



A guide to Guernsey real estate holding structures

This matrix has been prepared to provide a comparison of real estate holding structures as at its date of publication. It is for general information only and is not intended to, and does not, constitute legal, financial or other advice upon which you may act or rely and does not constitute an offer to provide such advice.

	Company	Limited Partnership (LP)	Guernsey Property Unit Trust (GPU)
What is it?	A company is a body corporate, with a separate legal personality Shareholders in a company limited by shares benefit from limited liability Management of the company is conducted through its board of directors	A type of Guernsey partnership where the investors (its limited partners) are not liable beyond the amount which they have contributed (or agree to contribute) to the LP, provided that they do not participate in the management of the LP An LP is not a legal person unless it elects to have separate legal personality at the time of its registration, which is irrevocable Management of the LP is conducted through its general partner(s) The general partner(s) is usually a Guernsey company It is possible to appoint more than one general partner, if so desired	A type of Guernsey trust where the investors are its unitholders It is not a separate legal entity Management of the GPU is conducted through its trustee The trustee is usually a Guernsey company It is possible to appoint more than one trustee and/or to appoint a separate manager, if so desired For UK property law reasons, if the GPU owns UK property directly, it must generally have a minimum of two trustees (and they will usually be Guernsey companies) ¹
What is the principal legislation governing it?	The Companies (Guernsey) Law 2008	The Limited Partnerships (Guernsey) Law, 1995	The Trusts (Guernsey) Law, 2007
How is it established?	A company is incorporated when the incorporation documents (including its memorandum and articles of incorporation) are submitted online to the Guernsey Registry together with payment of the appropriate fee A company can only be incorporated by a corporate	An LP is established by the general partner(s) and the limited partners executing an LPA Registration of an LP is effected by filing at the Guernsey Registry a declaration by the general partner(s) containing certain prescribed information about the LP,	A GPU 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

¹ Section 27 Law of Property Act, 1925: If a purchaser of a property that is subject to a trust pays the purchase price in good faith to at least two persons as trustees (or a trust corporation), the beneficial interests are 'overreached' and the buyer will acquire good title.

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How is it established? <i>continued</i>	<p>service provider which holds a fiduciary licence from the Guernsey Financial Services Commission</p> <p>Shelf companies are not available</p> <p>Prior to incorporating a company, a company name can be reserved for three months</p>	<p>including its name, the nature and principal place of its business, its registered office in Guernsey, name and address of its general partner(s), duration of the LP and whether it elects to have separate legal personality) together with the relevant fee</p> <p>There is no requirement to file the names of the limited partners or to file a copy of the LPA</p> <p>An LP with separate legal personality is also required to file particulars of its governance provisions and a statement of its resident agent</p>	
How long does it take to establish?	<p>A standard company incorporation can be completed in 24 hours (standard), or in some circumstances in two hours or, for a basic asset holding company with standard articles of incorporation, 15 minutes provided that all requisite information (including client due diligence) has been provided and satisfied in advance</p> <p>It may be necessary to obtain regulatory approval from the Guernsey Financial Services Commission, depending on the nature of the activities of the company (which may have an impact on the timing and costs of establishment)</p>	<p>An LP can generally be established on a same day basis provided that all requisite information (including client due diligence) has been provided and satisfied in advance</p> <p>It may be necessary to obtain regulatory approval from the Guernsey Financial Services Commission, depending on the nature of the activities of the LP (which may have an impact on the timing and costs of establishment)</p>	<p>A GPUT can generally be established within five business days provided that all requisite information (including client due diligence) has been provided and satisfied in advance</p> <p>It may be necessary to obtain regulatory approval from the Guernsey Financial Services Commission, depending on the nature of the activities of the GPUT (which may have an impact on the timing and costs of establishment)</p>
What are the establishment costs?	<p>The Guernsey Registry charges a fee of £100 for a standard incorporation, £500 for a two-hour incorporation and £1000 for a 15-minute incorporation</p> <p>Reservation of a company name for three months costs £25 per name</p> <p>In addition, professional fees will be payable</p>	<p>The Guernsey Registry charges a fee of £100 for a standard registration and £500 for a two-hour registration</p> <p>In addition, professional fees will be payable</p>	<p>No fees are payable to the Guernsey Registry</p> <p>Professional fees will be payable</p>
What are its constitutional documents?	Memorandum and articles of incorporation	Limited partnership agreement (LPA)	Trust instrument
Does it appear on a public registry?	<p>Yes</p> <p>The name and address of the initial subscribers to a company's memorandum of incorporation and the number of shares taken by each subscriber are publicly available. The initial subscriber to a company's memorandum of incorporation may be a third-party</p>	<p>Yes</p> <p>The LP will have a registered number, and its name and basic limited information is available from a public search (including its registration number, registered office, registration date, name and address of its general partner(s), details of its resident agent and particulars of governance (if it is an LP with separate legal personality),</p>	<p>No</p> <p>The GPUT is a private structure and does not have a registered number</p> <p>The trust instrument and the unit register are not filed and are not public documents</p>

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Does it appear on a public registry? <i>continued</i>	<p>service provider</p> <p>Beneficial owner information is not publicly available</p> <p>The company will have a registered number, and its name and basic limited information is available from a public search (including its registered office address, registration date, names of its directors and date of appointment, resident agent status, name of its resident agent and date of appointment (if applicable), company status, economic activity and classification type, audit status and AGM status)</p> <p>The certificate of incorporation, memorandum and articles of incorporation, special resolutions, statement of the register, annual validations plus a few other documents required to be filed in certain circumstances are available to purchase</p> <p>Shareholder information is not kept by the Guernsey Registry</p> <p>Confidential shareholder arrangements can be included in a separate shareholders' agreement, which does not need to be filed, provided it is drafted appropriately</p>	<p>its status and economic activity code)</p> <p>The following documents are available for purchase: the certificate of registration, a statement of the register (which includes the registered office address, any previous name, the principal place and nature of business of the LP, the name and address of the general partner(s) and the dates of their appointment or removal) and annual validations</p> <p>The LPA and the register of limited partners are not filed and are not public documents</p>	
Is my holding certificated?	<p>Yes</p> <p>Share certificates are generally issued to investors for the shares subscribed</p> <p>The ultimate record of ownership is determined by the share register maintained by the company</p>	<p>No</p> <p>Partnership interests are not generally certificated</p> <p>The ultimate record of ownership is determined by the register of limited partners maintained by the general partner(s) for the LP</p>	<p>Yes</p> <p>Unit certificates are generally issued to investors for the units subscribed</p> <p>The ultimate record of ownership is determined by the unit register maintained by the trustee for the GPUT</p>
What variations are available?	<p>A number of different types of Guernsey company are available, including no par value companies, guarantee companies, unlimited companies, mixed liability companies, protected cell companies and incorporated cell companies</p> <p>Guernsey law does not distinguish between public and private companies</p>	<p>An LP may elect to have a separate legal personality and become a body corporate</p> <p>LPs are sufficiently flexible to accommodate most structuring requirements</p> <p>Limited liability partnerships are also available</p>	<p>While there is no concept of different types of GPUT, the GPUT is sufficiently flexible to be able to accommodate most structuring requirements</p>

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What corporate administration support will it require in Guernsey?	<p>A registered office as a minimum and, generally, all Guernsey companies are required to have a resident agent (being either a locally resident director or a corporate services provider)</p> <p>Most companies also often require a Guernsey administrator to provide directors and a company secretary (optional) as well as general corporate administrative support</p>	<p>A registered office as a minimum and, usually, general corporate administrative support</p> <p>If the general partner(s) is a Guernsey company, then it will also require corporate administrative support</p> <p>An LP with separate legal personality (which is not a collective investment scheme) is required to have a resident agent</p>	<p>A trustee as well as general corporate administrative support</p> <p>The trustee will either be a newly incorporated private company or a regulated trust company</p>
How does it hold assets?	The assets of the company are held by the company directly (or by a nominee on its behalf)	The assets of the LP are generally held (or deemed to be held) by the general partner(s) (or a nominee on behalf of the general partner(s)) as an asset of the LP in accordance with the terms of the LPA	The assets of the GPUT are held directly by, and in the name of, the trustee (or a nominee on behalf of the trustee) on trust in accordance with the terms of the trust instrument
What is the minimum and maximum number of investors?	<p>A minimum of one shareholder</p> <p>There is no maximum but if the company has multiple shareholders it may be considered to be a collective investment scheme and as such require regulatory approval from the Guernsey Financial Services Commission</p>	<p>A minimum of one general partner and one limited partner</p> <p>There is no maximum but if the LP has multiple limited partners it may be considered to be a collective investment scheme and as such require regulatory approval from the Guernsey Financial Services Commission</p>	<p>A minimum of one unitholder is required</p> <p>There is no maximum but if the UT has multiple unitholders it may be considered to be a collective investment scheme and as such require regulatory approval from the Guernsey Financial Services Commission</p> <p>For UK regulatory reasons, a UT owning UK real estate will generally require a minimum of two unitholders</p> <p>It is quite common for the second unitholder to be a subsidiary or affiliate of the first unitholder</p>
Is it regulated?	No, unless it has characteristics of a collective investment scheme		
Who is responsible for management?	<p>The board of directors has responsibility for the day-to-day management of the company</p> <p>Certain actions require the approval of shareholders as a matter of law, eg changes to its memorandum and articles of incorporation and other actions can be made subject to shareholder approval if so provided for in its articles of incorporation</p>	<p>The general partner(s) has responsibility for the day-to-day management of the LP</p> <p>Certain matters can be made subject to limited partner approval if so provided for in the LPA (and subject to appropriate drafting)</p>	<p>The trustee has responsibility for the day-to-day management of the GPUT, unless a separate manager is appointed with responsibility for management of the GPUT</p> <p>Any matters can be made subject to unitholder approval if so provided for in the trust instrument</p>
What duties are owed to the investors?	The directors owe certain fiduciary and non-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, to avoid conflicts of interest, to exercise their powers for a proper purpose and to exercise the skill and	The general partner(s) owes certain fiduciary duties to the limited partners by virtue of them being in a partnership, including the duty of utmost good faith	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

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What duties are owed to the investors? <i>continued</i>	care that a reasonably diligent person would exercise in comparable circumstances		exercise the trustee's powers only in the interests of the unitholders and in accordance with the terms of the trust
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 subject to a shareholder vote Appropriate legal and tax advice will be required	It may be possible for representatives of the investors to be appointed to the board of directors of the general partner(s) It may also be possible for representatives of the investors to be appointed to a 'committee' which will consult with the general partner(s) on certain key matters Any matters which are made subject to investor approval in the LPA are subject to a limited partner vote Appropriate legal and tax advice will be required	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 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
What rights do the investors have?	The Companies (Guernsey) Law 2008 provides shareholders with a wide variety of rights The shareholders have certain rights under general company law and they will also have any rights set out in the articles of incorporation	The Limited Partnerships (Guernsey) Law, 1995 provides limited partners with a number of rights The limited partners have certain rights under general partnership law and will also have any rights set out in the LPA	The unitholders have certain rights under general trust law and they will also have any rights set out in the trust instrument
Must an auditor be appointed?	Yes - unless the shareholders have passed a resolution exempting the company from the requirement	No - unless required to do so by the LPA, or by limited partners whose contribution is 50% of the total contribution of all limited partners, or the LP carries on business of banking, insurance, investment, asset management/administration, trusteeship, or company/trust formation or administration (excludes a closed-ended LP)	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 in cash), assets (where an investor will contribute real estate or other assets to the company in return for shares), loans and/or the provision of services	The LP can be funded by a variety of means, including cash (where an investor will subscribe for partnership interests using cash) and assets (where an investor will contribute real estate or other assets to the LP in return for limited partnership interests) The LPA will need to be drafted according to any specific requirements	The GPUT can be funded by a variety of means, including cash (where an investor will subscribe for units in 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

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How does it return cash or assets to its investors?	<p>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</p> <p>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</p> <p>Any requirement and/or restrictions can be built into the articles of incorporation</p>	<p>An LP can return cash or assets to its investors by a variety of means, including distributions and returns of capital</p> <p>Provided that 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</p> <p>Any requirements and/or restrictions can be built into the LPA</p>	<p>A GPUT can return cash or assets to its investors by a variety of means, including distributions, unit redemptions or returns of capital</p> <p>Provided that the GPUT will be solvent after the payment, there are no restrictions on these processes under Guernsey law</p> <p>Any requirement and/or restrictions can be built into the trust instrument</p>
Can it borrow, give guarantees and provide security over its assets?	<p>Yes</p> <p>A Guernsey company has unlimited corporate capacity</p> <p>Restrictions can be incorporated in its articles of incorporation, if so desired</p>	Yes - subject to the terms of the LPA	Yes - subject to the terms of the trust instrument
Can an investor grant security over its shares/units/partnership interests?	<p>Yes</p> <p>A shareholder can grant security over its shares in a company in accordance with the Security Interests (Guernsey) Law, 1993, subject to any restrictions in its articles of incorporation</p> <p>There is no register of security in Guernsey</p>	<p>Yes</p> <p>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 LPA</p> <p>There is no register of security in Guernsey</p>	<p>Yes</p> <p>A unitholder can grant security over its units in a GPUT in accordance with the Security Interests (Guernsey) Law, 1993 and subject to the terms of the trust instrument</p> <p>There is no register of security in Guernsey</p>
Does it have unlimited duration?	Yes - unless its memorandum or articles of incorporation provide otherwise	The LPA will normally fix the term of the LP (which may be unlimited) but if no term is fixed for the duration of the LP, it will be dissolved 30 years from the date of its registration	Yes – provided that its trust instrument so provides
Guernsey taxation	<p>No Guernsey income tax or capital gains tax is payable</p> <p>There is no Guernsey withholding tax on the payment of dividends or interest payments (assuming none of the shareholders are Guernsey resident individuals)</p> <p>No Guernsey stamp duty is payable on transfer of shares (assuming there is no Guernsey real property)</p>	<p>An LP is not a separate taxable entity and is not therefore liable to tax in Guernsey</p> <p>There is no Guernsey withholding tax (assuming none of the partners are Guernsey resident individuals and any payment is not in respect of income arising from Guernsey real estate)</p> <p>No Guernsey stamp duty is payable on transfer of partnership interests (assuming there is no Guernsey real property)</p>	<p>The trustee will generally have the benefit of certain tax clearances from the Guernsey tax authority confirming that no Guernsey tax is payable on GPUT income and capital profits and that no withholdings are required on interest payments or distributions (assuming none of the unitholders are Guernsey resident individuals)</p> <p>No Guernsey stamp duty is payable on transfers of units (assuming there is no Guernsey real property)</p>
How is it wound up/dissolved?	Voluntary winding up (if the company is solvent)	Dissolution of an LP is carried out in accordance with the terms of the LPA	Dissolution of a GPUT is carried out in accordance with the terms of the trust instrument

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How is it wound up/dissolved? <i>continued</i>	<p>This process can be conducted by the directors or by a liquidator</p> <p>A voluntary strike off process is also available</p>	<p>An LP is dissolved on the occurrence of any of the following:</p> <ul style="list-style-type: none"> • on the occurrence of any event specified in the LPA (if any) • on the expiration of its fixed term (if any), unless notification of its continuance is filed with the Guernsey Registry not less than 15 days before • if no term is fixed, on the expiration of a period of 30 years after its registration • by written agreement of all partners • on the death, legal incapacity, retirement, resignation, removal, bankruptcy or dissolution of a general partner unless: <ul style="list-style-type: none"> ◦ the LPA permits the partnership business to be carried on by the remaining general partner(s) ◦ another general partner is immediately and validly appointed, or ◦ within a period of 90 days, all remaining partners agree in writing to continuation of the partnership business and to the appointment of such additional general partner(s) as necessary • by order of the Royal Court of Guernsey, or • if the LP is struck off by the Guernsey Registry 	

Contacts

For further information, please contact one of our industry leading experts. A full list of our contacts can be found on our website [here](#)

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