

# Using Jersey for your UK REIT: A guide

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*This guide considers the benefits of using Jersey as a domicile and explores the various steps needed to launch a Jersey company that qualifies as a REIT for UK purposes.*

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For many years, Jersey companies and property unit trusts (a **JPUT**) have been a popular choice for holding UK real estate assets. The use of a Jersey company that qualifies as a Real Estate Investment Trust (**REIT** or **Jersey REIT**) for UK purposes is a more recent trend that has been gaining popularity over the last 10 years. This is especially the case after the REIT regime was further refined as part of the introduction of UK capital gains tax on non-residents disposing of UK commercial real estate.

### **What is a REIT?**

The REIT regime was introduced on 1 January, 2007. Under the regime, a company that meets the necessary requirements will gain the benefit of efficient tax treatment with the REIT paying no corporation or capital gains on the profits made from its property investments. In January 2007, nine companies elected to become REITs (being UK companies) and this number has grown significantly. That growth has been fuelled, in part, with Channel Islands companies converting or launching as REITs.

### **What are the features of a REIT?**

To qualify as a REIT, there are certain important requirements that must be met. Some of the key features (together with the approach taken in Jersey) are listed below:

- **The REIT must be a company** – in the case of Jersey, a Jersey company can be used as the holding company for the REIT and its group companies. It does not have to be a UK company.
- **The REIT may need to be listed on a recognised stock exchange** – if a listing is required, a straightforward and efficient solution is the listing of the REIT's shares on The International Stock Exchange (**TISE**) which qualifies as a recognised exchange for the UK REIT regime.
- **The REIT must be tax resident in the UK** – unlike other jurisdictions, a Jersey company can be tax resident outside of Jersey and solely tax resident in the UK.
- **Shares** – a REIT has to be closed-ended and must typically issue one class of ordinary shares.
- **Certain loans not permitted** – the REIT must not be a party to any excluded loans (profit-linked, asset-linked or non-commercial).
- **Production of financial accounts** – the REIT holding company and its group must produce accounts (generally under IFRS).

### **Why use Jersey?**

For those considering Jersey as an option for their REIT, Jersey offers the following benefits:

- **More flexibility for distributions** - Jersey's company law is based on UK company law and should therefore be familiar to lawyers and asset managers in the UK and other common law countries. Jersey's company law (the **Companies Law**) is more flexible in certain aspects, notably the ease by which distributions can be made. This is particularly helpful as 90 per cent of the REIT's income from its property rental business must generally be distributed within 12 months of the end of the accounting period.
- **Regulatory flexibility** – Jersey's regulatory environment provides significant flexibility in choosing a regulatory regime for the REIT, its investors and asset managers. The regulatory regime that is applicable (if any) will depend on whether the REIT is to be listed and the nature, number and location of the investors in the REIT.
- **Service providers** – Jersey is well known for its real estate based service provider expertise.
- **Listing the REIT's shares on TISE** – If listing is required, TISE offers an efficient and economical path to listing when compared to other exchanges. TISE's listing rules (the **Listing Rules**) contain certain dispensations that make the listing of investment vehicles (including REITs) easier. Certain requirements, such as the 25 per cent 'free float' requirement (i.e. equities that are in the 'hands of the public') are exempted for REITs.

The steps for launching a Jersey REIT are explored in detail below:

### Step One - Choosing your Service Providers and Directors

As a first step to launching a Jersey REIT, you will normally need to appoint a number of key service providers. These include:

- **Investment Manager or Investment Advisor** – if one is to be appointed, the Investment Manager or Investment Advisor (an **Investment Manager** or **Investment Advisor**) will normally be contractually appointed to provide their expertise directly to the REIT and its group.
- **UK tax and legal advisors** – you will need to appoint advisors familiar with the UK REIT regime to help you structure your REIT and to provide tax and property advice on the properties to be acquired by the REIT (the **UK Advisors**).
- **Jersey legal advisor** – Mourant has acted on a number of notable REIT launches including the first REIT launched using a Jersey company. Mourant can provide the necessary legal support to you and your UK Advisors to establish your chosen REIT structure in Jersey.
- **Corporate Administrator** – you will need an administrator in Jersey to provide a registered office for your REIT in Jersey (which is mandatory). Typically the administrator would also provide the REIT with other services such as company secretarial services, directors as well as corporate administration and accounting services (the **Corporate Administrator**), some of which may have to be provided from the UK.
- **Listing Sponsor** – if the REIT is to be listed, the REIT will need to appoint a listing sponsor approved by the relevant exchange. For REITs listed on TISE, Mourant offers a listing sponsor service (the **Listing Sponsor**). In that role, Mourant will make the listing application and will assist with the REIT's continuing obligations under listing rules.
- **Directors** – If it is listed, a Jersey REIT will need at least three directors (which is prescribed by the TISE Listing Rules). As the REIT will be UK tax resident, these will normally be UK resident individuals constituting all, or at least the majority, of the directors of the REIT. If the REIT appoints an Investment Manager or an Investment Adviser, those directors must be able to demonstrate their ability to act independently. In practice, this means that director representatives of the Investment Manager or the Investment Adviser should not be in the majority. If there is no Investment Manager or Investment Adviser appointed, the REIT must at least ensure that the directors collectively have the relevant expertise in relation to the property assets in which the REIT is investing.

### Step Two – Incorporating your REIT

#### The incorporation process

With the help of your Corporate Administrator, your REIT will usually be incorporated as a Jersey private company. . If your REIT will be privately held by investors that are already known in advance, the Jersey Financial Services Commission (**JFSC**) will require certain information on a confidential basis, including:

- the full names, residential addresses and occupations of the proposed beneficial owners and controllers of the company; and
- confirmation that the proposed beneficial owners have never been bankrupt or associated with a bankrupt company.

A certificate of incorporation is issued and constitutes conclusive evidence of incorporation.

#### Timeframe for incorporation

The formation of a Jersey company is normally completed within 24 hours of an application being made to the Registrar of Companies (the **Registrar**) and upon payment of the incorporation fee. The application to the Registrar cannot be made until the Corporate Administrator has completed its due diligence on the beneficial owners and controllers of the company.

#### Constitutional Documents

As part of the incorporation process, the constitutional documents (**Memorandum and Articles of Association**) must be prepared and submitted to the JFSC. You can incorporate your REIT with standard

form documents (which Mourant can provide) however, specific amendments may eventually be needed to tailor the Memorandum and Articles of Association to suit the specific requirements for a REIT and the TISE Listing Rules (if required).

The specific amendments to the Memorandum and Articles of Association typically include:

- **Shareholder Restrictions** – restrictions on the number and the type of investors that can hold shares. The UK REIT regime has specific rules which may affect the number and the type of shareholders for the REIT to qualify for the UK REIT regime. It is important for you to receive appropriate advice from your UK Advisors on this point.
- **Additional Ancillary Provisions** - adding an 'investment policy' for the REIT as well as the calculation of net asset value provisions and the power to dispense with annual general meeting (where all shareholders agree).
- **Tax residency and director requirements** - restrictions on the location of board meetings and tax residency of directors to the UK. From a Jersey perspective the REIT will not be regarded as tax resident in Jersey if its business is centrally managed and controlled in the UK (where the highest rate at which any company may be charged to tax on any part of its income is 10 per cent or higher, being the relevant test). As a UK resident, your REIT will be subject to UK tax. Specific advice should be taken from your UK Advisors on UK taxation matters.

### Share Capital, Share Register and Share Certificates

Although Jersey companies have a lot of flexibility when it comes to structuring share capital, a REIT will typically only have one ordinary share class listed in its Memorandum of Association. The REIT will also have to be 'closed-ended' (meaning that the REIT's shares would not be redeemable at the option of the shareholder). The following additional general points about the share capital of Jersey companies should also be noted:

- shares can be denominated in any currency;
- the issue of bearer shares is not permitted and the Companies Law includes detailed provisions as to the keeping of a share register;
- directors do not need to hold shares;
- the payment of commissions is not prohibited;
- the issue of fractions of shares may be authorised; and
- an instrument of transfer will be required to transfer shares.

As a closed-ended company, the REIT will not generally qualify for uncertificated holdings. The Companies Law will require the REIT to issue share certificates within two months of allotment or a transfer of shares.

### Ongoing Administrative obligations

Once incorporated, a Jersey REIT must:

- file an annual confirmation statement before the end of February in each year after the year of its incorporation giving certain details as to its share capital, and its directors;
- keep a share register, either at its registered office or at an address in Jersey notified to the Registrar;
- keep minutes of directors' and shareholders' meetings. Records may be kept in any form so long as information can be reproduced in intelligible form within a reasonable time and steps are taken to safeguard information.

Your Corporate Administrator can generally assist with these obligations in Jersey and in the UK.

## Step Three – Listing the REIT's shares and other regulatory applications and tax clearances

### Listing the REIT's shares on TISE

Prior to April 2022, to qualify as a REIT under the UK REIT regime, the REIT's shares had to be listed on a recognised stock exchange. This requirement was changed in April 2022 so that a REIT need only be listed if less than 70% of the shares in the REIT will be held by institutional investors. If the REIT needs to be listed,

a straightforward and efficient solution is the listing of the shares of the REIT on the official list of TISE (the **Official List**). TISE qualifies as a recognised stock exchange for the UK REIT regime.

### The role of the Listing Sponsor

For the REIT to be listed, the REIT will need to appoint a Listing Sponsor for the entire duration of its listing. Mourant, as a member of TISE, can offer a listing sponsor service to act as the REIT's Listing Sponsor. In that role, Mourant will make the listing application and will assist with the REIT's continuing obligations under listing rules.

### The documents required for listing

Mourant, as Listing Sponsor, can assist the REIT and its directors with the preparation of the following documents which are the key documents required as part of the listing process:

- **Listing Application** – prepared by the Listing Sponsor and signed by a REIT director attesting to the satisfaction of conditions for listing and the accuracy of information provided to TISE.
- **Non-Applicability Letter** – prepared, signed and submitted by the Listing Sponsor to TISE in relation to disclosure obligations set out in the TISE listing rules that are not applicable to the REIT.
- **Omitted Information Letter** – prepared, signed and submitted by the Listing Sponsor to TISE requesting, where applicable, derogations from particular disclosure obligations set out in the TISE listing rules.
- **Listing Undertaking** – prepared by the Listing Sponsor and signed by a REIT director undertaking compliance with the continuing obligations under the Listing Rules.
- **Director Declarations** – prepared by the Listing Sponsor and signed by each individual REIT director providing certain information about the director and their bona fides.
- **Listing Sponsor Declaration and Formal Notice** – a formal notice required under the Listing Rules giving notice that an application has been made for admission to TISE's official list together with a separate declaration from the Listing Sponsor as to the satisfaction of conditions for listing and the accuracy of information provided to TISE.
- **Listing Document/Offer Document** – TISE will require a listing document for the purpose of the listing rules which includes particulars/statements given in compliance with the Listing Rules for the purpose of giving information about the REIT. The listing document can be prepared separately but, more often, the REIT's offer document (i.e. prospectus, which is prepared by the UK Advisors and Mourant) can function as the listing document for TISE with the particulars/statements incorporated therein.

### Jersey Fund applications

In advance of launching the REIT, the relevant Jersey 'fund' regulatory application (if applicable) will be prepared by Mourant and lodged with the JFSC with the help of the Corporate Administrator.

Jersey's regulatory environment provides significant flexibility in choosing a regulatory regime for the REIT, its investors and asset managers. Some clients choose to have their REITs regulated as 'Jersey Expert Funds' which offers light touch fund regulation. This may be of interest to those REITs that are to market to European professional investors where a certain level of regulation is expected and required. Additional Jersey regulatory authorisations and Jersey licences will be required if the REIT is to be regulated as an Expert Fund. For more information, please refer to our guide on [Jersey Expert Funds](#).

However, many clients choose a Jersey 'unregulated fund' regime option for the REIT. This is useful for REITs that have a small number of non-European institutional investors that do not require any additional investor protection. Unregulated funds are not regulated by the JFSC. To qualify as an Unregulated Fund, investors must meet certain eligibility requirements such as minimum investment (e.g. initial investment of the currency equivalent of USD \$1m) however there are a number of other helpful categories that can also apply. Investors must also sign an 'investor warning' in the prescribed form. The Corporate Administrator must also hold the requisite licenses as a 'fund services business' in Jersey. For a REIT to become an 'unregulated fund' a notice and declaration must be given to the JFSC, following which the REIT will be registered as 'unregulated fund' on a public register maintained by the JFSC. For more information, please refer to our guide on [Jersey Unregulated Funds](#).

If the REIT is not to be listed, then it may be subject to limited regulatory requirements in Jersey.

### UK Tax clearances

In advance of launching the REIT, your UK Advisors will usually seek advance clearance on specific interpretations on parts of the relevant tax legislation with HMRC in the UK with the expectation that the REIT will fulfil the relevant 'qualifying conditions' for REIT status following the listing of the REIT's shares. Your UK Advisors can advise on the timing for this clearance.

### Fourth Step – Launching your REIT

The process for seeking advance clearance from HMRC (by the UK Advisors) as well as the listing and launching a REIT can take some time. This is not uncommon as the launch of a REIT normally runs in parallel to the acquisition/due diligence work stream on the properties to be acquired by the REIT (which itself can be lengthy) together with the arrangement of external borrowings with an external financier.

The 'launch' of the REIT normally begins with the capitalisation of the REIT in readiness for its first property acquisition/transfer. In advance of launch, a number of key milestones need to be achieved, the timing of which must be carefully managed. These include:

- **Amendment to the Memorandum and Articles of Association** – if the REIT was incorporated on standard form documents, the specific amendments (described above) which are required to make the REIT compatible with the UK REIT regime and the TISE Listing Rules must be made. This will require a shareholder resolution to be signed by the shareholders approving the amendments.
- **Board Meetings and change of tax residency** – the REIT will need to hold several board meetings in advance of launch to approve, amongst other things, the listing documents for submission to TISE and any regulatory applications and/or notices to the JFSC and the issuance of the REIT's offer documents to its shareholders.
- **Listing** – the listing process generally takes around 4-8 weeks to complete. The admission of the REIT's shares to the Official List is normally timed at or around the main capitalisation of the REIT. Therefore the timing of the share issue and the issue of the REIT's offer document must be exactly timed.

Following the share capitalisation, it normally follows that:

- **External Financing** – if the REIT and its group requires external financing from a lender for its acquisition, this is normally drawn down as part of the launch process.
- **Completion of the Acquisition** – the REIT and its group complete the acquisition of its first properties.
- **REIT status** – the UK Advisors will determine the precise timing for giving notice to HMRC once the REIT has fulfilled the relevant 'qualifying conditions' for UK REIT status however this can only happen the initial capitalisation and following the listing of the REIT's shares on TISE. The notice to HMRC can, in some cases, follow completion of the acquisition.

### Fifth Step – Living with your REIT – Obligations

#### Distribution Obligations

Under the UK REIT regime, 90 per cent of the REIT's income from its property rental business must generally be distributed within 12 months of the end of each accounting period.

Jersey's Companies Law is more flexible in certain aspects than its UK counterpart with respect to distributions, notably the ease by which distributions can be made. Distributions may be made out of profits, share premium or any other accounts of the company (other than capital redemption reserve or nominal capital) provided that the directors of the company who approve the distribution make a solvency statement that the company is able to meet its liabilities as they fall due for a period of 12 months (or until dissolution, if earlier) after the distribution.

#### Continuing Obligations under the TISE's Listing Rules

For a REIT that is to be listed, the TISE Listing Rules govern the continuing obligation requirements of the REIT following the admission of its shares to the Official List.

The continuing obligations for the REIT involving the Listing Sponsor include:

- **Substantial Shareholder and Related Party transactions** – the provision of information on 'substantial shareholder' transactions (one which exceeds 15% according to the test under the Listing Rules) and 'related party' transactions (one which exceeds 5% according to the test under the Listing Rules) to TISE.
- **Reverse Takeovers** – the notification of reverse takeover (any acquisition or acquisitions which over a twelve month period would exceed 100% according to the test under the Listing Rules) to TISE which may trigger a suspension.
- **Material Change of Business** – the notification of any acquisition or acquisitions (which over a twelve month period would exceed 75% according to the Listing Rules) to TISE.
- **Disclosure of Financial Information** – the provision of financial information periodically to TISE (e.g. annual and half yearly reports).
- **General notifications** – the REIT (via the Listing Sponsor) must notify TISE within three business days of any information which is necessary to avoid the establishment of a false market in its securities, or that might reasonably be expected to materially affect market activity in, or the price of, its securities. TISE must also be notified of certain other events, including changes to the REIT's directors or certain of its service providers.

Mourant would be happy to assist you with any Jersey questions you may have on the launch of your REIT.

## Contacts

A full list of contacts specialising in REITs can be found [here](#).

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. © 2021 MOURANT OZANNES ALL RIGHTS RESERVED