



Jersey - the REIT
choice for UK
property investment

CAREY OLSEN

Introduction

We have prepared this note in order to set out some initial information and considerations in relation to the use of a real estate investment trust (“REIT”) which will list on The International Stock Exchange (formerly known as the Channel Islands Securities Exchange) (“TISE”).

In summary, this note includes information in relation to:

- the UK REIT regime;
- advantages of using a Jersey company as the REIT vehicle;
- TISE listing process and listing document requirements;
- TISE’s continuing obligations requirements; and
- Carey Olsen and our REIT experience.

We trust that the above will be of assistance.

“It is like dealing with a magic circle law firm outside London.”

Chambers and Partners UK

What is a REIT?

Background and benefits

The REIT regime was introduced in the UK in 2007 in order to encourage investment in the UK real estate sector. Take-up beyond the largest property investment companies was relatively limited in the early years of the regime due to the state of the general economic climate and a perceived burden in complying with the REIT regulations.

Since the implementation of certain material enhancements to the regime in 2012 (including the abolition of a 2% entry charge on seeding assets and a general simplification of the qualifying conditions), numbers of new and converting REITs have continued to rise steadily.

The REIT is now an important and popular structure utilised by various leading real estate companies.

The principal attraction of the regime is that a REIT is not liable to pay UK corporation or capital gains tax on the profits (including rental income) arising from its property investments.

The following is by way of background only and is intended to provide a high level summary of the key qualifying conditions. Specific English legal and tax advice should be taken to confirm the precise requirements and ensure that the proposed structure complies with the applicable REIT regulations and guidance and to obtain all necessary clearances and confirmations from HMRC prior to implementation.

Qualifying conditions

In order to qualify as a REIT there are a number of conditions that must be met, certain of which are set out as follows.

The REIT must be a company

The company does not however need to be incorporated in the UK and may therefore be incorporated in Jersey. Many UK REITs are structured as Jersey companies.

The REIT must be UK tax resident

Jersey companies are by default tax resident in Jersey but it is straightforward and common for Jersey companies to become UK tax resident, provided that the company is centrally managed and controlled and actually resident for tax purposes 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 (September 2016) updated Chapter 7 of its Listing Rules in order to streamline the process for listing a UK REIT and to remove certain previous listing conditions.

Please refer to page 3 of this note for further information in relation to TISE and the listing process.

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, sovereign wealth funds and the like. The REIT regime allows three accounting periods to satisfy this requirement.

The REIT must not be an open-ended investment company and the only shares the REIT can have in issue are a single class of ordinary share capital and various classes of relevant preference shares

This is a common structure for Jersey companies, which in this context may operate exactly like a UK company.

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

Other conditions / considerations

Business conditions

Naturally 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.

90% distribution requirement

The REIT must distribute as property income dividends 90% of the income of its property rental business 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.

None of the above conditions cause any material issues from a Jersey legal, regulatory or TISE perspective.

Why use a Jersey company?

Key advantages of Jersey

- Jurisdictional standing
- Flexible corporate law and regulation
- Robust court system
- Choice of fast-track regulatory regimes
- Tax neutrality
- Likely to be unaffected by Brexit

What follows is a snapshot of some of the key advantages of selecting a Jersey company as the REIT vehicle.

Key advantages include:

Jurisdictional standing

Compliance

Jersey 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. Jersey was ranked by MONEYVAL (a Council of Europe body) in 2016 in the principal tier of jurisdictions assessed under the global Financial Action Task Force international standards. Jersey's excellent standing in this respect has also been acknowledged by independent assessments from some of the world's leading bodies including the Organisation for Economic Co-operation and Development (OECD).

Expertise

Jersey has robust and mature legal, finance, corporate and administration sectors with many decades of experience in global business.

Listings

Jersey companies remain an extremely popular choice for listing and holdings vehicles for global business, with many Jersey companies being listed on the UK, United States and Asian markets.

Flexible corporate law and regulation

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:

No legal requirement for Jersey resident directors

While Jersey directors are often appointed for reasons of tax residency, this is not a legal requirement and as such it is possible to appoint directors from the UK or elsewhere. This allows for a flexible approach as to management and control (see below in relation to tax domicile).

Flexible capital maintenance regime

Jersey has a much more flexible capital maintenance regime than the UK – it has no equivalent to the UK “distributable reserves” / “profits available for distribution” concepts. Subject to the board giving a 12-month forward-looking cash-flow based solvency test, a Jersey company may fund a distribution from any source other than its nominal capital account (in the case of a company whose shares have a nominal value) or any capital redemption reserve. This specifically includes the share premium account and potentially allows a loss to be run in the profit and loss account. The regime is particularly helpful given the 90% distribution requirement noted above.

In addition, redemptions or repurchases of shares may be funded from any source and Jersey also operates a dual regime with respect to formal reductions of capital which can either be sanctioned by the court or effected without any court input.

No statutory pre-emption on share issuances or transfers

No financial assistance rules

Choice of GAAP

Flexible constitution

Jersey allows great flexibility in the constitutional documents – in particular, the thresholds for special resolutions can be set at any level greater than 2/3 (the default position) and there can be different thresholds for different types of special resolution. It is also possible to hardwire into the constitution relevant investor protections and joint venture provisions as may be required.

Corporate reorganisations

Jersey allows many options with respect to corporate reorganisations, including true legal mergers, migrations/continuances and in due course will also allow demergers.

Robust court system

Jersey also has a robust court system that is experienced in complex high-value matters and that leads international developments in certain key areas. The ultimate appellate court is the Judicial Committee of the Privy Council in the UK, which is comprised of senior UK judges.

Flexible regulation

A Jersey REIT may be structured so as to fall within a choice of regulated or unregulated regimes. Regulated Jersey REITs have the ability to market to a wider range of investors and can be marketed into the EU/EEA using national private placement regimes if required.

Tax neutrality

As noted above, it is straightforward and common for Jersey companies to become UK tax resident, provided that the company is centrally managed and controlled and actually resident for tax purposes in the UK. This is usually accomplished by the articles of association of the company requiring a majority of the board to be comprised of UK residents and board decisions to be taken in the UK. As a consequence, no Jersey tax should be levied on the REIT and no Jersey tax filings should be required.

“Kate Andrews is commercial, responsive and technically excellent.”

Legal 500

Listing on TISE

TISE

- Recognised stock exchange
- Efficient process for listing REITs
- Carey Olsen Corporate Finance Limited (associated with the law firm) acts as listing sponsor

TISE listing process

TISE has recently enhanced Chapter 7 of its Listing Rules to make the listing of investment vehicles such as REITs more straightforward. Among other things, the TISE have exempted REITs from the 25% "free float" requirements (which, for other types of investment vehicle, must be held in the hands of the public).

The listing process, which would be managed by Carey Olsen Corporate Finance Limited ("COCFL") as listing sponsor, involves the following principal steps.

TISE listing stage 1: Obtaining 'in principle' consent/confirming conditions to listing are satisfied

Apply to TISE for "in principle" consent to list the REIT and satisfy conditions to listing, including demonstrating:

- experience and independence of management;
- appropriate spread of risk;
- that the securities of the company are suitable for listing;
- a minimum market capitalisation of £500,000; and
- (unless waived by TISE) that the company has prepared audited accounts which (among other things) cover at least three years and are made up to at least a date falling within 12 months prior to the date of the listing document.

TISE listing stage 2: Initial listing application (preparation)

Prepare the draft initial listing application documentation. We can make progress on this simultaneously with stage 1 above.

The initial application documents/requirements include:

- a listing application in the prescribed form;
- a copy of the listing document (marked against the Listing Rules requirements);

- payment of the initial application fee;
- letters of non-applicability and/or omission re. any non-compliant aspects of the application;
- directors' declarations in the prescribed form;
- any required annual report and accounts/statement and any required interim accounts (as to which, see below) and, where the listing document contains an accountant's report, a copy of any statement of adjustments relating to the accountant's report; and
- various ancillary documents, declarations, undertakings and notices as required under the Listing Rules.

TISE listing stage 3: Initial listing application (TISE submission)

Submit the initial listing application suite of documentation to TISE. Response times to the initial application can vary but we would expect normally to receive a response within 1 – 2 weeks or less.

TISE listing stage 4: Addressing TISE comments on initial listing application

Address TISE comments on the initial application. In our experience, we would anticipate comments to be "light touch" in comparison to a London listing with usually only one round of comments.

TISE listing stage 5: Final listing application (preparation and submission)

Prepare and submit the final listing application documentation (including with signed copies of all of the above and various other ancillary documentation) to obtain a Grant of Listing.

Listing completes at 8:00am on the day after the final application is received subject to cut-off times.

Listing document requirements

The Listing Rules detail a number of requirements as to the information that must be included in the listing document. In summary the listing document must include the following.

General rule

- All the specific information listed below; such other information as is necessary to enable an investor to make an informed assessment; any additional information required by TISE; and certain prescribed responsibility statements.

Specified information

- general information about the company, its advisers and the listing document;
- information about the company's securities (including terms and conditions of issue and distribution)/capital;
- information about the financial position of the company and its prospects (see below);
- information about the company's management, ownership and operation;
- information about certain documents which must be available for inspection; and
- relevant risk warnings and other prescribed information.

Financial information

- **Accountant's report:** covering relevant financial information where: (i) the company has traded, made any investments or taken on any liabilities; or (ii) there has been a material change in the company since its last audited accounts; or (iii) the auditors' report on the accounts is qualified, modified or not accepted; or (iv) TISE decides that an additional report is necessary. NB such a report will not be required if the company (among other things): satisfies TISE that it has set out in its audited accounts sufficient information to allow an informed assessment to be made by shareholders and this information is included in the listing document, or is newly formed;

- **Interim statement:** if more than nine months have elapsed since the end of the financial year to which the last published annual accounts relate, an interim financial statement covering at least the first six months following the end of that financial year must be included in or appended to the listing document;
- **Other consolidated statement:** a statement on a consolidated basis as at the most recent practicable date (which should be within 42 days of the listing document) of certain other material financial information including the total amount of all/any: (a) debt securities; (b) borrowings/indebtedness; (c) mortgages/charges; and (d) contingent liabilities/guarantees;
- **Valuation:** a valuation report on the company's interests in land or buildings prepared by an independent qualified valuer on the basis of the value of such interests as at a date which shall be no more than 3 months before the date of issue of the listing document reconciled with the accountant's report above – please note, the extent and nature of the valuation required can be explored with TISE in advance of listing; and
- certain other prescribed accounting and financial information.

“Alex Ohlsson has first-rate experience and very impressive knowledge.”

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TISE continuing obligations

Set out below is a summary of some of the key TISE continuing obligations.

General requirements – Company must:

- continue to comply with the conditions of listing (as summarised above);
- notify all relevant parties within 14 days of any information necessary to appraise the company, to avoid a false market and which might affect the market/price of securities;
- provide the following documents/information to the TISE (among others):
 - a. a copy of the annual report (and any separate auditors' report) and accounts, within six months of the end of the financial period to which they relate;
 - b. a copy of the interim report, within four months of the end of the financial period to which they relate;
 - c. all documents which are circulated to holders of the company's listed securities; and
 - d. any other information which changes or materially affects the company and/or the listed securities, within 14 days; and
- provide to the TISE within 14 days of request such other information as the TISE may request.

Notifiable/approval transactions – The Listing Rules also contain detailed provisions in relation to the disclosure to, and in certain cases approval by, shareholders of certain types of substantial or related party transactions. These rules are complex and require detailed analysis in the instance of any particular transaction.

TISE is entitled to require the publication of further information by and impose additional requirements on the company where it considers that circumstances so justify.

Company is required to notify TISE of the following events (usually within 14 days):

- capital changes
- corporate governance matters (e.g. change in board or agents, office, etc.; director and other interests; certain company decisions; commencement of certain liquidation events)

Directors must comply with a code of securities dealing (at least equivalent to TISE Model Code)

Company must ensure equality of treatment and timely provision of relevant information

TISE must approve certain documents prior to issue – e.g. announcements relating to the issue of securities or trading matters; takeover or similar circulars; amendments to the constitution and resolutions outside the ordinary course.

TISE must receive certain copy documents – e.g. all circulars, etc (as the same time as issued to shareholders) and all resolutions passed in general meeting (within 14 days).

Miscellaneous obligations – Company must (among other things): apply for listing of all new securities of the same class as those listed; pay annual listing fee; and respond promptly to enquiries.

Consequences of failure to comply

Failure to comply with continuing obligations may result in TISE taking enforcement action, which in the most severe cases may include suspension or cancellation of listing or referral to relevant criminal prosecution authorities. TISE retains wide discretion in relation to enforcement action.

About us

- Global offshore footprint
 - Market leading
 - 48 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 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 48 partners are supported by over 380 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.

“Robert Milner gives excellent advice, both from a technical perspective and with a view to commercial implementation.”

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Key contacts

For further information or professional advice please contact our lawyers below:



Alex Ohlsson

Partner

D +44 (0)1534 822251

E alex.ohlsson@careyolsen.com



Kate Andrews

Partner

D +44 (0)1534 822293

E kate.andrews@careyolsen.com



Robert Milner

Partner

D +44 (0)1534 822336

E robert.milner@careyolsen.com



FIND US

47 Esplanade
St Helier
Jersey JE1 0BD
Channel Islands

T +44 (0)1534 888900

F +44 (0)1534 887744

E jersey@careyolsen.com



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Visit our regulatory team at
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Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen 2017

About us

Carey Olsen is a leading offshore law firm advising on the laws of the British Virgin Islands, Cayman Islands, Guernsey and Jersey from a network of eight international offices.

We provide legal services in relation to all aspects of corporate and finance, trusts and private wealth, investment funds, insolvency, restructuring and dispute resolution.

Our clients include global financial institutions, investment funds, private equity and real estate houses, multi-national corporations, public organisations, sovereign wealth funds, high net worth individuals, family offices, directors, trustees and private clients.

We work with leading onshore legal advisers on international transactions and cases involving our jurisdictions.

In the face of opportunities and challenges, our clients know that the advice and guidance they receive from us will be based on a complete understanding of their goals and objectives combined with consistently high levels of client service, technical excellence and commercial insight.

A woman with long dark hair, wearing a grey coat, is looking down at a tablet device she is holding. She is standing in a city at night, with a blurred background of city lights and buildings. The overall scene is dimly lit, with the primary light source being the city lights and the light from the tablet.

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Partners

200

Lawyers

380

People

Contact us

Jurisdictions

British Virgin Islands

Rodus Building
PO Box 3093
Road Town
Tortola VG1110
British Virgin Islands

T +1 284 394 4030
F +1 284 494 4155
E bvi@careyolsen.com

Cayman Islands

PO Box 10008
Willow House
Cricket Square
Grand Cayman KY1-1001
Cayman Islands

T +1 345 749 2000
F +44 1481 739081
E cayman@careyolsen.com

Guernsey

PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272
F +44 (0)1481 711052
E guernsey@careyolsen.com

Jersey

47 Esplanade
St Helier
Jersey JE1 0BD
Channel Islands

T +44 (0)1534 888900
F +44 (0)1534 887744
E jerseyco@careyolsen.com

International offices

Cape Town

Protea Place
40 Dreyer Street
Claremont
Cape Town 7708
South Africa

T +27 21 286 0026
E capetown@careyolsen.com

Hong Kong

Carey Olsen (Hong Kong) LLP
Suite 4120
Jardine House
1 Connaught Place
Hong Kong

T +852 3628 9000
F +852 3628 9090
E hongkong@careyolsen.com

London

Carey Olsen LLP
8-10 Throgmorton Avenue
London EC2N 2DL
United Kingdom

T +44 (0)20 7614 5610
F +44 (0)20 7628 0652
E londonco@careyolsen.com

Singapore

Carey Olsen Singapore LLP
Level 11
Marina Bay Financial Centre
Tower 1
8 Marina Boulevard
Singapore 018981

T +65 6653 4330
F +65 6653 4331
E singapore@careyolsen.com

OFFSHORE LAW SPECIALISTS

BRITISH VIRGIN ISLANDS CAYMAN ISLANDS GUERNSEY JERSEY
CAPE TOWN HONG KONG LONDON SINGAPORE

[careyolsen.com](https://www.careyolsen.com)