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Maltese securitization structures

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The Securitization Act is one of the latest legislative initiatives aimed at enhancing the Maltese financial services industry by increasing the volume and variety of securities which can be issued and traded on the market. The law, enacted in September 2006, integrates the experience of securitization gathered by other European jurisdictions.

Securitization forms

The Act caters for the establishment of flexible structures with attractive cost conditions. It contemplates three forms of securitization:

Asset securitization

This is by far the most popular form of securitization. Through it, the assignment or transfer of receivables can be designed in such a manner so as to separate the receivables from the insolvency risk of the originator.

The Act offers a wide definition of what a securitization asset is. In fact this is defined as “any asset, whether existing or future, whether movable or immovable and whether tangible or intangible, and where the context allows, includes risks”. Risks include those arising from any rights relating to the assets, whether movable or immovable, tangible or intangible, future or existing, as well as risks resulting from any obligations or activities of third parties and risks arising from any event or circumstance.

Synthetic securitization

In synthetic securitization the originator typically buys credit risk protection through a series of credit derivatives by entering into a credit default swap with the securitization vehicle, which assumes all risks relating to a particular credit of the originator. The securi-

tization vehicle has the power to assume risks by guaranteeing or assuming obligations, entering into derivative contracts or by committing itself in any other way.

Whole-business securitization and loan structure

Under this arrangement a securitization vehicle raises funds by issuing financial instruments in capital markets and uses the proceeds of those funds to provide a loan to the originator, against which it obtains security over the whole of the assets of the originator.

The securitization vehicle

The Act contemplates the use of a series of securitization vehicles, including investment companies, partnerships and trusts. The use of the investment company offers a wide spectrum of possibilities so that the securitization vehicle may be structured in a tax-efficient manner while segregating the assets and liabilities of the vehicle into different compartments, each of which would be treated as a separate entity.

The originator and the securitization vehicle are at liberty to select any method of transferring the securitization assets.

The Act now provides that the transfer of securitization assets is considered to be valid and enforceable in accordance with its terms and with the Act, and is not subject to re-characterization. This circumvents many hurdles typically encountered in the laws of Malta and other civil law jurisdictions, namely those faced in perfecting an assignment or in assigning a future right. In fact, the Act now makes it lawful for future receivables, including future claims against future debtors, to be assigned.

Parties of a securitization

The holders of the securities issued by the securitization vehicle are granted a privilege over the assets ranking prior to all other claims at law, except for other creditors who enjoy a

prior ranking right granted to them with the consent of the holders.

Article 17 of the Act offers the possibility to the parties of a securitization transaction to be free to choose any law to govern contracts relating to, or ancillary to, a securitization transaction.

Any entity which intends to act as a securitization vehicle in or from within Malta must give notice to the Malta Financial Services Authority that it intends to enter into one or more securitization transactions. However, securitization vehicles intending to make an offer of securities to the public must still comply with all relevant legislation.

The Act offers immense opportunities for both originators and securitization programme providers in Malta while minimizing the risk of re-characterization. Furthermore, the Act has the potential to contribute to the economy as a whole by bringing financial markets and capital markets together.

Banking and finance

Recommended firms

Tier 1

Camilleri Preziosi Advocates
Ganado & Associates
Mamo TCV Advocates

Tier 2

CDF Advocates
Fenech & Fenech Advocates
Galea Salomone & Associates
Grech Vella Tortel & Hyzler Advocates

Mergers and acquisitions

Recommended firms

Tier 1

Camilleri Preziosi Advocates
Mamo TCV Advocates

Tier 2

Fenech & Fenech Advocates
Ganado & Associates

Tier 3

Galea Salomone & Associates

Set in an idyllic part of the Mediterranean, Malta has long been a playground for the rich and famous. Its economy relies on a steady stream of tourism into the island so unsurprisingly the real-estate and construction sectors are flourishing.

According to one lawyer: "There has been a huge national drive to upgrade tourism and further improve Malta's image so there is more construction and huge residential projects are being targeted at the international market." Hotel investments are certainly attracting considerable interest, with a number of acquisitions this year.

And foreign investment is flooding into Valletta. Dubai has sent considerable sums of cash Malta's way; Tecom Investments is involved in the SmartCity@Malta project to build a technology park on the island while two companies from the United Arab Emirates acquired Maltacom, the national telecoms company, in May 2006.

Malta's accession to the EU in 2004 is bringing further overseas investment into the country. Professional Investor Funds (PIFs) are increasingly popular among hedge funds and Malta is appearing on the map as a fund domicile that can compete with Luxembourg. One lawyer explained: "Regulations are very favourable and very tax-efficient. The funds are regulated properly but the extent of the controls on PIFs is much less than on publicly offered schemes." And taxation of funds is even less than in Luxembourg.

Undertakings for Collective Investment in Transferable Securities (Ucits) type funds are also proving popular. One partner at a leading Maltese firm said: "We find more and more institutions are knocking at the door enquiring."

Malta's location and culture will always attract sun-seekers but the island looks set to welcome more funds as their managers arrive seeking a friendly tax regime and relaxed regulations.

Camilleri Preziosi Advocates

Capital markets are the fastest growing area of Camilleri Preziosi's excellent practice. The firm has a good reputation for its work on initial public offerings (IPOs) and this year received several listing mandates.

Oil and gas company Medserv engaged the firm to advise it on its LM3.25 million (€7.57 million) IPO on the Maltese Stock Exchange in October 2006 which was oversubscribed in less than half an hour. And Camilleri Preziosi was also given the thumbs-up from the elite when Grand Harbour Marina, a berth for super-yachts, chose the firm to help it list in February 2007.

Leading lawyer Louis de Gabriele and rising star Laragh Cassar assisted on both deals. The firm however boasts a strong team across the board. One financial client said: "We are very happy with them and there were no particular problems. There have been some pretty tight deadlines which they've worked to with us and their feedback has been prompt."

The capital markets team is supported by the strong corporate expertise of Camilleri Preziosi. In May 2007 the firm represented International Hotel Investments during its €178 million acquisition of the businesses of two hotel companies and the exit of Istithmar, a Dubai investment fund, from the company.

Corporate partner Henry Mizzi is well regarded in the legal market. One rival commented: "He is a very, very precise and up-to-scratch lawyer."

Leading lawyers

Louis de Gabriele
Henry Mizzi

CDF Advocates

CDF Advocates specializes in banking and financial services work.

Bank of Valletta is the firm's chief client, and has been returning to use Frank Chetcuti Dimech's services for over a decade. This year Chetcuti Dimech has advised the bank on various mortgage deals worth a total of €3.5 million and provided regulatory advice on financial services and data protection.

Bank of Valletta also engaged the firm to guide its subsidiary, Valletta Fund Services, on setting up a €10 million private-equity fund.

Thanks to work like this, CDF Advocates is getting a good international reputation for its funds work. In May 2007 the firm helped UK-based Churchill Group and Eiger Capital set up a property fund under the EU Prospectus Directive to raise £50 million. Banca Commerciale Lugano, an independent Swiss bank, also chose the firm for help establishing a €40 million Ucits fund with a focus on ethical investment.

One client said: "They are meticulous and good to work with. What we ask for, we receive."

Malta is increasingly competing with Luxembourg as a domicile for funds. With the influx of fund-related business that this is bringing into Malta, CDF Advocates expect to go from strength to strength.

Leading lawyers

Frank Chetcuti Dimech

Fenech & Fenech Advocates

Family-run firm Fenech & Fenech is managed by Tonio Fenech. Despite a traditional expertise in shipping law, Fenech & Fenech is increasingly respected for its corporate work. One client commented: "Fenech & Fenech is one of the top firms in Malta."

The firm consistently proves its M&A credentials. Following the firm's role advising the lead arrangers on Maltese law during PT Adaro Indonesia's \$1 billion takeover in the summer of 2005, the firm has acted on the arranging or corporate side of several domestic privatizations. The firm, for example, advised one of the bidders for the island's national telecoms company, Maltacom, which concluded in May 2006.

As well as having lawyers dedicated to corporate and financial work, the firm also takes a sectoral approach to law with practice groups on aviation, property and telecoms.

Leading lawyers

Tonio Fenech
Nicholai Vella Falzon

Galea Salomone & Associates

Galea Salomone & Associates is a five-lawyer firm with particular expertise dealing with foreign clients and their requirements. The firm gears its services to international businesses and is a member of ILF, a global association of international law firms in 40 countries.

The firm was established in 1989 and is headed by named partner Arthur Galea Salomone. He has an excellent reputation in Malta and holds a number of high-profile appointments including deputy chairman of the Malta Stock Exchange.

In 2006 the firm was part of Malta's privatization programme, counselling the Maltese government on the sale of its 25% stake in the Bank of Valletta.

Leading lawyers

Arthur Galea Salomone

Ganado & Associates

Ganado & Associates is a well respected corporate and commercial law firm, popular among competitors and clients. One client said: "They were very professional and are just as good as Camilleri; they are one of the best."

This year the firm advised the Maltese government on the privatization of the petrol division of energy company Enemalta, and in March 2007 the firm counselled Adaro Finance on the Maltese aspects of the \$275 million refinancing of its existing mezzanine debt, which was initially incurred during the company's takeover in 2005.

Ganado & Associates is also the Maltese member of Lex Mundi.

Leading lawyers

Stephen Attard
Max Ganado

Grech Vella Tortell & Hyzler Advocates

Grech Vella Tortell & Hyzler Advocates is a five-partner firm formed from the merger of three smaller Maltese practices. Following its entry into the 2007 edition of the *IFLR1000*, the firm has maintained its position in this year's rankings.

This year the firm acted for two Middle Eastern investment companies – Tecom Investments and Emirates International Telecommunications – on their €220 million acquisition of the government's 60% stake in Maltacom.

Mamo TCV Advocates

Mamo TCV is in the top tier for both banking and finance and M&A this year, but it is on the corporate side that the firm has been particularly busy with a plethora of deals.

Privatizations continue apace as the government seeks to sell its shares in Maltese companies to private entities. This year the firm has worked on three high-profile privatizations. Leading lawyer Richard Camilleri counselled a joint venture of Liquigas Italia and Multigas on its bid for the gas division of Enemalta. Meanwhile in July 2007 the firm advised Rimorchiatori Riuniti on its acquisition of 74% of the shares in Tug Malta from the government for €25 million. And MTCV also advised national telecoms company Maltacom during the government's sale of its 60% stake to Dubai-based T-Com Investments for €220 million.

The telecoms sector is certainly very active. This year Andrew Muscat advised the lenders, GE Corporate Finance Bank, on GMT Finance Group's €168 million takeover of Melita Cable. Muscat was described by one

competitor as "an excellent all-rounder and a bible when it comes to commercial and financial law who is definitely our top choice at other firms". In other telecoms work, the firm assisted Siemens Italia and Midi Consortium on regulatory aspects of their joint venture in Malta.

The firm is also assisting Midi consortium on another joint venture, this time with Miller Developments, to build a large shopping centre in Tigné Point. Property acquisitions and divestitures have provided the firm with some interesting work this year. In January 2007, MTCV helped Windham Hotels Group International buy 15 million ordinary shares in CHI, a Maltese hotel group, for €50 million. Selling was the order of the day for Starman Hotels Group which sold its Phoenicia Meridienne Hotel in June 2007.

PIFs are also drawing foreign capital onto the island and MTCV has been advising several fund managers establishing PIFs for hedge funds.

Leading lawyers

Richard Camilleri
Andrew Muscat