UPDATE

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Natural Capital and Jersey Property Unit Trusts

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Natural capital is increasingly being recognised as a new alternative asset class and the Jersey Property Unit Trust looks perfectly placed to facilitate investors and assist asset managers/operators with their natural capital projects in the UK.

Natural capital

The range of alternative investment sectors and sub-sectors is evolving rapidly, particularly to accommodate technology advancements and sustainability considerations.

Natural capital is increasingly being recognised as a new alternative asset class. Indeed, it is perhaps the ultimate 'alternative asset', since all other investments directly or indirectly rely on it.

The resources of the natural world, including soil, air, forests, water and living organisms are natural capital, providing benefits to ecosystems which support our economies, society and human life.

Natural capital is being used at an unsustainable rate. It is being degraded, exploited and polluted with consequential loss of biodiversity and loss of the ecosystem services which underpin human life. This loss of natural capital is compounding societal consequences such as inequality and our resilience to climate change.

It is increasingly recognised that investing in natural capital is crucial for a sustainable economy. Recent data shows that approximately 55% of global GDP - equivalent to around $58 trillion - is moderately or highly dependent on nature. Natural capital investments also offer opportunities for the development of biodiversity, nature and carbon credits, which can support investors and asset managers in meeting their sustainability obligations and offsetting some of the impact of their activities, as part of their journey to net-zero.

By way of example, the new biodiversity net gain (**BNG**) legislation was introduced in England, effective from February 2024. BNG places obligations on developers to deliver a 10 per cent biodiversity net gain as part of their developments. Where this cannot be delivered onsite, offsite BNG is permitted. As a last resort, developers can buy credits from the UK government, who will use the credit payments to invest into habitat creation in England. There are also proposals for a net gain policy for marine environments which will complement the BNG regime and apply to any development that takes place below the low water mark, such as port and harbour developments and offshore wind farms.

A further example relates to nutrient neutrality. To ensure that a new development will not cause increased nutrient pollution to specific protected habitats or water bodies, developers must carry out a nutrient budget calculation and balance the added nutrient load by either treating the nutrients on-site or funding land-use changes elsewhere in the area to keep nutrient levels stable. Nutrient credits are created by mitigation schemes and developers can purchase them to offset their nutrient budgets.

Jersey Property Unit Trusts

For decades, the Jersey Property Unit Trust (**JPUT**) has been used as a vehicle to support investment into UK real estate and was considered the vehicle of choice for many years. Whether structured as a fund or a simple joint venture there has been a compelling list of reasons to use the JPUT structure.

In 2019, with the introduction of Capital Gains Tax for non-UK residents holding UK real estate, the taxation position between onshore and offshore structures was levelled.

Regulatory motivations remain for using the JPUT and we continue to see the JPUT used for direct and indirect investment into UK real estate. However, with the recent rises in Corporation Tax rates, and regime improvements, the private Real Estate Investment Trust (**REIT**) has become increasingly popular for those assets and strategies which can meet the requirements of the REIT regime.

The UK's Reserved Investor Fund (**RIF**) product is a new option for fund managers and investors seeking a UK-resident fund structure, however, it will not be able to compete with the JPUT or private REIT where the requirement is for a simple asset holding vehicle. The RIF is an Alternative Investment Fund (**AIF**), with the requirement for, and associated costs of, a UK AIFM and UK depositary.

Whilst the JPUT and private REIT continue to compete healthily in relation to structuring investments into UK real estate, the JPUT may well be peerless as a vehicle to structure investment into natural capital assets.

The second coming of the JPUT

Here is why we consider that the JPUT could be the perfect vehicle to hold natural capital investments located in the UK:

Tax transparency

JPUTs that meet the relevant requirements can make a Transparency or Exemption election with HMRC, both of which preserve the tax transparent nature of the vehicle in relation to gains. JPUTs can also be treated as transparent for income where the trust instrument states that net income accrues directly to the unit holders, often referred to as 'Baker Trusts'. Importantly, this allows investors with an exempt tax profile, such as pension funds, charities and sovereign wealth funds, to preserve their status. No UK tax is suffered by the JPUT having made these elections. Typically, the Transparency election is utilised by joint venture and simple asset holding arrangements and the Exemption election is more relevant to funds.

Ability to hold natural capital assets

Collective investment vehicles such as JPUTs that wish to make Transparency or Exemption elections in the UK must meet the requirement of being 'property-rich'. It is worth noting that for these purposes, the definition of 'UK Land and property deriving its value from land' is very wide as set out in BIM60805 in the HMRC manual. The definition notes that:

> '*land……includes buildings and other structures, land covered with water (including seabed) and any estate interest, easement, servitude or right in or over land. This could include, but is not limited to, licenses and security interests over land*'; and
>
> *'property deriving its value from land' includes: any shareholding in a company deriving its value directly or indirectly from land; any partnership interest deriving its value directly or indirectly from land; any interest in settled property deriving its value directly or indirectly from land; and any option, consent or embargo affecting the disposition of land*.

This establishes a wide definition, which could include many examples of natural capital. For example, forestry assets, nature regeneration projects and potentially seagrass assets, peat bogs and oyster bed farms, could all be held within a JPUT which makes a Transparency or Exemption election, subject always, of course, to UK taxation advice. Whilst the REIT regime is currently proving popular for UK real estate investments, the regime has a narrow definition of 'property' limited to investment in an underlying 'property rental business' meaning that it cannot be used to hold natural capital assets.

Regulatory benefits

The JPUT is considered a simple and flexible vehicle. Jersey funds can access European and UK capital through the National Private Placement regimes. The JPUT also neatly unitises the underlying asset, and

Jersey has a proportionate regulatory regime, which means that everything from a joint venture, through private fund deals, to an open-ended structure can be delivered by a Jersey unit trust with the cost of regulation proportionate to the investor number and profile.

Experienced service networks

Jersey is a well-regulated jurisdiction, with significant expertise and experience with alternative assets. There is a high-quality and good choice of law firms, accounting firms, and administrators on the Island and a growing network of sustainability advisory firms. Jersey achieved a positive outcome from its recent MONEYVAL review in 2024, ranking it among the highest of the 35 jurisdictions evaluated around the world.

Exit considerations

Investors have long been familiar with acquiring a target asset via the acquisition of units in a JPUT and this continues to provide for an efficient exit route. The disposal of units in JPUTs should not attract a stamp duty charge.

Governance considerations

Holding a natural capital asset within a structure can help deliver on desired governance. For instance, whilst the majority of directors on the board of a trustee of a JPUT should be Jersey resident, it is possible to add non-Jersey based individuals, which can accommodate an investor having a nominated representative on the board, or a director with a specific skill set, such as environmental expertise, being added.

These considerations will be very important where the natural capital asset is being used to deliver a carbon or biodiversity credit. High standards of governance and sustainability diligence will be required to ensure the high levels of integrity that investors in these instruments are increasingly demanding.

Jersey for sustainable finance

In 1994, Jersey committed to the Convention on Biological Diversity (**CBD**), through extension of the UK's ratification of the CBD that same year. The CBD aims to conserve biodiversity, sustainably use its components, and ensure the fair and equitable sharing of benefits from genetic resources.

Subsequently, in 2022, the UK's climate obligations under the Paris Agreement were extended to include Jersey and its territorial waters. A carbon-neutral roadmap was published for the Island in 2022. Specific to financial services, in November 2024, Jersey published its sustainable finance action plan. It is recognised that as an International Finance Centre, Jersey can make a significant contribution to a more sustainable future.

In summary, the JPUT looks perfectly placed to facilitate investors and assist asset managers/operators with their natural capital projects in the UK. One such example, on which Mourant advised, is a JPUT established as a joint venture between a prominent UK based asset manager and insurer, and a local pension authority, to acquire agricultural land in the UK. It is proposed that both sustainable farming techniques and nature-based solutions, such as lowland peatland restoration, hedgerow afforestation and increasing soil organic matter, will be used to reduce the environmental impact.

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