

Insights

ECONOMIC CRIME (TRANSPARENCY AND ENFORCEMENT) ACT 2022 USHERS IN THE NEW OVERSEAS ENTITIES REGISTER WITH SOME LATE AMENDMENTS OF NOTE

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SUMMARY

The draft Economic Crime (Transparency and Enforcement) Bill, published on 28 February 2022 and following an expedited passage through Parliament, received Royal Assent on 15 March 2022 to become the Act. Some of the provisions on the imposition of sanctions are in force straight away, including the streamlined process for making sanctions regulations and the urgent designation of persons by name or description, with the remainder of the Act (notably, introducing the overseas entities register and amendments relating to proceeds of crime legislation) due to enter into force on a day to be appointed by regulations.

The Act impacts overseas owners' holdings of UK land since January 1999, and requires disclosures by an overseas entity of UK land transactions from 28 February 2022. We would recommend that those impacted prepare and implement compliance arrangements straight away.

This briefing looks at the few yet significant amendments made as the Bill progressed through Parliament. For a summary of the original proposals and how they apply to real estate and financial services business in particular, see our 2 March 2022 briefing [Government expedites legislation on a register of overseas entities that own UK property in its Economic Crime \(Transparency and Enforcement\) Bill 2022](#). Our earlier briefing also sets out preliminary actions to consider, which remain relevant.

Additional information requirements to be provided by an overseas entity on registration

The amendments mean that the overseas entities register will show where individuals and legal entities that are registrable beneficial owners meet a beneficial ownership condition by virtue of being a trustee. In addition, it will record where a registrable beneficial owner (including a

government or public authority) is a designated person pursuant to the Sanctions and Anti-Money Laundering Act 2018, where that information is publically available.

Provision of information on trusts (to be kept off the public register)

When an individual or legal entity that is a registrable beneficial owner is a trustee, the overseas entity's registration application must include specified information about the trust, and a statement as to whether the entity has reasonable cause to believe that there is required information about the trust it has not been able to obtain. The information to be provided includes details about the trust, of trustees that are or were (at any time) registrable beneficial owners of the overseas entity in a trustee capacity, the trust's beneficiaries and anyone with rights under the terms of the trust to appoint or remove the trustees, or to exercise trustee functions. As part of its annual updating duty and when applying for removal from the register, overseas entities will also have to provide Companies House with this trust information and statement (updated as necessary).

These provisions do seem to overcome a lacuna in the draft Bill (that we have previously identified), so that now details of the economic and controlling interests behind trusts holding property will have to be disclosed, albeit the information is not to be made publically available. However, these new requirements significantly increase the compliance burden across the industry. We would hope that future regulation clarifies circumstances where trusts do not need to register in order to avoid duplicate registration requirements under other transparency laws. Further, the Act provides that regulations are to follow to specify which non-UK arrangements are, or are not, to be treated as being of a similar character to a trust for these purposes.

Restricted public access to the register for trust information

Companies House cannot disclose on the public register the trust information that has been provided. However, Companies House can disclose this information where it is already publicly available on the register by being included in another unrestricted publically accessible document. In addition, to HMRC or any other person or body with functions of a public nature and specified in regulations. Apart from specific disclosure to HMRC, this is as for disclosure of protected date of birth and residential information.

Transitional requirements for overseas entities' holdings in qualifying real estate in England & Wales

An overseas entity that became the registered proprietor of a qualifying estate on or after 1 January 1999 but before the relevant part of the Act comes into force (on a date to be confirmed) (the **In Force Date**), will now have six months (reduced from 18 months) from the In Force Date to apply to become a registered overseas entity. There are separate rules for Scotland and Northern Ireland.

When making the overseas entity registration application, the entity will also now need to make a statement covering the period between 28 February 2022 and the date of its application confirming

either that: (a) it has not made any relevant dispositions of qualifying real estate; or (b) it has made dispositions and give details of those. The details required will be the date of the disposition and the registered title number of the qualifying estate. This provision is clearly designed to catch those who are moving fast to divest of their assets without scrutiny.

A failure to meet this application deadline (unless exempt) will result in a daily default fine of £2,500 which, in the event of continued contravention, can be levied against every officer of the entity regardless of their role in the application process, on a cumulative daily basis. Those officers could also, on conviction, be subject to imprisonment for up to two years.

Meanwhile, the Land Registry will have six months from the In Force Date to enter a restriction on each of the relevant titles, albeit that the restriction will not bite until those six months have expired.

Narrowing of overseas entities that are exempt

The Act includes a power that allows the Secretary of State to specify, by regulations, a description of an overseas entity that is exempt. This is only where necessary: (a) in the interests of national security or (b) to prevent or detect serious crime. The suggested third basis of exemption on 'the interests of the economic wellbeing of the UK' has been removed in the Act.

An overseas entity that is exempt will be able to engage in land transactions without having to have registered on the overseas entities register.

Offences

There are provisions for increased financial penalties, which are cumulative in nature, for a variety of breaches and offences set out in the Act. This is in addition to the criminal penalties including potential sentences up to two years' imprisonment. Such sentences and/or fines could be imposed on conviction for making a statement which is misleading, false or deceptive in a material particular, for the purposes of the provisions of this Act, or, failing to comply with a notice to register.

Financial sanctions compliance

From 15 March 2022 in the UK, the imposition of sanctions are possible on the basis of an urgent procedure when another jurisdiction (with whom the UK aligns its sanctions policy) has designated an individual or entity, and the Minister considers that it is in the UK's interests to designate the same person or entity. For the UK, this is an entirely new basis on which sanctions designations can be made and is intended to provide for equivalence with those jurisdictions. However, it removes the requirement (at least for an initial period of 56 days) for the Minister to have reasonable grounds to suspect that the person is an involved person (pursuant to a sanctions regime made under the Sanctions and Anti-Money Laundering Act 2018).

Finally, it should be noted that the following original provisions of the Bill have been incorporated into the Act:

- to extend the existing regime for unexplained wealth orders (**UWOs**) to those who hold property in corporate structures including trusts; to extend periods for interim freezing orders and determinations of proceedings and to cap the costs of a party successful in the resistance of a UWO; and
- to the UK's primary legislation giving rise to a breach of the financial sanctions regime to introduce a strict civil liability test for monetary penalties is to be applied.

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