



## **Focusing on Funds: An update on the Register of Overseas Entities regime**

The UK's Economic Crime (Transparency and Enforcement) Act 2022 (ECTE Act) originally implemented the Register of Overseas Entities regime in 2022 and as of 21 December 2023 has resulted in over 30,000 registrations at Companies House.

In this Focusing on Funds we look at recent and upcoming changes to the Register of Overseas Entities regime made by the Economic Crime and Corporate Transparency Act 2023 (ECCT Act) and the implications for funds and other investors owning real estate in the UK through non-UK legal entities.

### **What is new**

The ECCT Act, which forms part of the UK's ever expanding focus on

implementing and enforcing transparency and enforcement legislation relating to economic crime and transparency of ownership, has amended the ECTE Act to expand the Register of Overseas Entities regime to include the following new requirements:

- Overseas entities holding property as nominees must look through to the owners of the land for its registrable beneficial owners (previously it only looked through to the owners of the nominee).
- Any legal entity in the overseas entity's beneficial ownership chain that is a trustee (whether or not a professional trustee) is disclosable as a registrable beneficial owner, together with the supporting trust information.
- An overseas entity must disclose its principal office (previously it was possible to disclose its registered office instead). Likewise, it must disclose the principal office, rather than the registered office, of any registrable beneficial owner that is a legal entity.
- Tougher information and compliance requirements including the potential loss of registered status and the ability to deal with land.

## Other upcoming changes

There are a number of other notable changes to the Register of Overseas Entity regime that will be brought in by the ECCT Act, but the Government has not yet indicated when these will come into force. These changes include:

- A requirement to provide the title number of the relevant property to Companies House – though this information will not be publicly available on the Register.
- A requirement to disclose the registrable beneficial owner(s) of the overseas entity between the period of 28 February 2022 and 31 January 2023.

Further information is set out below. Fund managers and other investors in UK real estate should consider their UK land ownership structures, alongside any upcoming acquisitions and disposals, including certain leases in progress, to understand the implications on their organisations of the Register of Overseas Entities regime, including the latest and upcoming changes. .

## The Register of Overseas Entities – a recap and its implications

- The Register of Overseas Entities (the Register) is a separate public register at Companies House for non-UK legal entities (overseas entities) that directly own or acquire qualifying UK real estate. It was established by the ECTE Act and launched on 1 August 2022.
- The relevant overseas entity is required to give comprehensive information about itself, its 'registrable beneficial owner(s)' (including, where the registrable beneficial owner is a trustee, information about the trust) and, in some circumstances, its managing officers. UK companies (and other UK entities) have to disclose their beneficial owner on a separate register under the People with Significant Control (PSC) regime.
- Information contained on the Register is for the most part available to the public.
- Overseas entities owning UK real estate (in particular, property registered since 1 January 1999 in England and Wales and since December 2014 in Scotland), or that have made disposals of UK real estate since 28 February 2022, originally had six months since 1 August 2022 to register on the Register.
- Overseas entities seeking to acquire UK real estate (freeholds and grants of leases of more than seven years) need to be registered on the Register at Companies House before an acquisition can be registered at the Land Registry.

- For further detail regarding the implications of the Register for UK real estate transactions, including Land Registry requirements, see our Law Now “[Important deadline imminent for Economic Crime Act](#)”.
- Overseas entities on the Register are required to annually confirm and, when relevant, update their information on the Register, and can apply to be removed from the Register when they cease to hold qualifying UK real estate. For more information on the updating duty, see our Law Now “[Be aware of the updating requirements for overseas entities at Companies House](#)”.
- There are fines and criminal penalties for non-compliance – and non-compliance will seriously impact an overseas entity’s ability to acquire, sell, let or charge UK real estate.

Scotland has its own transparency regime, the Register of Persons Holding Controlled Interests in Land, that applies there in addition to the Register of Overseas Entities regime. For more information on the Scottish regime, see our Law Now “[Register of Persons Holding a Controlled Interest in Land – \(cms-lawnow.com\)](#)”.

## Overseas entity

The obligation to register under the ECTE Act is on the ‘overseas entity’, which is a body corporate, partnership or other entity that (in each case) is a legal person governed by non-UK law. The overseas entity needs to provide specific information about itself, any ‘registrable beneficial owners’ (including, where the registrable beneficial owner is a trustee, information about the trust) and, in some cases, its managing officers to Companies House as part of its application to register on the Register.

The information contained in the application for registration must be verified by a registered verifier. Information provided in the annual update statement must also be verified.

### Registrable beneficial owner(s)

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Overseas entities that register on the Register will need to identify their 'registrable beneficial owner(s)'. A beneficial owner is an individual, a legal entity or a government or public authority (X), who meets any of the following conditions in relation to the overseas entity (Y):

**1. Ownership of shares**

X holds, directly or indirectly, more than 25% of the shares in Y. If the company does not have any share capital, this condition is met by holding a right to a share in more than 25% of the entity's capital or profits.

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**2. Voting rights**

X holds, directly or indirectly, more than 25% of the voting rights in Y.

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**3. Right to appoint or remove directors**

X holds the right, directly or indirectly, to appoint or remove a majority of the board of directors (or equivalent management body of that entity if there is no board) of Y.

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**4. Significant influence or control**

X has the right to exercise, or actually exercises, significant influence or control over Y.

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**5. Trusts, partnerships, etc.**

(a) The trustees of a trust, or the members of a partnership, unincorporated association or other entity, that is not a legal person under the law by which it is governed meet any of the conditions specified above (in their capacity as such) in relation to Y; and

(b) X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or entity.

These conditions are similar to the control conditions in the PSC regime. The

ECTE Act also includes rules on registrability, exemptions and anti-avoidance provisions similar to those in the PSC regime. For more details on the PSC regime, see our Back to Basics briefing "[Back to Basics briefing on the UK PSC regime](#)".

**Other key principles for identifying a registrable beneficial owner include:**

- Where an overseas entity is owned by a chain of legal entities, it is necessary to look at the entities in the chain and consider which are registrable. It will usually be the first legal entity in the chain subject to 'its own disclosure requirements' that is registrable, and no legal entities or individuals further up the chain will need to be registered. However, with effect from 4 March 2024, this has changed in relation to any legal entities in the chain that are trustees. See below for more about this.
- A legal entity is considered subject to 'its own disclosure requirements' where it is already required to disclose beneficial owner information under the PSC regime, or by virtue of its shares being traded on a UK or EU regulated market or on the other markets specified in the PSC regime, or where it is itself registered on the Register due to owning UK real estate itself.
- Where an overseas entity is owned by a chain of legal entities and none of the legal entities in the chain are registrable, the individuals at the top of the ownership structure will need to be registered if they meet any of the beneficial owner conditions.
- A government or public authority that meets a beneficial owner condition is considered registrable in all cases.
- Shares held by a person as nominee for another are to be treated as held by that other (and not by the nominee itself).
- A limited partner is not likely to be a beneficial owner unless (unusually) it has the right to exercise, or actually exercises, significant influence or control over the overseas entity or the limited partnership. Limited partners are specifically exempted from meeting conditions 1, 2 and 3 listed above.
- Where a registrable beneficial owner is a trustee, the overseas entity

Where a registrable beneficial owner is a trustee, the overseas entity must provide certain information about the relevant trust, including the beneficiaries and settlors. This information is not available to the public. There is no similar provision in the PSC regime.

- Where the overseas entity has no registrable beneficial owner or it is unable to identify one, or provide the required information in relation to it, the overseas entity must state that in its application for registration and supply certain information about its managing officers instead.
- The overseas entity must notify the registrable beneficial owner(s) to confirm their status as registrable beneficial owner(s) and to require them to confirm, correct and supply the relevant information. It is an offence for a person who has been so notified not to reply.

#### **New from 4 March 2024:**

- Where an overseas entity holds the property as nominee for another person, the other person (or the beneficial owner of the other person) qualifies as a registrable beneficial owner. Before this amendment to the regime, it would only be the registrable beneficial owner of the nominee that was required to be disclosed.
- There are now enhanced provisions in relation to trusts. Any legal entity in the beneficial ownership chain that is a trustee must be disclosed as a registrable beneficial owner – not just professional trustees and not just the first trustee entity in the ownership chain (as it was before 4 March). This is particularly notable because when a registrable beneficial owner is a trustee, information about the trust, including the beneficiaries, must be disclosed – though this information will not be on the Register.

The new provisions apply to all overseas entities who apply for registration from 4 March 2024, and to overseas entities already on the Register, in their first annual update after 4 June 2024.



## Information

The ECTE Act sets out the information that must be provided to Companies House about the overseas entity, its registrable beneficial owner(s) (including, where a registrable beneficial owner is a trustee, about the trust) and, where applicable, its managing officers. A summary table of the information to be provided for different registrable beneficial owners is set out below:

	Information	Individual	Legal entity	Authority
1.	Name	Yes  (and date of birth and nationality)	Yes	Yes
2.	Address	Yes  (usual residential)	Yes  (principal office)  Note that from 4 March 2004, there is no longer a choice to provide the registered office instead.	Yes  (principal office)
3.	Service Address	Yes	Yes	Yes
4.	Legal form and law by which it is governed	No	Yes	Yes

	Information	Individual	Legal entity	Authority
5.	Public register and registration number (if any)	No	Yes	No
6.	Date it became registrable	Yes	Yes	Yes
7.	Which conditions are met and why	Yes	Yes	Yes
8.	Meets condition by virtue of being a trustee	Yes	Yes	No
9.	Whether designated person (under s9(2) of the Sanctions and Anti-Money Laundering Act 2018), where information is publicly available	Yes	Yes	Yes

**New from 4 March 2024:** There is no longer an option to include a legal entity's registered office address; an address that qualifies as the legal entity's principal office must be disclosed.

## Information is available to the public

The public may inspect the Register which is available on-line at Companies House. Certain information will not be made available, including the day of the month of any birthdate, residential addresses, the required information about trusts and any information that may be specifically protected (by application to the Companies House).

## Failure to comply with the Registrar of Companies notification to supply information on the Register

**New from 4 March 2024:** The Registrar of Companies has been given enhanced powers to request information from anyone who is required by law

to deliver documents to the Registrar for the purpose of checking compliance with the delivery requirements. Where an overseas entity fails to provide information to the Registrar in response to such a request, the overseas entity will cease to be treated as a 'registered overseas entity' under the Land Registration Act 2002 – and therefore will not be able to transfer, grant a lease of more than 7 years or grant a legal charge in relation to the relevant qualifying UK property - until it remedies the failure. The same consequence has always applied for failure to comply with the updating duty.

## Next Steps

Overseas entities need to review the changes made to the Register of Overseas Entities regime by the ECCT Act, including checking whether any of the further changes have come into force, in good time before their next annual update statement is due to determine whether they need to update their information on the Register accordingly. This will be particularly relevant to an overseas entity holding qualifying UK real estate as a nominee or that has trusts in its ownership chain. Care must also be taken when registering new overseas entities since the changes are in effect from initial registration of the overseas entity on the Register.

Overseas entities must also be sure to reply promptly to any information requests from the Registrar, not only to avoid committing an offence but to ensure that their status as registered overseas entities is not affected.

The information in this briefing is for general purposes and does not purport to constitute legal or professional advice.

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**Amanda Howard**

Partner  
London



**Christopher Luck**

Partner  
London



**Darren Stolzenberg**

Partner  
London



**Ed Kingsbury**

Partner  
London



**Justin Coaley**

Partner  
London



**Patrick Groves**

Partner  
London



**Victoria Henry**

Partner  
London



**Caroline Newsholme**

Partner  
London



**David Bunker**

Partner  
London



**Colin Lawrie**

Partner  
Edinburgh