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GUIDE

A Guide to JPUTs (Jersey Property Unit Trusts)

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What is a JPUT?

A Jersey Property Unit Trust (**JPUT**) is a specific type of Jersey trust which is commonly used to acquire and hold interests in UK real estate.

Unlike a company, a JPUT is not a separate legal entity. The assets of the JPUT are held by its trustee on trust for the unitholders of the JPUT. The unitholders hold units in the JPUT, similar to shareholders holding shares in a company.

As the JPUT is a trust, the trustee will be the legal owner of the assets of the JPUT whereas the unitholders will be the beneficial owners of those assets. This is different from the position with a company, where shareholders have no direct ownership interest in the company's assets.

How do you establish a JPUT and how long does it take?

The following is required to establish a JPUT:

- An entity must be identified to act as trustee of the JPUT (see 'Who can act as trustee?' below).
- A regulatory consent will be needed from the Jersey Financial Services Commission (**JFSC**) in order for the JPUT to issue units.
- The trustee will need to execute a trust instrument establishing and setting out the terms of the JPUT.
- The JPUT will require trust property. Usually, one or two 'founder' investors will establish the JPUT by subscribing for initial units in the trust by way of a cash subscription (eg £100 for 100 units issued at £1.00 each).

The trustee will need to hold a board meeting to approve, among other things, its appointment as trustee, its execution of the trust instrument and the initial issue of units in the JPUT.

The JFSC will generally take up to of five business days to issue the regulatory consent to allow the establishment of a JPUT. If the JPUT is set up as an investment fund, additional regulatory requirements will apply. This guide deals with the establishment of a JPUT which is not regulated in Jersey as a fund.

What information about JPUTs is publicly available?

A JPUT is not a legal entity and its existence does not appear on a public register in Jersey. The trust instrument, the register of unitholders and the consent issued by the JFSC are not publicly available documents.

Who can act as trustee?

The trustee will usually be a Jersey special purpose company (**SPV Trustee**) incorporated specifically to act as trustee of one or more JPUTs. Any entity which acts as trustee of a JPUT will either need to be regulated by the JFSC under the Financial Services (Jersey) Law 1998 or fall within an exemption from such regulation. An SPV Trustee will generally seek to rely on an exemption from regulation, and so the JPUT will need to be structured so as to fall within an appropriate exemption.

An SPV Trustee is commonly owned by a charitable trust (and so will be an 'orphan' company with no parent company) but will be provided with directors, a secretary and other administration services by a Jersey administrator. For a variety of reasons it would not be generally possible for the unitholders to own the SPV Trustee.

It is also possible for a regulated trust company in Jersey to act as trustee of a JPUT, though most clients tend to opt for an SPV Trustee. There may be particular reasons why a client may prefer one over the other. An SPV Trustee can offer certain benefits including greater flexibility on a sale or to change administrator, less execution risks on a financing (as the trustee has no other business which may be put at risk) and the possibility (subject to appropriate tax advice) of the unitholders appointing directors to the board of the trustee.

How many trustees are needed?

The JPUT must have a minimum of one trustee and will usually have one trustee or two. If the JPUT will hold UK real estate directly (rather than indirectly through a company, another JPUT or other entity), the

JPUT will usually have two trustees (or one trustee and a nominee) for UK real estate law reasons (so that any overriding interests are overreached).

What are the trustee's duties?

Jersey trustees are regulated by the JFSC and are also subject to Jersey trusts law, including the Trusts (Jersey) Law 1984. The trustee owes 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.

This combination of legal and regulatory obligations provides protection for unitholders, who are placing money and assets in the hands of the trustee.

Must a JPUT have a manager?

No. The trustee will generally manage the affairs of the JPUT as well as holding the JPUT assets. A separate manager may be appointed if so desired. In such cases the manager is generally owned and controlled by one or more of the unitholders. Appointing a manager can give the unitholders potentially greater control over the management of the JPUT.

The trustee will usually appoint a property manager to manage any property the JPUT owns.

Must a JPUT appoint an auditor?

No. A JPUT does not require an auditor nor must audited accounts be prepared or filed. That said, many unitholders prefer audited accounts and this is usually required by lenders if external financing is being raised for the JPUT.

How is a JPUT funded?

The JPUT can be funded by a variety of means including cash (where an investor will subscribe for units using cash), real estate or other assets (where an investor will contribute an asset to the JPUT in return for units) or loans. The trust instrument will need to be drafted according to any specific requirements.

Can a JPUT make distributions?

Yes. There are no restrictions under Jersey law as to the manner in which the JPUT may make distributions of capital or income (subject to the 'Baker Trust' requirements (see 'UK tax treatment of a JPUT' below)). The trust instrument will need to be drafted according to any specific requirements.

How does the trustee hold the JPUT's real estate assets?

The trustee can either be registered as the direct holder of the real estate assets or it can hold via nominees or indirectly via other entities which it owns.

How many unitholders must the JPUT have?

For UK regulatory reasons it is usually necessary for the JPUT to have a minimum of two unitholders. It is quite common for the second unitholder to be a subsidiary or affiliate of the first unitholder.

If the JPUT will have multiple investors then it is possible that it will need to be regulated as an investment fund. For more information on the regulation of investment funds in Jersey, refer to our guide entitled 'An introduction to Jersey investment funds'.

Rights of the unitholders

The rights of the unitholders will be set out in the trust instrument. The rights of unitholders may vary depending on the number of units they hold in the JPUT.

One of the benefits of a JPUT is that the Trusts (Jersey) Law 1984 contains very few specific provisions regulating the relationship between a JPUT and its unitholders or between unitholders themselves. This means that there is a great deal of flexibility in how the trust instrument is drafted and in the rights that can be granted to unitholders.

Can the unitholders control the trustee?

The trustee will be independent of the unitholders, with its own shareholders and directors (unless any unitholder representatives are on the board of directors of the trustee). While the trustee will be responsible for the affairs of the JPUT, it is possible to include provisions in the trust instrument restricting what the trustee may do without approval from the unitholders. In addition a manager could be appointed if the unitholders wish to have greater participation in the management of the JPUT (see 'Must a JPUT have a manager?' above).

Can a JPUT borrow, give guarantees and provide security?

Subject to the terms of the trust instrument, the trustee of a JPUT is able to borrow, give guarantees and indemnities, grant security over the JPUT's assets and generally perform any obligations required of it under finance documents. The trustee will generally be required to do one or more of these things by any external lender that is funding the acquisition of the relevant real estate asset.

The trustee's power to do these things can be subject to such restrictions as are deemed necessary. Any such restrictions should be incorporated in the trust instrument.

Security can also be granted by the unitholders over their units in the JPUT (subject to any restrictions in the trust instrument). Any such security will need to comply with the requirements of the Security Interests (Jersey) Law 2012.

UK tax treatment of a JPUT

The UK tax treatment of the JPUT will need to be checked with UK tax advisers. We understand that some of the potential advantages of a JPUT for investment in UK real estate from a UK tax perspective include:

- If a JPUT is a 'Baker Trust' (ie the trust instrument provides that the income from the trust accrues to and belongs to unitholders as it arises, rather than forming part of the trust fund for later distribution), the JPUT should be treated as transparent for UK income tax purposes. As a result only the unitholders (and not the JPUT) are subject to UK income tax, putting them in the same position as if they had invested directly in the property. This may be beneficial for tax exempt investors.
- If a JPUT has made a 'transparency election', the JPUT should be treated as transparent for UK capital gains tax purposes. As a result only the unitholders (and not the JPUT) should be subject to UK capital gains tax, putting them in the same position as if they had invested directly in the property. This may be beneficial for tax exempt investors.
- The sale of any units should not be subject to UK stamp duty land tax.

How long can a JPUT last (ie the term of the JPUT?)

The trust instrument would usually prescribe the 'term' of the JPUT which can be set to a specific time period (usually set in years or by reference to a specific date) otherwise the time period can be indefinite. The rule against perpetuities has been abolished in Jersey thereby allowing an indefinite life for a JPUT.

Jersey tax treatment of a JPUT

The Jersey tax treatment of a JPUT is as follows:

- No Jersey income tax or capital gains tax is payable by the trustee (provided that no unitholder is a natural person who is Jersey tax resident).
- No Jersey withholding tax is applied on interest payments or distributions by the trustee (provided that no unitholder is a natural person who is Jersey tax resident).
- No stamp duty is payable on the transfer of any units.

Winding up a JPUT

The trust instrument will usually set out the procedure for terminating a JPUT and distributing its assets. In addition, regard should be had to the following:

- In addition to the terms of the trust instrument, Jersey law provides that all of the unitholders together will generally have the right to require the trustee to terminate the JPUT.

- On the termination of a JPUT, the trust property is to be distributed by the trustee to the unitholders within a reasonable time. There are no Jersey filings that need to be made and no specific statutory or regulatory timetable that needs to be complied with.
- There are no formal requirements to advertise for creditors.
- The trustee may require to be provided with reasonable security for liabilities before distributing trust property. The trustee may therefore wish to receive an indemnity from the unitholders to whom the trust property is distributed covering such liabilities.

For more information on winding up a JPUT, please refer to our guide 'Winding up JPUTs'.

What are the benefits of a JPUT?

Benefits of a JPUT include:

- No Jersey tax (see 'Jersey tax treatment of a JPUT' above).
- Potential UK tax advantages (see 'UK tax treatment of a JPUT' above).
- Ease of getting money or assets into or out of a JPUT.
- A commonly used structure (which will therefore be familiar to advisors, sellers and buyers).
- Flexibility in relation to unitholder rights.

Can a JPUT be used for other purposes?

Yes. Although most JPUTs are used to directly or indirectly acquire UK real estate, they can potentially be used for a variety of other transactions. Legal and tax advice should be sought in each case.

How can Mourant assist?

Any person wishing to establish a JPUT will require:

- Jersey legal advice – the JPUT will need to be structured to meet the client's requirements as well as applicable Jersey regulatory and legal requirements. Mourant Ozannes (Jersey) LLP has advised on many of the UK's largest real estate transactions in recent years, many of which were structured through JPUTs.
- Jersey administrator – a JPUT will require a Jersey based administrator to provide trustee services and administrative support to the JPUT. Mourant Ozannes (Jersey) LLP is able to assist through its affiliated corporate and fiduciary services business, Mourant Governance Services (Jersey) Limited.

Mourant Ozannes (Jersey) LLP and Mourant Governance Services (Jersey) Limited are able to provide the seamless Jersey legal and administrative support that is necessary to ensure that JPUT transactions are executed in a timely and efficient manner.

Contacts

A full list of contacts specialising in corporate law can be found here.