

Securitisation Transactions in Malta

Malta is increasingly becoming a jurisdiction of choice for structured finance and securitization transactions. A strong but flexible regulatory framework, tailored income tax neutrality provisions, statutory bankruptcy remoteness and a network of over 65 double tax treaties, have bolstered Malta's reputation as an international transactional solution in this regard. Amendments to the Securitisation Act (Chapter 484, Laws of Malta) have also specifically addressed the 'securitisation special purpose entity' exemption introduced by the AIFMD.

Nature of the Securitisation Vehicle ("SV")

The SV may be a company (including an investment company), commercial partnership, written trust, foundation, or such other structure approved by the MFSA as the competent authority. It may also be established under the laws of any other EU/EEA state, as well as third party states engaged in an MOU with the MFSA.

SVs are not required to obtain a license unless they qualify as a public securitisation vehicle, however a notification must be provided to the MFSA even with respect to SVs which are not required to be licensed. The objects of the vehicle must be restricted to the securitisation transaction, and any acts related thereto. The constitutive document must also expressly state that the vehicle is established under the Securitisation Act. Where the SV intends to make offers of securities to the public, the relevant provisions would also apply.

Definition of Securitisation under Maltese Law

The Act outlines three principal types of securitisation transaction:

- i. **Asset Securitisation** – where a SV acquires securitisation assets from an Originator. Assets may be of any type, whether existing or future, movable or immovable, tangible or intangible;
- ii. **Risk (Synthetic) Securitisation** – where a SV assumes risk from an Originator;
- iii. **Loan Securitisation** – where a SV grants a secured loan or facility to an Originator;

all of which would be financed directly or indirectly, in whole or in part, by the issue of financial instruments.

Statutory Bankruptcy Remoteness

The Act specifically addresses bankruptcy remoteness to ensure that the SV is protected from becoming insolvent due to external factors (even if relating to the Originator). Thus, any action against the Originator will not have an effect on the SV, the securitisation assets or any payments due from the underlying debtors of the SV.

To further protect the SV, the Act introduces the following features:

- i. Once the assets are transferred from Originator to the SV, this transfer is final (including vis-à-vis third parties) and cannot be rescinded or annulled;
- ii. Any prohibition on the Originator to transfer the assets at the time of transfer shall not have any effect on the transfer itself;

- iii. Creditors of the Originator may not attack the SV or the assets;
- iv. The transfer of assets from Originator to the SV can never be re-characterised as a secured loan.

Tax Neutrality

A securitisation vehicle in Malta enjoys a tax neutral status. While as a rule the vehicle is liable to 35% tax, the following deductions are available:

- i. **Cost of Acquisition** – Amounts payable to the Originator for the acquisition of assets/risk;
- ii. **Finance Costs** - Premiums, interest or discounts relating to financial instruments issued, or funds borrowed to finance the acquisition of securitisation assets/risk;
- iii. **Operating Costs** – Costs incurred in the day-to-day running of the vehicle, including advisory, legal, accounting and audit costs.

After the aforementioned deductions are taken, the securitisation vehicle may opt to claim a further deduction on its remaining taxable income, thereby ensuring no taxation at the level of the securitisation vehicle. The deductions, including the further deduction, constitute deemed income for the Originator. However, no Malta tax is payable on such deemed income where the originator is not resident in Malta for tax purposes.

AIFMD Exemption

As of July 2013, AIFMD was introduced to regulate managers of Alternative Investment Funds (AIFs) operating in or from the EU. The Directive however exempts certain entities from its scope, including the ‘securitisation special purpose entity’. The definition, which is taken from the ECB Regulation of Financial Vehicle Corporations and further explained in the Statistics Regulation Guidance Note, lays out the features which would qualify the vehicle as a securitisation vehicle.

Maltese law has specifically addressed this point in two ways. Firstly, the Investment Services Act states that an AIF can only be constituted as a collective investment scheme, and defines it accordingly. Secondly, the Securitisation Act states that a securitisation vehicle is not a collective investment scheme, but the MFSA reserves the right to publish notices (in the future) whereby it may consider certain types of SVs as collective investment schemes. To date, no such notice has been issued.

What the above leads to is a situation whereby under Maltese law a securitisation vehicle cannot be an AIF (since it is not a collective investment scheme) and thus falls outside the licensable remit of the AIFMD.

The above has allowed fund managers to structure certain parts of their business and services in a more flexible manner.

Securitisation Cell Companies (“SCCs”)

On the 28th November 2014, the Securitisation Cell Companies Regulations were introduced in Malta. The new law allows the establishment of SCCs with the power of establishing within themselves one or more cells for the purpose of individual securitisation transactions. The salient features are as follows:

- Each cell constitutes a separate patrimony;
- Assets and liabilities may pertain to the SCC in general or to individual cells;



Global reach
Local knowledge

- No cross-contamination (i.e. creditors of one cell may not attack another);
- SCC can also be incorporated as a Reinsurance SV;

How can TMF Group help?

TMF Group in Malta can assist clients looking to structure a securitisation transaction in a number of ways:

- Establishment of an appropriate SV for the transaction in question;
- Provision of management, directorship and governance services via TMF Group's qualified pool of lawyers, accountants and administrators;
- Corporate secretarial services for the established SV;
- Liaison with authorities in the administration of the SV;
- Accounting and audit coordination;
- Investor & ECB reporting;
- Sourcing and provision of technical, legal, tax, transactional and financial advisory required for the administration of the SV;

Why TMF Group for your securitisation needs?

- TMF Group is a leading provider of specialised administrative and corporate governance services to the securitisation industry with more than 220 dedicated staff members.
- We have dedicated SFS teams located in all key financial capitals, can assist in structured finance transactions in over 25 jurisdictions and our team has over 20 years' experience in the sector.
- Our experts in structured finance are passionate about providing high quality services to more than 2,000 special purpose vehicles (SPVs) around the globe.
- We are a market leader in European CLOs and aviation structures.

For more information about doing business in Malta and how TMF Group can help, please contact us:

Mr. Alex Hooft van Huysduynen, Managing Director / Dr. Clint Bennetti, Director Client Services
TMF Management and Administrative Services (Malta) Limited
T: +356 22063000
F: +356 21228465
E: clint.bennetti@tmf-group.com

SmartCity Malta
Block SCM01, Level 04,
Ricasoli, Kalkara SCM 1001
Malta

www.tmf-group.com

Want to receive the latest news and updates from TMF Group? Subscribe to our e-alert service. www.tmf-group.com/ealert