The Securitisation Act

Malta’s Securitisation Act (the “Act”) provides a legal framework for securitisation transactions that has been carefully designed to reflect both the specificities and wide variety of securitisation transactions brought to market. The Act provides statutory solutions and greater certainty of outcomes for many of the legal challenges that investors and credit rating agencies are typically concerned with, including true sale, bankruptcy remoteness and the privileges of securitisation creditors over the vehicle’s assets. The structural enhancements afforded to Maltese securitisation vehicles under the Act allow for competitive borrowing costs relative to any recognised issuer jurisdiction.

Forms of Securitisation Permitted

Maltese securitisation vehicles can be used to structure various forms of securitisation transactions, including synthetic risk transfer securitisation, and a wide variety asset-classes can be securitised, including credit card receivables, trade receivables, lease/charter payments for aircraft and ships, insurance risk and income/royalty streams from intellectual property assets such as copyright, patents and trademarks, to name a few.

Securitisation Creditors’ Rights & Protections

True Sale
The Act specifically addresses the requirement of ‘true sale’ in asset securitisation transactions by providing that a transfer to a securitisation vehicle made in accordance with the Act is valid and enforceable on its terms and is not subject to re-characterisation for any reason whatsoever nor is it subject to the claims of the originator’s creditors in insolvency or otherwise. The Act also significantly reduces the usual requirements for the validity of an assignment under the Civil Code.

Bankruptcy Remoteness
Securitisation vehicles established in terms of the Act are bankruptcy remote from the originator by operation of the law. The Act expressly provides that no proceedings taken in relation to the originator under any law will have any effect on the securitisation vehicle, the securitisation assets acquired (or risks assumed) by the securitisation vehicle, or other assets of the securitisation vehicle, including payments due by the underlying debtors, cash-flows or other proceeds owing to the vehicle in connection with the securitised assets.

Priority Claim Over Assets
Investors in the securities issued by the securitisation vehicle (whose credit is secured by any means whatsoever) enjoy the benefit of a first ranking privilege under Maltese law with respect to all assets held by the securitisation vehicle, except for other securitisation creditors who are given a prior ranking with the consent of the investors. This privilege extends to all proceeds derived from the securitisation assets and all assets acquired with those proceeds.

Limited Recourse
The subordination of claims between various securitisation creditors (including investors, lenders, liquidity providers, hedge counterparties and the like) will also be respected in accordance with the provisions of the Act, including in the event of insolvency.

Moreover, the Act expressly prohibits all persons who are not securitisation creditors from applying to the court for the issuance or enforcement of any precautionary act or warrant against the securitisation vehicle and its assets unless it is shown to the satisfaction of the court that there has been fraud on the part of the securitisation vehicle.

Non-Petition Clauses
The constitutive documents of the securitisation vehicle may give a person (such as a trustee) or class of creditors the exclusive right to demand the securitisation vehicle’s dissolution, liquidation, winding up, reconstruction or recovery (i.e. to the exclusion of all other persons), confirming that non-petition clauses typically included in transaction documents will be respected.
Malta has specific rules on the tax treatment of securitisation vehicles that enable them to achieve tax neutrality in respect of the securitisation transactions for which the vehicles are established. These tax rules can be applied to eliminate tax leakage for securitisation vehicles established in Malta and to ensure that there is no Maltese tax liability for originators that are not Malta tax resident.

Tax neutrality in Malta can be achieved through a combination of:
1. the general provisions on deductibility of expenses under the Income Tax Act; and
2. further deductions specified under the Securitisation Transactions (Deductions) Rules.

The securitisation vehicle can opt to wipe out all of its chargeable income by making use of those deductions, resulting in no tax being payable in Malta.

Securitisation vehicles may opt not to make use of the further deductions and thereby pay some Maltese tax on their net profits, with the amount of net profit potentially being very low if the excess spread left in the vehicle is minimal.

Tax Treaties
Malta has an extensive Double Tax Treaty network in place with more than 65 Treaties currently in place.

Interest payments
No Maltese tax is payable on payments of interest by a securitisation vehicle to a holder of the vehicle’s securities that:
   i. is not resident in Malta;
   ii. does not have a permanent establishment in Malta; and
   iii. is not owned and controlled (directly or indirectly) by, or acts on behalf of, an individual who is ordinarily resident and domiciled in Malta.

Dividends
No Maltese tax is payable on the payment of dividends by a securitisation vehicle to its shareholders.

Transfers of securities
No Maltese tax is payable on the transfer of any securities issued by a securitisation vehicle if the transferor is:
   i. not resident in Malta; and
   ii. not owned and controlled (directly or indirectly) by, or acts on behalf of, an individual who is ordinarily resident and domiciled in Malta.

Stamp Duty
A securitisation vehicle established as a Maltese company qualifies for a stamp duty exemption where more than 90% of its business interests are situated outside Malta. The exemption applies to any transfer of marketable securities issued by the vehicle.
Credit Rating

Obtaining a credit rating for the securities being issued is, more often than not, essential in enhancing their marketability to investors. Many of the structural enhancements offered by Maltese securitisation vehicles, including statutory bankruptcy remoteness from the originator, address the fundamental considerations contained in the legal/special purpose entity criteria applied by the leading rating agencies.

Absence of Regulatory Authorisations

Securitisation vehicles are specifically exempt from licensing or authorisation requirements of any kind, irrespective of the kind of activities carried out by the vehicle, including where such activities would ordinarily require authorisation (under the Investment Services Act or the Banking Act, for example). Of particular relevance to transactions with a managed or dynamic portfolio of assets, the Act provides that Maltese securitisation vehicles are not to be considered collective investment schemes (including in the form of an ‘alternative investment fund’ under the AIFMD), and are therefore exempt from the local regulatory regime applicable to collective investment schemes (including the regime for alternative investment funds).

Securitisation vehicles are merely required to notify the MFSA of their intent to enter into one or more securitisation transactions. The only exception is for a securitisation vehicle that (unusually) issues financial instruments to the public on a continuous basis, which would require authorisation by the MFSA prior to issuing financial instruments to the public. Securitisation vehicles also qualify as financial vehicle corporations pursuant to Regulation (EU) 1075/2013 of the European Central Bank, with attendant quarterly statistical reporting requirements to the Central Bank of Malta.