

Converting Guernsey and Jersey entities holding UK real estate into REITs

Service area / [Investment Funds, Listing Services](#)

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Guernsey and Jersey entities are frequently used for investment into UK real estate – and many international institutions are carefully considering how their existing and future investments into the UK should be structured.

Carey Olsen has recently advised a number of Guernsey and Jersey structures (including both regulated funds and vehicles which had originally been established as private structures) on their conversion into REITs. We have also been active in liaising with major UK law and accountancy firms and The International Stock Exchange (“TISE”) in developing innovative approaches to REIT structures.

The purpose of this briefing is to highlight the potential benefits of REITs for institutional investors in UK real estate and outline how existing Guernsey and Jersey entities can be converted so as to enjoy REIT status.

What is a REIT?

A REIT is essentially a listed closed-ended company that owns and operates a UK property rental portfolio, which can comprise commercial, residential or any other type of commercially let property. The principal attraction of the REIT regime is that a qualifying company is not liable to pay UK corporation or capital gains tax on the profits (including rental income) arising from its property investments.

We have set out at the end of this note a list of the key requirements that must be satisfied in order to qualify for REIT status. So long as those criteria are satisfied, any Guernsey or Jersey company holding a portfolio of UK real estate is capable of a conversion into a REIT. Further, many existing Guernsey or

Jersey unit trusts are limited partnerships which directly or indirectly invest into UK real estate are capable of being restructured into REITs.

Why investors may wish their existing Guernsey or Jersey entities to convert into a REIT

REITs enjoy special treatment from a UK tax perspective and many existing structures could potentially obtain improved UK tax treatment by converting to REIT status – together with other benefits such as the potential for investors to access increased secondary liquidity and raise external funds through an IPO or placing of the REIT shares.

Conversion to a REIT

Typically, there will be four key steps in converting a Guernsey or Jersey vehicle into a REIT:

- pre-conversion restructuring- any necessary changes are made to the structure so as to ensure that a) the REIT requirements set out below relating to e.g. portfolio composition and debt levels are met and b) where necessary, a closed-ended suitable for listing is interposed at an appropriate level;
- where necessary, a regulatory application to the Guernsey or Jersey Financial Services Commission is made such that the company to be listed obtains appropriate regulated status (i.e. as a Jersey Listed Fund or a Guernsey Authorised/Registered Closed-Ended Fund);
- the tax residence of the company to be listed is moved to the UK (this is possible for both Guernsey and Jersey companies through the relocation of central management and control); and

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- an application to list the shares of the entity is made to a recognised stock exchange. TISE listings can typically be effected more quickly and economically than listings on other recognised stock exchanges- further information on the process and costs of TISE listings can be found [here](#).

Provided that at the point of listing the company meets all the other requirements to qualify as a REIT, it can submit a notice to HM Revenue & Customs confirming that it elects to join the REIT regime. The notice must specify at the date on which the company wishes to join the regime and cannot be backdated.

Electing for REIT status will not otherwise change the legal status of the company or its jurisdiction of incorporation. The company would continue to be regulated (as applicable) in Guernsey or Jersey (as long as it remains incorporated and administered in that Island and complies with applicable regulatory laws and policy).

Advantages of Guernsey and Jersey structures

By keeping structures in Guernsey and Jersey, promoters and investors may benefit from a number of advantages including:

Jurisdictional standing

Each Island is well-established as a key international finance centre for the structuring of business and operates the highest levels of compliance with international anti-money laundering and anti-terrorist-financing standards which has been acknowledged by independent assessments from some of the world's leading international finance and tax bodies.

Expertise in listed funds

Each Island has robust and mature legal, finance, corporate and administration sectors with many decades of experience in global business. A large proportion of both existing REITs and listed funds generally are based in Guernsey and Jersey.

Flexible corporate law and regulation

In Guernsey and Jersey, corporate law is based on UK corporate law but with certain enhancements that allow for a more flexible and practical regime. It therefore allows UK business to operate within a familiar legal landscape but to operate with greater freedom. Some key highlights include:

- light-touch capital maintenance regimes (particularly helpful given the 90% distribution requirement noted below);
- simple processes for share repurchases, redemptions and reductions of capital;
- no statutory pre-emption on share issuances or transfers;
- no financial assistance rules;
- the ability to choose from a range of accounting standards;
- a range of options with respect to corporate reorganisations, including true legal mergers, migrations/continuations and in due course demergers.

Furthermore, Guernsey and Jersey listed funds are regulated on a light-touch basis and can qualify as AIFs for EU AIFMD Directive purposes where marketing into the EU/EEA is desirable through private placement regimes.

Key requirements to qualify as a UK REIT

The REIT must be a closed-ended company with a single class of ordinary shares (save for non-participating fixed-rate preference shares) – the company does not however need to be incorporated in the UK and may therefore be incorporated in Guernsey or Jersey.

The REIT must be tax resident only in the UK – it is straightforward and common for Guernsey and Jersey companies to become UK tax resident, provided that the company is centrally managed and controlled in the UK. This is usually accomplished by a majority of the board being comprised of UK residents and board decisions being taken in the UK.

The REIT must be listed on a recognised stock exchange – for these purposes, TISE is a recognised stock exchange. Moreover, TISE has recently updated Chapter 7 of its Listing Rules in order to streamline the process for listing a UK REIT and now hosts a significant proportion of all listed UK REITs.

The REIT must not be a close company for UK purposes – this broadly means that the REIT cannot be controlled by five or fewer participators though there are various exemptions for institutional investors and sovereign wealth funds. The REIT regime allows three accounting periods to satisfy this requirement.

The REIT must not be party to any profit participating and other types of prohibited loans

The REIT must distribute property income – 90% of the income of a REIT's property rental business must be distributed for the profits of the business to be exempt from tax. There is no requirement for the company to distribute any gains on disposal of properties that are part of the business. The 90% distribution requirement may be satisfied by using stock/share dividends.

REIT business requirements – the REIT's business must focus on real estate. This will be satisfied where at least 75 per cent of the REIT's activities by reference to income and asset values relate to property investment business. In addition, the diversification rules require the business to hold at least three properties, each representing no more than 40 per cent of the total value of the property assets in the business.

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About us

- Global offshore footprint
 - Market leading
 - 50-plus partners and 200 lawyers
 - Leading offshore adviser to London listed companies
 - The leading TISE listing sponsor
 - Extensive REIT experience
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REITs and experience

Carey Olsen has acted in relation to numerous high-profile REIT transactions. Our advice has covered the entire scope of typical REIT transactions, from initial structuring, obtaining relevant regulatory clearances, corporate restructuring, financing, listing and launch.

Selected experience includes:

- Advising British Land on the launch of Broadgate REIT as a new holding company for their joint venture with GIC as 50:50 owners of the Broadgate development in London. Broadgate is a 30 acre fully managed estate in the heart of the City of London.
- Advising on the launch of GCP Student Living plc, the UK's first education-property focused REIT, whose shares were admitted to trading on the Specialist Fund of the London Stock Exchange and listed on the Official List of TISE.
- Advising on the launch of Regional REIT Limited, a Guernsey REIT on the Main Market of the London Stock Exchange, managed by Toscafund and London & Scottish Investments, targeting investments in commercial property in major regional centres outside London.
- Advising on the launch of GRIP REIT plc, and its listing on TISE, a joint venture REIT established by a UK institutional real estate investor and a large pension fund to invest in private rented sector assets.
- Advising on the launch of Bricklane Residential REIT plc, and its listing on the TISE, targeting investments in residential property outside London.

More generally:

- Carey Olsen is a market leading offshore law firm operating from the key offshore financial centres of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey and Jersey. We also have an established presence in Cape Town, London, Singapore and, more recently, Hong Kong.
- Our firm offers a partner-led service. Our 50-plus partners are supported by over 400 people and we have 200 lawyers across our offices. We provide legal services in relation to all areas of corporate and finance law, investment funds and dispute resolution as well as to private clients, and we are consistently the firm of choice for our clients and for advisers who refer work to our jurisdictions.
- We advise more London Stock Exchange-listed clients than any other offshore law firm (Corporate Advisers Rankings Guide, 2016) and regularly advise on listings on the London, NYSE, HKEx, Euronext and TISE markets.
- Carey Olsen is the leading listing sponsor on The International Stock Exchange (both by new issuers and number of new securities issued) having sponsored more TISE listings than any other listing sponsor. Figures released by TISE reveal that more than 470 securities were listed on TISE in 2016, with Carey Olsen working with issuers to sponsor more than one-third of the total number of listings achieved.

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