



## An introduction to Jersey property unit trusts (JPUTs)

**Nick Kershaw** of **Ogier** explains what Jersey property unit trusts (JPUTs) are, how they are established and why they are used for holding UK property. This practice note considers the current advantages of using JPUTs and contains a table comparing and contrasting JPUTs with UK real estate investment trusts (REITs).

### WHAT IS A JPUT?

A Jersey property unit trust (JPUT) is a unit trust governed by Jersey law and used to hold real estate. A unit trust is not a legal entity: under a unit trust, legal ownership of the trust assets is vested in a trustee, who holds them on trust for the benefit of holders of units in the trust (unit holders) in accordance with the terms of the trust instrument.

JPUTs have been used extensively in recent years as a vehicle to acquire and hold UK property. Historically, the key driver for this was to take advantage of the seeding relief exemption from UK Stamp Duty Land Tax (SDLT), which gave relief from SDLT when property was transferred into a newly formed unit trust in consideration of the issue of units.

Seeding relief was abolished with effect from 22 March 2006 (for background on seeding relief and its abolition see *Practice note, Budget 2006: implications for property: Withdrawal of Unit Trust "seeding relief"* ([www.practicallaw.com/7-202-1304](http://www.practicallaw.com/7-202-1304))). However, other key advantages of using JPUTs still remain and JPUTs can be attractive property investment vehicles for single investors, joint venture arrangements and collective investment funds (see below, *Advantages of JPUTs*).

This practice note:

- Explains how JPUTs are established.
- Summarises the applicable regulatory framework.

- Outlines the advantages of using JPUTs.

- Compares JPUTs and REITs.

### HOW ARE JPUTs ESTABLISHED?

#### Identifying trustees

The first step in establishing a JPUT is to determine who will act as the trustee. If the JPUT is an investment fund it will also typically have a separate manager which will be a party to the trust deed and which will be owned by the promoter of the fund and assume direct responsibility for the investment arrangements of the JPUT.

In Jersey, trust company business is regulated by the Financial Services (Jersey) Law 1998 (FS Law). Persons carrying on trust company business are, subject to certain exceptions, required to be registered under the FS Law and to comply with the Trust Company Business Codes of Practice issued under the FS Law (*Article 7, FS Law*).

Professional trustee companies will typically have such a registration in place. However, where the JPUT is to be established as a straightforward property holding structure, it may be preferable for the trustee to be a private company established for the purpose and held by the unit holder. This approach has the following advantages:

- The unit holder has a greater degree of control over the JPUT because it can populate the board of directors

### Private trustee company conditions

To take advantage of the private trustee company exemption, a private trust company must meet each of the following conditions:

- Its purpose must be solely to provide trust company business services in respect of a specific trust or trusts (*Article 4, FSO*).
- It must not solicit from or provide trust company business services to the public (*Article 4, FSO*).
- Its administration must be carried out by a registered person registered to carry out trust company business under the FS Law (*Article 4, FSO*).

of the trustee with nominated individuals.

- The trustee company can be sold along with the units in the JPUT, which means that underlying contracts do not need to be assigned to new trustees if the JPUT is sold.

Private trustee companies are exempt from the requirement to register under the FS Law provided they meet certain conditions (*see box, Private trustee company conditions*) (*Article 2, Financial Services (Trust Company Business (Ex-*

## Expert investors

Each investor in an expert fund is required to sign an investor warning and must fall within one of the following prescribed categories of expert investor:

- A person who makes a minimum initial investment of US\$100,000 (or equivalent).
- A person whose ordinary business includes buying or selling investments or giving investment advice.
- A person with a net worth (individually or jointly with their spouse) of more than US\$1 million (or equivalent) excluding their place of residence.
- An entity either with assets available for investment of not less than US\$1 million (or equivalent) or of which every member or partner is an expert investor.
- A person connected with a functionary of the fund (including “carried interest investors”).

*emptions*) (*Jersey Order 2000 (FSO)*). Private trustee companies are also exempt from the legislation and codes of practice applicable to professional trustees.

### Regulatory framework

Once it has been decided who will act as trustee, the next step is to determine the level of regulatory control to which JPUT will be subject and what authorisation is required from the Jersey Financial Services Commission (the Commission) for the issue of units.

The degree of regulatory control applicable to JPUTs varies, depending on the number and type of investors. There are four different levels of regulation; each is considered in turn below.

### Very private unit trusts

A JPUT will be a very private unit trust (VPUT) if it has no more than 15 investors and does not issue an offering document to potential investors, according to the Commission’s informal guidance.

A VPUT requires consent from the Commission before it can raise money and issue units (*Article 9, Control of Borrowing (Jersey) Order 1958 (COBO)*). Obtaining such consent is normally a formality taking a couple of days to process, subject to the disclosure to the

Commission on a non-public, confidential basis of details in relation to ultimate beneficial ownership.

The Commission will not review any documents relating to a VPUT or monitor it on an ongoing basis.

### COBO-only funds

A JPUT will be a COBO-only fund if it involves an element of pooling of funds and the JPUT offers units to potential investors by way of an offer document or, if there are more than 15 investors, provided the units in the JPUT are not to be offered to more than 50 investors or listed on any stock exchange (*Article 3, Collective Investment Funds (Jersey) Law 1988 (CIF Law)*).

Consent will be required from the Commission for the COBO-only fund to raise money and issue units and, in granting such consent, the Commission will review the offer document of a COBO-only fund.

In addition, the Commission will require the trustee to have two Jersey-resident directors on its board and may require the JPUT to have a Jersey manager. The Commission may also require the JPUT to supply information that enables it to be satisfied as to the stature of the promoter in accordance with the Commission’s Policy on Promoters.

### Collective investment funds

A JPUT will be a collective investment fund (CIF) if units in the JPUT are to be offered to more than 50 investors or are to be listed on a stock exchange (*Article 3, CIF Law*).

A CIF JPUT requires consent to raise money and issue units under the COBO. In addition, Jersey functionaries (that is, the trustee and the manager, administrator or custodian (if any)) of the JPUT must obtain permits from the Commission (*Article 5, CIF Law*).

For non-expert funds (which are all funds that are not expert funds, to which a lighter regulatory regime applies; see below, *Expert funds*), permits will not be granted until the Commission is satisfied with the stature of the promoter and the structure and the documentation of the JPUT itself. The Commission will place conditions on the permits to facilitate ongoing monitoring.

In addition, the Commission will require the trustee of a JPUT that is a CIF to have two Jersey-resident directors on its board and a Jersey-resident manager. The authorisation process generally takes four to six weeks. If the CIF is open-ended, the Guide to Open-Ended Unclassified Collective Investment Funds, which sets out certain documentary and structural requirements in relation to the JPUT, will also apply.

### Expert funds

A JPUT will be an expert fund if each of the investors is an expert investor (*see box, Expert investors*).

Expert funds are aimed at institutional and high net worth investors and are subject to a very light degree of regulation. Expert funds can be established within a matter of days on the basis of a self-certification approach without the requirement for any formal regulatory review of the fund or its promoter. In particular, an expert fund is not required to adopt any prescribed investment or borrowing restrictions or risk diversification strategy.

An expert fund requires consent to raise money and issue units under the COBO.

## JPUTs and UK REITs: a comparison

	JPUT	UK REIT
<b>Type of vehicle</b>	Unit trust. No requirement for listing or UK tax residence. Can be open-ended.	Must be a listed body corporate resident in the UK for tax purposes. Must not be an open-ended investment company.
<b>Type of unit/share</b>	No restriction on number or type of classes of units (meaning that, for example, a JPUT can have an ordinary class of units and a "carried interest" class of units).	One class of ordinary shares and fixed rate preference shares only are permitted.
<b>Control restrictions</b>	None.	Tax penalty if a shareholder controls 10% or more of the share capital/voting rights.
<b>Portfolio restrictions</b>	None.	Property rental business must include at least three properties, and no single property may represent more than 40% of the total value of the properties in the property rental business.
<b>Business restrictions</b>	None.	75% of the income and asset value must relate to property rental business.
<b>Gearing restrictions</b>	None.	Tax penalty if ratio of rental profits before interest and capital allowances to interest on loans is less than 1.25:1.
<b>Entry charge</b>	No equivalent.	2% of the market value of the UK REITs' investment properties immediately before conversion.
<b>Distribution of profits</b>	No deadline for distribution.	Must distribute 90% of net taxable profits before corporation tax filing date.
<b>Tax on vehicle</b>	<p>Can be structured so as to be transparent for UK income tax purposes, which means there is no charge to income tax on property rental income, or other income, at the level of the JPUT.</p> <p>For UK capital gains tax purposes a JPUT is treated as a company, which means that, if it is managed and controlled offshore, it can also be possible to defer or even avoid tax on capital gains in relation to its capital assets (including its non-property assets).</p> <p>JPUTs are exempt from Jersey tax, provided they have no Jersey-resident unit holders and no Jersey-source income.</p>	<p>Qualifying rental income and gains on disposals of investment properties are exempt from UK corporation tax.</p> <p>Income from non-property rental activities (including development activity) is subject to UK corporation tax at 30%.</p> <p>For information on the taxation of non-UK resident subsidiaries of UK REITs, see <i>Practice note, UK REITs: questions and answers</i>.</p>
<b>Tax on distributions</b>	No withholding tax on distributions.	<p>Distributions of income and capital (including distributions to overseas investors) are subject to withholding tax at the UK basic rate of 22%. In practice, this means that overseas property investors, who would otherwise be exempt from UK tax on capital gains may still prefer offshore structures.</p> <p>For further information on UK REITs generally, see <i>Practice note, UK REITs: questions and answers</i>.</p>

The Commission will require the trustee to have two Jersey-resident directors on its board. However, it will not require the JPUT to have a Jersey manager so long as either:

- in the case of an open-ended fund, it has a separate Jersey-based administrator; or
- in the case of a closed-ended fund, the trustee fulfils the manager function.

### Acquisition of property

Once the relevant regulatory approval has been obtained, the trustee and manager, if any, will execute the trust instrument.

The trust instrument will typically contain provisions dealing with, among other things, each of the following:

- The powers and discretions of the trustee.
- The procedure for appointing and removing trustees.
- The mechanics for the valuation, issue, transfer and redemption of units.

However, the JPUT will not come into existence until the trustee is holding assets on trust for the unit holders. For that reason, the acquisition of property is integral to the establishment of a JPUT. The trustee or JPUT manager will typically appoint a property manager to deal with the day-to-day management of the property including rent collection, maintenance and insurance.

While major decisions relating to the management of the trust assets remain the responsibility of the trustee or manager, if any, the trust instrument can be drafted so as to enable the property manager to provide the trustee with advice and for the consent of the unit holders to be required before certain decisions can be taken by the trustee (for example, the issue of new units or the acquisition of a new property).

## WHAT ARE THE ADVANTAGES OF JPUTs?

Despite the abolition of seeding relief, there remain a number of benefits to using JPUTs for investment in property. These are considered below.

### Tax transparency

The JPUT trust instrument can be drafted so that the JPUT is transparent for UK income tax purposes, known as a Baker trust (*Baker v Archer - Shee [1927] AC844*). This means that the income is treated as directly attributable to the unit holders as it accrues and unit holders can set off expenses of the JPUT against that income (which means that they can avoid a potential double layer of taxation at both vehicle and unitholder level).

### Deferral of UK tax on capital gains

JPUTs are treated as companies for UK taxation of chargeable gains purposes. This means that, if a JPUT is managed and controlled offshore, it can be possible to defer or avoid tax on capital gains.

### No stamp duty

The transfer of units in a JPUT does not attract UK or Jersey stamp duty. By contrast, the transfer of UK property attracts SDLT of 4%, the transfer of units in a UK unit trust attracts Stamp Duty Reserve Tax of 0.5% and the transfer or purchase of shares in a UK REIT Stamp Duty or Stamp Duty Reserve Tax of 0.5%.

### Jersey tax-exempt

Provided it has no Jersey-resident unit holders or Jersey-source income (other than bank deposit interest), a JPUT will be exempt from tax in Jersey and no tax will be withheld on distributions to unit holders.

### Can be listed or unlisted

Unlike a REIT, there is no requirement that a JPUT be listed on a recognised stock exchange.

A number of offshore unit trusts are listed on the Channel Islands Stock Exchange (CISX). A JPUT listed on CISX

is an eligible investment for SIPS and SAPS and for institutional investors with restrictions on investing in non-listed securities, as CISX is recognised by the UK Financial Services Authority, HM Revenue & Customs and the US Securities and Exchange Commission.

### Units easily transferable

A unit in a JPUT is similar to a share in a company and is transferable in the same way. By contrast, transferring a limited partnership interest is much more complicated.

### Easy to give security

A unit in a JPUT can be given as security in the same way as a share in a Jersey company, including by way of possessory security where the secured party takes possession of the unit certificates, without the need to be entered on the register of unit holders.

### No restrictive statutory framework

The statutory framework that applies to companies does not apply to JPUTs, which can be structured and operated by trustees subject only to their ordinary fiduciary duties. This means that, for example, there is no prohibition on financial assistance, so JPUTs can give security for the indebtedness of unit holders. There are also no maintenance of capital rules or restrictions on distributions, so JPUTs can make distributions out of capital without the need to meet solvency or other tests.

### Can issue different classes of units

A JPUT can be structured with different classes of units, which makes it possible for investors to receive different returns on their units. For example, this can be used to accommodate "carried interest" which gives the property manager an enhanced return depending on performance of the JPUT.

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