

A guide to Guernsey real estate holding structures

	Company	Guernsey Property Unit Trust (GPUT)	Limited Partnership (LP)
Who can invest?	<p>A body corporate which is a separate legal entity where the investors (its shareholders) benefit from limited liability</p> <p>Management of the company will be conducted through its board of directors</p>	<p>A type of Guernsey trust where the investors (its unitholders) benefit from limited liability</p> <p>It is not a separate legal entity</p> <p>Management of the GPUT will be conducted through its trustee (known as a 'managing trustee')</p> <p>The trustee will usually be a Guernsey company</p> <p>It is possible to appoint more than one trustee and/or to appoint a separate manager if so desired</p> <p>For UK property law reasons, if the GPUT owns property directly it must generally have a minimum of two trustees (and they will usually be Guernsey companies)</p>	<p>A partnership where investors (limited partners) benefit from limited liability</p> <p>While a 'standard' LP is not a legal person, it is possible, at the time of its registration, for an LP to elect to have separate legal personality</p> <p>Management of the LP will be conducted through its general partner</p> <p>The general partner will usually be a Guernsey company</p> <p>It is possible to appoint more than one general partner if so desired</p>
How is it established?	<p>Company incorporations are conducted online by licensed fiduciaries known as corporate service providers</p> <p>A company is incorporated when the incorporation documents and appropriate fees are delivered to the Guernsey Registry</p>	<p>A GPUT is established by the trustee executing a trust instrument setting out the terms of the trust and the initial trust property being transferred to the trustee to hold on trust</p>	<p>Registration is effected by filing at the Registry a declaration by the general partner containing certain information (including the name of the limited partnership, the nature and principal place of its business, its registered office in Guernsey, the full name and address of every general partner and whether it elects to have a separate legal personality)</p>
How long does it take to establish?	<p>Once all relevant information has been collected (including KYC), incorporation can take place within one day (standard), or on a 15 minute or two hour basis if fast-tracked</p>	<p>Once all relevant information has been collected (including KYC), the GPUT will be established when the instrument is executed by the trustee</p> <p>A minimum of five business days may be required for the trustee to obtain relevant regulatory exemptions</p>	<p>Once all relevant information has been collected (including KYC), an LP can generally be established on a same-day basis</p>
What are the establishment costs?	<p>The Guernsey Registry's incorporation fees are:</p> <ul style="list-style-type: none"> • £100 for a standard 24 hour incorporation • £350 for a same day two hour incorporation 	<p>No fees are payable to the GFSC</p> <p>Professional fees will be payable</p>	<p>The Registry charges a fee of £350</p> <p>In addition, professional fees will be payable</p>

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What are the establishment costs? <i>continued</i>	<ul style="list-style-type: none"> £750 for 15 minute incorporation In addition, professional fees will be payable		
What are its constitutional documents?	Memorandum and articles of incorporation	Trust instrument	Limited partnership agreement
Does it appear on a public registry?	Yes. The company will have a registered number and its name and limited information will be available from a public search (including its memorandum and articles of incorporation and annual return) Confidential shareholder arrangements can be included in a separate shareholders' agreement which will not need to be filed provided it is drafted appropriately The identity of shareholders is not publicly available	No. The GPUT is a private structure and does not have a registered number The trust instrument and the unit register are not filed and are not public documents	Yes. The LP will have a registered number and its name and limited information will be available from a public search (such as the name of the general partner, the duration of the LP and the registered office of the LP) The partnership agreement and the register of limited partners are not filed and are not public documents
Is my holding certificated?	Yes. Share certificates are generally issued to investors for the shares subscribed	Yes. Unit certificates are generally issued to investors for the units subscribed	No. Partnership interests are not generally certificated The ultimate record of limited partnership interests is determined by the register of limited partners maintained by the general partner
What variations are available?	A number of different types of Guernsey company are available, including no par value companies, guarantee companies, unlimited companies, protected cell companies and incorporated cell companies	While there is no concept of different types of GPUT, the GPUT is sufficiently flexible to be able to accommodate most structuring requirements	A limited partnership may, as stated above, elect to have a legal personality separate from its members and become a body corporate Limited partnerships are sufficiently flexible to accommodate most structuring requirements Limited liability partnerships may also be formed in Guernsey More information is available on request
What is the key piece of legislation governing it?	The Companies (Guernsey) Law 2008	Trusts (Guernsey) Law, 2007	Limited Partnerships (Guernsey) Law, 1995
What corporate administration support will it require in Guernsey?	Most companies will require a Guernsey administrator to provide a company secretary and directors to the Guernsey company as well as general corporate administrative support Registered office and resident agent in Guernsey is mandatory	A trustee as well as general corporate administrative support The trustee will either be a newly incorporated private company or a regulated trust company	A registered office as a minimum, and usually general corporate administrative support If the general partner is a Guernsey company then it will require corporate administrative support too

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What corporate administration support will it require in Guernsey? <i>continued</i>	A company secretary is permitted but not required		
How does it hold assets?	The company's assets will be held by the company directly (or by a nominee on its behalf)	The GPUT's assets will be held directly in the name of the trustee (or a nominee on behalf of the trustee) who will hold the assets on trust in accordance with the trust instrument	Assets are held (or deemed held) by the general partner (or a nominee on behalf of the general partner) for the benefit of the limited partnerships in accordance with the limited partnership agreement
What is the minimum and maximum number of investors?	A minimum of one shareholder There is no limit on the number of shareholders	From a Guernsey perspective a minimum of one unitholder is required There is no limit on the number of unitholders For UK regulatory reasons a GPUT owning UK real estate will generally require a minimum of two unitholders It is quite common for the second unitholder to be a subsidiary or affiliate of the first unitholder	A minimum of one limited partner and one general partner There is no limit on the number of partners
Is it regulated?	No, unless it has characteristics of an investment fund		
Who is responsible for management?	The board of directors of the company will have responsibility for the day-to-day management of the company Certain actions require the approval of shareholders as a matter of law (eg changes to its memorandum and articles of association), and other actions can be made subject to shareholder approval if so provided in its articles of incorporation	The trustee will have responsibility for the day-to-day management of the GPUT, unless a separate manager is appointed with responsibility for management of the GPUT Any matters can be made subject to unitholder approval if so provided in the GPUT's trust instrument	The general partner will have responsibility for the day-to-day management of the LP Certain matters can be made subject to limited partner approval if so provided in the limited partnership agreement
What duties are owed to the investors?	The directors owe certain fiduciary duties to the company, including a duty to act honestly and in good faith with a view to the best interests of the company and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances	The trustee owes certain fiduciary duties to unitholders including a duty to act with due diligence, as would a prudent person, to act to the best of the trustee's ability and skill, to observe the utmost good faith and to exercise the trustee's powers only in the interests of the unitholders and in accordance with the terms of the trust	The general partner owes certain fiduciary duties to the limited partners by virtue of them being in a partnership, including the duty of utmost good faith
Can the investors participate in management and decision making processes?	Subject to their shareholdings it may be possible for representatives of the investors to be appointed to the board of directors Any matters which are made subject to shareholder approval in the company's articles of incorporation are	If the trustee is a special purpose company then it may be possible for representatives of the investors to be appointed to the board of directors of the trustee Alternatively the investors may be appointed to the board of directors of a separate company which is	It may be possible for representatives of the investors to be appointed to the board of directors of the general partner It may also be possible for representatives of the investors to be appointed to a 'committee' which will

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Can the investors participate in management and decision making processes? <i>continued</i>	subject to a shareholder vote Appropriate legal and tax advice will be required	appointed to act as manager of the GPUT Any matters which are made subject to unitholder approval in the trust instrument are subject to a unitholder vote Appropriate legal and tax advice will be required	consult with the general partner on certain key matters Any matters which are made subject to investor approval in the partnership agreement are subject to a limited partner vote Appropriate legal and tax advice will be required
What rights do the investors have?	The Companies (Guernsey) Law 2008 provides shareholders with a wide variety of rights The shareholders will have certain rights under general company law and will also have any rights set out in the articles of incorporation	The unitholders will have certain rights under general trust law and will also have any rights set out in the trust instrument	The Limited Partnerships (Guernsey) Law, 1995 provides limited partners with a number of rights The limited partners will have certain rights under general partnership law and such rights as are set out in the partnership agreement
Must an auditor be appointed?	Yes, unless the shareholders have passed a resolution exempting the company from the requirement	No. An auditor may be appointed if so desired	
How is it funded?	The company can be funded by a variety of means including cash (where an investor will subscribe for shares using cash), assets (where an investor will contribute real estate or assets to the company in return for shares), loans and/or the provision of services	The GPUT can be funded by a variety of means including cash (where an investor will subscribe for units using cash), assets (where an investor will contribute real estate or other assets to the GPUT in return for units), loans and/or the provision of services The trust instrument will need to be drafted according to any specific requirements	The LP can be funded by a variety of means including cash (where an investor will subscribe for partnership interests using cash), assets (where an investor will contribute real estate or other assets to the LP in return for a partnership interest), loans and/or the provision of services The partnership agreement will need to be drafted according to any specific requirements
How does it return cash or assets to its investors?	A company can return cash or assets to its investors by a variety of means, including distributions, share redemptions, share buybacks and reductions of capital The directors will be required to resolve that the company satisfies a cash flow and balance sheet solvency test, but otherwise there are few restrictions under Guernsey law Any requirements and/or restrictions can be built into the articles of incorporation	A GPUT can return cash or assets to its investors by a variety of means, including distributions, unit redemptions or returns of capital Provided the GPUT will be solvent after the payment, there are no restrictions on these processes under Guernsey law Any requirements and/or restrictions can be built into the trust instrument	A LP can return cash or assets to its investors by a variety of means, including distributions and returns of capital Provided the LP will be solvent after the payment and will remain so for a period of six months, there are no restrictions on these processes under Guernsey law Any requirements and/or restrictions can be built into the partnership agreement
Can it borrow, give guarantees and provide security over its assets?	Yes. A Guernsey company has unlimited corporate capacity Restrictions can be incorporated in its articles of association if so desired	Yes, subject to the terms of the trust instrument	Yes, subject to the terms of the limited partnership agreement

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Can an investor grant security over its shares/units/partnership interest?	Yes, a shareholder can grant security over its shares in a company in accordance with the Security Interests (Guernsey) Law 1993, subject to any restrictions or restrictions in its articles of incorporation There is no register of security in Guernsey	Yes, a unitholder can grant security over its units in a JPUT in accordance with the Security Interests (Guernsey) Law 1993 and subject to the terms of the trust instrument	Yes, a limited partner can grant security over its partnership interest in accordance with the Security Interests (Guernsey) Law 1993 and subject to the terms of the limited partnership agreement
Does it have unlimited duration?	Yes, unless its memorandum or articles of incorporation provide otherwise	Yes, provided its trust instrument so provides	The partnership agreement will normally set out the term of the partnership (which may be unlimited), and where it does not, the term will be 30 years (unless extended)
Guernsey taxation	No Guernsey income tax or capital gains tax is payable There is no Guernsey withholding tax on the payment of dividends or interest payments (assuming none of the shareholders are Guernsey resident individuals) No Guernsey stamp duty is payable on transfers of shares	The trustee will generally have the benefit of certain tax clearances from the Guernsey tax authorities confirming that no Guernsey tax is payable on GPOT income and capital profits and that no withholdings are required on interest payments or distributions (assuming none of the unitholders are Guernsey resident individuals) No Guernsey stamp duty is payable on transfers of units	An LP is tax transparent for Guernsey tax purposes so tax will be assessed on the partners of the LP and no assessment will be made on the LP itself There is no Guernsey withholding tax on interest payments or distributions No Guernsey stamp duty is payable on transfers of partnership interests
How is it wound up/dissolved?	Voluntary winding up (if the company is solvent) This process can be conducted by the directors or by a liquidator A voluntary strike off process is also available	Dissolution of a GPOT will be carried out in accordance with the terms of the trust instrument	Dissolution of an LP will be carried out in accordance with the terms of the limited partnership agreement A limited partnership is dissolved upon the occurrence of any of the events specified in the partnership agreement, upon the expiration of its fixed term (if any) or, if no term is fixed for its duration, 30 years after the partnership's registration, or by the written agreement of all partners

Contacts

To find out more, please get in touch with your usual Mourant contact, or alternatively, a full list of contacts can be found [here](#)

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