Jersey property unit trusts

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Introduction

As a politically stable and tax neutral jurisdiction with over 30 years' accumulated experience as an international finance centre, Jersey 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 real estate finance team at Carey Olsen for the purpose of giving clients and professional intermediaries a general overview of Jersey property unit trusts, now commonly referred to as "JPUTs".

The growth of JPUTs

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

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

- no stamp duty being payable (in Jersey or the UK) on transfers of units in a JPUT;
- no income or capital gains tax being payable in Jersey by a JPUT trustee;
- the potential to be transparent for UK income tax purposes;
- the potential to defer or be exempt from UK capital gains tax on the sale of UK property; and
- being a structure recognised and accepted by lending banks in the UK and elsewhere.

Accordingly, Carey Olsen continues to receive a steady stream of instructions to establish new JPUTs each year.

JPUT trustees

It is recommended that special purpose companies be established in each instance to act as trustees of new JPUTs ("SPC Trustees"). Although the provision of trustee services is a regulated activity in Jersey pursuant to the Financial Services (Jersey) Law 1998 (the "FS 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 trust company business under the FS Law;
- the SPC Trustees' sole purpose of establishment and only activity is to act as trustees of a specific JPUT or JPUTs; and
- the SPC Trustees must not solicit from or provide trust company business services to the public.

What is a unit trust?

A unit trust is a legal structure whereby legal ownership of assets is vested in a trustee who holds these on trust for the benefit of unitholders. Under Jersey 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 unitholders.

The trustee of a unit trust may appoint a manager, depending on the needs of the client and the nature of the proper ty held.

Alternatively, this function can be under taken directly by the trustee. In addition, where a JPUT is concerned, it is usual for a property manager to be appointed by the trustee to manage the proper ty and deal with matters such as tenant issues or rent collection.

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

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

Provisions can be included in a trust instrument which require a trustee to obtain the consent of unitholders or a third party (such as a lender) before certain powers are exercised.

There are no taxes, registration fees or duties payable in Jersey in respect of the establishment or administration of a unit trust. However, before a JPUT can be established, the Jersey trustee/ administrator will need to identify the beneficial owners behind the structure and will need to obtain due diligence documentation to meet its obligations under the island's anti-money laundering (AML) legislation.

Regulation of JPUTs in Jersey

The extent to which a JPUT is subject to regulation in Jersey will depend largely upon the number of persons to whom an offer of units is made and the level of sophistication of those persons. If there are less than 15 investors, JPUTs can qualify as "Very Private Unit Trusts" with very light touch regulation.

Very private unit trusts

Consent to the establishment of any unit trust (other than a unit trust which is a regulated collective investment fund (see below)) must be obtained from the Jersey regulator, the Jersey Financial Services Commission (the "Commission"). This takes the form of a consent to the raising of money and issue of units under the Control of Borrowing (Jersey) Order 1958 ("COBO"). A unit trust can be established as a very private unit trust where there are no more than fifteen persons to whom an initial offer of units is made and where the number of investors may not exceed fifteen persons at any time throughout the life of the unit trust. For such structures the authorisation process has been streamlined. Details of beneficial owners are required to be disclosed to the Commission on a confidential basis.

Collective investment funds

A JPUT may be regulated under the Collective Investment Funds (Jersey) Law 1988 (the "CIF Law") if units are to be offered to more than 50 persons or are to be listed on a stock exchange. Jersey functionaries to a JPUT regulated under the CIF Law (for example the trustee or the manager) must be regulated for the conduct of funds services business under the FS Law.

It is possible for JPUTs regulated under the CIF Law to be established under the expert fund regime. Expert funds will be given regulatory approval in three working days and benefit from a lighter ongoing regulatory touch. Further, it is possible for a JPUT that would otherwise require regulation under the CIF Law to be established as an unregulated eligible investor fund or an unregulated exchange traded fund.

The Carey Olsen team

The Carey Olsen team has wide experience in JPUTs, regularly advising purchasers, vendors, investors, trustees and finance par ties both on the establishment of the structure and on an ongoing basis. In particular, we have recently advised on issues relating to distressed JPUTs and the enforcement of security over JPUT units and JPUT assets. We have also advised on changing the regulatory status of JPUTs, either to permit a wider offer of units or to cancel certificates issued under the CIF Law.

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FIND US

Carey Olsen Jersey LLP
47 Esplanade
St Helier
Jersey JE1 0BD
Channel Islands

T +44 (0)1534 888900
E jerseyco@careyolsen.com

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