

ENGLAND AND WALES

The Register of Overseas Entities: how does it apply to trusts?

The new register of overseas entities ("ROE") maintained by Companies House came into effect on 1 August 2022. The aim of the ROE is to record the beneficial ownership through "overseas entities" of land in the UK. Non-compliance with registration obligations will in practice make it impossible for overseas entities to buy, sell, let or charge UK land and also carries criminal sanctions. It is therefore crucial that overseas entities, including corporate trustees, are aware of their obligations in relation to the ROE.

THE REGISTER OF OVERSEAS ENTITIES

The ROE is established under the Economic Crime (Transparency and Enforcement) Act 2022 ("the ECA") which also provides for unexplained wealth orders and sanctions. The ECA received Royal Assent on 15 March 2022, its passage through Parliament having been expedited following commencement of the war in Ukraine. This briefing focuses on the ROE and especially on what the ROE means for trustees.

The ROE carries forward the UK Government's drive for greater transparency in the beneficial ownership of trusts, companies and other entities. Previous legal



measures include the Register of Persons with Significant Control of UK companies ("the PSC Register") – also maintained by Companies House – and HMRC's Trust Registration Service ("TRS") which requires disclosure of beneficial ownership and other information in relation to UK trusts and some non-UK trusts.

There is some overlap between the PSC Register, the TRS register and the ROE. In this briefing the main focus is on the ROE but we will indicate areas of overlap, especially with the TRS, where we consider these to be particularly relevant.

In broad terms the ECA requires overseas entities – including non-UK corporate trustees – which hold or acquire a "qualifying estate" in land in the UK to register on the ROE and to provide the "required information" about their "registrable beneficial owners" and in some cases about their managing officers. Where the trustee of a trust counts as a

"registrable beneficial owner" then the "required information" includes details about the trust in question. Much of the information on the ROE will be accessible to public inspection.

Non-compliance with the requirements of the ECA relating to the ROE can result in offences being committed by the overseas entity and its officers. Non-compliance will also affect overseas entities' ability to buy, sell, let and charge UK land. It is crucial for those affected, including trustees, to be aware of their obligations under the ECA. Yet understanding how the ECA applies to particular trusts and their related entities, such as a trust's underlying company, can be complicated. In this briefing, we endeavour to set out some general principles (based on our understanding of the law as at 20 September 2022) but in practice each arrangement must be considered individually.

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WHICH KINDS OF ENTITIES ARE REQUIRED TO REGISTER ON THE ROE?

The obligation to register on the ECA applies to "overseas entities". The term "overseas entity" is defined by the ECA and broadly means a legal entity (i.e. an entity with its own separate legal personality) governed by the law of a country outside the UK. This includes non-UK companies and some partnerships.

Importantly, non-UK corporate trustees also fall within the definition of "overseas entity" and such trustees therefore have an obligation to register on the ROE if they hold or acquire a qualifying estate in UK land. Trusts per se, however, are not overseas entities (because they are not legal entities with their own separate legal personality) and neither are trustees who are individuals.

WHAT IS A "QUALIFYING ESTATE"?

It is only in respect of holding, acquiring or dealing with a "qualifying estate" in UK land that overseas entities are required to register on the ROE.

A qualifying estate is defined for the purposes of the ECA as (a) a freehold or (b) a leasehold granted for seven years from the date of grant.

WHEN MUST AN OVERSEAS ENTITY REGISTER ON THE ROE?

An overseas entity which held a qualifying estate in UK land on 1 August 2022 (and which it acquired on or after 1 January 1999) must register on the ROE before the end of the six-month transitional period which runs from 1 August 2022 to 31 January 2023. Note that the obligation to register on the ROE ensues where the overseas entity itself is, or is acquiring, a qualifying estate in UK land in respect of which it is, or is intended that it will become, the registered proprietor on the title at HM Land Registry. Upon registration on the ROE the overseas entity will be issued with an overseas entity ID as proof of ROE registration. Non-compliance with ROE registration obligations constitutes an offence by the overseas entity and its officers; further, a purchaser of the land from the overseas entity will not be able to register their interest at HM Land Registry, which in practice will make it impossible for the overseas entity to sell or otherwise deal with their qualifying estate.

The overseas entity must also provide details to the ROE of any "relevant dispositions" made during the period from (and including) 28 February 2022 to the end of the transitional period on 31 January 2023. Failure to do so constitutes

an offence. A "relevant disposition" is any of (a) a transfer of land (b) the grant of a lease for more than seven years from the date of grant and (c) the grant of a legal charge.

The above registration requirements apply to land in respect of which the overseas entity was registered at HM Land Registry pursuant to an application made on or after 1 January 1999.

Further, an overseas entity intending to acquire UK land must register on the ROE. Failure to do so means that the overseas entity will not be able to register its interest at HM Land Registry.

These registration obligations are reinforced by HM Land Registry's obligation to enter a restriction at the Land Registry against land registered in the name of an overseas entity. The restriction prohibits the registration of the transfer of a freehold, grant of a lease for more than seven years from the date of grant and grant of a legal charge unless the overseas entity is registered on the ROE (or is exempt). (There are some exclusions which might apply, depending on the circumstances).

If an overseas entity makes a disposition that breaches the restriction, an offence is committed by the entity and its officers.

There are further details about these property related aspects of the ROE at our briefing note [here](#) entitled "Ready, Steady (almost) GO! The register of is entities goes live"



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WHAT INFORMATION DOES THE OVERSEAS ENTITY HAVE TO PROVIDE TO THE ROE WHEN REGISTERING?

Broadly speaking, the overseas entity must provide "required information" about:

- the overseas entity itself including its name, country of incorporation or formation, registered or principal office and correspondence details;
- the overseas entity's "registrable beneficial owners" including for individuals their name, address, date of birth, nationality and date when they became a registrable beneficial owner and for legal entities including name, registered office, legal form and date when it became a registrable beneficial owner; and
- its managing officers – but only if the overseas entity reasonably believes that it does not have any registrable beneficial owners or that it has not been able to identify all of them.

If a registrable beneficial owner is a trustee, the overseas entity must provide details of the trust in question including the date of the trust's creation, trustee's name and date of becoming trustee, details of each beneficiary and settlor of the trust and details of any person who, under the terms of the trust, has rights in respect of the appointment or removal of trustees or in respect of the exercise by the trustees of their functions.

An offence is committed if false, deceptive or misleading statements or documents are provided to Companies House in connection with the ROE.

Furthermore, the information on the ROE must be updated annually, or a statement provided that there are no updates; failure to comply is commission of an offence by the overseas entity and its officers.

WHAT INFORMATION ON THE ROE IS PUBLICLY ACCESSIBLE?

In principle any person is permitted to inspect the ROE and require copies of material on it. However, this is subject to exclusions. Broadly speaking, personal information about registrable beneficial owners or managing officers must not be made available for inspection. Further, Companies House may not disclose information about trusts delivered to it in connection with an application for registration on, or updating of, the ROE unless the disclosure is to HMRC or another body exercising public functions specified by regulation. There is a further category of "protected information" where disclosure might lead to serious risk of violence or intimidation of individuals.

WHO ARE "REGISTRABLE BENEFICIAL OWNERS"?

Since the overseas entity must provide to ROE details of its "registrable beneficial owners", it is important to be able to identify these.

The first step is to identify the "beneficial owners" of the overseas entity before going on to determine whether they are "registrable beneficial owners".

A beneficial owner is an individual or a legal entity who or which:

- (a) Holds directly or *indirectly* over 25% of the shares or voting rights of the overseas entity
- (b) Holds the right directly or *indirectly* to appoint or remove a majority of the board of directors of the overseas entity
- (c) Has the right to exercise, or actually exercises, significant influence or control over the overseas entity
- (d) Has the right to exercise, or actually exercises, significant influence or control over the activities of a trust (or over certain other kinds of arrangements) the trustees of which satisfy any of (a)-(c) above. (In other words, under (d), where the overseas entity's beneficial owner is a trustee, any person, such as a protector, who has the right to exercise significant control etc over the activities of the trust would be a beneficial owner in relation to the overseas entity).

Note that an individual or legal entity can be a beneficial owner of an overseas entity by holding rights or interests in the overseas entity "indirectly", for example, by holding a majority of shares or voting rights in another legal entity that is itself a beneficial owner of the overseas entity.

Having identified the beneficial owners of an overseas entity, it is necessary to determine whether they are registrable. Beneficial owners are *not* registrable if they are exempt. Broadly speaking a beneficial owner is exempt if it holds an *indirect* interest in the overseas entity through one or more legal entities which are themselves registrable beneficial owners of the overseas entity.

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Further, to be a registrable beneficial owner of an overseas entity, a company (or other legal entity) must be "subject to its own disclosure requirements". Broadly speaking a company or other legal entity is "subject to its own disclosure requirements" if (a) it is itself on the ROE (b) it is a UK company required under the UK Companies Act 2006 to keep a "register of persons with significant control" (c) its voting shares are traded on a UK or EU regulated market or (d) it provides trustee services regulated by the law of a non-UK territory (being the entity's governing law).

Where an overseas entity's registrable beneficial owner is a trustee of a trust, then the overseas entity, when registering on the ROE, must provide details of the trust, including of its beneficiaries.



HOW DOES THE NEW REQUIREMENT TO REGISTER ON THE ROE APPLY TO TRUSTS AND THEIR RELATED ENTITIES?

The registration requirements for trusts and their related entities will depend on the circumstances of the trust in each case (for example, the legal constitution of the trustee, how a corporate trustee is owned and how the trustee in turn holds land in the UK and so forth). We set out below some scenarios applying the general principles above to some of the more common trust arrangements but in practice each arrangement must be considered individually.

1. A professional non-UK trust company is the registered proprietor of the qualifying estate

If the qualifying estate is owned directly by a non-UK professional trust company that trust company will be an overseas entity obliged to register on the ROE, giving details of itself and of any of its registrable beneficial owners (and/or, where required, of its managing officers).

If, as will often be the case, the professional trust company sits within a group of companies, then it is likely to be wholly owned by another company within the group, which will be the trust company's beneficial owner. Such other company will be the *registrable* beneficial owner of the trust company if "subject to its own registration requirements", for example, if it is itself on the ROE or if its voting shares are admitted to trading on an EU (or UK) regulated market. If that is the case, then the

trust company when registering on the ROE, must provide details of such other company as its registrable beneficial owner.

If the company which beneficially owns the trust company is *not* subject to its own disclosure requirements, then it would not be a *registrable* beneficial owner of the trust company; the latter would then have to look further up its chain of ownership in order to identify any of its *indirect* beneficial owners for ROE purposes. If there were none, or if they were not registrable, then the trust company may have no registrable beneficial owners in which case it would simply provide the required information to the ROE about itself and its managing officers.

There would be no need for the trust company to provide to the ROE information about the trust; this would be needed only if the trust company itself were a registrable beneficial owner in relation to another overseas entity, which is not the case in this scenario.

Note though, that the trust company, in addition to considering its obligations under the ECA 2022, would also have to consider whether it is obliged to register on the TRS, providing details of its beneficial owners (the definition of "beneficial owner" for the purposes of the TRS is different from that applicable for ROE purposes). TRS registration would be required, for example, if the trust company became registered proprietor of its qualifying interest in the UK land on or after 6 October 2020 (unless any exclusions from TRS registration apply) or if it is, or becomes, liable to UK tax on UK assets (in which case, exclusions are not in point).

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2. The professional non-UK trust company holds the qualifying estate through a non-UK nominee company

Here, instead of holding the qualifying estate directly in its own name, the trust company holds it through a non-UK nominee company.

The non-UK nominee company is an overseas entity and, as the registered proprietor of the qualifying estate, it must register on the ROE and provide details of itself and of any of its registrable beneficial owners (or, if relevant, of its managing officers).

If, as will often be the case, the nominee company sits within a group of companies, then, as for the trust company in scenario 1, the nominee company's beneficial owner for ROE purposes is likely to be another company within the group. Such other company within the group will be a *registrable* beneficial owner of the nominee company if "subject to its own disclosure requirements". If this were the case, the nominee company would provide details of such beneficial owner when registering on the ROE. Otherwise, as for the trust company in scenario 1, the nominee company would have to look up through its chain of ownership in order to identify any indirect (registrable) beneficial owners.

Is the trust company, as the company for which the nominee holds the qualifying estate, a registrable beneficial owner of the nominee? Although the trust company has the right to direct the nominee in relation to the UK land, it is otherwise unlikely to have the right to exercise or to actually

exercise significant influence or control over the nominee company. On that basis, the trust company is unlikely to qualify as a beneficial owner of the nominee company, but the position must be considered in each case.

The trust company itself is not required to register on the ROE because, although it is an overseas entity, it is not the registered proprietor of a qualifying interest in UK land. Furthermore, when the nominee registers on the ROE it would not have to provide details of the trust; this would be required only if the trust company were a registrable beneficial owner of another overseas entity, which is (probably) not the case in this scenario.

As far as HMRC's Trust Registration Service is concerned, the nominee arrangement counts as a trust and consideration must therefore be given as to whether the nominee is registrable on the TRS. If it is registrable, the nominee company will need to provide details of its beneficial owners (the definition of beneficial owner for purposes of the TRS is different from that for purposes of the ROE). The nominee will be so registrable if, for example, the nominee acquired the qualifying interest in UK land on or after 6 October 2020. There are other limited circumstances in which the nominee could be registrable on the TRS; this must be checked in each case. Furthermore, where the beneficial owner (for TRS purposes) of the nominee is a trust (as in this scenario), care must be taken by the nominee when registering on the TRS correctly to determine the details about the trust required to be provided to the TRS.

3. The professional non-UK trust company holds the qualifying estate indirectly through its wholly-owned non-UK subsidiary company which is the registered proprietor and which holds the qualifying estate beneficially

Here, rather than holding the qualifying estate in UK land through a non-UK nominee company, the non-UK trust company holds the qualifying estate through its wholly owned non-UK subsidiary; the latter is both registered proprietor and beneficial owner of the UK land.

The non-UK subsidiary company, as an overseas entity directly holding UK land, is obliged to register on the ROE and to provide the required information about itself and its registrable beneficial owners.

The non-UK trust company is likely to be a *registrable* beneficial owner of the non-UK subsidiary (because it is both a beneficial owner of the subsidiary and, as a professional trust company, is likely to be regulated under the law of its non-UK territory and so "subject to its own disclosure requirements").

The non-UK subsidiary must also analyse whether any person, such as a protector or enforcer of the trust, has the right to exercise significant influence or control over the activities of the trust so as to count as a registrable beneficial owner in relation to the subsidiary (see condition (d) under heading above "Who are registrable beneficial owners?").

On the basis that the trust company is a registrable beneficial owner of the subsidiary, there is no need to look further up the chain of ownership of the subsidiary because any beneficial owners of the trust company would be exempt from registration.

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Because the trust company is a registrable beneficial owner of an overseas entity, namely of the subsidiary, the latter must provide details of the trust, including of its beneficiaries, when registering on the ROE.

As far as the TRS is concerned, the subsidiary is not obliged to register because it does not hold the UK land as a trustee or nominee. Given that the trust company does not hold directly (as registered proprietor) any UK land, it would have to register on the TRS only if it had become liable to UK taxes in respect of any UK assets.

4. A private trust company ("PTC") is the registered proprietor of the qualifying estate; the PTC is owned by the professional corporate trustee ("the purpose trustee") of a purpose trust

This is a common format for a non-UK trust arrangement. The PTC, as an "overseas entity" directly holding UK land, must register on the ROE and provide the required information about itself and about its registrable beneficial owners. PTC's beneficial owner is the purpose trustee, which, as a professional corporate trustee, is likely to be subject to its own disclosure requirements and so to be a *registrable* beneficial owner of the PTC; on that basis, when registering on the ROE, the PTC must provide to the ROE the required information about the purpose trustee. It is possible that a protector or enforcer of the purpose trust, or other person exercising control over the activities of the purpose trust, would also count as a registrable beneficial owner of the PTC (see condition (d) under the heading "Who are the registrable beneficial owners?").



Furthermore, the PTC, when registering on the ROE, must also provide details of the purpose trust itself, including of its beneficiaries. (This is because, as in scenario 3, details of a trust are always required on the ROE if the trustee of such trust - here, the purpose trustee - is the registrable beneficial owner of an overseas entity - here, the PTC).

On the basis that the purpose trustee is a registrable beneficial owner of the PTC, the PTC does not need to look further up the chain of ownership to identify any of its indirect beneficial owners because such indirect owners would be exempt from registration.

The PTC will also need to consider whether it is obliged to register on the TRS. It will be obliged to do so, for example, if it acquired land in the UK on or after 6 October 2020 (subject to any exclusions applying) or if it is liable to UK tax on UK assets (in which case exclusions are not in point).

5. Jersey professional trust company as trustee ("purpose trustee") of a purpose trust owns two Jersey corporate trustees ("Jersey Trust Co A" and "Jersey Trust Co B") of property unit trust ("JPUT") which in turn are registered proprietors of UK land

JPUTs¹ can be structured in different ways but for purposes of this briefing we will assume that the JPUT is established as a private investment vehicle. It has two Jersey trust companies set up as special purpose vehicles ("Jersey Trust Co A" and "Jersey Trust Co B") which jointly hold land directly in the UK (ie they are the registered proprietors) as trustees of the JPUT for the benefit of the unit-holders. The two Jersey Trust Cos are in turn owned by a professional Jersey trustee as trustee of a purpose trust.

Jersey Trust Cos A and B are overseas entities holding a qualifying estate in UK land and will therefore need to register on the ROE and provide the required information about themselves respectively and their respective registrable beneficial owners.

¹ Broadly speaking, the same principles apply to Guernsey property unit trusts.

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The purpose trustee as a professional trustee is likely to be subject to regulatory oversight in Jersey and as such will be "subject to its own disclosure requirements". It will therefore be a registrable beneficial owner of Jersey Trust Cos A and B and its details must be provided by them to the ROE. Jersey Trust Cos A and B must also provide details of the purpose trust to the ROE.

The owners of the purpose trustee do not have to be disclosed on the ROE because, even if they satisfied the definition for being indirect beneficial owners of Jersey Trust Cos A and B, they would be exempt from being registrable (assuming, as is likely, that the purpose trustee, as a professional trust company, is subject to its own disclosure requirements).

Jersey Trust Cos A and B will need to consider whether they are registrable on the TRS with an obligation to provide details of their beneficial owners. They will be registrable if, for example, they acquired the land in question on or after 6 October 2022 (subject to any exclusions applying) or if they become liable to UK tax on UK assets (in which case exclusions are not in point).



How does the registration process work?

In order to register on the ROE, the overseas entity must provide the required information about itself and its registrable beneficial owners (and/or, as appropriate, its managing officers) and, where necessary, any relevant trusts, to Companies House together with a fee of £100. Pursuant to regulations published earlier in summer 2022, such information must first be verified by a "UK-regulated agent". Verification will also be needed to fulfil annual updating obligations in the ROE. For more information on how the verification process works please see [here](#) our briefing note entitled "Ready, Steady (almost) GO! The register of overseas entities is live".

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Disclaimer

This note reflects our understanding of the law as at 20 September 2022. The circumstances of each case vary and must be analysed individually. This note provides a general overview and does not constitute legal advice.



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