Jersey Funds for
UK Real Estate Investment

Jersey Finance
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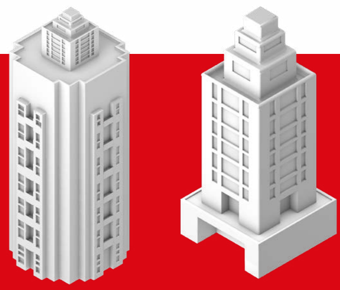


Jersey is one of the world's leading international finance centres and continues to be a jurisdiction of choice for fund structures holing UK real estate.

Jersey is a jurisdiction of choice for both commercial and residential UK real estate 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 2023 show that for Jersey's funds industry as a whole, has a total net assets stood at $593.5bn. The funds surveyed for that report:

- Real estate as an asset class represented more than US$77.9bn of the total net asset value
- There were 275 Jersey domiciled RE funds of which 153 are solely focussed on UK real estate, with a net asset value of US$41.8bn.

In December 2023, 29% of the constituent funds quoted on the AREF/IPD UK Quarterly Property Fund Index, made use of a Jersey structure.

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. The TISE is home to over 40% of all UK REITs.

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 product, launched in 2017, has experienced strong take-up, with more than 664 JPFs having now been established (September 2023).

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.

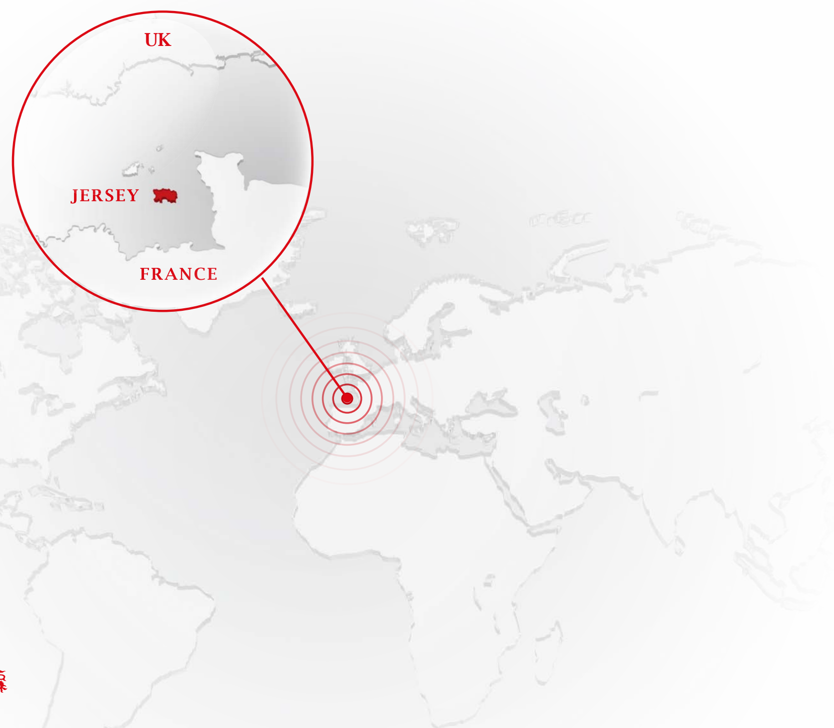
UK tax: navigating the changes

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.



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 transparency or exemption 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.

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 has not been 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).

Case Studies

Jersey has played a key part in a number of significant UK Real Estate deals. Here are some examples from professional services firms explaining how Jersey has been used in their structuring:

Carey Olsen

In the largest UK commercial real estate deal of 2020, at £552 million, Carey Olsen advised Singaporean property developer and asset manager Sun Venture on the launch of their first Jersey fund, a Jersey limited partnership, established under the Jersey Private Fund regime. The structure acquired 1 & 2 New Ludgate, London.

They also advised Blackstone Group on the Jersey aspects of its acquisition of a $4.7 billion IQ Student Accommodation, which included two Jersey Property Unit Trusts, and advised Blackstone Capital Partners and Blackstone Real Estate in connection with their proposed acquisition of Bourne Leisure, a premier UK holiday company which operates through its three brands, Haven, Butlin's and Warner Leisure Hotels.

Using a Jersey holding structure to acquire the Guernsey target company with a Jersey limited partnership and a number of Jersey companies, Carey Olsen also advised M7 Real Estate on the financing aspects of the acquisition and the reorganisation of the Mailbox holding structure, adding a UK REIT for the acquisition of The Mailbox, Birmingham, the UK's largest mixed-use asset outside of London.

Mourant

Mourant advised DTZ Investors on the establishment of the world's first unlisted collective investment vehicle for professional investors investing in large scale purpose-built London co-living buildings. The fund was set up as a Jersey private fund by DTZ Investors in partnership with the global co-living pioneer, The Collective, with a target size of £1 billion which will invest in 6 to 10 assets in London. The collaboration is based on a shared vision and belief in creating co-living places which deliver a meaningful and tangible social and environmental impact.

Mourant also advised The Employees Provident Fund of Malaysia on its Jersey based UK REIT, which included the recent migration of 13 companies to Jersey from Luxembourg. The REIT holds a portfolio of UK hospitals valued at over £2 billion. Additionally, Mourant advised the Singaporean listed Suntec Real Estate Investment Trust on its inaugural investment in the UK, being a £430m acquisition of a 50% interest in The Nova Building, Victoria, London. Furthermore, Mourant advised Medical Properties Trust on the £800m acquisition of a portfolio of select UK behavioural health facilities from Priory Group.

IQ-EQ

IQ-EQ created a bespoke structure for the purpose of acquiring and operating 16 student accommodation properties in the UK. A joint venture between a Sovereign Wealth Fund and a successful PBSA provider, the structure includes: a Jersey limited partnership, a JPUT, two Jersey SPVs as trustees, and two Jersey SPVs as unitholders.

Similarly IQ-EQ also created a structure for a UK based investment manager who partnered with institutional investors and family offices to deliver investment returns by acquiring and enhancing under-developed office buildings in fringe London. The investments are structured through a limited partnership structure which has been established as a Jersey private fund.

These structures excellently demonstrate the benefit of using Jersey vehicles to hold UK property.

Ogier

In one of the first major real estate transactions to take place under the lockdown imposed as a result of the COVID-19 pandemic, Ogier acted for property investment company Urban Logistics REIT plc. Through the acquisition of a Jersey property unit trust, this latest portfolio purchase by Urban Logistics comprises seven sites, with an average warehouse size of 84,105 sq ft, located in Aberdeen, Huntingdon, Blackpool, Ipswich, Newmarket, Plymouth and Rotherham.

Ogier also represented EPIC Management Limited in relation to the £335 million sale of a portfolio of eight UK logistics investment properties to real estate funds managed by Blackstone. Working with Taylor Wessing, Ogier advised in connection with five of these properties (including Tesco and Homebase) which were held via five Jersey property unit trusts.

Most recently, Ogier has advised Cain International, a privately held real estate investment firm, in the final closing of the Cain European Real Estate Opportunity Fund I, raising €324 million in investment commitments. Advised by a UK Real Estate investment adviser, the fund's capital has been deployed across several UK and European gateway cities.