

BEWARE THE NEED FOR NOTICE - HEFFALUMP TRAPS SET BY THE ECONOMIC CRIME (TRANSPARENCY AND ENFORCEMENT) ACT 2022

This is the second of a series of articles highlighting some traps for the unwary under the Economic Crime (Transparency and Enforcement) Act 2022 (ECTEA).

The ECTEA was passed into law at a very fast pace on March 15 2022. The government launched the new Companies House system on August 1 2022 and the land registration elements of the ECTEA came into force on 5 September 2022.

The aim of the ECTEA is to elicit disclosure of the beneficial (actual) owners or managing officers of entities holding UK property. However, now we had had some practical experience of the ECTEA, it is feasible that parties could unwittingly commit offences under the ECTEA.

Background – what overseas entities must do

Existing property owners

Overseas entities which as at 31 January 2023 are registered proprietors at the Land Registry of real estate acquired on or after 1 January 1999 (but before 5 September 2022) must:

- submit an application to Companies House and obtain an overseas entity ID;
- identify and disclose **beneficial owners or managing officers** (as such terms are defined in the ECTEA);
- keep the data on the ROE up to date by an annual submission; and
- demonstrate compliance to the relevant land registry (in England and Wales, the Land Registry).

New property purchases

Overseas entities seeking to acquire an interest in new UK property (whether by transfer or taking a lease of 7 years or more) will need to obtain the same overseas entity ID prior to completing a transaction.

Recent property disposals

Overseas entities which disposed of relevant real estate interests on or after 28 February 2022 but before 1 February 2023 must still disclose certain details to the ROE whether or not such entities continue to hold relevant real estate interests. This is an anti-avoidance provision.

Practical restraints

The three UK land registries are being used as the gatekeepers to ensure compliance with the ROE. The ECTEA prevents dealings with property being registered at the Land Registry if it is not possible to demonstrate compliance with the ROE provisions of the ECTEA.

Does this apply to me?

An overseas entity is any body corporate, partnership or other legal person or entity governed by the law of a country or territory outside of the United Kingdom.

It can be overlooked that the United Kingdom does not include Crown Dependencies and registration on the ROE will be required for entities incorporated in any Crown Dependency.

Whilst there are certain specific exemptions, each overseas entity that holds UK property should proceed on the basis that it will need to be on the ROE.

What are the consequences?

The ECTEA imposes criminal penalties for non-compliance, including fines which will quickly and easily aggregate to hundreds of thousands of pounds and, in certain cases, imprisonment.

Timing is crucial

Under section 12 of the ECTEA an overseas entity **must** do certain things **before** an application can be made to get on the ROE. One of the action points that must be done is giving a formal information notice to any person that the overseas entity knows, or has reasonable cause to believe, is a registrable beneficial owner in relation to it.

That doesn't sound too problematic of itself but, the recipient of the notice must be given the opportunity to respond to the notice and the ECTEA states that this is a period of **one month beginning with the day on which it is given**. Under common law, there is no distinction between 'serving' and 'giving' a written notice.

The recipient of the notice may be able to respond sooner. If it does, that is great news and the ROE application can be progressed. There is, of course, a risk that the recipient of the notice doesn't respond.

A failure to respond to the notice will not prevent an ROE application being made but it will delay things.

If an overseas entity thinks it is unlikely that a response will be received (or it is not able to ensure that the recipient of the notice responds quickly), the overseas entity needs to think very carefully about the timing of the notice to make sure it can still meet the deadline of 31 January 2023.

For example, a notice put in the post by special delivery on 30 December 2022, *could* be given on 31 December 2022 and require a response by 30 January 2023. That would leave the overseas entity a theoretical one day in which to make the application to the ROE.

This timeframe comes with risk as (a) the application would need to be ready to submit on 31 January 2023, (b) there is a risk of cancellation and (c) this timing does not take into account the possibility of postal strikes. Any of these events could result a failure to meet the deadline of 31 January 2023.

Best practice?

The overseas entity should not delay and should progress its application as soon as possible. Leaving it until the new year and after the end of the holiday period is probably fatally late.

In order to give the overseas entity the best chance of meeting the deadline, the overseas entity should undertake its due diligence into its registrable beneficial owner and send the notice on or before 20 December 2022 at the very latest. Even then, there is of course no guarantee that the deadline will be met.

Being prepared and allowing time is key.

Further advice

Wedlake Bell has been working closely with BEIS, Companies House and HM Land Registry on the implementation of the new regime. If you require further advice or assistance in understanding the obligations which this new regime will impose on you and/or our assistance in complying with such obligations, please contact the person with whom you usually deal or, alternatively contact Philip Matthews, Gemma Cook or Edward Craft.

Key points

- Overseas entities which currently hold property within the scope of the ECTEA will have until 31 January 2023 to register under the ECTEA.
- The ECTEA imposes criminal penalties for non-compliance.
- Before an application can be made, a notice must be served on the registrable beneficial owner(s) and they need to be given one month to respond.
- The overseas entity should not delay and should progress its application as soon as possible. Leaving it until the new year and after the end of the holiday period could be leaving it too late.
- Being prepared and allowing time is key.

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