period. If the borrower fails to do so, the restriction which will have been entered on the title by the Land Registry will take effect and prevent any further dispositions being registered until such time as the OEID is obtained.

There is an exception under the Act which allows a sale by a chargee (of a registered charge), or a receiver appointed by such a charge, to be registered without an OEID for the relevant overseas entity. This gives lenders comfort that, provided their security is registered at the Land Registry, if they need to enforce it (either during the transitional period or after), the lack of an OEID for the relevant overseas entity (and the restriction on the title) should not prevent such a sale being registered.

Clearly sale on enforcement is a last resort and the parties' interests should be aligned in obtaining the OEID to facilitate disposition (including future refinancing) in the ordinary course. We would recommend, therefore, that even during this transition period, the OEID should be a CP to any refinancing.

Existing finance

Lenders should review their existing portfolios to determine which of them will be affected by the Act and take steps to ensure the relevant overseas borrower entities register, and keep updated, their details with the ROE.

We should note that the exception under the Act for a sale by chargee or receiver (above) will also apply in relation to any existing financing. Consequently, the lack of an OEID would not prevent a sale by a chargee or receiver being registered. Notwithstanding that exception for enforcement, we would recommend that lenders press their existing borrowers (where applicable) to obtain the OEID without delay in order to preserve all of a lender's exit routes in addition to enforcement.

To date, the number of applications to Companies House is reportedly low. However, this is expected to change in the run up to the end of the transition period on 31 January 2023. It is therefore prudent for an overseas entity to get registered in good time, to avoid a last-minute rush and potential backlog at Companies House.