



CMS – Focusing on Funds - New Register for overseas legal entities and their owners holding UK real estate

April 11, 2022

On 15 March 2022, the Economic Crime (Transparency and Enforcement) Act (the Act) received Royal Assent after being fast-tracked through Parliament in response to the war in Ukraine.

In this Focusing on Funds we look at the new register of overseas entities and their beneficial owners that will be established by the Act and how it may affect funds and other investors owning real estate in the UK through non-UK legal entities. Other parts of the Act expand provisions relating to unexplained wealth orders and sanctions and will not be covered in this briefing.

Fund managers and other investors in UK real estate should consider their UK land ownership structures, proposed acquisitions and any disposals in progress to understand the implications of the legislation for their organisations.

Navigation

- The Register of overseas entities and its implications
- Overseas entity Registrable beneficial owners
- Information available to the public
- Next Steps

The Register of overseas entities and its implications

Key implications of the Act include:

- There will be a new public register at Companies House for non-UK legal entities (overseas entities) that directly own or acquire UK real estate.
- The register will contain information about the overseas entity, its 'registrable beneficial owner(s)' and, in some circumstances, its managing officers, that is supplied to Companies House by the overseas entity. UK companies (and other UK entities) already have to disclose their beneficial owner on a separate register under the People with Significant Control (PSC) regime.
- Information on the new register will for the most part be available to the public.
- Once the register comes into effect, 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, will have six months to register; and any overseas entity seeking to acquire UK real estate will need to be registered at Companies House before their acquisition can be registered at the Land Registry.
- For further detail on the implications of the new register for UK real estate transactions, including Land Registry requirements, see our Law Now "[Real estate changes in Economic Crime \(Transparency and Enforcement\) Act 2022](#)".
- 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 UK real estate.
- 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.

That part of the Act relating to the new register is not yet in force. Further regulations need to be published and the Registrar of Companies, working with the Land Registries, needs to do further work to develop the operational framework for the new register. Although no timings have been given, we expect it will be government priority to bring the new register into effect as soon as practicable.

Scotland introduced its own transparency regime on 1 April 2022, the Register of Persons Holding Controlled Interests in Land (RCI), [Register of Persons Holding a Controlled Interest in Land – \(cms-lawnow.com\)](#) which will be more far reaching, and already seeks to encompass transparency for overseas entities. It is anticipated that, once the new UK Register and rules come into force, registered overseas entities will join the list of entities out of scope of the RCI, as they have their own transparency regimes, to avoid double reporting.

Overseas entity

The obligation to register under the 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 specified information in relation to itself, any 'registrable beneficial owners' and, in some cases, its managing officers to Companies House as part of its application to register.

Registrable beneficial owners

Overseas entities that 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.
2. Voting rights	X holds, directly or indirectly, more than 25% of the voting rights in Y.
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 of Y.
4. Significant influence or control	X has the right to exercise, or actually exercises, significant influence or control over Y.
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 Act also includes rules on registrability, exemptions and anti-avoidance provisions similar to those in the PSC regime, and we expect the analysis of ownership structures for the new register to broadly follow the PSC approach. For more details on the PSC Regime, see our [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. Generally, it will 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.
- 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 new register.
- 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 (not the nominee).
- 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 or 3.
- 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.

Information

The Act sets out the information that must be provided to Companies House about the overseas entity, its registrable beneficial owners (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 owners is set out below:

Information	Individual	Legal entity	Authority
1. Name	✓ (and date of birth and nationality)	✓	✓
2. Address	✓ (usual residential)	✓ (registered or principal office)	✓ (principal office)
3. Service Address	✓	✓	✓
4. Legal form and law by which governed	X	✓	✓
5. Public register and registration number (if any)	X	✓	X
6. Date became registrable	✓	✓	✓
7. Which conditions met and why	✓	✓	✓
8. Meets condition by virtue of being a trustee	✓	✓	X
9. Whether designated person (under s9(2) of the Sanctions and Anti-Money Laundering Act 2018), where info publicly available	✓	✓	✓

The overseas entity must notify the registrable beneficial owner to confirm their status as registrable beneficial owner 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. There will also be verification requirements to satisfy, which will be set out in regulations that have not yet been published.

Information is available to the public

The public may apply to Companies House to inspect the register. Certain information will not be made available, including the day of the information of any birthdate, residential address, the required information about trusts and any information that may be specifically protected (by application to the Companies House under regulations that have not yet been published).

Next Steps

In preparation for the new register coming into effect, owners should consider their ownership structures for UK real estate, including for any proposed acquisitions and any disposals from 28 February 2022.

For further updates on developments in the funds space, watch this space and subscribe to our Law-Now and RegZone articles.

Authors



Amanda Howard
Partner
T +44 20 7524 6342
E amanda.howard@cms-cmno.com



Christopher Luck
Partner
T +44 20 7524 6294
E christopher.luck@cms-cmno.com



Darren Stolzenberg
Partner
T +44 20 7524 6191
E darren.stolzenberg@cms-cmno.com



Ed Kingsbury
Partner
T +44 20 7367 2550
E ed.kingsbury@cms-cmno.com



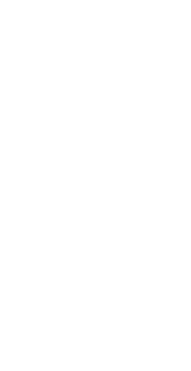
Justin Coaley
Partner
T +44 20 7524 6245
E justin.coaley@cms-cmno.com



Patrick Groves
Partner
T +44 20 7524 6575
E patrick.groves@cms-cmno.com



Victoria Henry
Partner
T +44 20 7524 6040
E victoria.henry@cms-cmno.com



Laurence Isaac
Senior Associate
T +44 20 7524 6921
E laurence.isaac@cms-cmno.com



Ben Price
Of Counsel
T +44 20 7524 6589
E ben.price@cms-cmno.com