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EPUT ESTABLISHMENT  
AND TRANSACTION GUIDE

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Consortium  
INVESTMENT MANAGEMENT

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### IMPORTANT NOTICE

This guide is intended to provide a general overview of the law and practice relating to exempt unauthorised unit trusts. Its purpose is to provide information and raise awareness of Consortium's activities and it should not be construed as legal or taxation advice nor as an invitation to engage in regulated investment activities.

# EPUT ESTABLISHMENT AND TRANSACTION GUIDE

## 01 What is an EPUT?

An Exempt Property Unit Trust (EPUT) is an onshore unit trust with stringent restrictions on who can hold units. If it complies with those restrictions, it is generally exempt from tax on income or gains. They have a custodian trustee and a Financial Conduct Authority authorised and regulated Manager – Consortium Investment Management LLP (Consortium).

EPUTs are commonly used where a number of high net worth or sophisticated investors wish to combine their pension funds (not necessarily held with the same provider) in order to undertake a specific property transaction.

Consortium's EPUTs accept investment from UK Registered Pension Schemes (including Self-Invested Personal Pension Schemes and Small Self-Administered Schemes) and other types of investors who are exempt from UK tax on capital gains, including certain overseas pensions such as a QROPS or QNUPS.

Exempt unit trusts can hold a range of assets but this guide focuses on EPUTs: exempt unit trusts holding property assets.

## 02 How to set up an EPUT with Consortium

### Stage 1

We will send you a property questionnaire which asks for details of the property and people involved.

### Stage 2

Once you have returned the completed property questionnaire, if appropriate, we will issue a "Terms of Business" outlining the transaction and confirming fees, timings and the application process.

### Stage 3

Once a signed Terms of Business (and any other required documentation) has been received, we will establish the EPUT, open a segregated bank account in its name and issue the EPUT application forms to be signed by the investors (or authorised advisers if applicable) and the investors' pension trustees.

We will work with you to agree a cash flow statement to confirm that the subscription monies together with any loan will be sufficient to cover the purchase price and all associated costs, and that on an ongoing basis the EPUT has sufficient rental income to service the mortgage and pay all costs.

### Stage 4

We will then instruct solicitors (to be mutually agreed) and liaise with the various other professional advisers – valuers, surveyors, lender, and environmental consultants – to progress the transaction.

If we feel that additional surveys or reports are needed they will have to be obtained, at the EPUT's expense, before proceeding.

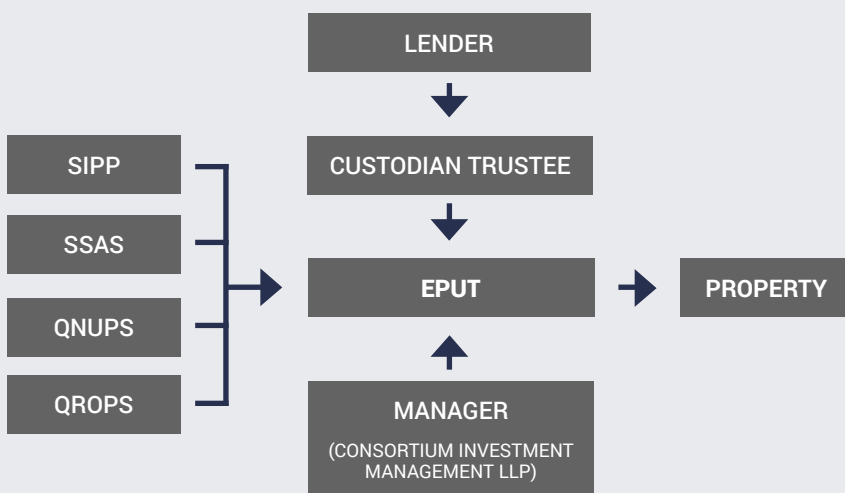
The property (including any existing or proposed leases) must not have any covenants or liabilities that are unacceptable to Consortium and the trustee, and the lender (if applicable) must agree to limit its recourse, and the trustee's liability, to the assets of that particular EPUT.

If applicable, we will register the EPUT for VAT and elect the property.

### Stage 5

Following completion the property is required to be professionally managed. Investors are able to nominate a suitable firm, or we can will instruct professional managers on the EPUT's behalf.

## STRUCTURE OF A TYPICAL EPUT



This diagram shows the structure of a typical EPUT. Pension schemes will purchase units issued by the EPUT, which will then purchase the property using subscription monies and bank borrowing (if applicable), and pay for associated costs and fees.

The trustee of the EPUT will hold legal title to the EPUT's assets via its nominee companies.

Should the EPUT be borrowing to undertake a transaction, then this must be on a limited recourse basis – the lender will only have recourse to the assets of the EPUT and not back to investors' pension funds or to investors personally.

### 03 What type of properties can be acquired?

An EPUT can invest in commercial property and in some cases residential property (see point 9).

Consortium will have to be completely satisfied with the legal title of the properties that are to be acquired by the EPUT. In addition, if the property is leasehold, we will need to ensure that the EPUT's liabilities as tenant are not onerous.

### 04 How does the EPUT borrow?

Borrowing towards the purchase of the property is in the name of the trustee of the EPUT. The amount the EPUT can borrow is restricted only by commercial factors such as how much it can afford in repayments and how much a bank is willing to lend. The loan must be on a limited recourse basis being strictly limited to the assets of the particular EPUT. Security is provided by a first legal charge on the property and assignment of rent only. No floating charges are acceptable. We will speak to the nominated bank to advise on the structure and terms required.

Investors are free to arrange the loan on behalf of the EPUT. However, the loan terms must be acceptable to Consortium.

We have several banking contacts that are familiar with the EPUT service and details are available on request.

### 05 Who insures the building?

We will arrange insurance for the buildings under a block policy with a leading insurance company. Where a superior landlord or other third party has the insuring obligation (rather than the trustee), this will have to be considered carefully in order to fully protect Consortium's and the trustee's legal position.

### 06 How does the accounting work?

All EPUTs managed by Consortium have an accounting year end of 5 April and an audited statement of account for each EPUT will be produced and circulated to all investors following the year-end.

### 07 Does the EPUT pay Tax?

In broad terms, no income tax or capital gains tax charges should arise. As the EPUT is only open to investors who are exempt from capital gains tax or corporation tax the EPUT can obtain approval from HMRC under the Unauthorised Unit Trusts (Tax) Regulations 2013 so that it is an "exempt unauthorised unit trust". This has effect for both income tax purposes and capital gains tax purposes.

### 08 Can the EPUT acquire overseas property?

In most cases, yes, although overseas property usually carries additional legal and management costs. Some countries may require a holding vehicle to acquire and manage the property on behalf of the EPUT. Please refer to us for further guidance.

### 09 Can the EPUT invest in residential property?

Yes. If UK registered pension schemes invest, then to ensure tax charges are not levied against the pension investors the EPUT would generally have to adhere to the Genuinely Diverse Commercial Vehicle definition as provided by HM Revenue & Customs. Please contact us if you would like to discuss.

### 10 Who holds the Legal Title to the properties held within the EPUT?

The title, whether freehold or leasehold, is held via two nominee companies of the Trustee. All titles to the properties must be "good, clean and marketable" and free of any onerous covenants.

### 11 What is required if the EPUT is to develop a property?

We will agree a budget and cash flow with you and the following must be in place:

#### **Project Manager**

A suitably qualified project manager must be appointed by the EPUT to oversee the development works and to sign off on applications for payments and expenses.

#### **Development Contract**

A development contract will need to be in place between the EPUT and the various parties involved in the development and must limit the liability of the EPUT to its assets.

Please refer to us for further guidance.

### 12 Who can occupy the property?

Leasehold commercial property must be let on standard open market commercial terms and be on effectively a full repairing and insuring basis, to either an unconnected tenant or an investor's business.

If the property is residential, it cannot be occupied by an investor in the EPUT.

### 13 Can I transfer an existing property from my pension to an EPUT?

Yes. The process involves the title of the property being legally transferred from the pension trustees to the trustee of the EPUT in consideration of units issued to the same value by the EPUT. A full conveyance is not normally necessary but that will be at the discretion of Consortium and any mortgaging bank.

Please note that the transfer value of any property must be supported by an appropriate independent valuation.

Please refer to us for further information and guidance.

### 14 What happens if one of the investors wants to sell their units?

In certain circumstances (such as death or divorce) legislation provides that the investment must be returned to the pension trustees within a certain timeframe. In this situation, if the investor's nominated beneficiaries cannot or will not remain invested, and a buyer for those particular units cannot be found, and the property cannot be refinanced, assets may have to be sold in order to return funds.

Should an investor simply wish to disinvest then there is no guarantee that a purchaser for their units will be found and they may have to remain invested until assets are sold.

### 15 Can the EPUT be registered for VAT?

Yes. We will arrange registration and opt to tax the property if required.

#### Transfer of Going Concern

If the property is subject to an existing ongoing tenancy then it should be possible to structure the transaction so that VAT is not payable on the purchase price as the purchase would be treated as a transfer of a going concern ("TOGC"). We would notify HM Revenue & Customs of this at the time that we submit the option to tax notification.

### Short term VAT borrowing

If the transaction cannot be treated as a TOGC and VAT is payable on the purchase price, a short term VAT overdraft facility may be required and is normally provided by a primary lender. Please note that once VAT is paid on the purchase price at completion it can take several months for the reclaim to be obtained therefore the VAT overdraft must be for a minimum of six months

### 16 Can I nominate which solicitor to use for the conveyance?

Yes. Investors can instruct us to use their chosen solicitors provided the firm has suitable expertise and a minimum of seven partners. We will instruct the solicitors on behalf of the EPUT but it is the sole responsibility of investors to agree their fees.

If investors have not chosen a preferred firm of solicitors we will instruct a firm known to us to and notify investors of the costs before proceeding.

### 17 How much does it cost?

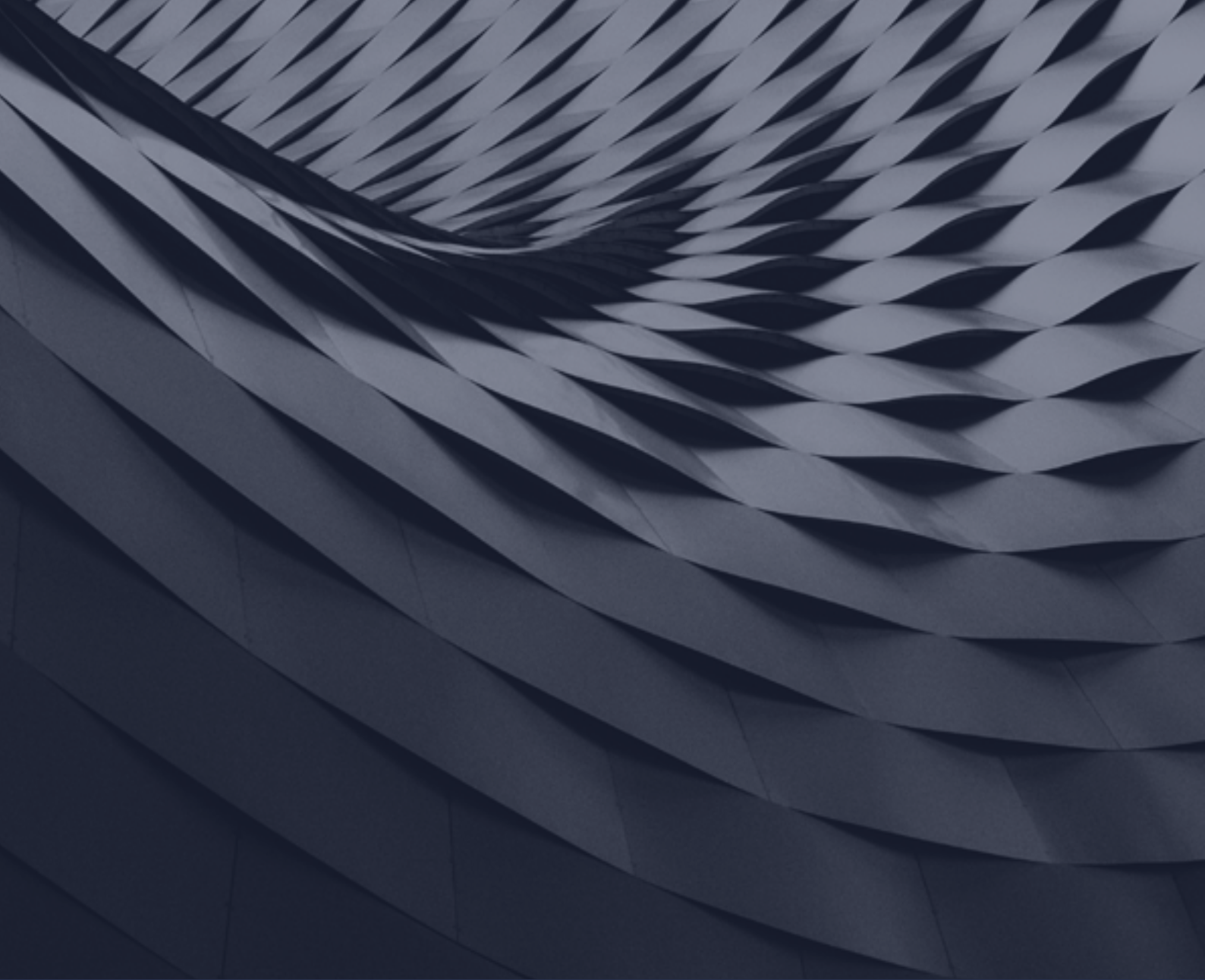
There will be an EPUT establishment fee, a transaction fee and an annual management fee, which we can only finalise on receipt of a property questionnaire. Please contact us for an indicative quote.

Additional charges may apply if a new lease or a sale of the property is required at a later date. We will also charge fees in connection with any litigation regarding the property. Any professional advice or assistance we require in order to manage the property or unit trust will be charged to the EPUT.

### 18 If the transaction fails to proceed, could there be any abortive costs?

If the transaction is aborted there may be a fee payable to the nominated solicitors (plus disbursements). We reserve the right to charge a fee if the transaction aborts at a late stage and Consortium has carried out a considerable amount of work.

Should you have any questions, please do not hesitate to contact Consortium on **+44 (0)20 7437 0200**



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