REGISTER OF OVERSEAS ENTITIES

Guidance Notes

1. Introduction

1.1 Part 1 of the Economic Crime (Transparency and Enforcement) Act 2022 (2022 Act) introduces a Register of Overseas Entities (ROE) to the UK. The ROE will be held by the Registrar of Companies for England and Wales.

1.2 This note refers to the requirements of Part 1 of the 2022 Act as they apply to land in Scotland. Similar provisions apply to land in England & Wales and Northern Ireland.

1.3 The 2022 Act requires any overseas entity that owns or leases land in Scotland to register in the ROE (see Guidance Notes 2 and 3). Although the ROE requires an overseas entity to disclose details of *beneficial owners* in that entity, this is not a pre-requisite for *registering* in the ROE[1]: if it has a "*relevant interest in land*"[2], even if there are no beneficial interests to disclose, the overseas entity will still need to register in the ROE, unless it is exempt.[3]

1.4 The requirement to register in ROE only applies if the overseas entity's ownership of the land or right as tenant in the land (i.e. a "relevant interest in land") has been registered in the Land Register on or after 8 December 2014[4], either by virtue of:

- registration in the Land Register as **proprietor**;
- registration in the Land Register of an **assignation** of a Sasine or land registered lease, where the overseas entity is the **tenant**; or
- registration in the Land Register of a **lease**, where the overseas entity is the **tenant**.

The relevance of this ROE registration requirement is that, if an overseas entity who owns or leases land in Scotland has *not* registered in the ROE (and is not an exempt entity), then the Keeper must:

- reject an application by an overseas entity to register a disposition, lease or assignation[5] [6] and

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1 2022 Act Section 4(2), Statement 2

2 2022 Act Section 9(10)(b)

3 2022 Act Section 34(6) provides that the Secretary of State may make Regulations specifying overseas entities that are exempt.

4 At the time of writing (June 2022), it is understood that this cut-off date is under consideration.

5 2012 Act Schedule 1A Paragraph 1

6 Notices of title are also in scope.

- reject an *application by a person acquiring from an overseas entity* of a disposition, lease, assignation of a lease or standard security[7].

Accordingly, ensuring that if the overseas entity is not exempt it is registered in the ROE is going to become an essential component of the conveyancing process when transacting with an overseas entity as one of the parties.

1.5 Section 33(2)(a) of the 2022 Act refers to **Schedule 4** which makes changes to the Land Registration etc. (Scotland) Act 2012 (2012 Act). In particular, it inserts a new **Schedule 1A**, entitled "*Land Transactions: Overseas Entities*" into the 2012 Act. It also incidentally introduces a new offence (new section 112A of the 2012 Act) imposed on overseas entities if they deliver a "*qualifying registrable deed*"[8] to a third party without being registered in the ROE.

2. Transitional period

2.1 There are in effect two "phases" for registration (although they overlap). When Part 1 of the 2022 Act comes into force, there will be a six-month transitional period, running from the date of commencement. During that period, any overseas entities that own or lease land in the UK (within the qualifying period) must register in the ROE. It does not need to be involved in any transaction with that land. Failure to have registered by the end of the transitional period will constitute an offence liable to imprisonment (for every officer of the entity), a fine, or both. The Secretary of State has power to serve notice on an overseas entity at any time, requiring it to register in the ROE. In theory therefore, every overseas entity that currently owns or is the registered tenant of land in Scotland any time from 8 December 2014 should be registered in the ROE by the end of the transitional period.

2.2 In addition, any overseas entity that grants a disposition, standard security, lease or assignation of a lease between 28 February 2022 and the end of the transitional period must provide details of the deed. Even if an overseas entity does not appear to need to register because it has ceased to own land by the end of the transitional period, it must still register and submit details of deeds granted by it from 28 February.

2.3 During the transitional period a disposition, assignation, lease or standard security *granted by* an overseas entity will not be rejected by the Keeper by reason only of the overseas entity not being registered in the ROE[9].

2.4 There is also an exception for registration of deeds that are in implement of a contract entered into before the later of the date on which the overseas entity's title was registered and the commencement date.[10]

2.5 However there is to be no moratorium on deeds *granted in favour of* an overseas entity during the transitional period, so the Keeper will still have to reject them if the overseas entity is not registered in the ROE.

2.6 A registered overseas entity has a continuing duty to keep its entries in the ROE up-to-date, at least once in every 12-month period, even if there have been no changes to the information previously provided (see Guidance Note 7).

2.7 The section 112A offence will not apply during the transitional period[11].

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[7] 2012 Act Schedule 1A Paragraph 2.

[8] 2022 Act Schedule 4 Part 1 paragraph 7: a qualifying registrable deed in connection with the offence is a disposition, a standard security, a lease or an assignation of a lease. See also Fn 13.

[9] 2022 Act Schedule 4 Part 2 paragraph 11(4).

[10] 2012 Act Schedule 1A paragraph 2(2)(b). Paragraph 2(2) lists other exceptions.

[11] 2022 Act Schedule 4 Part 2 paragraph 11(3).

3. **Registration after the commencement date**

3.1 Any overseas entity that acquires land or becomes the registered tenant of land on or after the commencement date will have to register with the ROE. Although the 2022 Act does not impose any express duty on such an overseas entity to register, the effect of the provisions of the Act (see Guidance Note 1.4) is that, without registration in the ROE, registration in the Land Register is not possible.

3.2 A registered overseas entity has a continuing duty to keep its entries in the ROE up-to-date, at least once in every 12-month period, even if there have been no changes to the information previously provided (see Guidance Note 7).

4. **Identifying the overseas entity and its powers**

4.1 An overseas entity is a legal entity that is governed by the law of a country or territory outside the UK; and a legal entity is a body corporate, partnership or other entity that is *a legal person under the law by which it is governed*.[12]

4.2 While, if the overseas entity is registered in the ROE that should mean it has legal status in its own jurisdiction, it will still be necessary to obtain a **Foreign Opinion** as to capacity to contract and all the other aspects usually covered in such an opinion.

5. **Overseas Entity ID**

5.1 Once registered, an overseas entity will be allocated a unique ID (probably alpha-numeric).

5.2 The PSG recommends that this is included in the **designation** of the overseas entity in documents where they are a party, e.g.: “and registered in the Register of Overseas Entities with ID AB1234”.

6. **Contracting with overseas entities**

6.1 If a transaction to which a contract relates will result in a *qualifying registrable deed*,[13] (or a registrable deed that is a standard security) then that contract needs to make provision about registration of the overseas entity in the ROE.

6.2 Where the overseas entity is **the Seller, the Landlord, the Assignor,** or is **granting a Standard Security**, the other contracting party requires to be sure that the overseas entity is registered in the ROE, as otherwise the resulting deed will not be capable of being registered, as the Keeper must reject it[14] (unless the overseas entity is exempt), meaning that the purchaser, tenant, assignee or lender, as the case may be will not get a real right.

6.3 Where the overseas entity is **the Purchaser, the Tenant or the Assignee**, the other contracting party requires to be sure that the overseas entity is registered in the ROE, as otherwise the resulting deed will not be capable of being registered, as the Keeper must reject it[15] (unless the overseas entity is exempt), meaning that the seller will not be divested

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12 2022 Act section 2.

13 2012 Act Schedule 1A paragraph 9: a qualifying registrable deed is a disposition, a lease or an assignation of a lease. Note that the definition does not include a standard security. Standard securities granted by overseas entities are separately referred to as “registrable deed which is a standard security”. However for a sale or lease contract it will not normally be a standard security that is being granted in implement of the contract.

14 2012 Act Schedule 1A paragraph 2.

15 2012 Act Schedule 1A, paragraph 1.

of the title; the landlord will not have an enforceable lease[16]; or the assignor will remain liable as tenant[17].[18]

6.4 The PSG recommends incorporating the following definitions into relevant documentation:

"**2022 Act**" means the Economic Crime (Transparency and Enforcement) Act 2022;

"**Overseas Entity**" has the meaning given by section 2 of the 2022 Act;

"**Registered Overseas Entity**" means an Overseas Entity that is registered in the ROE;

"**relevant interest in land**" has the meaning given by section 9(10)(b) of the 2022 Act;

"**ROE**" means the Register of Overseas Entities established under section 3 of the 2022 Act;

6.5 There is no need to define a "qualifying registrable deed". If the seller is an overseas entity with a relevant interest in land, then the disposition, lease or assignation will *be* a qualifying registrable deed by virtue of the provisions of the 2022 Act.

6.6 Where the Seller, Landlord or Assignor is an overseas entity, the contract should contain confirmations from them:

- that they are a Registered Overseas Entity;
- that they have complied with the duty (in section 7 of the 2022 Act) to update the ROE;[19] and
- that the information held in the ROE for them is correct, complete and up-to-date.

6.7 It is not necessary, in the PSG's opinion, to require any undertaking from the overseas entity (where it is the Seller, Landlord or Assignor) that it will not remove itself from the ROE (until completion of registration of the deed). While an overseas entity can apply to be removed from the ROE under section 9 of the 2022 Act, section 10 requires the registrar, on receipt of such an application, to check whether the overseas entity is registered as proprietor, and if it is still registered as proprietor, the registrar must refuse to remove it from the ROE.

It is presumed therefore that, following completion of a sale or assignation of a lease, as long as the overseas entity continues to appear as proprietor or tenant in the proprietorship section of the title sheet, until it is replaced by the purchaser or assignee as proprietor or tenant, it cannot be removed from the ROE.[20]

6.8 Where the Purchaser, Tenant or Assignee is an overseas entity, the contract should contain confirmations from them:

- that they are a Registered Overseas Entity, or will be a Registered Overseas Entity at Completion;
- (if already registered) that they have complied with the duty (in section 7 of the 2022 Act) to update the ROE; and

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16 Note only registrable leases are in scope.

17 Note only registered (or recorded) leases are in scope.

18 Note that there is however a carve-out in 2012 Act Schedule 1A paragraph 1(3) where the application is for registration of a lease or assignation; is made by a person other than the overseas entity; *and* the leased subjects are (or are part of) an unregistered plot owned by the overseas entity. This provision appears to cater for automatic plot registration.

19 See Guidance Note 7.

20 An overseas entity cannot be removed from the ROE while it is listed as proprietor on any of the UK land registers.

- that the information held in the ROE for them is correct, complete and up-to-date.

6.9 It is not necessary, in the PSG's opinion, to require any undertaking from the overseas entity (where it is the Purchaser, Tenant, or Assignee) that it will not withdraw its application for registration in the ROE; or, if registered that it will not remove itself from the ROE; or that it must maintain its registration in the ROE in the future. Quite apart from the fact that it must be registered in the ROE to be able to register the deed in the Land Register, once registered, the overseas entity cannot be removed from the ROE for as long as it is the proprietor of land registered in any of the UK land registers.[21]

6.10 When transacting with overseas entities it will be necessary to obtain a **Report in the Register of Overseas Entities**. The firms of professional searchers will provide such a Report.

It is recommended that this Report is obtained at an early stage of the transaction, so that if for example an overseas entity that is selling is not registered in the ROE, or its information in the ROE has not been updated under the requirements of section 7, there will be time to remedy the position before Completion. It is recommended therefore that a Report is obtained before conclusion of missives where the Seller, Landlord or Assignor is an overseas entity, and then an update of the Report is obtained immediately before Completion.

Where the overseas entity is the Purchaser or Tenant or Assignee, it may not yet have registered in the ROE if it does not yet own or lease any other land in the UK. However, it will not be able to register the disposition, lease or assignation in the Land Register unless the overseas entity is registered in the ROE. Accordingly it will have to be registered in the ROE by Completion if it is to submit the deed for land registration expeditiously. In any event, the Seller, or Landlord, or Assignor, will require the comfort that the overseas entity is already registered before Completion takes place, so that it can be assured that the application will not be rejected.[22] It is understood that an overseas entity can register in the ROE before it is the owner of any land, and so, since the procedures for confirming information and obtaining verification[23] required before registration can be effected can take some time[24] it is recommended that the overseas entity takes the steps to register in the ROE at the earliest opportunity.

The Report should disclose:

- that the overseas entity is registered in the ROE; and
- that the entries in the ROE are up-to-date in compliance with section 7 of the 2022 Act.

7. ROE Registration requirements

7.1 Not only must an overseas entity register with the ROE, once registered it has a duty to update its details at least once in every 12-month period[25], even if there have been no changes to the information previously provided. Failure to comply with the duty to update is an offence, liable to a fine on summary conviction.

7.2 In addition, the overseas entity will no longer be regarded as being registered in the ROE until it remedies that failure. This means that, even if the overseas entity is registered, it will not be possible for any qualifying registrable deed to be registered in the Land Register, as

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21 2022 Act section 10.

22 See Guidance Note 6.3

23 The Register of Overseas Entities (Verification and Provision of Information) Regulations 2022.

24 For example, if the overseas entity has registrable beneficial owners, it must send an information notice to them, to which they have one month to respond (2022 Act Section 12(5)); similarly the person verifying the OE's information prior to registration has 14 days in which to do so (unless they are also delivering the OE's information to the ROE).

25 2022 Act Section 7.

the overseas entity will be regarded as unregistered in the ROE and therefore the Keeper must reject the deed.

7.3 Accordingly the due diligence checks must include not only confirmation of *registration* in the ROE, but also confirmation that the *information has been updated* for the current 12-month period.