

A guide to GPUTs (Guernsey Property Unit Trusts)

GUIDE

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What is a GPUT?

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

Unlike a company, a GPUT is not a separate legal entity. The assets of the GPUT are held by its trustee(s) on trust for the unitholders of the GPUT. The unitholders hold units in the GPUT, similar to shareholders holding shares in a company.

As the GPUT is a trust, the trustee will be the legal owner of the assets of the GPUT whereas the unitholders will be the beneficial owners of those assets. This is different from the position with a company, where shareholders have no direct ownership interest in the company's assets.

How do you establish a GPUT and how long does it take?

The following is required to establish a GPUT:

- An entity must be identified to act as trustee of the GPUT (see 'Who can act as trustee?' below).
- The trustee will require a fiduciary licence, or an exemption, from the Guernsey Financial Services Commission (**GFSC**) if it receives a fee for acting as trustee (see 'Who can act as trustee?' below).
- The trustee will need to execute a trust instrument establishing and setting out the terms of the GPUT.
- The GPUT will require trust property. Usually, one or two 'founder' investors will establish the GPUT by subscribing for initial units in the trust by way of a cash subscription (eg £100 for 100 units issued at £1.00 each).

The trustee will need to hold a board meeting to approve, among other things, its appointment as trustee, its execution of the trust instrument and the initial issue of units in the GPUT.

The GFSC will generally take a minimum of five business days to provide the fiduciary exemption to the trustee, and so this is the minimum period of time required to establish a GPUT. If the GPUT is set up as an investment fund, additional regulatory requirements will apply. This guide deals with the establishment of a GPUT which is not regulated in Guernsey as a fund.

What information about GPUTs is publicly available?

A GPUT is not a legal entity and its existence does not appear on a public register in Guernsey. The trust instrument, the register of unitholders and the consent issued by the GFSC are not publicly available documents.

Who can act as trustee?

The trustee will usually be a Guernsey special purpose company (**SPV Trustee**) incorporated specifically to act as trustee of one or more GPUTs. Any entity which acts as trustee of a GPUT will either need to be regulated by the GFSC under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law 2000 or fall within an exemption from such regulation. An SPV trustee will generally seek to rely on an exemption.

An SPV trustee is commonly owned by a charitable trust (and so will be an 'orphan' company with no parent company) but will be provided with directors, a secretary and other administration services by a Guernsey administrator. For a variety of reasons it would not be generally possible for the unitholders to own the SPV trustee.

It is also possible for a regulated trust company in Guernsey to act as trustee of a GPUT, though most clients tend to opt for an SPV Trustee. There may be particular reasons why a client may prefer one over the other. An SPV Trustee can offer certain benefits including greater flexibility on a sale or change administrator, less execution risk on a financing (as the trustee has no other business which may be put at risk) and the possibility (subject to appropriate tax advice) of the unitholders appointing directors to the board of the trustee.

How many trustees are needed?

The GPUT must have a minimum of one trustee and will usually have one trustee or two. If the GPUT will hold UK real estate directly (rather than indirectly through a company, another GPUT or other entity), the

GPUT will usually have two trustees (or one trustee and a nominee) for UK real estate law reasons (so that any overriding interests are overreached).

What are the trustee's duties?

The trustee of a GPUT will be subject to the Trusts (Guernsey) Law, 2007, under which it must observe utmost good faith and act *en bon père de famille* (or, as a good father would act to his children). It must act in accordance with the terms of the trust instrument, and solely in the interests of the beneficiaries (or unitholders).

Must a GPUT have a manager?

No. The trustee will generally manage the affairs of the GPUT as well as holding the GPUT assets. A separate manager may be appointed if so desired. In such cases the manager is generally owned and controlled by one or more of the unitholders. Appointing a manager can potentially give the unitholders greater control over the management of the GPUT.

The trustee will usually appoint a property manager to manage any property the GPUT owns.

Must a GPUT appoint an auditor?

No. A GPUT does not require an auditor nor must audited accounts be prepared or filed. That said, many unitholders prefer audited accounts and this is usually required by lenders if external financing is being raised for the GPUT.

How is a GPUT funded?

The GPUT can be funded by a variety of means including cash (where an investor will subscribe for units using cash), real estate or other assets (where an investor will contribute an asset to the GPUT in return for units) or loans. The trust instrument will need to be drafted to include any specific requirements.

Can a GPUT make distributions?

Yes. There are no restrictions under Guernsey law as to the manner in which the GPUT may make distributions of capital or income (subject to the 'Baker Trust' requirements (see 'UK tax treatment of a GPUT' below)). The trust instrument will need to be drafted to include any specific requirements.

How does the trustee hold the GPUT's real estate assets?

The trustee can either be registered as the direct holder of the real estate assets or it can hold via nominees or indirectly via other entities which it owns.

How many unitholders must the GPUT have?

For UK regulatory reasons it is usually necessary for the GPUT to have a minimum of two unitholders. It is quite common for the second unitholder to be a subsidiary or affiliate of the first unitholder.

Rights of the unitholders

The rights of the unitholders will be set out in the trust instrument. The rights of unitholders may vary depending on the number of units they hold in the GPUT.

One of the benefits of a GPUT is that the Trusts (Guernsey) Law, 2007 contains very few specific provisions regulating the relationship between a GPUT and its unitholders or between unitholders themselves. This means that there is a great deal of flexibility in how the trust instrument is drafted and in the rights that can be granted to unitholders.

Can the unitholders control the trustee?

The trustee will be independent of the unitholders, with its own shareholders and directors (unless any unitholder representatives are on the board of directors of the trustee). While the trustee will be responsible for the affairs of the GPUT, it is possible to include provisions in the trust instrument restricting what the trustee may do without approval from the unitholders. In addition a manager could be appointed if the unitholders wish to have greater participation in the management of the GPUT (see 'Must a GPUT have a manager?' above).

Can a GPUT borrow, give guarantees and provide security?

Subject to the terms of the trust instrument, the trustee of a GPUT is able to borrow, give guarantees and indemnities, grant security over the GPUT's assets and generally perform any obligations required of it under finance documents. The trustee will generally be required to do one or more of these things by any external lender that is funding the acquisition of the relevant real estate asset.

The trustee's power to do these things can be subject to such restrictions as are deemed necessary. Any such restrictions should be incorporated in the trust instrument.

Security can also be granted by the unitholders over their units in the GPUT (subject to any restrictions in the trust instrument). Any such security will need to comply with the requirements of the Security Interests (Guernsey) Law, 1993.

How long can a GPUT last (ie the term of the GPUT?)

The trust instrument would usually prescribe the 'term' of the GPUT which can be set to a specific time period (usually set in years or by reference to a specific date), otherwise the time period can be indefinite. The rule against perpetuities has been abolished in Guernsey, allowing an indefinite life for a GPUT.

UK tax treatment of a GPUT

The UK tax treatment of the GPUT will need to be checked with UK tax advisers. We understand that some of the potential advantages of a GPUT for investment in UK real estate from a UK tax perspective include:

- If a GPUT is a 'Baker Trust' (ie the trust instrument provides that the income from the trust accrues to and belongs to unitholders as it arises, rather than forming part of the trust fund for later distribution), the GPUT should be treated as transparent for UK income tax purposes. As a result only the unitholders (and not the GPUT) are subject to UK income tax, putting them in the same position as if they had invested directly in the property. This may be beneficial for tax exempt investors.
- If a GPUT has made a 'transparency election', the GPUT should be treated as transparent for UK capital gains tax purposes. As a result only the unitholders (and not the GPUT) should be subject to UK capital gains tax, putting them in the same position as if they had invested directly in the property. This may be beneficial for tax exempt investors.
- The sale of any units should not be subject to UK stamp duty land tax.

Guernsey tax treatment of a GPUT

The Guernsey tax treatment of a GPUT is as follows:

- No Guernsey income tax or capital gains tax is payable by the trustee (provided that no unitholder is a natural person who is Guernsey tax resident).
- No Guernsey withholding tax is applied on interest payments or distributions by the trustee (provided that no unitholder is a natural person who is Guernsey tax resident).
- No stamp duty is payable on the transfer of any units (provided the GPUT does not hold any real estate in Guernsey).

Winding up a GPUT

The trust instrument will usually set out the procedure for terminating a GPUT and distributing its assets. In addition, regard should be had to the following:

- In addition to the terms of the trust instrument, Guernsey law provides that all of the unitholders together will generally have the right to require the trustee to terminate the GPUT.
- On the termination of a GPUT, the trust property is to be distributed by the trustee to the unitholders within a reasonable time. There are no Guernsey filings that need to be made and no specific statutory or regulatory timetable that needs to be complied with.
- There are no formal requirements to advertise for creditors.
- The trustee may require to be provided with reasonable security for liabilities before distributing trust property. The trustee may therefore wish to receive an indemnity from the unitholders to whom the trust property is distributed covering such liabilities.

What are the benefits of a GPUT?

Benefits of a GPUT include:

- No Guernsey tax (see 'Guernsey tax treatment of a GPUT' above).
- Potential UK tax advantages (see 'UK tax treatment of a GPUT' above).
- Ease of getting money or assets into or out of a GPUT.
- A commonly used structure (which will therefore be familiar to advisors, sellers and buyers).
- Flexibility in relation to unitholder rights.

Can a GPUT be used for other purposes?

Yes. Although most GPUTs are used to directly or indirectly acquire UK real estate, they can potentially be used for a variety of other transactions. Legal and tax advice should be sought in each case.

How can Mourant assist?

Any person wishing to establish a GPUT will require:

- **Guernsey legal advice** – the GPUT will need to be structured to meet the client's requirements as well as applicable Guernsey regulatory and legal requirements. Mourant has advised on many of the UK's largest real estate transactions in recent years, including many structured through GPUTs.
- **Guernsey administrator** – a GPUT will require a Guernsey based administrator to provide trustee services and administrative support to the GPUT. Mourant is able to assist through its affiliated corporate and fiduciary services business, Mourant Governance Services.

Mourant is able to provide the seamless Guernsey legal and administrative support that is necessary to ensure that GPUT transactions are executed in a timely and efficient manner.

Contacts

A list of contacts can be found [here](#).