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Jersey property unit trusts

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A Jersey Property Unit Trust (**JPUT**) is a type of Jersey trust which is usually used as a vehicle to hold UK commercial real estate assets.

A JPUT is a trust and so, unlike a company, it does not have separate legal personality under Jersey law. The assets of the JPUT are held on trust by a trustee on behalf of unitholders, who will hold units in the JPUT which correspond to a beneficial interest in the underlying assets. Therefore, while the unitholders will be the beneficial owners of the JPUT's assets, the trustee will be the legal owner.

Establishing a JPUT

A JPUT is formed by a trust instrument which will be executed by the trustee and will set out the terms on which the JPUT will operate and the assets that will be held. To be validly formed a JPUT is required to hold trust property on establishment. This can either be in the form of existing assets that are already held by the proposed unitholders and are transferred into the JPUT in exchange for units or, if the JPUT is to be used as an acquisition vehicle after it is established, this requirement can be met by having one or more 'founder' investors subscribing for units for a nominal amount on establishment.

A consent will be required from the Jersey Financial Services Commission (the **JFSC**) pursuant to the Control of Borrowing (Jersey) Order 1958 (**COBO Consent**) to allow the JPUT to issue units. The JFSC's published turnaround time for issuing a COBO Consent is five business days (this briefing has been drafted on the basis that the JPUT will not constitute an investment fund under the Jersey Private Funds Guide or the Jersey funds law regime, or an AIF under the AIFMD, in which case additional regulatory consents may be required).

Because a JPUT is not a legal entity it does not appear on the publically available register published by the Jersey Registry. A JPUT's trust instrument, register of unitholders and any consents issued by the JFSC are not publicly available.

Who can act as trustee?

The trustee can either be a pre-existing regulated Jersey trust company or, more commonly, a special purpose vehicle established to act as trustee of the JPUT (**SPV Trustee**). An SPV Trustee will typically be administered by a regulated Jersey administrator, who will, for example, provide directors, a company secretary and registered office.

Jersey has a very well established trust company industry with most administrators offering trust company services alongside their administration services. Generally, however, most JPUTs are established with an SPV

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Trustee. There are several reasons for this which largely depend on the objectives and sensitivities of the relevant investors, but the key advantages are:

1. it may (subject to tax advice) offer unitholders a greater degree of control over the trustee (and by extension the JPUT) by allowing them to appoint directors to the board of the SPV Trustee;
2. it allows for a smoother transition where there is a change of administrator (for example following a sale).

An SPV Trustee can be owned by a foundation or a charitable or non-charitable purpose trust. Collas Crill is able to advise on the establishment of foundations or trusts for this purpose.

A JPUT must have at least one trustee, but there is no Jersey law requirement for it to have more than one trustee. In practice a JPUT will often have two trustees if the structure requires the JPUT to directly hold UK real estate. This addresses certain English law considerations, in particular it allows for any overriding interests to be overreached.

Duties of the trustee

Acting as a trustee is a regulated function in Jersey, but where the unitholders are professional or sophisticated certain exemptions are available to SPV Trustees so they will not be required to be registered to undertake trust company business, as required by the Financial Services (Jersey) Law 1998. The trustee will also be subject to Jersey's trust law regime and in particular the Trusts (Jersey) Law 1984.

Under Jersey law trustees have an obligation to act with due diligence, as would a prudent person, to the best of their ability and skill in accordance with the terms of the trust instrument. They must also observe utmost good faith and to use their powers as trustees only in the interests of unitholders.

Other appointments

There is no Jersey law requirement for a JPUT to have a manager, but a manager can be appointed if required. Where a manager is appointed we would generally expect it to be party to the trust instrument and to take on some of the management responsibilities that would otherwise be undertaken by the trustee. A trustee may also appoint a property manager to manage the properties it holds.

There is generally no requirement for a JPUT to appoint an auditor or produce audited accounts, but an auditor can be appointed if it is commercially desirable, for example if required by a third party lender providing finance to the JPUT.

Rights of unitholders

The rights of unitholders and their relationship with the trustee will largely be governed by the terms of the trust instrument. The trust instrument will contain the commercial terms that govern the JPUT and will generally contain provisions to cover points such as voting thresholds, redemption rights, transfer rights, rights to remove a trustee or the right to terminate the trust. The exception to this is where all of the unitholders

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have full legal capacity and act unanimously, in which case the trustee is required to follow their directions, regardless of what the trust instrument may say.

The trustee will be independent of the unitholders, but unitholders are able to maintain a degree of control over the trustee by, for example, including limitations on what the trustee can do under the terms of the trust instrument or ensuring that a manager (which they control) is a party to the trust deed and has power to exercise control of key areas of the JPUT's management.

Borrowing, security and guarantees

Subject to any restrictions that may be imposed by the trust instrument, the trustee of a JPUT is able to borrow money, give guarantees, give indemnities and grant security over the assets of the JPUT.

Subject to any restrictions in the trust instrument, security may also be created over units of a JPUT and in our experience most international banks are familiar with JPUTs and are willing to lend on a secured basis using units in a JPUT as collateral. For the purposes of the Security Interests (Jersey) Law 2012 units in a JPUT are treated as 'investment security' and so can provide collateral for the purposes of a security interest agreement and for securing a loan.

Term and winding up

The trust instrument will generally contain a provision setting out the term of the JPUT. This can either be a set period of time, or it can have an indefinite term, subject to any process set out in the trust instrument for the winding up of the JPUT.

The trust instrument will usually set out a procedure to wind-up the JPUT. As noted above, all of the unitholders acting together will generally be able to require the trustee to terminate the JPUT. On termination the assets held by the JPUT will be distributed to the unitholders by the trustee within a reasonable time.

Baker Trust

JPUTs are often structured as 'Baker trusts' (a reference to the English law case Baker v Archer Shee upon which the principle is founded). In practice this means that any income that is generated by the underlying assets accrues for the benefit of the unitholders, rather than forming part of the trust assets that the trustee must then distribute. As well as offering the practical benefits of reducing the burden on the trustee to have to make distributions of income, this feature also often forms an important part of the tax planning that underpins the structure of the JPUT.

UK tax treatment

From April 2019 the UK tax treatment for offshore collective investments vehicles (**CIVs**) (which includes JPUTs) invested in UK land is changing. Direct or indirect disposals of UK land by non-residents will be subject to UK tax on chargeable gains and CIVs will be treated as companies for these purposes. This expansion of the UK tax

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net has led to concerns that exempt investors could suffer tax which they would not suffer were they to hold the asset directly and there could be multiple charges suffered in CIV structures. This default position can therefore be modified where the CIV makes either a transparency election or an exemption election – in either case the effect of which is broadly to move the tax charge to the ultimate investor.

Transparency election

A Jersey tax resident CIV which is:

1. UK property rich (i.e. at least 75 per cent of its value is derived from UK land); and
2. transparent for income tax purposes,

may elect to be treated as a partnership for the purposes of the new rules.

If the JPUT makes this election no tax would accrue at the level of the JPUT, but each individual investor would be liable for UK capital gains tax on their share of any disposal by the JPUT.

Exemption Election

The exemption election is aimed at widely held investment funds. Where the exemption is available it exempts the CIV entirely from UK tax levied on the disposal of the underlying asset. CIVs that make this election will be subject to additional annual reporting requirements aimed at assisting HMRC with collecting tax due from non-residents.

Regardless of whether an election is made, investors will be subject to UK tax on any gains made when they dispose of their interest in a CIV. So investors in a UK property rich JPUT would be subject to a UK tax liability on any gains when they dispose of their units.

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