

## THE REGISTER OF OVERSEAS ENTITIES

### NEW REGULATORY REQUIREMENTS FOR OFFSHORE HOLDING STRUCTURES FOR UK REAL ESTATE

The UK *Economic Crime (Transparency and Enforcement) Act 2022* (“**ECTEA**”) introduced a public register of overseas entities holding UK real estate (the “**ROE**”). The ROE requires each overseas entity with an affected holding structure to disclose details of its registrable beneficial owners to the UK Registrar of Companies. The deadline is 31 January 2023 for pre-existing holding structures. In many cases, the legal analysis which is required before making a ROE application will take a number of weeks.

#### Background

The ECTEA was passed on 15 March 2022 after a fast-tracked legislative process following events in Ukraine and the urgent need to counteract criminal activity involving offshore holding structures for UK real estate. The ROE is maintained by Companies House and the majority of its registered information is publicly searchable via a free-access online database.

An “*overseas entity*” is a legal entity that is governed by the law of a country or territory outside the UK. Where a partnership has legal personality under the law by which it is governed, it will fall within the scope of the ROE.

“*UK real estate*” means a freehold interest in UK real estate or a leasehold interest in UK real estate granted for a term of more than seven years or an interest under a charge.

The “*registrable beneficial owner*” of an overseas entity is broadly any individual or entity subject to its own disclosure requirements with more than 25% of the shares or voting rights (directly or indirectly), significant influence or control, or the right to appoint a majority of the directors. Trustees and partnerships with legal personality can be beneficial owners for these purposes.

#### Trusts

The extent to which trusts within a UK real estate holding structure are affected depends upon the structure and, in many cases, additional trust information is required for ROE purposes. Any obligation to register on the ROE is in addition to any obligation to register on the UK’s Trust Register.

Trustees (or holding entities above a trustee) will be disclosable within the ROE regime where:

- the trustees hold shares in an overseas entity that holds UK real estate; and
- an overseas-incorporated corporate trustee is registered as holding UK real estate.

In the former case, the trustees of the trust would be treated as the registrable beneficial owners and it will be necessary to disclose details of the underlying trusts and trust’s beneficiaries; however, such trust information is protected from public view. Please see “**Information to be registered**” below.

In the latter case, the corporate trustee would constitute an “*overseas entity*” but is not required to disclose details of the trusts under its management. These may, however, need to be registered on the UK Trust Register maintained by HM Revenue and Customs.

A traditional common law trust has no legal personality so does not satisfy the definition of an “*overseas entity*” meaning such overseas trusts that hold UK real estate directly do not need to register on the ROE.

#### Information to be registered

The information that an overseas entity must provide on itself includes: its name; country of incorporation or formation; registered or principal office; the legal form of the entity and the law by which it is governed; and any public register in which it is entered.

The information required on an overseas entity’s beneficial owners will depend on whether the owners are individuals, companies or trustees but will importantly require an analysis of the manner of control.

For individuals, the required information includes: the individual’s name; date of birth and nationality; and their usual residential address. The date of birth and residential address will not be publicly available, however.

Where a trustee is a registrable beneficial owner within the scope of the ECTEA provisions, the details of the trustee must be disclosed, together with further information including: details of the trust (including its name and date of creation); details of the settlor, beneficiaries and anyone with powers of control over the trust such as a protector (including date of birth, nationality and residential address); and information on the trustees themselves; however, these details will not be subject to public disclosure.

Before making a registration application an overseas entity is required to serve an information notice on those it knows, or has reasonable cause to believe, is a registrable beneficial owner. The application should not be made until the particulars are confirmed by the identified persons.

## Registration requirements and deadlines

Overseas entities holding UK real estate before 1 August 2022 that was acquired on or after 1 January 1999 (for England and Wales) or on or after 8 December 2014 (for Scotland) must register with Companies House and obtain an Overseas Entity ID before **31 January 2023**. Furthermore, all sales of UK real estate since 28 February 2022 must be reported and entities that are not otherwise registrable under the ROE and that have sold all UK real estate between 28 February 2022 and 31 January 2023 must provide information to Companies House as if they were required to register (including payment of the fee). This information will only be held on a public file for two years.

From **5 September 2022**, purchasers of UK real estate that are within scope must register and obtain an Overseas Entity ID number and produce this to the relevant UK land registry before their title can be registered.

## Consequences of non-registration

The ECTEA imposes criminal penalties for non-compliance, including fines of up to £2,500 per day and prison sentences of up to five years. The overseas entity will also be restricted from buying, selling, transferring, leasing or charging the real estate concerned.

## Verification

In order to register, the information an overseas entity provides about itself and its registrable beneficial owners must be independently verified by a “relevant person”. A relevant person includes financial institutions, accountants, tax advisers, lawyers and trust/company service providers.

This verification process is complex. The test for a registrable beneficial owner is a different test to the “know your client” (“KYC”) requirements for anti-money laundering purposes, meaning relevant persons who have undertaken KYC on an

overseas entity client will not necessarily be in a position to verify information for that entity to Companies House. The verifier is also required to verify the nature of “control” of the entity, which necessitates a legal analysis of the ownership structure and, in many cases, experience of international corporate forms and trust laws.

## Action to take

If you are aware of an overseas entity that holds UK real estate you should consider your obligations under the ROE regime in good time before the registration deadline of 31 January 2023. The ROE will apply even if the overseas entity is holding the property on trust or as nominee: the ROE looks to the legal title, not the beneficial interest.

*Wedlake Bell have been working closely with the Department of Business, Energy & Industrial Strategy, Companies House, HM Land Registry and other stakeholders on the implementation of the ROE regime. We are pleased to advise clients on compliance with the ROE regime and any related UK Trust Register responsibilities.*

## CONTACTS



**MATTHEW BRAITHWAITE**  
Partner, Private Client  
T: +44 (0)20 7674 0532  
E: mbraithwaite@wedlakebell.com



**EDWARD CRAFT**  
Partner, Corporate  
T: +44 (0)20 7395 3099  
E: ecraft@wedlakebell.com

## Business Services

Disputes

Private Client

Real Estate

## Wedlake Bell LLP

71 Queen Victoria Street, London EC4V 4AY DX 30744 | Cheapside  
T: +44 (0)20 7395 3000 | F: +44 (0)20 7395 3100 | E: legal@wedlakebell.com

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