

# PROPERTIES OF THE JPUT

Clients seeking to invest in commercial real estate ventures frequently use a trust structure for that purpose. The Jersey structures are known as Jersey property unit trusts, or JPUTs. David Dorgan explains more about this structure

**H**igh-net-worth individuals (HNWIs) may have the ownership of their personal realty held in a private trust structure so that either their trustees directly own the realty or, as has historically been more common, the realty is owned by an underlying company owned by the trustees. HNWIs also look to invest in commercial real estate ventures and, again, a trust structure is frequently used for that purpose. In Jersey, these structures are known as Jersey property unit trusts (JPUTs).

## STRUCTURE

Like any other trust, a JPUT will often come into existence on the execution of a trust instrument made by a trustee and on the transfer to the trustee of the property. However, those persons transferring property (i.e. the trust fund) to the trustee will be known as unitholders rather than beneficiaries. In addition, the unitholders' names will be entered into a register of unitholders and they will be issued with units in the JPUT.

The units will represent an undivided share of the underlying trust fund and carry those rights set out in the trust instrument. It is possible to have different classes of units, each class carrying different rights.

If further capital is required to purchase investment property, then either a subscription for additional units can be used to raise equity, and/or debt financing can be raised and secured against the investment property and/or the units.

## THE TRUSTEES

While professional, regulated trustees can serve as trustees, usually a special

purpose vehicle (SPV) is appointed to act as trustee, because it provides unitholders with greater control over the JPUT in terms of both nominating directors and moving the administration of the JPUT (should the need arise) without disturbing the legal ownership of the underlying property.

The shares of the SPV are usually held by a foundation or purpose trust for desired commerciality. In most jurisdictions, it is now not a requirement to have more than one trustee of a trust. However, if the underlying property is, for example, located in England, then the doctrine of overreaching needs to be considered, and so it may be desirable to have two trustees appointed.

## DUTIES OF TRUSTEES

Trustees of a JPUT have the same obligations as other trustees: to act with due diligence, as would a prudent person, to the best of their ability and skill, in accordance with the terms of the trust instrument; to observe the utmost good faith; and to exercise powers for the benefit of the unitholders.

The trustees may appoint a property manager to deal with the day-to-day management of the property, depending on the nature of the investment property and whether such a move is commercially viable. If it is known at the outset that a manager is required, then the manager will be likely to be a party to the trust instrument, agreeing to undertake the management responsibilities while the trustees undertake a custodian role.

## UNITHOLDERS' RIGHTS

Generally speaking, unitholders' rights are determined by the trust instrument,

but general trust principles also apply. It is not uncommon for a trust instrument to stipulate that certain actions – i.e. removing a trustee or terminating the trust – will require the consent of all unitholders or a majority of them.

## REGULATION

The level of financial regulation of a property unit trust will entirely depend on the jurisdiction and structure. By way of example, a JPUT with no more than 15 investors, not offering or marketing units, will be treated as a private structure and will only be subject to obtaining the consent of the Jersey Financial Services Commission to raise finance by the issue of units. If there are more than 15 investors and/or marketing interests, Jersey regulatory consent will be required.

## WINDING UP

Subject to the terms of the trust instrument, there is usually no requirement for a liquidator. Once the property has been distributed, the JPUT will come to a natural end as per usual trust principles.

## CONCLUSION

A JPUT can be an attractive vehicle for those seeking a return on investments in commercial real estate ventures. They are flexible and are a tried and tested method of making such investments.

## LOOK BEHIND THE NAME

In a *STEP Journal* web exclusive, Claire Tilbrook of Macfarlanes highlights recent UK changes and proposals that aim to enhance transparency of beneficial ownership of UK property. Read the article at [www.step.org/journal/web-exclusive-looking-behind-name](http://www.step.org/journal/web-exclusive-looking-behind-name)



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