

Loss Prevention Standards – Financial Lines

Solicitors and the Register of Overseas Entities

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A guide for solicitors regarding the Register of Overseas Entities and the provision of verification services.



Solicitors and the Register of Overseas Entities



Introduction

The following guideline has been prepared to provide clarity about:

- The introduction of the Register of Overseas Entities
- How this could have an impact on Solicitor Firms
- Steps that Solicitors can take to manage the new risks posed



The Register of Overseas Entities

The Economic Crime (Transparency & Enforcement) Act 2022 introduced a new register to record ownership of UK property by Overseas Entities. The main aim of the register was to require foreign property owners to reveal their identities, to help prevent money laundering activity via UK property ownership by complex corporate structures.

Summarised, the new rules provide that:

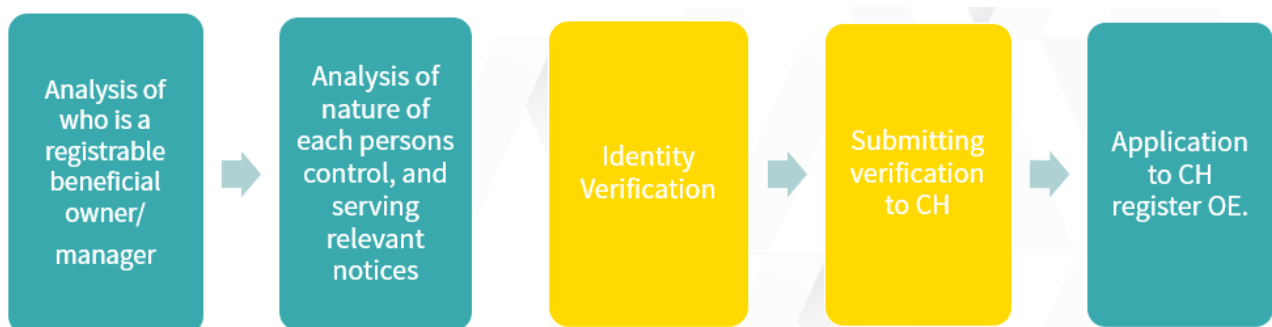
- If an Overseas Entity wishes to purchase a new UK property, HM Land Registry will not register them as the owner until they have first registered as an Overseas Entity at Companies House
- If an Overseas Entity already owns UK property, they needed to register at Companies House by 31 January 2023
- If an Overseas Entity has disposed of their UK Property since 28 February 2022, they needed to register certain details of the disposal and their beneficial owners by 31 January 2023.

Failure to register is a criminal offence.

However, an Overseas Entity cannot be registered at Companies House until its beneficial owners and managing officers have had verification checks. The verification checks must be carried out by a “UK-Regulated Agent”, who then provides a Verification Statement in support of the application (within 3 months of the application). A “UK Regulated Agent” means someone who is based in the UK and supervised under the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017. This includes legal professionals, accountants, financial institutions, estate agents and letting agents.

Once registered, the Overseas Entity is under an obligation to update the information annually.

Overview of Process



1. Not every beneficial owner needs to be registered. Before even commencing the verification checks, an **analysis needs to be carried out as to who the company's beneficial owners are, and whether or not they are registrable**. This will not always be straightforward. For example, there are different considerations and requirements depending on whether the beneficial owner is an individual, legal entity, government or public authority, or if they are trustees of a trust, members of a partnership, unincorporated association or other **legal entity**. Further, someone could be a registrable “beneficial owner” if they “**have the right to exercise or actually exercise significant influence or control**”, which would include individuals or companies with influence that do not appear on official documents at all. The Economic Crime (Transparency & Enforcement) Act 2022 should be closely considered, alongside BEIS Guidance for the Registration of Overseas Entities on the UK Register of Overseas Entities.
2. The Overseas Entity needs to send an information notice to any person it knows or has reasonable cause to believe is a beneficial owner (or someone else who they believe knows the identity of a beneficial owner). That person needs to confirm or correct the information in the notice and supply certain information. If they do not respond, they could be committing a criminal offence.
3. The information provided by the Overseas Entity needs to be verified by a UK Regulated Agent. The agent must:
 - a. Obtain an agent assurance code from Companies House. Overseas Entities cannot be registered without a code.
 - b. Check the **information as to individual's identities, and whether they are a beneficial owner**.
 - c. **Ensure they are “verifying” based on documents or information obtained from a reliable source** which is independent of the person whose identity is being verified.
 - d. Sign a verification statement to that effect.
4. The verification needs to be submitted to Companies House by the UK Regulated Agent. If a solicitor makes an inaccurate statement at this point, they are at risk of committing a criminal offence.
5. The Overseas Entity can apply to be registered at Companies House. This needs to be within 3 months of the verification.

Greater Risks to Solicitors

Solicitors (and particularly, those who are involved in Property, Trusts or Corporate work) may be asked to assist clients with registration of Overseas Entities, providing verification services or both.

This exposes solicitors to a number of new risks:

- It is a new regime, and there is a great deal of uncertainty as to how solicitors can best protect themselves.
- There are criminal penalties if they get it wrong.
- **The Law Society's Guidance note** is very clear that it considers “*any law firm acting as a verifier will face significant challenges and expose itself to significant risk, including possible criminal prosecution, regulatory sanction, and reputational damage*”.
- The checks and verifications, and definitions of key terms are different to those contained in the Money Laundering Regulations. This regime is different, and the documentation and checks demanded by the rules are more onerous. From our discussions with our insureds, this was not immediately apparent to all solicitors.
- **Solicitors seem to be unsure if it is something they “should” be offering**. The Law Society guidance is clear that these services should only be offered where a firm has “specialist expertise”.

LOSS PREVENTION STANDARDS

- There is client pressure on solicitors to carry out this work even where they lack the expertise – clients are under threat of a criminal prosecution themselves if they do not register, and might naturally expect their trusted legal advisors to be step in to resolve this.
- Financial incentivisation in difficult financial times – there is currently very little competition for this work, and firms who do choose to offer it are able to charge a premium rate. **The temptation to “overstretch” and expose themselves to criminal liabilities could be high.**
- If the work is carried out, but takes too long, solicitors could be liable for damages arising from associated delays/costs

Even where solicitors choose to not provide verification or registration services, they may still be exposed to indirect risks such as:

- Clients alleging they were not fully advised of the need for verification at the outset of a transaction and this causing delays/aborted costs
- Solicitors providing recommendations or endorsements of poor external verification services

How can solicitors manage the new risks posed?

When considering whether or not to offer these services, solicitors should:

- Be aware that the requirements and relevant definitions are different to the Money Laundering Regulations, and more onerous.
- Consider whether they can demonstrate specialist expertise in this area.
- Carefully consider what information they would be able to verify; and the circumstances in which they would be prepared to do so.
- Consider whether they need to advise on the operation of laws in the overseas jurisdiction (for example, when considering beneficial ownership of complex corporate structures or trusts), and if they have the appropriate qualification to do so.
- **Be mindful that the vast majority of firms are not prepared to offer these services, and it is not the “industry norm”.**

Where solicitors decide they are prepared to offer verification services, they should:

- Prepare clear policies, setting out unambiguous and strict limits on what services the firm is or is not prepared to offer, and to whom they might be offered.
- Consider limiting the individual employees who are authorised to carry out this activity, and that they Ensure that the policy is regularly reviewed to ensure it remains in line with the most recent Law Society Guidance, as and when it is updated.
- Are of sufficient seniority.
- Ensure all practitioners considering undertaking verification services understand the potential criminal offences they are subjecting themselves to, and that they should not undertake this activity if they are uncomfortable.
- Only verify information that is within their actual knowledge or is based on a reliable and independent source, and not information that has been obtained from the party requiring verification.
- Ensure the file contains a full audit trail, and clear evidence base for the verification, which is kept for a minimum of 5 years.
- Ensure their Letters of Engagement clearly set out what services they are and are not providing, and specifically refer to the potential timeframes, and duty to update the register annually.
- Ensure that there is enhanced supervision and file auditing of any solicitor conducting these services.
- Keep central records of all verifications provided.

Where solicitors decide they will not provide verification services, they should still:

- Ensure all employees are aware of the policy, and the reasons for it.
- Make clients aware of the need for verification services where required, and clearly set out in the engagement letter that the firm is not able to provide them, and the potential effect on transaction timeframes.
- Exercise caution if directing clients to external verification services, or when offering recommendations. A full list of agents is available here: [List of UK-regulated agents who can complete verification checks on beneficial owners of an overseas entity - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/list-of-uk-regulated-agents-who-can-complete-verification-checks-on-beneficial-owners-of-an-overseas-entity)

Checklist

A Verification Services Checklist is presented in Appendix 1 which can be tailored to your own organisation.

Specialist Partner Solutions

Aviva Risk Management Solutions can offer access to a wide range of risk management products and services at preferential rates via our network of Specialist Partners.

For more information please visit:

[Aviva Risk Management Solutions – Specialist Partners](#)

Sources and Useful Links

- [Economic Crime \(Transparency & Enforcement\) Act 2022](#)
- [BEIS Guidance for the Registration of Overseas Entities on the UK Register of Overseas Entities](#)
- [Economic Crime \(Transparency and Enforcement\) Act 2022 Law Society guidance for solicitors concerning verification](#)

Additional Information

To find out more, please visit [Aviva Risk Management Solutions](#) or speak to one of our advisors.

Email us at riskadvice@aviva.com or call 0345 366 6666.*

*The cost of calls to 03 prefixed numbers are charged at national call rates (charges may vary dependent on your network provider) and are usually included in inclusive minute plans from landlines and mobiles. For our joint protection telephone calls may be recorded and/or monitored.

Register of Overseas Entities Verification Services



Office	
Date	
Completed by (name and signature)	

	Whether or not verification services are being offered:	Y/N	Comments
1.	Are all fee earners aware of the firm's policy on verifications services, and the reasons for it?		
2.	Are clients being made aware of the need for verification services at the outset of a matter when required, and the possible effect on transaction timeframes?		
3.	Does the engagement letter clearly set out whether or not the firm is able to provide these services on all instructions where this is potentially relevant?		
4.	How do you exercise appropriate caution in directing clients to external verification services or when considering offering recommendations?		

	When considering whether or not to provide verification services:	Y/N	Comments
5.	Are you aware of the differences in the requirements and definitions between Verification services and the Money Laundering Regulations?		
6.	Can you demonstrate specialist expertise in this area?		
7.	Have you carefully considered what information you would be able to verify and the circumstances in which you are prepared to do so?		
8.	Do you need to advise on the operation of laws in the overseas jurisdiction. If so, do you have the appropriate qualification to do so?		

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	Where you are providing verification services:	Y/N	Comments
9.	Do you have unambiguous policies in place, setting out clear limits on the services that are being offered? Is this regularly updated in line with the most recent Law Society Guidance?		
10.	Are there limits on the individual employees who are authorised to conduct this activity, and are you satisfied they of sufficient seniority, with specialist expertise?		
11.	How have you ensured that all practitioners considering undertaking verification services understand the potential criminal offences they are subjecting themselves to, and that they can decline to undertake this activity if they are uncomfortable?		
12.	Do you have safeguards in place to ensure and check that practitioners are only verifying information that is within their actual knowledge or is based on a reliable and independent source?		
13.	Does the file have a full audit trail and clear evidence base for the verification, to be kept for a minimum of 5 years?		
14.	Does your Letter of Engagement clearly set out what services you are and are not providing, and specifically refer to the potential timeframes, and duty to update the register annually?		
15.	Is there enhanced supervision and file auditing of any solicitor conducting these services?		
16.	Do you keep central records of all verifications?		

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