

EPUT GUIDE

This guide is about EPUTs – tax-exempt structures that provide different ways for pension schemes to invest in property.

Consortium is an independent FCA authorised and regulated specialist property fund management firm that has been establishing and operating EPUTs and property funds since 2002.

We regularly work with pension providers, investment banks, wealth managers and property professionals to structure and manage bespoke property funds. Please read the following pages for more information on our services.

Investing with EPUTs – A Summary

Pension schemes can use EPUTs to invest indirectly into commercial and residential property where it may otherwise not be possible to do so directly.

Consortium have been operating EPUTs for 20 years, investing in property on behalf of personal pensions through purchase, development or property lending.

Some key points on investing via an EPUT with Consortium are as follows:

- EPUTs are available to SIPPs, SSASs and certain QROPS and QNUPS
- Groups of personal pensions can pool their money, along with unrestricted borrowing, into an EPUT to purchase property assets that may be unaffordable or impossible to purchase directly
- EPUTs can invest in both commercial and residential property, or make property-related loans
- There are no restrictions on borrowing limits, so an EPUT can increase the asset range available to pension investors
- EPUTs are tax efficient, being exempt from capital gains tax
- Pension investors can purchase their current work premises and the EPUT will benefit from the rental income
- Consortium cover all accounting, reporting and investor communications and will only invest funds as directed or agreed at the outset

When setting up an EPUT, pension schemes subscribe cash in exchange for units. As part of Consortium's management of an EPUT, we provide all unit holders with annual valuations, written updates and accounts to help with their scheme returns. Our costs are fixed and agreed up front.

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.

HOW IT WORKS - EPUT Q&A

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. EPUTs have a custodian trustee and a Manager – Consortium Investment Management LLP (Consortium), which is authorised and regulated by the Financial Conduct Authority.

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 professional advisers involved.

Stage 2

Once you have returned the completed property questionnaire, if appropriate, we will prepare a “terms of business” agreement outlining the transaction and confirming our services, fees, timings and the subscription process.

Stage 3

Once the terms of the transaction have been formally agreed and recorded, we will establish the EPUT, open a segregated bank account in its name and issue the EPUT application forms to be signed by the pension trustees and underlying investors (or authorised advisers if applicable).

We will work with you to agree a cash flow statement to confirm that the proposed funding 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 be obtained, at the EPUT’s expense.

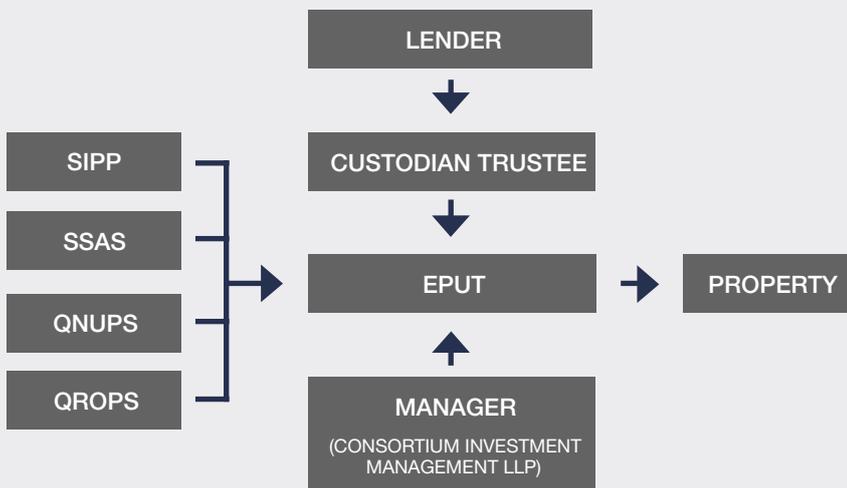
The property (including any existing or proposed leases) must not have any covenants or liabilities that are unacceptable to Consortium and the trustee, and the lender (if applicable) must agree to limit its recourse, and the trustee’s liability, to the assets of that particular EPUT.

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

Stage 5

Following completion the property must be professionally managed. Investors are able to nominate a suitable firm, or we can instruct professional property 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 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. 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, as the EPUT will be the contracting party, the loan terms must be acceptable to Consortium.

For investors who do not have debt arrangements in place, Consortium has numerous banking contacts that are familiar with lending to EPUTs and property SPVs and offers a debt brokerage service.

05 Who insures the building?

This depends on any leases in place. Under usual circumstances, the trustee of the EPUT will need to insure and we will arrange insurance for the buildings under our block policy with a leading insurance company and the premium paid will be recharged to the tenant. Where a superior landlord or other third party has the insuring obligation (rather than the EPUT), 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 accounts 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 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 which can impact viability. 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 note: different and more permissive rules apply to eligible overseas pensions, such as QNUPS). 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:

Monitoring Surveyor

A suitably qualified surveyor 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?

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, none of it can 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 divest 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. Your EPUT is bespoke to you and should be seen as a long-term investment.

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 substance. 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 can suggest a suitable firm to be appointed by the EPUT.

17 How much does it cost?

Our fees are fixed and will be agreed up front with you when we enter into a terms of business agreement.

As an example, our fees for establishing and managing an EPUT with less than five unit holders, purchasing one single-let commercial property valued at less than £1m with a mortgage and registered for VAT would be (all subject to VAT):

- Establishment fee of £7,000
- Property transaction fee of £7,000
- Annual management fee of £7,000

These costs will vary depending on the services required and nature of the property assets (e.g. whether there will be more than one property, multiple tenancies, development, etc.).

In addition to transaction costs, an EPUT must meet its own ongoing third-party fees including trustee, audit and property management costs, which will be outlined at the time of establishment. Based on the above example, these should typically total less than £3,000 per annum.

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**

19 Can Consortium take over an existing EPUT?

Yes, depending on the terms of the existing arrangement. It involves replacing the manager and in most circumstances the trustee too. The title of the property would need to be transferred to the new trustee which is not normally subject to Stamp Duty Land Tax, as long as the unitholders (i.e. the beneficial pension schemes) stay the same.

Who we are

Consortium is an independent firm, owned and managed by its partners.

Consortium was launched in 2001 (having been previously known as Allsop & Co Investments Limited), converted to an LLP in 2007 and was subject to a management buyout by the current partners in 2017 from the property consultants, Allsop LLP.

With over £750 million in assets under management, Consortium is one of the leading independent providers of onshore alternative investment funds and collective investment schemes for private investors. We work with property professionals, wealth managers, accountants and investment companies to establish and operate onshore investment vehicles to acquire or develop property assets or to hold a variety of other investments such as secured loans or shares.

Our team has substantial experience in property, accounting, law and pensions, so we can help with all aspects of the fund establishment and administration process.

Ben Hobbs FRICS

Founder and Managing Partner

A fellow of the Royal Institution of Chartered Surveyors, Ben has over 25 years' experience in real estate investment and development. Since establishing Consortium in 2001, he has been involved with structuring over £2 billion of real estate transactions.

Richard Saunders ACA

Partner

A qualified chartered accountant, Richard qualified with a City accountancy practice in 2000 and joined Consortium in 2007.

Jonathan Davies

Partner

Jonathan spent twelve years at City law firm Macfarlanes, eight of them as a specialist financial services lawyer focusing on fund formation and related issues. He joined Consortium in 2010 and has a broad involvement in legal matters.

Richard Cobbold

Partner

Richard has worked in property and financial services since 2003. He joined Consortium in 2006, having previously worked in personal pension administration focusing on property. He has the certificate in investment administration from the Chartered Institute of Securities & Investment.

Trevor Mackney

Fund Manager

Trevor is a fund manager at Consortium, with over 17 years' experience in property and financial services administration. He joined Consortium in 2007, having previously worked in real estate pension administration.

If you are interested in setting up an EPUT or would like any more information then please do get in touch.

Consortium

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