Snapshot: Jersey and trends in real estate structuring

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We are currently seeing a lot of demand for Jersey Property Unit Trusts (JPUTs) being used as a structuring vehicle, but they are not the only popular option. Covering both residential and commercial, many different asset classes and asset types are being structured in Jersey.

Why are JPUTs so popular?

JPUTs are in demand for a number of reasons - from investment holding structures for Jersey and Luxembourg funds, to feeder funds investing in UK funds for the non-UK foreign investors, to classic joint ventures and fund vehicles in their own right. It can be used in so many different ways.

To the extent the JPUT is a fund vehicle or feeder, it will almost always be approved as a Jersey Private Fund (JPF) due to its flexibility and speed to market, and a JPF has a number of key selling points:

1. the ease of access to European capital via national private placement regime (NPPRs)

2. the speed to market (ie 48 hours approval process) following the submission of a complete application to the JFSC via a dedicated web portal

3. the price - fees of around £1,000 to establish and thereafter annually

4. up to 50 offers and investors permitted

5. the pragmatic and relatively light touch regulatory regime which is permissive and not too prescriptive. For example, there is no requirement for an offer document (although there is a standard for content requirements where there is one), an audit or Jersey-resident directors – although these are often required for other reasons such as investor expectation and substance. Importantly, JPFs remain subject to Jersey's full AML/CFT regime which is essential for safeguarding both investors and managers.

While the changes to the capital gains regime in the UK has led tax exempt investors to utilise the JPUT to avail themselves of the various exemptions available under the new legislation, the general benefits of Jersey remain the same as they always have: political stability, legal flexibility, robust court system, tax neutrality and a mature and well-resourced workforce with hands on experience in the real estate sectors.

For funds with a global investor base, Jersey can offer a product that is quick to market, that can utilise NPPRs successfully to access European capital, but does not need to comply with full weight of the AIFMD.

What other structuring options are in demand?

We recently worked on an incorporated cell company (ICC) structure for an Financial Conduct Authority (FCA) regulated client who was looking for a solution to manage lots of different assets under one umbrella, housing different real estate strategies for different investors - all sophisticated high net worth investors.

Are there specific asset types being structured in Jersey?

We see so many different sectors and asset types covering residential and commercial, with recent examples including affordable housing, residential, care homes, distressed sales, and commercial office real estate.

As a group, we've seen a trend in foreign investment towards single tenant, long lease, commercial real estate in the regional cities outside of London, and particularly north of the border into Scotland. Generally wrapped up in a JPUT, it would appear that investors are willing to forfeit a little yield for tenant stability and rent annuity.

We've also seen more deals focused on logistics parks and similar commercial storage assets – again, mostly through JPUTs, but also through Jersey SPV companies.

This is consistent with the market; logistics remains an incredibly hot sector, especially urban logistics/last mile assets. Tech-focused infrastructure assets, such as data centres and smart hotels, have become more prevalent and student housing is still performing strongly, which is surprising considering the current number of university students studying from home.

More so, we see specific investors using Jersey rather than particular asset types. Institutional investors, pension funds and sovereign wealth funds continue to seek tax transparent vehicles (such as the JPUT) and high net worth investors who have sophisticated structuring requirements.

What are the hot topics for real estate structuring in 2021?

Whilst offices continue to play second fiddle to logistics, they are a haven for investors seeking stable returns and, naturally, single tenant offices further contribute to the stability that investors seek. Yields in London are being so squeezed at the moment that investors (particularly emerging institutional investors who are developing a stronger stomach for foreign investment) are seeking better yields in secondary locations such as Glasgow, Edinburgh and the Thames Valley.

Logistics remains the sweetheart of all the real estate sectors and it's not hard to understand why as we continue to see an increase in online shopping versus the decline of high street and destination retail. As the sector attempts to keep pace with demand, there is a particular shortage of supply in 'last mile' logistics property and we have seen many investors attempting to gain more exposure in the sub-sector.

Also, environmental, social and governance (ESG) and sustainable finance is on everyone's agenda at the moment, and is an increasingly important topic with investors conducting more due diligence on managers' ESG credentials. Sustainable finance refers to the process of taking due account of ESG considerations when making investment decision and a new wave of regulation is already crash landing.

Investors are doing a deep dive into ESG policies and want examples and case studies that show sustainability – and managers will need a framework to identify, quantify and report on the sustainability of investments. So this is an area that will keep us busy as lawyers in 2021.

We've certainly seen more interest in the build-to-rent (BTR) scheme world, with one of our blue-chip real estate clients currently pursuing a portfolio with this in mind. I predict we'll start to see a few more of these development structures through JPUTs as these schemes become more mainstream.

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