

# Economic Crime (Transparency and Enforcement) Act 2022 ("ECTEA 2022")



## Quick guide to the register of beneficial owners of Overseas Entities

This table provides an overview of the regime implemented under the ECTEA 2022. There are supplementary regulations being introduced which extend the regime to different types of entity such as Scottish LLPs.

BASICS			
1.	What's happening?	All Overseas Entities (as to which, see Q2 (What is an "Overseas Entity"?) below) which own freehold property in the UK, or leaseholds that are more than seven years at the date of grant, must apply for registration on a new register maintained by Companies House.	
2.	What is an "Overseas Entity"?	A legal entity that is governed by the law of a country or territory outside the United Kingdom. The Isle of Man and the Channel Islands are all classed as outside the UK. ECTEA 2022 is widely and purposively drafted and covers all types of legal structures, including trusts, states, local authorities and unincorporated associations.	s2(1) ECTEA 2022
3.	When?	The Legislation came into force on 1 August 2022. Overseas Entities now have until 31 January 2023 to register at Companies House.	s4 ECTEA 2022
4.	Why?	There has long been the perception that bad actors have been allowed to invest their money in property assets in the UK. The invasion of Ukraine gave the issue a higher profile, and the legislation has been expedited in order to be able to apply sanctions to some Russian nationals closely involved with the Putin government.	
5.	What is a Registrable Beneficial Owner?	ECTEA 2022 wants to make public the identities of people who either own a company, or who control the running of a company, which owns a property in the UK; these people are called "beneficial owners". Almost all beneficial owners are registrable; only those entities that are already heavily regulated and subject to stringent transparency requirements will not be registrable.	Schedule 2 ECTEA 2022
6.	What is a beneficial owner?	An individual who has significant control of the company.	Part 2, Schedule 2 ECTEA 2022
7.	Can I sell my property before the ECTEA 2022 comes into force?	Yes, but if you subsequently register as an Overseas Entity then you will have to tell the Registrar what property you have dealt with since 28 February 2022.	ss41- 43 ECTEA 2022
8.	Is the legislation retrospective in any other ways?	Yes; any Overseas Entity that has registered property at HM Land Registry since 1 January 1999 will have to register.	s41 and Schedule 3 ECTEA 2022
9.	Must the Overseas Entity provide its details just once?	No; there is an annual updating duty.	s7 ECTEA 2022

## DETAILS OF THEIR REGISTRABLE BENEFICIAL OWNER AND PROTECTION OF THEIR PERSONAL INFORMATION

1. What must an Overseas Entity do?	Initially, take reasonable steps to find out if it has any registrable beneficial owners and, if it does, identify and notify them and give the requisite details in a statement to Companies House.  It must also give required information about itself.	
2. What is the required information about 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; and (g) any public register in which it is entered and, if applicable, its registration number in that register.	Schedule 1 ECTEA 2022
3. What is the required information about the Registrable Beneficial Owner	The required information varies depending on what type of entity the Registrable Beneficial Owner is. If the Registrable Beneficial Owner is an individual, the following information will be required:  (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) which of the conditions in paragraph 6 of Schedule 2 is met in relation to the registrable beneficial owner and a statement as to why that condition is met; (f) whether the individual meets that condition by virtue of being a trustee; (g) whether the individual is a designated person (within the meaning of section 9(2) of the Sanctions and Anti-Money Laundering Act 2018), where that information is publicly available.	Part 3, Schedule 1 ECTEA 2022
4. Is this information all public?	No, individual dates of birth will only appear as a month and a year. An individual's usual residential address will not be public, but will be available to HMRC and some enforcement agencies. Also, information about trust beneficiaries, settlors and other office-holders such as enforcers will not be made public.	s24 ECTEA 2022

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5.	Does “significant control” look only at shareholdings?	No, the control test is satisfied by anyone who meets one or more of five specified conditions. These are:  (a) a direct or indirect holding of more than 25% of the shares in the company; (b) the direct or indirect holding of more than 25% of the voting rights in the company; (c) the right, directly or indirectly, to appoint or remove directors holding a majority of the board level voting rights; (d) the right to exercise, or actual exercise of, significant influence or control over the company; and (e) if there is a trust arrangement, then significant control may be wielded by any of the trustees, settlor or trust enforcer.	
6.	What does an indirect shareholding look like?	Shares or rights are held indirectly if they are held via a majority stake (as defined) in a company or chain of companies.	Paragraph 18, Part 5 Schedule 2 ECTEA 2022
7.	What about individuals who exercise control jointly?	Individuals who have a “joint arrangement” (including any agreement, understanding or practice) regarding their shares will each be treated as holding the combined shares.	Paragraph 12, Part 5 Schedule 2 ECTEA 2022
8.	What does “significant influence or control” in the fourth condition mean?	There is expected to be statutory guidance on this, which includes examples. Someone with “absolute decision” rights or “absolute veto” rights relating to the running of the company’s business e.g. its business plan or borrowing decisions, would have significant influence or control, but not if those veto rights are solely to protect a minority shareholding. The guidance gives a list of “excepted roles”, which includes professional advisers to the company, parties to contracts with the company and directors. These roles would not, on their own, constitute significant influence or control.	<a href="https://publishing.service.gov.uk">Technical guidance for the registration and verification of overseas entities on the UK register (publishing.service.gov.uk)</a>
9.	What must an Overseas Entity do?	Send the Registrable Beneficial Owner a notice asking the addressee to say whether or not they are a registrable person, and to correct, complete or confirm their details if they are.	ss12-14 ECTEA 2022
10.	Is the onus solely on the Overseas Entity to obtain this information?	No. If the Overseas Entity hasn’t served a notice on a Registrable Beneficial Owner by the end of the month after they became a Beneficial Owner, then that Beneficial Owner has a duty to supply the relevant details to the Overseas Entity. Failure to comply with a notice is an offence.	s15 ECTEA 2022
11.	What if the Overseas Entity doesn’t have a Registrable Beneficial Owner, or a reasonable search reveals no evidence of one?	There is “official wording” prescribed to cover most of the scenarios where the Overseas Entity might not have complete information, including where it knows there is a Registrable Beneficial Owner but it can’t identify them, or where it has identified a Registrable Beneficial Owner who hasn’t replied, or where enquiries are ongoing. If the Registrable Beneficial Owner is not known, then the officers of the relevant Overseas Entity must be identified.	s4 ECTEA 2022

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12.	Might people other than shareholders receive notices from the Overseas Entity?	Yes. An Overseas Entity can give notice to anyone who it knows or has reasonable cause to believe knows the identity of a Registrable Beneficial Owner, or knows someone who is likely to know the identity of a Registrable Beneficial Owner. This can include intermediaries or advisers, including banks, lawyers, accountants and family members.	ss12-14 ECTEA 2022
13.	If the Overseas Entity is a wholly-owned subsidiary within a group and "Topco" has a Registrable Beneficial Owner, is that person the Registrable Beneficial Owner of the Overseas Entity?	Not necessarily. It depends whether there is a "non-registrable relevant legal entity" in the chain of ownership. This area is convoluted. Basically, you look up the chain of ownership until you get to an entity which is either subject to the Overseas Entities regime in its own right, or is exempted (see Q8 of this section). That entity is then entered in your Beneficial Owner Register. If your immediate holding company is an Overseas Entity then you must continue to look up the chain of ownership until you get to a Beneficial Owner (as defined) or the appropriate legal entity.	Paragraph 8, Schedule 1 ECTEA 2022
14.	Are there any precedent forms?	No; the process is online and accessible through the Companies House website.	

## ENFORCEMENT

1.	What if the Overseas Entity doesn't take reasonable steps to identify the Registrable Beneficial Owner?	Failure to comply with this legislation is a criminal offence on the part of the Overseas Entity and its officers.	s39 ECTEA 2022
2.	What are the criminal and civil penalties?	There are a variety of non-compliance offences, which are punishable by daily fines for the Overseas Entity itself and imprisonment of up to five years for the officers; further details will be clarified in the regulations.	ss27(4), 32, 34, and 35 ECTEA 2022; further details in the regulations.
3.	Apart from criminal sanctions, how will this regime be enforced?	The ECTEA 2022 only applies to registrable property interests. If an Overseas Entity does not comply then it will be unable to deal with its property as HM Land Registry will put a restriction on the title preventing dispositions. This means the property cannot be sold, charged or have a lease granted out of it. The enabling secondary legislation for this is in force from 5 September 2022.	Section 85A and Schedule 4A Land Registration Act 2002
4.	Will this mean the attempted transaction is invalid?	No, it will be valid, but the transferor will be committing a criminal offence, and no one will want to deal with a title they cannot register.	Schedule 4A, Land Registration Act 2002
5.	Does this regime apply to partnerships?	Yes – legal entity means "a body corporate, partnership or other entity that (in each case) is a legal person under the law by which it is governed".	s2 ECTEA

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