CAREY OLSEN

# A guide to JPUTs (Jersey Property Unit Trusts)

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Jersey property unit trusts (JPUTs) remain a popular choice of vehicle for investment and fund structures that hold UK real estate and we continue to see a steady flow of instructions to establish new JPUTs.

This brief guide has been prepared by the real estate finance team at Carey Olsen to provide our clients and professional intermediaries with a general overview of JPUTs, their benefits and their regulation in Jersey.

## What is a JPUT?

A Jersey Property Unit Trust (JPUT) is a legal structure whereby legal ownership of assets (primarily non-Jersey real estate) is vested in one or more trustees who hold the assets on trust for the benefit of unitholders upon the terms of a written trust instrument.

## What are the benefits of a JPUT?

JPUTs have many plus points:

- **Familiarity**: JPUTs are generally recognised and accepted by investors, lenders, advisers, regulators and tax authorities in the UK and elsewhere.
- **Flexibility**: There are very few restrictions in Jersey on the governance terms of a JPUT (such as trustee powers, reserved matters and distribution entitlements and arrangements) so these may be customised to suit commercial objectives.
- **Tax-efficiency**:
  1. No income or capital gains tax payable in Jersey by a JPUT trustee.
  2. No stamp duty payable in Jersey or the UK on transfers of units in a JPUT.
  3. Possible to structure in such a way as to be transparent for UK income tax purposes.
  4. A JPUT may elect to be treated as exempt or transparent for UK capital gains tax and corporation tax purposes (including on the sale of the JPUT's underlying real estate).
- **Ease of establishment**: A JPUT is straightforward to establish, requiring a trust instrument, an initial trust fund (usually a nominal cash amount), one or more trustees and an appropriate consent or regulatory approval.

## JPUT trustee(s)

A JPUT requires a person or entity (usually a Jersey private limited company) to act as trustee. Due to English property law requirements, it is often preferable for a JPUT to have two trustees that jointly hold the underlying real estate upon the terms of the trust instrument.

It is usually recommended that a special purpose company is established to act as a trustee of a JPUT which can usually be exempt from regulation. A variety of professional Jersey service providers are available to administer those SPC trustees for you.

Although legal ownership of assets vests in the trustee(s), Jersey law imposes certain fiduciary duties on the trustee(s) that are owed to the unitholders of the JPUT.

The majority of directors on the board of a trustee of a JPUT trustee must be Jersey residents. hHowever, it is possible to appoint non-Jersey based individuals. This flexibility can be beneficial for can assist an investors wanting who wish to have a nominated representative on the board or include someone with a specific set of skills.

The trustee(s) may appoint a manager (for example, to manage the property and deal with matters such as tenant issues or rent collection) or other adviser, depending on the needs of the client and the nature of the property held. Alternatively, this function can be undertaken directly by the trustee(s).

## Trust instrument for JPUTs

A written trust instrument is required to constitute a JPUT which sets out, in effect, the terms on which the trustee(s) hold the trust assets for the unitholders.

The trust instrument can be drafted to allow a manager to provide trustee(s) with advice and to require unitholder consent before certain decisions are made by the trustee(s). The consent requirement can be particularly effective when acquiring a new property.

Jersey's trust law regime is very flexible and modern in various respects, particularly in comparison to other jurisdictions. This means that the commercial intentions of investors can generally be well-reflected in the terms of the trust instrument.

## Regulation of JPUTs in Jersey

There is great flexibility in the regulation of a JPUT – from being exempt to various types of regulated fund options:

- **Non-Fund JPUTs:** Typically, single asset with one/two investors. Only requires a straightforward consent to the raising of money and issue of units under the Control of Borrowing (Jersey) Order 1958 (known as a COBO Consent).
- **Jersey Private Fund (JPF):** For JPUTs with multiple investors, especially where the JPUT will hold multiple assets. JPFs have gone from strength-to-strength since their introduction in 2017 due to a fast-track approval system and light touch regulatory approach.
- **Eligible Investor (Notification only) funds:** For JPUT funds with multiple sophisticated investors where neither the trustee nor JPUT need be regulated.
- **Collective Investment Fund (CIF):** Where a JPUT is a fund with multiple assets and investors, it may be regulated as a CIF (typically, as an Expert fund).

JPUT trustees may also be required to register with the JFSC for AML/CFT purposes in certain circumstances. However, there are various exemptions to registration which may be available (e.g. the JPUT is a "professional investor regulated scheme" or "PIRS scheme").

Find out more about [Jersey funds regulation].

## UK capital gains tax (CGT) and corporation tax (CT) changes and their impact on JPUTs

Under the UK's Capital Gains Tax (CGT) and Corporation Tax (CT) regimes, we understand that non-UK investors are generally in-scope on any direct or indirect gains in relation to investments in UK property. However, certain exemptions are available which contribute to the continued popularity of JPUTs:

- **Transparency election:** JPUTs may elect to be treated as transparent for any gains subject to satisfaction of certain conditions. Investors in JPUTs making a transparency election will be taxed in their own hands on any gain made in respect of investments in UK property and therefore: i) the status of exempt investors is preserved; and ii) no double-tax will result as a consequence of investment through these vehicles.
- **Exemption election:** UK property-rich Jersey fund structures (including JPUTs) which are widely held and prepared to fulfil certain reporting requirements are able to elect to be treated as exempt. This means that not only the fund itself but also any underlying holding entities will be disregarded for CGT/CT purposes (in respect of UK property gains), and investors will be taxed in their own hands on any gain made on their interests in the fund.

## The Carey Olsen team

As the largest Jersey law firm, the Carey Olsen team has extensive experience of JPUTs, regularly advising purchasers, vendors, investors, trustees and finance parties both on the establishment of the JPUT structure and on an on-going basis.

We work closely with other stakeholders on legal developments (both in Jersey and the UK) that impact JPUTs. This provides us with insight enabling us to best assist our clients on their existing and future structures. We also have good relationships with all of the key corporate service providers in Jersey who provide administration, accounting and other services to JPUTs and their trustee(s).

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