

# Offshore Real Estate Holding Structures

## Offshore real estate holding structures

The use of offshore investment vehicles through which to make investments in real estate offer significant benefits to investors. These are principally fiscal efficiencies, stamp duty savings, tax transparency, increased liquidity, risk spreading and light regulation. The benefits of using a Channel Islands structure (specifically Jersey or Guernsey) include the ability to manage and control the real estate investment vehicle without suffering any local income tax or deductions for withholding. Competitive pressures on arrangers have resulted in Jersey and Guernsey holding structures being used more frequently in commercial property transactions.

The Channel Islands have developed into leading and well regulated offshore financial centres. They are less than an hour's flight from London and although the islands are dependencies of the British Crown, each island has its own government with responsibility for internal matters, including taxation.

## WHY GO OFFSHORE?

### Overview

In Jersey and Guernsey, the real estate holding structures used are primarily companies, limited partnerships and unit trusts (all of which may be established as investment funds), but with private trusts and limited liability partnerships also being used. (These are explained in more detail below in 'Structures Available').

The Ogier Group can advise on the appropriate structure from straightforward company structures established for the benefit of an individual investor wishing to maximise his return on a significant real estate investment to complex fund structures set up for institutional investors. We can also assist with the establishment and administration of each structure.

## UK Tax and Stamp Duty Savings

Although a Channel Islands real estate holding structure can be used for international real estate investments, to date, the majority of transactions have involved investment in UK real estate. The principal advantage of investing indirectly in UK real estate through a Channel Island vehicle is the mitigation of liability in respect of the following forms of UK taxation and duties:

## Stamp Duty and Stamp Duty Land Tax

Where real estate is held through a Channel Island company, as an alternative to arranging for a conveyance of the real property, shares in a holding company may be transferred without incurring any charge to stamp duty. In contrast, on a direct sale of the property by conveyance, Stamp Duty Land Tax ('SDLT') would be chargeable at rates of up to 4%. The saving to a purchaser will normally be reflected in the sale price.

Neither stamp duty nor SDLT apply to transfers of interests in unit trusts which hold UK property. The advantage of using a Channel Island unit trust over an English unit trust is the avoidance of Stamp Duty Reserve Tax at the rate of 0.5%.

Hence if it is possible to get the property into a Channel Island unit trust or company free of SDLT, the units or shares in such unit trust or company can then be sold free of SDLT.

## Income tax

Non-resident individuals and companies investing in UK real estate are charged to income tax in the UK on the taxable rental profits on a 'fiscal year' basis. The rate for a non-resident corporate investment vehicle is 22% (compared to 30% for UK-resident vehicles) and the maximum rate for a non-resident individual is 40%.

Limited Partnerships will generally be deemed to be transparent for UK tax purposes meaning that the partnership's income (and any capital gains) are deemed to arise directly in the hands of the respective limited partners and taxable in accordance with their own tax status.

Offshore unit trusts can be settled in such a way that income will be deemed to arise directly to investors who will be taxed on the basis of their own tax status.

Taxable rental profits are broadly based upon the profit established under commercial accounting principles. Deductible expenses include fees paid to UK real estate agents, fees incurred abroad on the management of the UK real estate, interest paid on loan financing, certain tax depreciation in the form of capital allowances and any other costs relating directly to the management of the UK real estate, for example, travel and subsistence costs of overseas employees, ground rent and repairs.

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Offshore real estate holding structures may be entitled to apply for the non resident landlord scheme whereby rents would be received gross of UK tax.

There are double tax treaties between the UK, Jersey and Guernsey which can be used to optimise the tax treatment of particular structures. For instance, by using a Jersey tax resident company to invest in and develop real estate in the UK. Where a Jersey or Guernsey tax resident company is used, local taxation can be kept at acceptable levels by the application of deductible expenses.

## Capital Gains Tax

An offshore company, limited partnership or unit trust will generally be exempt from capital gains tax arising on the realisation of UK investment real estate. This can be compared with a UK entity for which the sale of real estate will give rise to a potential tax charge of 30% of the gain.

## Inheritance Tax

UK domiciled individuals pay inheritance tax at rates of up to 40% on their worldwide estate. UK non-domiciled individuals, on the other hand, pay inheritance tax only on their UK assets.

Companies do not pay Inheritance Tax and the use of an offshore holding structure can be used to transform the nature of an investment interest to a non-UK asset (corporate securities) from a UK asset (real estate). This is because the relevant asset becomes the shares or interest in the offshore holding company.

## Value Added Tax

Value added tax ('VAT') is only payable on the sale of a freehold or leasehold interest in any UK commercial building should the vendor elect to include the real estate in the VAT regime. If so included, the landlord must then charge VAT on rents. This can be unpopular with tenants such as financial institutions which are unable to recover the VAT in full. Non-UK residents can therefore hold real estate in a manner which is more attractive to such tenants. In practice, most UK investment real estate transactions are structured as the "transfer of a going concern" and there is no need to pay VAT on the purchase cost.

A non-UK resident can register for VAT purposes to allow recovery of any VAT suffered on the purchase of real estate.

If the real estate holding vehicle is managed by an offshore manager, there can also be VAT savings on fees billed to the vehicle by the manager.

## Lower Regulatory Burden

If the investment management of a fund is conducted offshore, so that investment advisory services only are provided from the UK, this can reduce the regulatory burden on the investment adviser in the UK in terms of compliance with relevant regulations.

## CHANNEL ISLANDS TAXATION AND REGULATION

### Taxation

Whether the vehicle used is a company (open-ended or closed-ended), a unit trust or a limited partnership, in each case, the vehicle will be exempt from taxation in the Channel Islands and there will be no withholding tax imposed on any dividend or other payments made by the vehicle. In addition, there is no capital gains tax, corporation tax, stamp duty, VAT or inheritance tax payable in respect of the issue or realisation of shares in an open-ended or closed-ended company, units in a unit trust or interests in a limited partnership. There is no corporation tax, profits tax, inheritance tax or withholding tax applicable in the Channel Islands to any of those vehicles or to their respective shareholders, unit-holders or partners. No stamp duty is payable locally on the transfer of shares, units or partnership interests and the Islands levy no annual taxes or charges by reference to a company's authorised or issued share capital. The Channel Island tax position specific to the possible structures is further discussed under 'Structures Available'.

### Regulation

The level of regulation within the Channel Islands is higher than that seen in many other offshore jurisdictions. This reinforces the Islands' position as one of the best regulated and most highly respected offshore centres in the world and provides an added degree of comfort to those using the Channel Islands.

### Private Arrangements

On its establishment, a company, limited partnership or unit trust will require appropriate consents pursuant to the local control of borrowing legislation which regulates, via the respective regulatory bodies (the Jersey and Guernsey Financial Services Commissions), the raising of money and issue of securities, limited partnership interests and units in a unit trust. If the vehicle is a private investment holding vehicle, obtaining such consents is normally a formality but information will need to be provided on the beneficial owners (which is kept confidential).

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## Investment Funds

If the vehicle is to be an investment fund which will be offered to a number of investors, then, in determining whether the requisite consents will be granted, the respective Commissions will take into account the stature and investment management expertise of the promoter and the levels of protection afforded to investors. The substance of any offering document will also require the approval of the respective Commissions and they may also wish to review other principal documentation.

## Jersey Requirements

In relation to Jersey structures where the fund is to be offered to more than 50 investors or listed, the provisions of the collective investment funds legislation and Financial Services (Jersey) Law 1998 (the 'FS Law') will need to be adhered to and in particular the fund will require a certificate from the Commission and any person providing management, custodial, administrative or other functions to the fund in or from within Jersey will need to be authorised to conduct funds service business pursuant to the FS Law.

Any person dealing in investments or carrying on investment management or advisory activities in or from within Jersey will either need to register under the FS Law or be able to take advantage of one of the exemptions. For this purpose there are exemptions for persons currently authorised to conduct funds service business under the FS Law and for persons providing services to professional investor regulated schemes. In this context, consideration will, in particular, need to be given to the position of any special purpose general partner or manager of a limited partnership, company or unit trust.

## Guernsey Requirements

The requirements in Guernsey are similar to Jersey. The Protection of Investors (Bailiwick of Guernsey) Law, 1987 regulates collective investment schemes, irrespective of the number of investors involved. Collective investment schemes must be authorised by the Commission and any person intending to provide management, custodial, administrative or other functions to the fund will also require a licence from the Commission.

## Channel Islands Stock Exchange

The Channel Islands Stock Exchange (CISX) provides an efficient and cost effective means of listing investment funds. Advantages of listing on the CISX include improved fund marketability and access to investment profiles on dedicated Reuters' pages and the CISX's website ([www.cisx.com](http://www.cisx.com)). Ogier Corporate Finance Limited can act as sponsor for a listing and is a member of the CISX.

## STRUCTURES AVAILABLE

### Limited Companies

The legislation which governs the establishment and management of companies in the Channel Islands is based on the UK Companies Act and therefore has the benefit of being modern, flexible and, in many cases, familiar to investors.

Channel Island companies may issue redeemable shares (particularly attractive for use with investment funds), share capital may be denominated in any convertible currency and the issue of fractional shares is permitted. Bearer shares may not be issued, although it is possible to achieve an effect similar to transferability on delivery by the use of bearer depository receipts. Non-voting shares are allowed and proportional voting structures may be achieved by weighted voting rights. Shares may be issued at a premium, (in Jersey, subject to a limit of up to 999 times their par value, although a greater premium can be used with the consent of the Registrar of Companies).

All Channel Island companies (and non Channel Island companies which are managed and controlled in the Channel Islands) are now generally chargeable to income tax at the rate of zero percent. For further information please see our client briefing on Jersey Taxation of Investment Vehicles.

Jersey company law allows for a number of different types of companies: par value and no par value limited companies, companies limited by guarantee, single member companies and unlimited companies.

In addition to companies limited by shares, Guernsey company law permits two further limited liability company structures: protected cell companies and companies limited by guarantee. A protected cell company ('PCC') is a single legal entity which consists of a "core" and one or more separate 'cells'. The assets of a particular cell benefit from statutory segregation and protection from not only the general liabilities of the PCC (i.e. the liabilities of the core) but also from the liabilities attributable to any other cell. A company limited by guarantee is a company that may be incorporated without a share capital. The members of this type of company undertake to contribute a defined amount to the assets of the company in the event of the company being wound up. A hybrid form is also permissible, where a company may have a share capital in addition to being limited by guarantee.

### Unit Trusts

In contrast to an investment fund company, a unit trust is not a separate legal entity as such, but a trust arrangement whereby legal ownership of the trust's assets is vested in a trustee who holds the assets on trust for the benefit of the unit-holders. A unit trust will ordinarily have a manager who will undertake the

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management and general administration of the trust although this function can be undertaken by the trustee in addition to its normal trustee role. The trust instrument will normally contain such provisions regulating the issue, redemption and valuation of units, as would, for a company, be found in its articles of association.

There are no taxes, registration fees or duties payable locally in respect of the establishment or administration of a unit trust save that distributions paid to Channel Island-resident unit-holders will be subject to the appropriate local income tax. In both Islands there are modern trust laws governing the operation of trusts and in particular the duties of trustees.

## Limited Partnerships

Local limited partnerships laws provide a modern and comprehensive framework for the establishment and operation of limited partnerships in the Islands. There is no restriction on the number of limited partners within a limited partnership and no requirement that the identity of limited partners should be disclosed on any public register. In addition, although the business of the limited partnership will principally be managed by a general partner (which may itself be a limited partner), limited partners are permitted to become involved in certain activities which might otherwise be regarded as management activities without losing the protection of limited liability. For instance, limited partners can approve investment recommendations as a member of an investment committee and they can act as directors of the partnership's general partner. Limited partnerships have tax transparency in Jersey and Guernsey: a limited partnership will not be subject to separate assessment for the purposes of local income tax and non-resident limited partners will not be liable to local income tax other than on local source income (excluding interest on bank deposits). A corporate general partner may also obtain exempt status.

Although limited partnerships in the Channel Islands do not have separate legal personality, Guernsey has recently introduced legislation permitting limited partnerships to elect for separate legal personality which can be attractive for structuring purposes, particularly within a fund of funds framework as it enables the partnership to count as only one investor.

There is also comprehensive and modern legislation permitting the establishment of limited liability partnerships although, to date, relatively few have been established.

## The Channel Islands as offshore centres

Jersey and Guernsey are the largest of the Channel Islands, situated just 14 miles off the northwest coast of France, with an enviable reputation as leading and well regulated offshore centres. There are no formal political links between the two Islands but both share the same

relationship with the United Kingdom and Europe. They are both part of the British Isles (as dependencies of the Crown) but not of the United Kingdom. Both Islands have enjoyed political autonomy throughout their history, with their own independent legislature (although the UK will legislate for their foreign affairs and defence) and their own court systems.

Neither Island is a member of the European Union and therefore they are unaffected by EU directives for example on fiscal harmonisation, financial services or company law.

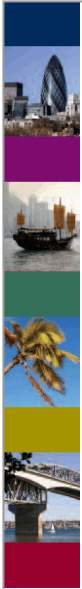
The Channel Islands are located in a convenient time zone (GMT), have a sophisticated infrastructure and a wealth of professional expertise and many of the world's leading banks and accountancy firms have established themselves in the Islands.

**Author: Victoria Yates, Managing Associate,  
Business & Trust Law Group  
+44 (0)1534 504212  
victoria.yates@ogier.com**

## About Ogier

Ogier is an award winning world leader in the provision of offshore legal and fiduciary services. Our integrated legal and fiduciary approach has proved a winning combination which enables us to secure awards for the quality of our services and our people.

The Group employs over 850 people and provides advice on all aspects of BVI, Cayman, Guernsey and Jersey law and fiduciary services through our international spread of offices that cover all time zones and key financial markets. Our network includes Bahrain, BVI, Cayman, Guernsey, Hong Kong, Ireland, Jersey, London, Shanghai and Tokyo.



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## Contact details

### Guernsey

Roger Le Tissier  
+44 (0) 1481 737150  
roger.le.tissier@ogier.com

### Jersey

Legal:  
Philip Le Cornu  
+44 (0)1534 504454  
philip.lecornu@ogier.com

Michael Lombardi  
+44 (0) 1534 504280  
michael.lombardi@ogier.com

Daniel Richards  
+44 (0) 1534 504252  
daniel.richards@ogier.com

Matthew Swan  
+44 (0)1534 504238  
matthew.swan@ogier.com

Tim Morgan  
+44 (0) 1534 504240  
tim.morgan@ogier.com

Fiduciary:  
Darren Kelland  
+44 (0)1534 753649  
darren.kelland@ogier.com

Paul Lawrence  
+44 (0)1534 753963  
paul.lawrence@ogier.com

Paul Willing  
+44 (0) 1534 504149  
paul.willing@ogier.com

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