

Real Estate Finance Guernsey Property Unit Trusts

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Introduction

As a politically stable and tax neutral jurisdiction with over 40 years accumulated experience as an international finance centre, Guernsey has gained a strong reputation as a prime location in which to establish investment structures of all descriptions including a large number of property funds and property holding vehicles.

This brief guide has been prepared by the finance team at Carey Olsen for the purpose of giving clients and professional intermediaries a general overview of Guernsey property unit trusts, now commonly referred to as “**GPUs**”. GPUs are used for a variety of property acquisitions, including as joint venture vehicles and as regulated funds.

The growth of GPUs

Until 2006, GPUs benefited from an advantageous provision of UK tax law which allowed (in certain circumstances) property to be transferred to a GPU without UK Stamp Duty Land Tax (“**SDLT**”) being incurred. This led to a substantial number of high-value UK commercial properties being held in GPUs, including many landmark buildings in the City of London and elsewhere.

Although the SDLT exemption referred to above has now been abolished, GPUs retain many desirable features, including:

- no stamp duty being payable (in Guernsey or the UK) on transfers of units in a GPU;
- no income or capital gains tax being payable in Guernsey by a GPU trustee;

- the potential to be transparent for UK income tax purposes (established as “**Baker Trusts**”); and
- being a structure recognised and accepted by lending banks in the UK and elsewhere.

GPU Trustees

It is recommended that a special purpose company or companies be established in each instance to act as trustees of new GPUs (“**SPC Trustees**”). Although the provision of trustee services is a regulated activity in Guernsey pursuant to the Regulation of Fiduciaries, Administration Businesses and Company Directors etc (Bailiwick of Guernsey) Law, 2000, as amended (the “**Fiduciaries Law**”), an exemption from the requirement to obtain regulated status is available where the following criteria are met:

- the SPC Trustees are administered by an entity regulated for the conduct of fiduciary business under the Fiduciaries Law; and
- the SPC Trustees’ sole purpose and only activity is to act as trustees of the GPU.

What is a Unit Trust?

A unit trust is a legal structure whereby legal ownership of assets is vested in a trustee who holds the assets on trust for the benefit of unit holders. Under Guernsey law, a unit trust must be constituted by a written instrument which sets out, in effect, the terms on which the trustee holds the trust assets for the unit holders.

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The trustee of a unit trust may appoint a trust manager, depending on the needs of the client and the nature of the property held. Alternatively, this function can be undertaken directly by the trustee. In addition, where a GPUT is concerned, it is usual for a property manager to be appointed by the trustee to manage the property and deal with matters such as tenant issues or rent collection.

Typically, trust instruments under Guernsey law will contain provisions relating to:

- i. the extent of the trustee's powers and discretions;
- ii. the appointment, removal or retirement of the trustee; and
- iii. the issue, redemption and valuation of units.

Provisions may be included in the trust instrument which require a trustee to obtain the consent of unit holders or a third party before certain powers are exercised.

There are no taxes, registration fees or duties payable in Guernsey in respect of the establishment or administration of a unit trust. Most GPUTs on Guernsey are not regulated. Those that are regulated are those established as funds ("**Collective Investment Schemes**").

Regulation of GPUTs in Guernsey

The extent to which a GPUT is subject to regulation in Guernsey will depend largely upon the number of persons to whom an offer of units is made and the level of sophistication of those persons. Depending on these factors, GPUTs can be "Collective Investment Schemes" for Guernsey regulatory purposes.

Collective Investment Schemes (Funds)

A GPUT may be regulated under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (the "**POI Law**") if it is a "collective investment scheme", being any arrangement relating to property of any description (including money):

- a. the purpose or effect of which is to enable investors to participate in, or receive profits or income arising from, the acquisition, holding, management or disposal of the property, or sums paid out of such profits or income, and
- b. in which the investors do not have a day-to-day control over the management of the property to which the arrangement relates (whether or not they have any right to be consulted or give directions), and
- c. under which:
 - i. the contributions of the investors and the profits or income out of which payments are to be made to them are pooled, or
 - ii. the property in question is managed as a whole by or on behalf of the person responsible for its management.

It is possible for GPUTs regulated under the POI Law to be established under the registered or authorised fund regime and as private investment funds ("**PIFs**"). Funds can be given regulatory approval by the Guernsey Financial Services

Commission ("**GFSC**") in three days from submission of final form documents for the fund.

Further information on the regulation of funds available on Carey Olsen's website at www.careyolsen.com or from one of the experts in our team.

Carey Olsen Team

The Carey Olsen team has wide experience in GPUTs, regularly advising purchasers, vendors, investors, trustees and finance parties both on the establishment of the structure and on an ongoing basis. We have advised on issues relating to distressed GPUTs and the enforcement of security over GPUT units and GPUT assets.

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