

CUMMINGS

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How to set  
up a fund  
as a Limited  
Partnership



# How to set up a fund as a Limited Partnership

## Introduction

A limited partnership is a common vehicle for property funds established in the UK because of its tax transparency and its relatively flexible structure, given that it is not subject to the complications of company law or the rules of the Financial Conduct Authority (FCA). One of the main advantages of the limited partnership fund structure is that charities, SIPP and SSAS private pension investors are able to participate through an exempt property unit trust feeder fund (EPUT). UK limited partnerships are collective investment schemes for the purposes of the Financial Services and Markets Act 2000 (FSMA), as they acquire and manage investments that are owned collectively by the partners as partnership assets, but please note that the following relates to unregulated collective investment schemes only.

## Fund Structure

The fund is established as a limited partnership and investors subscribing directly for interests in the limited partnership will become limited partners. A separate EPUT will be established for charitable, SIPP and SSAS investors who will subscribe for units in the EPUT and the trustee of the EPUT will then invest the proceeds of the units in the limited partnership by subscribing for interests, which means that the EPUT will become a limited partner in the partnership. The proceeds of the interests will then be invested directly in property and form part of the partnership assets. This is explained in the Appendix in diagrammatic form.

The partnership is a tax-transparent structure, whereby each individual partner is taxed as if having a direct investment in their share of the partnership assets and no tax should be levied on the partnership itself. The overall structure is intended to enable investors to invest tax-efficiently and in the case of SIPPs and SSASs, within regulatory limits.

The fund is usually close-ended in that redemption rights for investors are only available in certain limited circumstances and the life of the fund will commonly range from between 3 to 10 years.

## Limited Partnership

An English limited partnership is a partnership which is registered as such with the Registrar of Companies under the Limited Partnerships Act 1907 (LPA). It is subject to the specific provisions of the LPA and is governed by the general law affecting partnerships, including both the common law and the Partnership Act 1890. An English limited partnership is not a separate legal entity, but has a general partner which acts on behalf of the partnership and which is responsible for the management and control of the partnership. The general partner has unlimited liability and for this reason, it will often be set up as a limited company. The remainder of the partners are the limited partners who enjoy limited liability provided that they do not participate in the management of the partnership's business. If a limited partner becomes involved in the running of the partnership, that limited partner will lose its limited liability.

## Registration

The registration of a limited partnership involves sending an application on Form LP5 to the Registrar of Companies in the part of the UK in which the principal place of business of the limited partnership is to be situated. The statement, which is signed by the partners, must be sent before the partnership commences business or incurs any liabilities and must contain certain particulars.

The Registrar of Companies maintains a register of limited partnerships and all of the statements registered in relation to them. Filed statements are available for public inspection. In order to be registered, the principal requirements which



must be satisfied are that there are one or more persons who are liable for all the debts and obligations of the firm (usually a single general partner) and that the principal place of business of the partnership must be in the UK.

## EPUT

The EPUT is an onshore unit trust and is classed as an unregulated collective investment scheme for the purposes of FSMA. It is not authorised or otherwise approved by the FCA and as a consequence cannot be marketed to the general public in the UK. Units in the EPUT can only be held by investors who are exempt from UK tax on capital gains otherwise than by reason of residence such as registered UK pension schemes (including SIPPS and SSASs), Qualifying Registered Overseas Pension Schemes and UK registered charities.

The EPUT is formed under the terms of a trust deed, which is a document used to list the terms of the EPUT, such as the trust's purpose, how the trust should be distributed, what level of authority the trustee will have and how the trustee is to manage the trust. The trustee of the EPUT will hold legal title of the assets in trust on behalf of the unitholders under the terms of the trust deed and, as mentioned above, will invest in the partnership on behalf of the unitholders and the EPUT will become a limited partner accordingly.

## Service Providers

### *General Partner*

The general partner is responsible for the management of the partnership, to the exclusion of the limited partners, save those activities which will be carried out by the operator of the partnership (see below), if this is a separate entity. In this type of fund structure, the general partner will generally delegate the investment management of the partnership assets to an independent third party, although it is not obliged to. The general partner will be paid a fee for its services.

### *Operator*

Operating and managing a collective investment scheme is subject to FCA regulation under FSMA and will need to be carried out by an authorised person. If the general partner is not authorised, the fund will therefore need to appoint an operator to carry out and conduct all acts and obligations relating to the partnership which are required to be carried out and conducted by an authorised person pursuant to FSMA. If the intention is to avoid the need for the general partner to be authorised, it is generally sensible to draft the limited partnership and operating deed (see below) on the basis that the general partner is not itself responsible for the management of the partnership assets or any regulated activities, but is instead responsible for appointing a third party which undertakes these responsibilities. The operator will be paid a fee for its services.

### *Investment Manager/Advisor*

A separate investment manager or advisor is generally appointed for this type of structure as they will be responsible for researching and advising on the property to be invested in and also for the marketing and distribution of the interests and units in the partnership and the EPUT. Although land itself is not a specified investment for FSMA purposes, the investment manager will usually be an authorised entity so as to be able to raise investment into the fund.

### *Trustee*

As discussed above, the EPUT will require a trustee.

### *Trust Manager*

The EPUT will require a trust manager also, which will be responsible for managing the EPUT and dealing with subscriptions. The operator and the trust manager are often the same entity.

### *Other Service Providers*

The fund will require a valuer to value the properties in the portfolio, legal counsel to prepare the documentation as well as advice from its tax advisors and other financial or professional advisors.



## Principal documentation required

- A prospectus and subscription agreement for the limited partnership
- A prospectus and subscription agreement for the EPUT
- A limited partnership and operating deed between the general partner, the operator and the limited partners
- A trust deed between the trustee and the trust manager
- An investment management/advisory agreement between the general partner, the operator and the investment manager/advisor

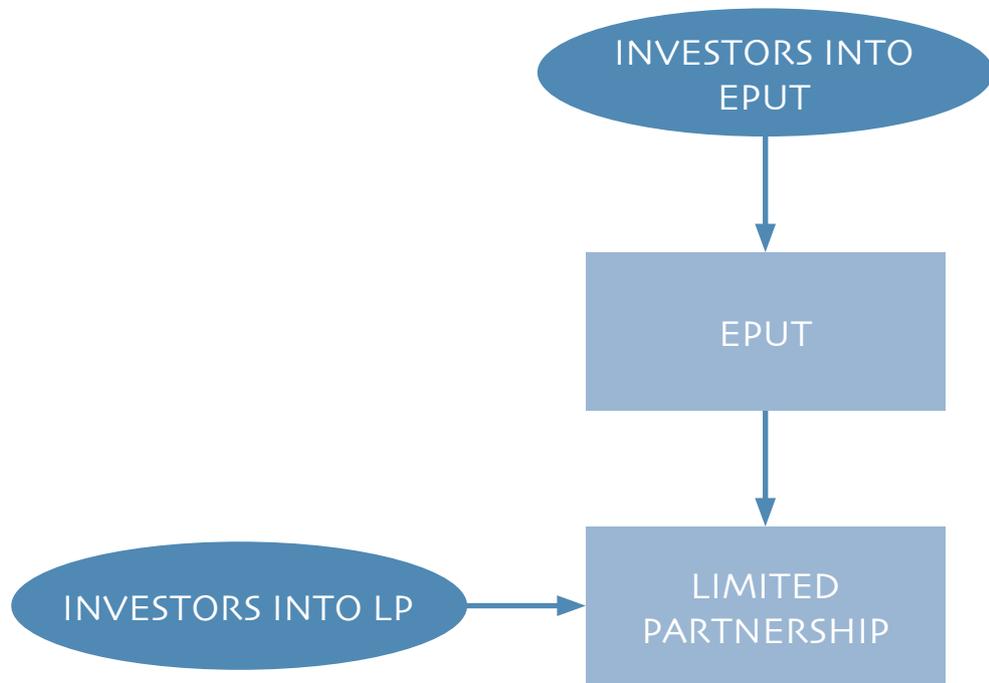
## Eligible investors

As an unregulated collective investment scheme, the promotion of this type of property fund is restricted by law and may only be promoted to certain categories of investors, such as investment professionals, institutional investors and sophisticated high net worth individuals. It must not be made available to the general public. Each of the general partner and/or the operator, the investment manager and/or any other distributor is responsible for ensuring that interests in the partnership are offered only to eligible investors. The minimum investment threshold is usually between £25 – 50,000 but may be higher to take account of regulatory issues affecting the distribution of offering documents.



APPENDIX

Diagrammatic example of fund structure



**This document is for general guidance only. It does not constitute advice.  
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