

THE ECONOMIC CRIME ACT 2022: DO YOU KNOW THE RISKS?

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The Economic Crime (Transparency and Enforcement) Act 2022 (“ECTEA”) was expedited into law as a result of the Russia/Ukraine conflict to “crack down” on overseas entities that are using UK property to launder money. Given the purpose of the new Register of Overseas Entities, and the existing mood-music about vacant luxury properties in the UK being owned by overseas entities and wide-spread concern to tackle international money laundering, it will come as no surprise that the consequences for non-compliance with the legislation are high. As you will see, repercussions will be felt not only by the entities but also by officers of the company and individuals, including beneficial owners. The UK Government has made clear in its guidance that entities who refuse to reveal their beneficial owners will face severe consequences. This article explores the sanctions for non-compliance with ECTEA namely, non-compliance with the requirements for the new Register of Overseas Entities (the “Register”).

For guidance on the requirements under the legislation, please read Fladgate’s briefing note published on [28 July 2022](#).

Introduction to the Overseas Register

ECTEA introduces a new register of overseas entities owning land in the UK, and those entities beneficial owners. The purpose of the Register is to create a further barrier against money laundering in the UK. A failure to comply with the requirements under ECTEA, as listed below, could amount to a criminal offence.

The Register came into force on 1 August 2022. There is a transitional period of six months, giving entities and their officers the opportunity to register themselves with Companies House, in compliance with the new requirements relating to existing land ownership in the UK. The Register applies retrospectively, so any property registered with the Land Registry after 1 January 1999 will come under the scope of ECTEA.

All overseas entities with an interest in freehold property or property with a lease of more than seven years will need to enter themselves onto the Register with information about the entity and the entity’s beneficial owners.

The key parties involved in getting overseas entities registered will be:

1. The entity itself: which will be a legal entity governed by the laws of territory outside of the UK;
2. The beneficial owners: which will include any person or entity that meets at least one of the criterion as listed on the government website and as set out below; and

3. The third party agent: who will need to verify the information provided by the overseas entity. Indeed, under this legislation, much onus is placed on agents and it remains to be seen which professionals will choose to bear this responsibility.

The Beneficial Owners

The beneficial owners of an entity will be subject to duties which will include providing true information about themselves to the entity, when requested, for registration on Companies House.

Beneficial owners will include individuals, legal entities, public authorities, trustees of trusts, who either:

- directly or indirectly hold more than 25% of the shares in the overseas entity;
- directly or indirectly hold more than 25% of the voting rights in the overseas entity;
- directly or indirectly hold the right to appoint or remove a majority of the directors of the overseas entity; and/or
- have the right to exercise significant influence over the entity.

This is an important element to the ECTEA as it not only goes some way in lifting the corporate veil but it actually places obligations on shareholders/owners. Failure to comply with those obligations could result in a criminal offence.

The Sanctions

Once registered, entities will receive an Overseas Entity ID from Companies House that they will provide to the Land Registry.

Entities that are not registered and do not have an ID from Companies House will see a restriction entered onto the Land Registry under the title to the land. The exact wording of the restriction is not yet known, but it is known that the restriction will prevent the entity from selling, leasing, transferring and putting charges over the land until the Land Registry has been provided with that ID.

From 5 September 2022, overseas entities are no longer able to register as the legal owner of a freehold or leasehold with an interest of more than seven years unless it has provided Companies House with the required information at the time of its application to the Land Registry. Similarly, at the end of the 6-month transitional period, overseas entities that are not registered will be prevented from registering any disposals, charges or leases at the Land Registry.

If an overseas entity wants to make use of the value of property, they need to make sure that they act within these time periods, otherwise they will be unable to dispose of or charge against the land, essentially removing the commercial value of the asset. Buyers and funders, going forward, may also wish to carry out enhanced due diligence when purchasing property held by overseas entities.

However, registration is not limited to when an entity wants to buy or sell the property. Even when the entity does not want to buy or sell, they still need to register, otherwise the entity and its officers risk committing criminal offences for non-compliance. This will certainly mean a fine, but could also mean imprisonment of up to 5 years for individuals that fail to register by the end of the transitional period.

Beyond initial registration, there are further on-going duties placed upon the entity, the officers of the entity, and the entity's beneficial owners.

- Entities and their officers must annually update the overseas register.
- Entities and their officers must take reasonable steps to identify and collate information on beneficial owners.

- Beneficial owners must comply with requests for information and provide information that is not misleading or false.
- All parties involved in the registration, including entities, their officers and beneficial owners must make statements that are not misleading or false.

The heavy sanctions for non-compliance will apply to both the individual and the overseas entity, putting extra pressure on company officers to act diligently and make sure they are personally complying with the rules.

1. The duty to update the Register

There is a duty to annually update the register to confirm that the information on the register remains correct, or to make changes where necessary. Where an overseas entity fails to do this, the entity and every officer of the entity who is in default will commit a criminal offence. Any person guilty of this offence will be liable to pay a daily default fine of £2,500 which continues to accrue until they have complied.

This means that individuals could find themselves personally liable for vast fines, to be paid by the defaulting individual, potentially leading to large financial repercussions for that person that could ultimately lead to bankruptcy. Directors should therefore be very cautious as this fine applies not only to the overseas entity but to the defaulting officers as well.

Company directors should also be mindful of their position and the duties they owe to the company. Amassing large fines could see directors in breach of their duties opening themselves up to further liability from the company in relation to the fines it accrues.

2. Information notices

An overseas entity must take reasonable steps to identify its registrable beneficial owners and to gather the necessary information about them. In order to obtain that information, the overseas entity must give information notices to any person who it knows or has cause to believe, is a registrable beneficial owner.

A person who fails to comply with an information notice will commit an offence. An offence is also committed if a person recklessly or deliberately makes a false statement when seemingly complying with the notice.

The offence is committed by every officer of the entity that committed the offence unless it can be shown that the requirement to give the information was frivolous. In this case, simply ignoring an information notice could amount to an offence. A person guilty of this offence could be fined and face up to 2 years in prison.

The penalties for failure to comply with information notices target the individual, and directors of companies will be held personally responsible as an officer of the defaulting entity.

3. General false statements

An offence is committed when a person delivers any document or makes any statement to the Registrar of Companies that is misleading or false. A person that makes such a statement knowing it to be false will be liable to pay a fine and could face up to 2 years in prison.

Summary

As with any new statutory regime, it remains to be seen how effective its implementation will be and how it will be policed. For example, it is not yet known what appetite the authorities will have for pursuing those committing criminal offences under ECTEA and how those sanctions will be enforced where those failing to meet their obligations are domiciled abroad. It therefore remains advisable that entities and their officers act expeditiously in getting themselves registered with Companies House to ensure that they avoid the risk of criminal sanction.



If you would like to discuss how the Register of Overseas Entities will impact you, your business or your client's business, please get in touch with authors [Joel Seager](#) or [Misha Chapman](#).



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About

I am a disputes lawyer who acts in a wide range of complex, cross border and high-value cases in both court and arbitration proceedings.

My litigation practice incorporates a broad range of commercial disputes with a focus on partnership disputes, civil fraud and contentious insolvency. I have particular experience of handling cases involving freezing injunctions, Norwich Pharmacal orders and other forms of interim relief. I have also managed proceedings in foreign jurisdictions and assisted foreign parties in obtaining evidence from parties in England & Wales pursuant to the Hague Convention.

I have advised and represented clients in international arbitration under the LCIA, ICC, GAFTA and UNCITRAL arbitration rules, as well as experience advising on ICSID arbitrations.

I commonly act for entrepreneurs, high-net worth individuals, energy companies, and clients in the finance, private equity and property sectors.

Away from work, I am a keen globe-trotter and enjoy pushing myself to explore new countries and cultures. This is something I can now enjoy with my family, who are already intrepid little explorers.

Expertise

Dispute Resolution



Civil Fraud & Asset Recovery



International Arbitration



Restructuring & Insolvency



Professional Practices



Commercial Litigation



Experience

- Public Institution For Social Security v Al Rajaan & Ors 2021 - defending a high value claim for dishonest assistance and knowing receipt of trust property
- ICC arbitration 2021 - acting for Claimants pursuing high value claims for fraudulent misrepresentation and breach of contract
- LCIA arbitration 2019 to 2021 – acting for Respondents in defence of a €60 million claim concerning entities that owned mining rights in an African state
- Lady Moon SPV SRL v Petricca & Co Capital Limited [2019] EWHC 439 (Ch) defending an attempt to wind up an Italian real estate investment fund in England & Wales
- Avonwick Holdings Limited & Ors v Mikhail Shlosberg [2016] EWCA Civ 1138 and Michael Shlosberg v Avonwick Holdings Limited & Ors [2016] EWHC 1001 (Ch) [2016] All ER (D) 76 (May) – various proceedings including the defence of unlawful means conspiracy claim and claims in other jurisdictions
- ORB A.R.L. & Anor v Fiddler & Anor [2016] EWHC 361 (Comm) (26 February 2016) defence of a claim including resisting a Norwich Pharmacal application
- Bloomsbury International Limited (in administration) & Ors v Mark Holyoake & Ors [2010] EWHC 1150 (Ch) – a dispute involving a freezing injunction, search order and claim for misappropriation

What our clients say

Joel Seager provides game-changing advice on key points. He has a great command of the commercial realities and issues that arise for clients and provides fantastic advice to them. Clients love him.

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What our clients say

Joel Seager is a masterful lawyer. He is at the top of his game – and possesses an unrivalled wealth of experience, insight and skills.

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