



FORWARD GROUP
Trust & Corporate Services

GUIDANCE NOTE
REGISTER OF OVERSEAS ENTITIES

Legal basis

The new Economic Crime (Transparency and Enforcement) Bill received royal assent in the UK on 15 March and became an Act.

Under the Act, a new Register of Overseas Entities will be created and held by Companies House. This new Act forms part of the UK's government's strategy to combat economic crime.

Register of Overseas Entities

The register requires overseas entities that own UK land or property to declare their beneficial owners or managing officers. Companies House state that there will be "severe sanctions for those who do not comply", including restrictions on buying, selling, transferring, leasing or charging their land in the UK.

The register went live on 1 August although the land registration elements of the Act will not come into force until 5 September 2022. The Act needs to be considered by all overseas entities which held an interest in UK land as at 28th February 2022.

Once the overseas entity has registered and provided all the necessary information, Companies House will provide an Overseas Entity Identity Number ("OEID"). This OEID will then need to be shared with the relevant land registry (depending on where the land is situated in the UK) whenever the overseas entity buys, sells, transfers, leases, or charges land in the UK. The overseas entity will need to update its information every year.

After registering, the name of the overseas entity and its beneficial owners will be publicly available on the "Find and Update Company Information Service" on the Companies House website.

Overseas entities who do not register will face severe sanctions such as daily fines and not being able to transact with their land.

The Act will apply to land bought since January 1999 in England and Wales, since December 2014 in Scotland, and to land bought from the day the Act comes into force in Northern Ireland. Companies incorporated in the Republic of Ireland fall under the definition of an overseas entity.

What is a beneficial owner?

Under the Act, an individual, legal entity a government or public authority is a beneficial owner if they meet one or more of the following conditions.

- a) They hold, directly or indirectly, **more than** 25% of the shares in an overseas entity
- b) They hold, directly or indirectly, **more than** 25% of the voting rights in an overseas entity;
- c) They hold the right, directly or indirectly, to appoint or remove a majority of the board of directors of an overseas entity;
- d) They have the right to exercise, or actually exercises, significant influence or control over an overseas entity;
- e) Are trustees of a trust, members of a partnership, unincorporated association or other entity that fulfil one or more of the conditions above;
- f) Where a person has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or entity.

By this definition a 25% beneficial holding would not meet the above criteria.

What does Significant influence or control mean?

“Significant influence” and “control” are alternatives. Where a person can direct the activities of an overseas entity, this would be indicative of “control”. Where a person can ensure that an overseas entity generally adopts the activities which they desire, this would be indicative of “significant influence”.

The “control” and “significant influence” do not have to be exercised by a person with a view to gaining economic benefits from the policies or activities of the overseas entity.

A person may exercise ‘significant influence or control’ if they:

- a) have absolute decision rights over decisions related to the running of the overseas entity or its business;
- b) have absolute veto rights over decisions related to the running of the overseas entity or its business, except when these relate to the protection of minority interests within the overseas entity;
- c) are significantly involved in the management and direction of the overseas entity or its business;
- d) have their recommendations always or almost always followed by shareholders or members who hold the majority of the voting rights in the overseas entity, when they are deciding how to vote;
- e) have the right to direct or influence the running of the activities of the overseas entity or its business.

What about significant influence and control for trusts?

If an individual is involved in a trust that has any ownership or control over an overseas entity, they must consider if that trust would meet any of the conditions were that trust an individual. If the trust does meet those conditions, then the individual must consider whether they have significant influence or control the activities of that trust.

A person has the right to exercise “significant influence or control” over a trust if they have the right to direct or influence the running of the activities of the trust or firm. This could include the right to:

- a) appoint or remove any of the trustees or partners, except through application to the courts, or as a result of a breach of fiduciary duty by the trustees;
- b) direct the distribution of funds or assets;
- c) direct investment decisions of the trust or firm;
- d) amend the trust or partnership deed; or
- e) revoke the trust or terminate the partnership.

A person is likely to exercise significant influence or control over a trust if they are regularly involved in its running, for example a person who issues instructions to the trustees as to the activities of the trust which are generally followed. This may be a settlor or beneficiary who is actively involved in directing the activities of the trust.

Where an individual has significant influence or control over the activities of a trust which has significant influence or control over an overseas entity then that individual is a Registrable Beneficial Owner.

What needs to happen before registration?

Before making an application to register, an overseas entity must take reasonable steps to identify its registrable beneficial owner and obtain the required information. The steps that an overseas entity must take include giving an information notice to a person it knows, or has reasonable cause to believe, is a Registrable Beneficial Owner.

A notice requires confirmation from that person as to whether or not they are a Registrable Beneficial Owner. If the person is a registrable beneficial owner, they must confirm or correct any of the required information about them specified in the notice and supply any of the required information that the notice states the entity does not already have.

If the person is a Registrable Beneficial Owner by virtue of being a trustee, they must confirm or correct any of the required information about the trust that is specified in the notice and supply any of the required information about the trust that the notice states the overseas entity does not already have.

Overseas entities may also send information notices to persons they know, or has reasonable cause to believe knows, the identity of:

- a) person who is a Registrable Beneficial Owner in relation to the overseas entity, but is not registrable; or
- b) any legal entity that is a beneficial owner in relation to the overseas entity but is not registrable; or
- c) a person likely to have knowledge of the identity of a person within paragraph (a) or (b).

Information notices require the person to whom it is given to comply with the notice within the period of one month beginning with the day on which the notice is given. Failure to comply with a notice, or making a false statement, is a criminal offence, subject to the penalties set out in section 15(5) and (6) of the Act which include fines and imprisonment for up to 12 months.

Once an overseas entity has gathered the required information about its registrable beneficial owners and/or managing officers this information must be verified.

Where Forward do not provide a Full Service (i.e. directors) then the Directors will need to make these enquiries or appoint or the Company Secretary / Agent to do so.

Whilst the law places specific requirements on the entity itself to conduct the identification process it would be reasonable to assume that the obligation would fall to administrators of those entities where a full service offering is being made.

Registration

Once an overseas entity has the required information, they must have it verified (see below for further detail on verification). They will then need to fill in an online form to submit the information to

Companies House. Companies House will charge a fee of £100 to apply to register. If the application is rejected, this will be refunded in full.

Verification

“Verify” means verify on the basis of documents or information in either case obtained from a reliable source which is independent of the person whose identity is being verified.

Documents issued or made available by an official body are to be regarded as being independent of a person even if they are provided or made available to the relevant person by or on behalf of that person.

Forward Group can make available the information obtained by the entity to the Agent or Persons that will verify the information.

What information is verified?

Verification involves verifying information about overseas entities, beneficial owners and managing officers. Verification checks for individuals should involve looking at both evidence to match their identity as well as evidence of the condition met to be a beneficial owner (or managing officer).

The required information is verified, namely:

In respect of the Overseas Entity:

- a) name;
- b) country of incorporation or formation;
- c) registered or principal office;
- d) a service address;
- e) an email address;
- f) the legal form of the entity and the law by which it is governed;
- g) any public register in which it is entered and, if applicable, its registration number in that register (“public register” means a register kept by a government or public authority in the country in which the overseas entity was incorporated or formed.)

In respect of the Registrable Beneficial Owners and is an individual, the required information about the owner is:

- a) name, date of birth and nationality;
- b) usual residential address;
- c) a service address;
- d) the date on which the individual became a registrable beneficial owner in relation to the overseas entity;
- e) Why they are a Registrable Beneficial Owner;
- f) whether the individual meets that condition by virtue of being a trustee;
- g) whether the individual is subject to any Sanctions

The required information about a trust is:

- a) the name of the trust or

- b) the date on which the trust was created;
- c) in relation to each person who has at any time been a registrable beneficial owner in relation to the overseas entity by virtue of being a trustee of the trust:
 - i. the person’s name,
 - ii. the date on which the person became a registrable beneficial owner in that capacity, and
 - iii. if relevant, the date on which the person ceased to be a registrable beneficial owner in that capacity;
- d) in relation to each beneficiary under the trust, the information that would be the same as if the beneficiary were a registrable beneficial owner in relation to the overseas entity;
- e) in relation to each settlor or grantor, the information that would be the same as if the settlor or grantor were a registrable beneficial owner in relation to the overseas entity;
- f) in relation to any interested person*:
 - i. the information that would be required under paragraph 3(1)(a) to (c) or 5(1)(a) to (e) if the interested person were a registrable beneficial owner in relation to the overseas entity, and
 - ii. the date on which the person became an interested person.

* “interested person”, in relation to a trust, means any person who, under the terms of the trust, has rights in respect of:

- a) the appointment or removal of trustees, or
- b) the exercise by the trustees of their functions.

Similar provisions exist in respect of Managers.

Overseas ID Number

Once the overseas entity has provided all the necessary information, it will be registered by Companies House and an Overseas Entity ID will be provided. This ID must be provided to the relevant land registry (depending on where in the UK the land is situated) whenever the overseas entity makes an application to register any of the relevant dispositions for the purposes of the Act. This means when buying, leasing, transferring or registering charges against the land.

Even if the overseas entity has an ID number, the application will not be accepted if the entity is non-compliant at the time of the application to the land registry, for example, because it has not complied with the updating duty. This refers to a requirement for an overseas entity to provide an update to Companies House every year.

Further guidance is being developed on this requirement.

Sanctions for non-compliance

If an overseas entity which is required to register as an overseas entity fails to do so and cannot demonstrate a pending application for registration, the entity and every officer of the entity commits an offence. A person found guilty of an offence may be liable to a fine, imprisonment or both. The penalties are different in England and Wales than in Scotland.

The Act provides for regulations to be made to enable Companies House to impose financial penalties for breaches of the requirements.

Access to information on the Register by the public

The majority of information on the overseas entity and its beneficial owners will be publicly available.

Any person may inspect information and request copies of material kept on the Register. Companies House will determine how such requests are made and copies are provided to enquirers.

The following information will **not be available** for public inspection:

- a) Any required date of birth or residential address information submitted in a document to Companies House as part of the application process that relates to a registrable beneficial owner or managing officer in relation to an overseas entity;
- b) The name or contact details of an individual delivered to Companies House when application is made for registration, removal or completion of updating duty;
- c) Any required information about a trust delivered to Companies House;
- d) Information which is protected by virtue of regulations under section 25 of the Act
- e) Any application or other document delivered to Companies House to rectify the Register (Section 29 of the Act)
- f) Any information removed by court order from the Register (Section 30 of the Act)
- g) Any email address, identification code or password deriving from a document delivered for the purpose of authorising or facilitating electronic filing procedures or providing information by telephone.

In summary, certain personal data relating to the individual such as their date of birth and their residential address is not available for public inspection. However the month and year of birth of the individual is available.

The required information about trusts will also not be available to view by the public. In both cases it will be available to HMRC.

Individuals who are concerned about the general ability to view this information can apply to protect information in limited circumstances. The application can be made on the basis either that the activities of the overseas entity or one or more characteristics or personal attributes of the relevant individual when associated with that overseas entity will put the relevant individual or a person living with the relevant individual "at serious risk of being subjected to violence or intimidation."

How can Forward help?

Forward are currently finalising a solution for affected clients which is expected to be available shortly.

Clients with an immediate requirement may use the services of a number of UK based law firms that are offering to complete this work. Based on a number of quotes received by this office, legal fees of around £4,000 per entity seem to be the starting point, increasing depending on the complexity of the structure and the number of Registrable Beneficial Owners.

For clients that wish to retain a degree of anonymity in relation to the property they own in the UK should consider the use of a Trust structure that excludes those terms that allow the client to retain significant influence or control over the Trustee, although information on the Trust will remain available to HMRC and Law enforcement agencies it will not be public.

We expect that in most cases property assets to be sold into the Trust to avoid any immediate potential Inheritance Tax charge arising in the UK. Clients should receive specific tax advice prior to establishing a Trust.

Forward stands by to assist all its clients in ensuring timely compliance with this new requirement.



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