Jersey Property Unit Trusts

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A Jersey Property Unit Trust ("JPUT)" is a specific type of Jersey trust which is commonly used to acquire and hold interests in UK real estate.

A JPUT differs from a Company in that it is not a separate legal entity, with its assets held "On Trust" by its trustee for the benefit of its unitholders (investors) who are ultimately the beneficial owners. Units are issued in a JPUT similarly to shares in a Company.

As the JPUT is not a separate legal entity it does not appear on any public registry in Jersey or elsewhere. The register of unitholders and any relevant consents issued by the Jersey Financial Services Commission (the "JFSC") are also not publicly available which further makes the JPUT appealing as an offshore vehicle of choice.

Establishing a JPUT is relatively straight forward and far less time consuming and costly when compared to other offshore funds vehicles, which is predominantly why there has been a resurgence in recent months following their hay day in the late 90's.

Regulatory consent is required from the JFSC, which permits the JPUT to issue units. The trustees then hold a board meeting to execute the Trust Instrument which formally constitutes the unit trust. Additionally it would approve its appointment as trustee, the issue of units and appointment of other advisors etc. Being a trust, assets are required at the outset in accordance with applicable Trust Law. Usually two founder unitholders subscribe for the initial units for a cash consideration of £1.00 per unit with 100 units each being issued.

In order to establish a JPUT, a suitable Jersey service provider is needed to act as the trustee/trustees. Either one or two trustees is standard practice dependent upon whether the JPUT will hold UK real estate directly (two trustees required) or indirectly through nominee companies or another JPUT (one trustee and a nominee company is utilised). This structuring safeguards compliance with UK real estate law, ensuring that any overriding interests are overreached.

The Jersey based trustees fall within the regulation of the JFSC and subject to adherence to the Trust (Jersey) Law 1984. The trustees are required to act in the best interests of the unitholders of the JPUT, observe utmost good faith, due diligence, to the best of their ability and skill in exercising their trustees powers under the terms of the trust instrument which governs the JPUT.

Unitholders should therefore feel adequately protected under the stringent Jersey legal and regulatory regime to which the trustees must adhere to when placing reliance on the control of their assets/investment.

The trustee must be, and be able to demonstrate clear independence from the unitholders, being comprised of its own shareholders and directors. (In certain cases it may be permissible for unitholder representatives to form part of the composite on the board of directors of the trustee).

The trustee maintains full responsibility for the operation of the JPUT, however it is again possible to include provisions within the trust instrument, stipulating certain actions that may require prior unitholder consents. In cases where larger property portfolios are involved or large numbers of unitholders, it is common practice to have a separate Management Company, licensed and regulated under the Funds Services Business ("FSB") regime which usually has significant expertise within its board of directors to give greater assurance to the unitholders of the underlying JPUT.

So what are the main benefits of a JPUT?

- No Jersey tax;
- UK tax advantages;
- Simplicity and ease of investing and divesting in/out of a JPUT;
- Well known, tested and familiar to legal counsels, advisors;
- Extremely flexible and tailored trust instruments to stipulate unitholders rights;
- Relatively cost effective, in comparison to more complex structures; and
- Straightforward comprehension makes it easy for unitholders and advisors to understand and the operation less time consuming.

Flexibility in relation to unitholder rights.

It would be fair to say that Limited partnerships and other SPV corporate vehicles do still lead as offshore real estate vehicles of choice, however the JPUT should still be respected as a worthy contender.

Another attractive prospect is that provided there are under 15 investors (unitholders), an auditor is not required to be appointed as audited accounts are not an annual requirement.

A JPUT issues units in exchange for cash or asset investment and as structured as a "Baker Trust" will distribute rental income, net of expenditure to the unitholders on a quarterly basis, in accordance with the applicable tax treatment.

A Baker Trust provides that within the trust instrument the income arising from the unit trust belongs to the unitholders as it accrues, not to the actual JPUT. The JPUT is therefore treated as tax transparent for UK income tax purposes.

JPUT's tend to be extremely flexible and the applicable trust law allows for the trust instruments to be tailored and bespoke to client's requirements.

Regarding the time period a JPUT can exist, the trust instrument prescribes the "term" of the JPUT, which can be determined and specified or remain indefinite. Jersey has abolished the rule against perpetuities thus permitting the possibility of a JPUT having an indefinite life.

A JPUT is deemed to be a very liquid investment vehicle, with transfer processes being far less convoluted than limited partnerships, for example.

In respect of gearing, security interest agreements are in comparison more simplistic and the units are usually securitised with a "lien" restricting their sale without prior consent from the lending facility.

Statutory consideration again are extremely flexible and the regulatory regime overseeing the JPUT permits the trustees to operate their fiduciary duties. This is far more beneficial compared with a company structure, which has more complex and stringent rules and restrictions including capital requirements, accounts and solvency, as well as a higher level of regulatory oversight.

There is the ability to issue varying classes of units similar to share classes which could enable investment managers and unitholders to receive pre-determined varying rates of return based on the class of unit.

When the JPUT has reached the end of its life, its cessation is relatively straightforward and is determined as a "winding up". The procedure for the winding up is again pre-determined within the trust instrument and requires the trust to have no assets, purpose or beneficiaries under the Trust law. Therefore once the trust assets, (cash and property) have been distributed, the JPUT will simply cease to exist.

Why Jersey? Why Not?

Jersey has led the offshore jurisdictions and been consistently ahead of the curve with its fund offerings including the JPUT's. Its infrastructure has been the recipient of significant investment, being a centre of excellence for managers, directors, trustees, registrars and administrators. All ranges of service providers are in residence, ranging from the large corporate global operators to the small bespoke boutique providers such as Whitmill. This leads to competitive pricing, lower operational costs with significant expertise at your service.

As a JPUT has to be managed and operated from Jersey, the relaxed French like ambience that greets you along with the expanse of Coastal views and excellent restaurant offering is another plus point. Although not a guarantee, the summer sunshine further highlights Jersey's charm as an attractive place to do business.

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