

New Dimension to M&A Deals as UK Rules Bite

Increased transparency surrounding land ownership

The broad sweep of new UK measures designed to combat international crime will affect the ability of Irish companies to deal with their UK land interests as well as adding another dimension to M&A deals with a UK property angle.

The **UK Economic Crime (Transparency and Enforcement) Act 2022** (“**ECA 2022**”) created a Register of Overseas Entities at UK Companies House (“**Companies House**”). All non-UK entities, including Irish companies, wishing to transfer, lease or charge UK land must register with Companies House and disclose details concerning their ‘registrable beneficial owners’ or managing officers.

The information contained on the register will be publicly accessible, except for certain personal details. Entities that do not comply with these new rules face sanctions, including restrictions on buying, selling, transferring, leasing or charging their UK real estate.

Those already familiar with the UK People with Significant Control (“**PSC**”) regime (and its EU equivalent, the beneficial ownership regime) will note similarities with the new overseas entities regime. This includes the requirement to supply details concerning the managing officers where beneficial owners are not identified. However, the latter regime does not require the overseas entity to keep an internal register of beneficial ownership information and there are subtle differences in the respective enforcement mechanisms.

What is an overseas entity under the ECA 2022?

- An overseas entity is a legal entity governed by the law of a country or territory outside the UK.
- An Irish company, partnership or other type of legal entity is in scope.

Land Registry filings

An Irish company must be a ‘registered overseas entity’, and have complied with its annual updating duty outlined below, before the following can be registered at HM Land Registry:

- The company’s ownership of a ‘qualifying estate’
- Any ‘registrable disposition’ of a ‘qualifying estate’.

A ‘qualifying estate’ in this context means a freehold estate or a leasehold estate in land for a term of more than seven years.

Information to be supplied

An Irish company registering as an overseas entity with Companies House must supply:

- ‘required information’ about the company itself, prescribed details concerning any identified ‘registrable beneficial owner’ (including whether they are subject to UK sanctions) and, in certain circumstances, details concerning the managing officers;
- confirmation that the company has complied with its obligation to take reasonable steps to identify any registrable beneficial owners; and
- information required to verify details relating to registrable beneficial owners and managing officers.

If a registrable beneficial owner is a trustee, the application must include prescribed information about the trust and a statement as to whether the overseas entity has any reasonable cause to believe that required information is missing.

A UK-regulated agent must carry out verification checks on all beneficial owners and managing officers of an overseas entity before registration. These checks must be completed no more than three months before the overseas entity is registered.

After registration, the Irish company receives a unique Overseas Entity ID to use when registering UK land dealings. The company is also reminded of its obligation to update the information on the register annually.

A person (X) is deemed a beneficial owner of an overseas entity or other entity (Y) if one of the following conditions are met:

- X holds (directly or indirectly) more than 25% of the shares or voting rights in Y
- X holds (directly or indirectly) the right to appoint or remove a majority of the board of directors of Y
- X has the right (directly or indirectly) to exercise, or actually exercises, significant influence or control over Y
- The trustees of a trust, or members of a partnership, unincorporated association or other entity that is not a legal person under the law by which it is governed meet any of the above conditions (in their capacity as such) in relation to Y, and X has the right to exercise, or actually exercises, significant influence or control over activities of that trust or entity.

Similar to the PSC regime, an exemption applies where a beneficial owner holds an interest indirectly through other legal entities if, due to one or more of those other entities being subject to its own disclosure requirements, the ultimate beneficial owners are ascertainable. This avoids the need for duplicate filings.

Steps to identify registrable beneficial owners

The ECA requires an Irish company to take reasonable steps to identify any registrable beneficial owners and, if it identifies any, to obtain ‘required information’ about them. There is no exhaustive definition of what constitutes ‘reasonable steps’ but it includes a specific requirement for an entity to send an ‘information notice’ to any person that it knows, or has reasonable cause to believe, is a registrable beneficial owner. It is a criminal offence for the recipient to fail to respond to the notice. Further optional notices may be served on third parties suspected of holding information about the beneficial owners of the entity. An exemption from disclosure applies to information which is subject to legal professional privilege.

Annual compliance

While a Irish company remains on the register, it has a duty to update the information on the register annually and related obligations to take reasonable steps to identify any registrable beneficial owners and to have the information verified.

Changes ahead

The new rules will come into play in M&A transactions involving an Irish buyer, seller or target where UK property forms part of the deal. Here is what to look out for:

SCENARIO	EXPECT	COMMENT
Irish company on sell-side in business/asset acquisition involving the assignment, transfer or lease of UK property	Expect buyer’s due diligence enquiries to address Irish company’s registration status at Companies House and compliance with annual filing obligations, and related warranty protection	Breach of the Irish company’s registration obligations will prevent the buyer registering as owner of the relevant UK property
Irish company on buy-side in business/asset acquisition involving the assignment, transfer or lease of UK property	Expect seller to seek confirmation as to the Irish company’s registration status at Companies House and compliance with annual filing obligations	Necessary to ensure that post-completion, the seller can remove itself as registered owner of the relevant land
Share acquisition involving Irish company target with UK land interests	Buyer (or Irish subsidiary) to update the beneficial ownership information at the next annual filing update	Breach of obligations by the target could attract criminal penalties. Non-compliance could also have consequences for any future transfer of the property (at arm’s length or as part of an internal group restructuring) and for the valid creation of security over the property as part of group financing arrangements
Share acquisition where target group includes Irish subsidiary with UK land interests	Expect buyer to seek confirmation on the registration status of the Irish subsidiary and to ensure that the subsidiary is up to date with its annual filing requirements, and related warranty protection	Breach of obligations by the subsidiary could attract criminal penalties Non-compliance could also have consequences for any future transfer of the property (at arm’s length or as part of an internal group restructuring) and for the valid creation of security over the property as part of group financing arrangements
Share acquisition where Irish target entitled to be removed from the register as it no longer holds any relevant land UK interests	Expect buyer to insist on removal of Irish subsidiary from the register pre-completion	Buyer must update beneficial ownership information at the next annual update following completion (and take reasonable steps to identify any registrable beneficial owners)
Seller acquires consideration shares in an Irish company with UK land interests or consideration shares in a buyer with an Irish subsidiary with UK land interests	Expect seller to establish whether its holding of those consideration shares gives rise to any beneficial ownership information disclosures	Irish company/buyer must update beneficial ownership information at the next annual update following completion (and take reasonable steps to identify any registrable beneficial owners)

Timelines, sanctions and further reading

The ECA 2022 creates a range of criminal offences for breach of its provisions and contains various anti-avoidance and transitional elements. Broadly equivalent rules apply to land ownership and transactions in Scotland and Northern Ireland.

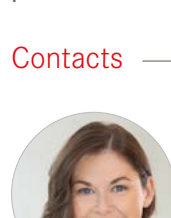
The new measures apply retrospectively to Irish companies which acquired land interests in England or Wales on or after 1 January 1999. These companies have until 31 January 2023 to comply. Irish companies only need to register Northern Ireland land interests acquired on or after 1 August 2022.

The Register of Overseas Entities opened on 1 August 2022 and the new HM Land Registry requirements take effect from 5 September 2022. The UK government has issued **official guidance** on the new regime and has confirmed that it is developing more guidance for overseas entities.

How Matheson can help

This is an evolving aspect of M&A practice and Matheson experts will continue to monitor developments closely. If you would like more information on this or any other M&A matter, please get in touch with the partners below or your usual Matheson contact.

Contacts



Sandra Lord
Partner | London Office
E: sandra.lord@matheson.com
T: +353 1 232 2676



Fergus Bolster
Partner
E: fergus.bolster@matheson.com
T: +353 1 232 2454