



Malta Securitisation

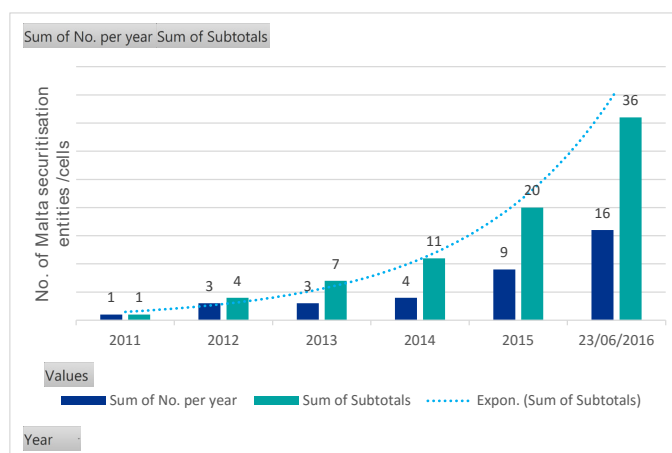
**Innovative, flexible and safe solutions
for securitisation transactions**

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'Securitisation, It's Back'¹ and the European Commission's endorsement of securitisation transactions is testament to this fact in Europe, promoting securitisation transactions as a catalyst to stimulate credit, investment and job creation in Europe.²

In Malta securitisation has enjoyed the support of successive Maltese governments and local authorities. Structuring Maltese securitisation transactions is regulated by the *Securitisation Act*.³ This Act and its related statutes were purposefully drafted to make Malta a jurisdiction of choice for securitisation transactions. Their impact cannot be ignored, Malta reportedly is the fastest growing securitisation jurisdiction within Europe.⁴



Data in table sourced from the official website of the MFSA⁵

The activities of a Malta securitisation vehicle ('SV') can achieve tax neutrality through the application of the general rules on the deduction of allowable expenses in terms of the Maltese *Income Tax Act* and rules on the deduction of allowable expenses in terms of the Malta *Securitisation Transactions (Deductions) Rules*.⁶ In turn Non-Maltese resident originators and investors can typically also achieve tax neutrality under the general provisions of the *Income Tax Act and Duty on Documents and Transfers Act*.⁷

The structuring of securitisation transactions using Maltese securitisation vehicles offer the following additional advantages:

- no restrictions on the type of securitisation assets;
- securities issued by an SV may be listed on a regulated market, whether in Malta or outside;
- SVs are excluded from the scope of AIFMD by virtue of the *Securitisation Act*;
- SVs may issue securities backed by underlying alternative investments and target funds to purchase their securities;
- all forms of securitisation transactions are permitted, covering outright acquisition of the securitisation assets, assumption of risks and the taking control of whole businesses;
- non-EU licenced fund managers may use securities issued by SVs, backed by units in non-EU funds, as a route to accessing finance within the EU;
- transfers to SVs of securitisation assets are final, cannot be challenged / recharacterised;
- bankruptcy remoteness of the originator is provided for expressly by statute;
- the *Securitisation Act* restricts litigious recourse against an SV;
- legal formalities for transfer of securitisation assets to an SV are simplified; securitisation investors and creditors are granted preferred claims by law;
- light touch regulatory oversight;
- swift incorporation of SVs, requiring only a day or two to complete registration from the submission of the constitutive documents in the case of limited companies or partnerships.

KPMG Malta can assist you in structuring and implementing securitisation transactions, in establishing Malta securitisation vehicles and with their ongoing obligations thereafter.

Key elements of Malta securitisation

Tax neutrality



- SV is subject to the standard Maltese tax system. Income tax would be charged on the worldwide income and gains of the SV
- Taxable income of the SV can be reduced or eliminated by the general rules on deductions of eligible expenses and the deduction of expenses under the *Securitisation Transactions (Deductions) Rules*. Permitted deductions include:
 - Expenses wholly and exclusively incurred in the production of the income;
 - Payables from SV to originator for the securitisation assets;
 - Payables in relation to the instruments issued by an SV; and
 - Expenses connected to day-to-day running of an SV
- No Malta tax liability for originator who is not tax resident in Malta on consideration for securitisation assets
- No withholding tax on payments by SVs to non-Malta resident investors holding of equity (dividend) or debt (interest) instruments of SVs
- Exemption from income tax on gains derived from a transfer of securities in an SV by non-Malta residents
- Exemption from stamp duty on a transfer of securities issued by an SV
- Management Services procured by SVs are equated from a VAT perspective with similar services provided by Investment Managers to collective investment vehicles and are therefore exempt without credit.
- Malta resident SVs enjoys possibility to avail of extensive double tax treaty network (70 treaties currently signed and ratified by Malta)
- No thin capitalisation restrictions

Originator / Assignor



- No requirement to be licenced / authorised or otherwise regulated
- No restrictions on identity of originator e.g. hedge funds (including non-licenced funds established outside the EU), shipowner or aircraft owning entities, IP holding entities, credit institutions, Government, parastatal bodies etc
- May hold equity stake in the securitisation vehicle, be a subsidiary of the securitisation vehicle or be unrelated to it

Securitisation Assets



- No limitation on what may constitute a securitisation asset e.g. securities, commodities, plant and machinery (e.g. vessels & aircraft), intellectual property, insurance risk, receivables arising from the aforesaid and from other sources (e.g. lease income, interest payments on credit facilities, coupons due from bonds, dividends and interest on securities) etc
- In terms of the *Securitisation Act* a securitisation asset may consist of: '(...) any asset, whether existing or future, whether movable or immovable, and whether tangible or intangible, and where the context so allows, includes risks'
- Securitisation transactions or financial instruments issued by the SV must exceed EUR1,000,000

Transfers of securitisation assets treated as final



- Title to securitisation assets may be transferred by any legally recognised form
- Such transfers are not subject to re-characterisation for any reason whatsoever
- Additionally, the *Securitisation Act* provides that such assignments are final, absolute and binding on the originator, the SV and on all third parties, notwithstanding any underlying contractual or statutory prohibition or restriction on the originator in relation to the securitisation assets

Bankruptcy remoteness of originator



- Proceedings taken under Maltese law against an originator cannot impinge on:
 - a securitisation vehicle;
 - its cash flow;
 - underlying securitisation assets; and
 - any other assets and obligation due in its favour by underlying debtors in connection with the securitisation assets
- In practice an SV may additionally be 'orphaned' through a Maltese purpose foundation

Limited litigious recourse



- By virtue of the *Securitisation Act*, only securitisation creditors are permitted to demand the issuance or enforcement of any precautionary act or warrant against the SV; save only where fraud is proven to the satisfaction of the courts in Malta

Non-petition clauses



- Provided also in the *Securitisation Act* is that an SV's constitutive documents may permit a particular class of persons only to demand or place the SV under:
 - dissolution and winding-up proceedings,
 - company recovery procedure,
 - company reconstruction or
 - other proceedings affecting creditors' rights

Preferred claims



- The claims of investors and other creditors of a securitisation vehicle over its assets and proceeds derived there from are privileged. These claims ranking prior to any claims by third parties against the securitisation vehicle and its assets
- Such privilege arises by virtue of the *Securitisation Act*
- No registration requirement of such privilege
- Amongst themselves, the ranking of securitisation investors and other creditors may be determined contractually

Regulation



- Single Malta regulator, the MFSA
- No licencing or authorisation requirements imposed on securitisation vehicle. Only SVs who issue financial instruments on a continuing basis require licencing by the MFSA
- *Notification* to MFSA of establishment of SV
- Securitisation vehicles classify as financial vehicle corporations ('**FVCs**') in terms of Regulation (EU) No. 1075/2013 ECB, not investment funds
- Securitisation vehicles also precluded from being considered / reclassified as a fund (including AIFs) by virtue of the *Securitisation Act*
- SVs required to submit quarterly reports to the Central Bank of Malta in terms of Regulation (EU) No. 1075/2013 ECB

References

¹The Economist, *Securitisation, It's Back*, 11th January 2014 <http://www.economist.com/news/leaders/21593457-once-cause-financial-worlds-problems-securitisation-now-part-solution-its>

²European Commission, *Proposal for a Regulation of the European Parliament and of the Council, laying down common rules on securitisation and creating a European framework for simple and transparent securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 and Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms*, p. 4 – 7 <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015SC0185&from=EN>

³Chapter 484 of the laws of Malta

⁴<http://www.financemalta.org/sections/capital-markets/financemalta-capital-markets-articles/detail/maltese-issuers-of-structured-investment-products-rank-top5-deutsche-borse-frankfurt>. Also reported that 'In the January 2016 report of the German Derivatives Association, Maltese Securitisation Companies ranked Top5 of Issuer of delta1 structured investment products based on jurisdiction. Malta even overtook Luxembourg in the ranking, while the first four jurisdictions were Germany, France, Switzerland and Italy. One of the Maltese Issuer - ETI Securities plc, established under the Securitisation Act of Malta and arranged by Argentarius ETI Management Ltd - ranked 9th overall confirming the leadership as bank-independent issuer within the German marketplace.'

⁵<http://www.mfsa.com.mt/pages/licenceholders.aspx> - accessed on 23rd June 2016

⁶Chapter 123.128 of the laws of Malta

⁷Chapter 364 of the laws of Malta





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