Jersey Funds for UK Real Estate Investment

Jersey Finance
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Jersey is one of the world's leading international finance centres and has been at the forefront of global finance for more than 50 years.

It continues to be a jurisdiction of choice for fund structures holding UK real estate, both commercial and residential with this success resting on a number of key factors:

- Politically and financially stable – no direct Brexit impact on financial services products
- Proactive adoption of developing global regulatory and tax standards
- Frequently chosen by the global investor community for UK real estate investment
- London time zone and regular travel connections
- Flexible legal and regulatory regimes and structures (funds; JPUTs; J-cos; partnerships)
- Tax transparent structures: essential for tax-exempt investors
- A jurisdiction of genuine substance (recently EU 'white-listed')
- Many service providers expert in managing and administering UK real estate
- EU and 'rest of world' market access without full AIFMD compliance costs

Figures in the latest Monterey Insight Jersey Fund Report 2019 show that for Jersey's funds industry as a whole, as of 30 June 2019, total net assets stood at US$482.2 billion. This was up 17% on 2017 and the highest level ever recorded.

Based on the funds surveyed for that report:

- Real estate as an asset class represented more than US$69 billion of the total net asset value
- There were 206 RE funds in Jersey focussing on UK real estate, with a combined net asset value of over US$63.5 billion

In fact, in 2020 around 36% of the constituent funds quoted on the AREF/IPD UK Quarterly Property Fund Index, made use of a Jersey structure.

Outside of the funds sector, research by Capital Economics on Jersey's value to Britain shows that Jersey is home to more than £600 billion in corporate asset vehicles. Around 80% of that is thought to be invested in real estate, with a strong emphasis on UK commercial real estate.

Case studies

Jersey has played a key part in a number of significant real estate deals. In 2017, the Jersey arm of the law firm Ogier, alongside Berwin Leighton Paisner as lead counsel, advised CC Land on its £1.15 billion acquisition of London's iconic 'Cheesegrater' building in one of the biggest single asset sales in the city's history.

This was followed by Ogier, working with Mayer Brown, on the purchase of the London skyscraper – the Walkie Talkie – by the LKK Health Products Group for more than £1.25 billion.

In 2018, Mourant's Jersey office advised the National Pension Service of the Republic of Korea and its listed investment vehicle on its acquisition of the Goldman Sach's European headquarters in London, valued at £1.2 billion. This was the single largest office deal in London that year.

Mourant also provided Jersey advice to listed Belgian healthcare real estate client, Aedifica, on its acquisition of a portfolio of 93 care home properties across England for approximately £450 million from Lonestar. The deal marks Aedifica's entry into the UK market, making it the fourth country in its portfolio. The UK portfolio consists of 91 locations with a total capacity for more than 5,700 residents.

Why Jersey?

A leading funds jurisdiction

Jersey is one of the world's leading funds jurisdictions, with more than half a century's experience in structuring, managing and administering funds, and has seen the number of Jersey-based fund promoters almost double in the last five years.

Jersey offers exceptionally high standards of service and governance. It also has a large pool of expertise, including a wealth of professional non-executive directors with extensive knowledge of funds across a variety of asset classes.

Tax neutrality

Jersey is a tax-neutral jurisdiction for international business. This makes Jersey's funds solutions far less complex than in other jurisdictions in that it offers:

- a simple tax regime
- operational flexibility, with less complexity
- no necessity for complex tax structuring
- UK income tax transparency through Baker Trust structuring of property unit trusts
- UK capital gains tax (CGT) transparency for Jersey funds and Jersey property unit trusts (JPUTs) through exemptions and elections

Flexible funds regulation

Jersey offers a wide and flexible spectrum of fund regulation, from highly regulated funds for retail investors through to unregulated funds for highly sophisticated investors. This allows managers to tailor their fund structure to their specific capital raising needs.

The Jersey Private Funds (JPF) regime is particularly popular, offering a simplified, 48-hour, regulatory regime for funds marketed to no more than 50 sophisticated investors. This new product has experienced strong take-up, with more than 200 JPFs having now been established since 2017.

Jersey vehicles holding a single real estate asset do not have to be regulated as funds in Jersey, and often JPUTs are established for exactly this purpose, requiring only a simple Jersey Financial Services Commission (JFSC) consent for the issuance of their units.

Access of Jersey funds to professional investors throughout Europe continues to be available through local national private placement regimes (NPPRs).

And, because Jersey is not part of the EU, for those Jersey funds and Jersey managers that target 'rest of the world' (ex-EU) investors, the requirements of the EU's Alternative Investment Fund Managers Directive (AIFMD) will not apply.

Jersey regulatory classifications provide a 'safe harbour' with up to three-day approval from the JFSC for the majority of non-retail funds.

Structuring options

Jersey offers a full range of structuring options suitable for UK real estate investment, from unit trusts to partnerships and corporates (including cell companies).

JPUTs

JPUTs are frequently used to acquire and hold interests in UK commercial real estate. Simplicity from an administrative and tax perspective, combined with the flexibility to tailor the terms of the trust instrument to meet commercial and operational requirements, are key to the JPUT's popularity and mean that it is a very familiar structure to principals, legal advisors, investors and lenders.

A JPUT is a trust and so, unlike a company, it does not have separate legal personality under Jersey law. The assets of the JPUT are held on trust by a trustee on behalf of unitholders, who will hold units in the JPUT that correspond to a beneficial interest in the underlying assets. So, while the unitholders will be the beneficial owners of the JPUT's assets, the trustee will be the legal owner.

As regards taxation of income, JPUTs are often structured as 'Baker Trusts' so as to be transparent for income. This means that that income does not form part of the trust assets and is taxed directly in the hands of the investors. This offers practical and cost benefits by reducing the administrative burden on the trustee. This feature of JPUTs also forms a key consideration for structures involving international investors and institutional, tax-exempt investors such as pension funds and sovereign wealth funds.

As regards capital gains, JPUTs may be structured to make a transparency or exemption election for UK CGT purposes, under the new rules for non-resident collective investment vehicles (CIVs) that came into effect in April 2019. Indeed, the transparency election was specifically designed by HMRC with JPUTs in mind. Both elections have the effect of preserving the tax neutrality of JPUTs for gains, shifting taxation of gains to the level of the investor.

UK REITs

While JPUTs have long been a structure of choice for UK real estate assets, the use of a Jersey company qualifying as a UK real estate investment trust (REIT) is a more recent trend, which has been gaining strongly in popularity. This solution is expected to benefit from changes to the UK's CGT regime for non-residents, effective from April 2019.

A UK REIT is a listed closed-ended company, which owns and manages commercial and/or residential property on behalf of its shareholders. There has been increased investor interest in the UK REIT product generally, given these products tend to provide a secure and stable income stream over a long period of time. It is a good alternative to other real estate structures given that it is tax exempt on its rental income and gains from UK property investments, provided that several qualifying conditions are met. While UK REITs must be tax resident in the UK, they can be incorporated in other jurisdictions such as Jersey.

By utilising a Jersey corporate structure and our leading fund regime, a UK REIT can provide the ideal vehicle for institutional investors and fund managers to structure their property investment into the UK.

Jersey structures offer key advantages

Familiar yet flexible company law

Jersey's company law is based on UK company law but is more flexible in certain key aspects that are relevant to REITs, such as the ease by which distributions can be made.

Structuring options

Jersey offers traditional limited companies as well as protected and incorporated cell companies, which may be useful for ring-fencing REITs.

Regulatory flexibility

Jersey's range of regulatory options allows managers to choose a funds regime suited to their target investors. These regimes are overseen by a pragmatic, approachable and responsive regulator.

Local expertise

Jersey is home to globally recognised administrators with expertise in UK real estate; the 'big four' accountancy firms have large offices on the Island and all of the principal local law firms have specialists with experience in launching UK REITs.

Access to listing on TISE

The International Stock Exchange (TISE), based in the Channel Islands, is a recognised exchange for the purposes of the UK REIT regime and offers a flexible, quick and cost-effective alternative to a London listing. There are currently more than 70 REITs listed on TISE.

UK tax: navigating the changes

Changes to non-resident CGT for UK real estate holdings, coupled with the transition to corporation tax for non-resident landlords, are effective from April 2019 and April 2020 respectively. These changes represent a significant shift for non-resident structures, abolishing the annual tax on enveloped dwellings (ATED) regime and introducing a single harmonised regime applicable to both residential and commercial real estate.

Despite this shift, the rationale for structuring through Jersey still holds good for the following reasons:

- The transparency election for closely-held CIVs, such as JPUTs, provides the ability to sustain the CGT transparency of JPUTs and was designed with this type of vehicle in mind. There are only a few other vehicles in other jurisdictions which offer this same blend of simplicity and transparency, with no direct equivalent available in UK law currently.
- The exemption election for widely-held CIVs provides the ability to achieve group transparency treatment for tax purposes similar to UK vehicles, such as exempt unauthorised unit trusts (EUUTs) and property authorised investment funds (PAIFs), but with fewer structuring and regulatory restrictions.
- Jersey administrators have the expertise and connections to assist with making elections, carrying out monitoring and compliance with reporting requirements applicable to CIVs.
- Enhancements to the UK REIT regime (including where structured using Jersey companies) extend the existing CGT exemption to disposals of shares in underlying UK property-rich companies, levelling the playing field with CIVs.
- Anti-forestalling measures, back-dated to November 2017, together with the UK tax condition applicable to the exemption election, limit the ability to (re)structure property holdings through vehicles in double-tax treaty jurisdictions such as Luxembourg.

These factors, coupled with unparalleled legal and regulatory flexibility and cost-effective vehicles, mean that Jersey continues to offer a compelling choice for structures to hold UK commercial property.

Regulatory certainty

BEPS, the EU and substance

By working with key stakeholders and retaining a keen focus on the international transparency landscape, Jersey is responding pro-actively to the OECD's Base Erosion and Profit Shifting (BEPS) initiative and, largely because of the substantive and skilled nature of Jersey's funds management industry, is in a better place to respond to it than jurisdictions where local substance and experience is relatively lacking.

Jersey is fully committed to developing international tax standards. In 2016, the Island became a BEPS associate and member of the BEPS inclusive framework. It has consistently been fully supportive of the BEPS project and is actively implementing BEPS standards, being among the first to introduce country-by-county reporting legislation, for instance. In December 2017, Jersey became only the third jurisdiction in the world to have completed domestic ratification of the OECD's Multilateral Instrument under Action 15.

The requirements of BEPS and the AIFMD have led to an increased focus on demonstrating substance from a governance perspective. Jersey has always been a jurisdiction of substance, with an expert finance sector employing more than 13,700 people locally. In 2019, it introduced specific substance legislation, which is the product of a collaborative effort between the Crown Dependencies and EU institutions. Fund vehicles themselves are outside the scope of this legislation, and the requirements, applicable to managers help to bring clarity around substance requirements while ensuring that Jersey continues to meet the highest international standards of tax compliance.

Having been 'white-listed' by the European Union in March 2019, in the context of its economic substance arrangements, Jersey funds and their managers, investors and advisers can be confident that Jersey is well placed to meet new BEPS-related requirements.

Brexit: the no-change option

Jersey's funds have a large base of UK investors and the British Government has already stated that the relationship between the UK and Jersey will not be impacted by Brexit. This position has been further cemented with the signing of a new Memorandum of Understanding (MoU) between the JFSC and the UK's Financial Conduct Authority, giving certainty to fund managers around accessing UK investor capital.

When it comes to the EU, Jersey is in an equally strong position. Jersey has never been part of the EU but has excellent, long-standing bilateral relationships with its member states and established European market access arrangements for its asset management industry, independent of the UK, through NPPRs. In addition, Jersey is well primed to receive the EU passport, should it be extended to third countries, having been positively assessed by the European Securities and Markets Authority (ESMA).