VOISIN LAW

A Jersey look at the Economic Crime (Transparency and Enforcement) Act 2022 | 1

The Economic Crime (Transparency and Enforcement) Act 2022 (the "Act") introduces a new register, the Register of Overseas Entities, and requires "overseas entities" owning land in the UK to register the identity of their beneficial owners at UK Companies House and to keep that register updated.

The Act received Royal Assent on 15 March 2022. The origins of the Act can be traced back to 2016 when the then Prime Minister, David Cameron, gave a warning to foreign companies that they would be required to disclose the beneficial ownership of UK property. Whilst this proposal was then subsequently placed on the "back-burner", the events in Ukraine have resulted in the bill being fast-tracked through Parliament.

The Act has three key components comprising of:

(i) the creation of a Register of Overseas Entities;

(ii) amendments to the UK's Unexplained Wealth Order regime; and

(iii) amendments to the existing legislation on UK sanctions (which also have an indirect impact on Jersey's sanctions regime, given the applicability of UK sanctions to Jersey).

Register of Overseas Entities

It is the creation of the Register of Overseas Entities which is of particular relevance to Jersey, given the historic use of Jersey structures as a vehicle to acquire UK land and noting the Act's stated aim of "[delivering] transparency about who ultimately owns and controls overseas entities that own land in the UK".

The register is to be operated by the Companies House registrar. Certain overseas entities will be required to register and provide details of their beneficial owners to UK Companies House before they can be registered to hold land in the UK. The register will be publicly accessible, although it is likely that some information provided will not be published (for example, for data protection reasons).

Who is a beneficial owner?

Information to be provided for registration purposes will include details of the overseas entity and its beneficial owners. Beneficial owners will be those persons who are considered to have significant influence or control over the overseas entity, including:

(a) persons directly or indirectly owning more than 25% of the shares or voting rights in the overseas entity;

(b) persons holding the right, directly or indirectly, to appoint or remove a majority of the board of directors of the overseas entity;

(c) persons having the right to exercise, or who actually exercise, significant influence or control over the overseas entity; and

(d) in relation to trusts, the corporate trustees of that trust and any registrable entity who has the right to exercise, or actually exercises, significant influence or control over the activities of that trust.

The overseas entity and its officers will be responsible for providing information for registration purposes and annual updates (or confirmations that no reportable changes have occurred) will be required.

Who does the Act apply to?

The Act will apply to any overseas entity which is registered as the proprietor of a "relevant interest" in land. This includes non-UK incorporated companies (even if the company is UK tax resident), limited liability partnerships (LLPs), foreign foundations and non-UK partnerships that, under the laws of the country they are governed by, have a separate legal personality.

The overseas entity will have a "relevant interest in land" if it is the registered proprietor of a "qualifying estate" (i.e. a freehold title or leasehold title of longer than seven years).

Are trusts affected?

Trusts do not have "legal personality" and so they cannot hold land directly. Instead, the trustees hold the land on behalf of the trust.

However, overseas entities holding land as a trustee will need to be registered and will need to provide certain prescribed information about the trust. The trust itself may also need to be registered with the Trusts registration service.

What land is impacted?

The register will apply to future acquisitions of UK land, but importantly will also apply to some UK land already belonging to overseas entities with the requirement to register applying retrospectively to land bought on or after 1 January 1999 in England and Wales, and 8 December 2014 in Scotland. In Northern Ireland, the requirement to register only applies prospectively (i.e. after the Act comes into force).

Overseas entities will have a 6-month transitional period from Parts 1 and 2 of the Act coming into force to either dispose (sell off) of their land or register. In respect of Northern Irish land, there is no need for a transitional period (given the requirement to register only applies prospectively).

What information must be provided?

The Act specifies the information that must be provided by the overseas entity (e.g., name, incorporation information, registered office, service address, etc.) and relating to registrable beneficial owners (e.g., name, date of birth, nationality, residential address, service address, the date on which the individual became a beneficial owner, etc.). All supporting documents provided as part of the application process must be in English.

Penalties for failing to register

Failure to register or submitting false information will be a criminal offence and will also prevent the overseas entity from being able to buy or sell (or mortgage) UK property in the future. A transfer of land by an overseas entity in breach of the registration requirement will also be a criminal offence committed by the overseas entity and every responsible officer of it, punishable by a fine or imprisonment.

Next steps

While certain provisions of the Act are yet to come into force (including, importantly, the registration requirements), they could be implemented in relatively short order. We would recommend that clients take steps now to start reviewing their UK property portfolios and ensure that they are ready to comply with the registration requirements when they come into force. Jersey structures that already own UK property or are about to acquire UK property, need to consider their obligations under the Act carefully and take appropriate advice in order to avoid inadvertently falling foul of the new requirements. Individuals who own their UK real estate through an "overseas entity" to safeguard their privacy will also need to consider the Act's implications.

For further information or specific advice, please contact Daniel Walker.