UK REAL ESTATE OWNERSHIP AND THE IMPLICATIONS OF THE ECONOMIC CRIME (TRANSPARENCY AND ENFORCEMENT) ACT

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Real Estate Alert

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On 2 August 2023, the Register of Overseas Entities (ROE) update process went live. UK Companies House issued guidance on the requirements overseas entities will have to adhere to in their annual update of the ROE.

Our previous client alert reported on the UK Government's introduction of a public register detailing beneficial ownership of overseas entities which own UK real estate. Part of the legislation put in place requirements on the overseas entity to update the ROE on an annual basis. Updates need to be filed to confirm all information is correct and up to date. On 2 August, a guidance note was issued by UK Companies House setting out the detail of how to file an update statement for an overseas entity and its beneficial owners or managing officers. This process is likely to be undertaken by one of the UK agents who were established to act for overseas entities on this process—see further sources below—although overseas entities will need to check this, as their agents may not have committed to file annual updates.

KEY POINTS FOR OVERSEAS ENTITIES

1. In relation to the update process, the overseas entity is required to check and confirm that all the information about the overseas entity on the register is still correct and update anything that has changed. An update statement must be filed even if nothing has changed.
2. It is a criminal offence not to update the statement and there could be a financial penalty for non-compliance. The overseas entity ID will become invalid until the record is brought up to date and the update statement filed.
3. All overseas entities must file an update statement every year. It can be filed more often. The statement date is within a year of the date the overseas entity was first registered or within a year of the last update statement.
4. There is a period of 14 days from the statement date to file. After this, the filing will be considered late and it must be filed as soon as possible. An update statement can only cover 12 months.
5. The update statement date can be found by searching for the entity on the UK Companies House register.

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WHAT HAPPENS IF THE STATEMENT IS FILED LATE

If the update statement is not filed on time then the overseas entity will be:

- Committing a criminal offence and could be prosecuted or fined;
- An overseas entity ID will not be valid and therefore an overseas entity will not be able to buy, sell, transfer, lease or charge its property or land in the United Kingdom (see previous alert); and
- A note will be added to the public record that says an update statement has not been filed.

WHO CAN USE THIS COMPANIES HOUSE UPDATE SERVICE?

The service can be used by a party that works at, or works on behalf of, the overseas entity.

You currently cannot use this service if:

- There are any trusts involved in the overseas entity—this includes trusts that the entity has already told Companies House about and trusts that it needs to tell Companies House about as part of the update statement.
- Any beneficial owners or managing officers have their personal information protected at Companies House (or are waiting for the results of an application).

The published Companies House guidance note contains the details of all the information which is required, such as the details on obtaining an authentication code. We have not included these details in this alert, other than to say that any changes an overseas entity makes must be verified by a UK-regulated agent no more than three months before the date of the update statement.

Also, if someone has become a registrable beneficial owner or managing officer and if you are adding new beneficial owners or managing officers, you will need to provide information about them. The guidance provides further detail, so, for example, if someone is no longer a registrable beneficial owner or managing officer, then the date they stopped being a beneficial owner or managing officer is required. Companies House will also have to be told about anyone that both became and ceased to be a registrable beneficial owner during the update period. The information provided about them must be correct as at the date they stopped being one. If there are no active beneficial owners, then Companies House must be notified about each managing officer. Anyone who has ceased to be a beneficial owner or managing officer, and even someone who became and then ceased to be one of these during the update period, must be notified.

The UK Government has issued guidance on registering an overseas entity to find out what information you need to provide about new beneficial owners and managing officers.

WHAT VERIFICATION CHECKS NEED TO BE COMPLETED?

Verification checks must be completed on any information that is being changed, including details on any new beneficial owners and managing officers that are being added. Verification checks must be carried out no more than three months before the date of the update statement. If the information is not being changed, then the overseas entity will not need to complete any verification checks.

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Verification checks can only be carried out by a UK-regulated agent. The agent must be based in the United Kingdom and supervised under the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017. They can be an individual or a corporate entity, such as a financial institution or legal professional.

FURTHER INFORMATION AND SOURCES

- Real Estate Implications of the Economic Crime Transparency and Enforcement Act
- Find a UK-regulated agent to verify information for an overseas entity
- Read the Register of Overseas Entities: guidance on registration and verification

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