



Register of Overseas Entities: Introducing the next act...

The Economic Crime and Corporate Transparency Act 2023 (the “Act”) has completed its final parliamentary stages and received Royal Assent on 26 October 2023. Part 3 of this Act will make some important changes to the regime for registration of beneficial owners of overseas entities owning UK land on the Register of Overseas Entities held at Companies House. These changes will include some wider disclosure obligations, in particular where nominees and trusts are involved, with potentially more to come.

The Register of Overseas Entities (the “**ROE**”) has been up and running since 1 August 2022 (see our [Talking Points Article](#)), and – following its recent anniversary – annual updating requirements have started to kick in for registered overseas entities (“**OEs**”). Once the Act comes into force, OEs will also need to comply with some important new changes which have been introduced courtesy of the new Act.

What are the new changes introduced by the Act?

There are a number of changes to the workings of the Economic Crime (Transparency and Enforcement) Act 2022 (the “**ECTEA**”) and the ROE. However, two of the principal changes comprise: (a) the expansion of the scope as to who comprises a registrable beneficial owner (“**RBO**”) – see our original [Talking Points Article](#) for further details as to who originally constituted an RBO under the ECTEA; and (b) changes to the information which must consequently be provided to Companies House.

Expansion in scope of RBOs

Beneficiaries of OE Nominees (i.e. the ultimate beneficial owners of land)

Where an OE holds UK land as a nominee for another (the “**beneficiary**”), the ECTEA required the RBOs of that OE to be registered as RBOs; however, this has not necessarily captured the “true” beneficiary. Therefore, the Act has made changes which mean that the “true” beneficiary is now also to be treated as an RBO (and therefore must be registered on the ROE). This will result in some legal and practical implications for OEs who own UK property through nominee arrangements. For example, where an OE is a nominee, instead of simply carrying out the RBO analysis in relation to its beneficial owners (as is currently the case), details of the beneficial

owners of its beneficiary will also need to be supplied; therefore, any previous analysis carried out pursuant to the ECTEA may need to be re-done in light of the new Act.

The inclusion of “true” beneficiaries of OE nominees is designed to address an acknowledged gap in the existing regime - i.e. to capture the “true” beneficial owners of land - and is a move towards the original legislative intention of transparency behind the ECTEA. Whilst nominee arrangements should usually already be registered under HMRC’s Trust Registration Service regime, that register is not public and so does not achieve the Government’s transparency aims. The current intention appears to be that, from now on, wherever there is an OE nominee, the specified information about the “true” beneficial owners of UK property is intended to be public.

Unfortunately, however, there is no definition of “nominee” in the Act, and the reach of this change is, therefore, unclear. Importantly, it is not clear whether a trustee will also constitute a nominee – and, therefore, whether common property holding structures, such as Jersey Property Unit Trusts, will be affected by the changes regarding nominees. On balance, it seems likely that these changes would not apply to situations where properties are declared to be held on trust but further guidance would be welcome.

More legal entity trustees will be RBOs

As an additional and separate change affecting trusts, and to achieve greater transparency in situations where trusts are involved, any beneficial owner of an OE which is a trustee will now constitute an RBO simply by meeting one or more of the regime’s beneficial ownership conditions (as set out in our original [Talking Points Article](#)), even if such trustee RBO is not subject to its own disclosure requirements or would have been exempt from registration under the ECTEA as

originally enacted. In turn, this trustee RBO must then disclose the specified information about the trust for which it is trustee (see further below). In addition, the new Act specifically leaves the door open for regulations to be made to further expand the description of persons who are RBOs where a trust is involved in the chain of ownership.

Expansion to information disclosure obligations for OEs

Disclosure of additional information about trusts

Where a person is an RBO in its capacity as trustee of a trust, certain information about the trust must be disclosed to Companies House under the existing regime (although such information is not, at present, public). Going forwards, additional information about the RBOs of the person who established the trust must also now be disclosed (although, again, not publicly at present). This expanded reach of the regime should, therefore, now catch not only the “true” beneficiaries of land, but also the persons who set up the trust (and the persons who control them, too).

Disclosure of changes in beneficial ownership

As well as widening the net to capture more trustees as RBOs as mentioned above, there is a new requirement to disclose changes in beneficial ownership (or confirm that there have been no such changes) which occurred during the relevant annual update period or during the transitional period (28 February 2022 to 31 January 2023), although there will be a three-month grace period for updating for OEs which are already on the ROE.



This new required information about changes in beneficial ownership means that:

- > the beneficial ownership “back story” will need to be disclosed for the whole of each updating period, rather than just an annual snapshot at the end of the period; and
- > OEs will be prevented from removing themselves from the ROE and “slipping through the net” without providing this information.

This is a worthy goal, aimed at stopping OEs or beneficial owners from circumventing the rules - although OEs which underwent a change of ownership during the transitional period may incur additional practical and administrative challenges in identifying previous RBOs.

Title numbers

As part of the information that OEs have to provide to Companies House, OEs must now provide a list of all qualifying freehold and leasehold titles of which they are registered as proprietor at the Land Registry. This is public information in any event so, although not a significant obligation, there will nevertheless be practical consequences (not least, an increased administration burden on OEs) and the reason for this additional requirement is not entirely clear.

Principal office

An OE's principal office address must be supplied for the ROE (rather than registered office address) to align with new Companies Act 2006 requirements.

Other changes

The Act also contains various other administrative changes around the process for correcting, removing and verifying material contained on the ROE, and there have been changes to the penalties and offences (including the introduction of a new offence of failing to comply with an information notice served under the ECTEA). These changes should not make much of a difference in practical terms – rather, they are principally designed to add more “teeth” and close loopholes in the original legislation.

Next Steps

OEs should already have been reviewing entries on the ROE in order to ensure that they comply with their annual updating obligations. Now, all registered OEs will also need to ensure that they are up to speed with the various changes to the regime and that the information they supply to Companies House meets the new wider disclosure obligations.

What does the future hold?

This is very unlikely to be the final act, as increasing transparency remains at the heart of the Government's aims. The Act was hotly debated in the House of Lords, with some of the more controversial amendments being rejected (much to some Lords' disappointment). In particular, there remains a keen desire in certain quarters that “protected trusts information” (being information about trusts supplied to Companies House for the purposes of the ROE) should be made more publicly available. The Government has remained of the view that, in most circumstances, it is appropriate to withhold information about trusts and did not ultimately accept this proposed change. However, the apparent compromise is that regulations will be consulted on in the near future to make provision requiring Companies House, on application, to disclose “relevant protected trusts information” to certain persons (such as investigative journalists). There was also a proposal from the House of Lords to move to event-driven updates, rather than annual updates, which would have required OEs to update their information within 14 days of a change of RBO, and – in a move which would be difficult to manage from a practical perspective – to update the ROE (or confirm no change required) not more than 14 days before any proposed dealing with qualifying land.

These more controversial proposals are still seen by some as desirable and seem likely to be the subject of further consideration, so watch this space...

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