

## Action required by overseas entities who own UK land – update November 2022

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*The Economic Crime (Transparency and Enforcement) Act 2022 (ECTEA) came into force on 1 August 2022. The 6 month transition period will end on 31 January 2023. Any overseas entities who own or plan to acquire UK property but are not yet on the Register of Overseas Entities must act now or risk committing a criminal offence.*

### How does ECTEA affect OEs who own or acquire UK land?

- An overseas entity (OE) who owns or acquires UK land must be entered on a new register of overseas entities (ROE), held at Companies House. Once registered, they will be given an OE ID number. Failure to comply will be a criminal offence by the OE and its officers, punishable by fines and imprisonment.
- For this purpose, an OE is a legal entity with its own legal personality. Whether this affects partnerships will depend on the law of the OE's own jurisdiction.
- HM Land Registry is obliged to put a restriction on any title held by an OE. Many are already in place.
- If the OE is not on the ROE, the restriction will make it impossible for anyone to whom the overseas entity disposes of land to register their transaction without producing the OE's OE ID number. This will affect:
  - sales of freehold land;
  - leases granted for more than 7 years; and
  - legal charges over the land to secure finance.
- It will be a criminal offence for an OE to enter into any of those transactions if it is not on the ROE. There will also be an immediate commercial impact, because in practice, OEs will have to demonstrate that they have complied with ECTEA whenever they are negotiating a sale or letting or using land as security for debt.
- If an OE buys land or takes a new lease of more than 7 years, they must not apply to be registered as proprietor at HMLR unless they are also on the ROE. This is in force **now** and does not have the benefit of the 6 month transition period. Not having an OE ID will effectively put a break on the transaction, especially where the OE is relying on secured finance.

Note that ECTEA applies throughout the UK but there are slightly different rules for Scotland and Northern Ireland. This note covers only land in England and Wales.

## **Action required by OEs before 1 February 2023**

OEs who own “qualifying estates” in UK land must apply to be registered on the ROE before 1 February 2023. This means overseas entities who are:

- the owner of freehold land; or
- the tenant of a lease granted for a term of more than 7 years.

Failure to do this will be a criminal offence, which will start to bite on 1 February 2023.

Overseas entities intending to acquire an interest in UK land must be on the ROE before they can perfect their legal title by applying to register the transaction at HM Land Registry. In practice, sellers, landlords and lenders will expect to see evidence that the OE has complied before completing the transaction.

## **How to get onto the ROE**

- To get onto the ROE, the overseas entity must disclose details of its beneficial owners, if it has any. Broadly, a beneficial owner will be someone who has more than 25% of the shares or voting rights in relation to the overseas entity or is in a position to exercise significant influence or control over it. A beneficial owner may be a person, another company or a trust (and note this will include entities like Jersey Property Unit Trusts). The information supplied to Companies House must be updated annually.
- Companies House requires all the information submitted to be verified by a regulated agent. There are now a number of companies offering this verification service, some of whom are included in a list published by Companies House. Maples Teesdale cannot act as your agent for this purpose but we can help you with choosing a suitable third party.

## **Don't delay**

Companies House is currently completing most applications within 48 hours but:

- OEs must allow extra time before applying to Companies House, to find a verification agent and provide all the information they need.
- 31% of applications to Companies House are currently being rejected. Using an experienced verification agent should help to avoid rejection.
- Companies House estimates that around 31,500 OEs will need to be on the ROE by 1 February 2023. By 25 October 2022, fewer than 3,000 had been registered. If the remainder leave it until January 2023 to apply, there could be an issue with capacity at Companies House and deals could stall.

## **Advice for those dealing with overseas entities**

There is still time for anyone buying land or taking a lease from an OE to complete and make their application to register the transaction at HM Land Registry before the transition period ends on 31 January 2023. That means that the purchaser or tenant will not have to produce the seller or landlord's OE ID. Once we get into January 2023, that timetable will start to look tight, which will increase pressure on OE owners to get onto the ROE.

## **Next steps**

The immediate priority is for OEs involved in the UK property market to get themselves onto the ROE. If you would like to discuss how ECTEA may affect your business, please get in touch with your usual contact at Maples Teesdale.