

Winding up JPUTs

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Before setting out the procedure for winding up (or 'terminating') a Jersey Property Unit Trust (**JPUT**), it is important to note that a JPUT is very much a private vehicle. Although consent from the Jersey Financial Services Commission (the **JFSC**) is needed before a JPUT can issue any units, there is no public register of JPUTs and there is very little stipulated in Jersey law (other than in relation to the general duties of trustees) in relation to the creation, operation or termination of a JPUT. As such, JPUTs are very flexible and are regulated almost exclusively by the terms of the trust instrument by which they were created. It is therefore the trust instrument to which you must have regard in determining the procedure for terminating a JPUT and distributing its assets.

Turning to the issues in more depth:

Commencing the termination

The requirements for commencing the termination will depend on the terms of the trust instrument. Trust instruments often provide that the JPUT will be terminated after a certain period of time, in the event of certain specified events (eg illegality, failure to find replacement for retiring trustee) or on a resolution of the unitholders. Under Jersey law, all of the unitholders together will generally have the right to require the trustee to terminate the JPUT.

Procedure on termination

Under Jersey law, on the termination of a JPUT the trust property is to be distributed by the trustee to the unitholders within a reasonable time in accordance with the terms of the trust instrument. The termination of the JPUT is therefore conducted by the trustee in accordance with the terms of the trust instrument. There is no requirement for a liquidator, and there are no provisions of Jersey law regulating the method of winding up. No filings need to be made with any authorities in Jersey (though it is good practice to advise the JFSC when a JPUT has been terminated), and the timescale for completing the process will be determined by the time taken to realise assets, discharge liabilities and distribute the remaining assets rather than any timescales set down by Jersey law. Following the distribution of the trust property the JPUT will automatically come to an end without further formality.

There are no formal requirements to advertise for creditors, and in practice this is not usually done as the trustee will be familiar with any claims on the trust property.

Prior to commencing the termination of the JPUT, the trustee will generally terminate the appointment of any property manager, investment manager, administrator and other advisers/delegates. Trust instruments commonly provide that, on termination of the JPUT, the trustee should realise the assets of the JPUT and then repay any borrowings. After payment by the trustee of the JPUT's liabilities (or retention by the trustee of an amount sufficient to cover such liabilities) the trustee will generally proceed to distribute the net proceeds of realisation among the unitholders in proportion to the number of units they hold. Trust instruments often provide that assets may be distributed in specie. Interim distributions can be made where the trust instrument provides for it.

Trustee indemnity

A trustee of trust whose appointment is being terminated or revoked or who distributes trust property or otherwise ceases to be a trustee may, before surrendering the trust property, require reasonable security for liabilities whether existing, future, contingent or otherwise. The trustee may require an indemnity from the unitholders to whom the property is distributed covering such liabilities. We would expect an indemnity to be requested by trustees in most cases.

This potentially places a purchaser of units in a JPUT, who then terminates the JPUT, in a difficult position as the purchaser may potentially be liable for liabilities incurred by the trustee prior to the purchase by it of the units. We would expect most purchasers of units to minimise this risk by:

- conducting all necessary due diligence on the property and JPUT prior to the purchase, and seeking appropriate warranties; and
- if appropriate, seeking indemnities from the seller.

Contacts

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

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