Increasing interest in using Malta for securitisation transactions

Q&A with Professor Joseph Bannister

How do you assess the opportunity to build out Malta as one of Europe's leading securitisation markets, given that outside of Luxembourg you are the only EU jurisdiction to have securitisation legislation in place?

Malta provides a legal framework for securitisation vehicles, primarily through the Securitisation Act which has been in place since 2006, and more recently, the Securitisation Cell Companies Regulations, introduced in 2014.

This legal framework has enabled Malta to develop into a jurisdiction of choice for securitisation transactions. The Securitisation Act provides both legal clarity and investor protection whilst enabling flexibility in the structuring of securitisation transactions. Any asset can be securitised including future receivables and the securitisation vehicle may take many different forms, which means that there is a vast scope of options for securitisation structures.

Tailored income tax neutrality provisions, statutory bankruptcy remoteness provisions and a network of over 65 double tax treaties increases the attractiveness of the legal framework. Malta also offers efficient solutions for access to capital markets through the Malta Stock Exchange and the European Wholesale Securities Market (EWSM). Both primary markets are supervised by the Malta Financial Services Authority.

Are you seeing signs of interest among firms wishing to bring securitisation products to market?

Following the establishment of the European Wholesale Securities Market, Malta has seen a significant interest in securitisation products from professional investors.

Professor Joseph Bannister, Chairman of the Malta Financial Services Authority

The introduction of the Securitisation Cell Companies Regulations has brought an increase in the number of securitisation vehicles structured in Malta.

The Securitisation Cell Companies Regulations were introduced by Legal Notice 411 of 2014. The Regulations provide an effective and legally entrenched framework for segregation of different sets of assets and risk instruments within a single special purpose vehicle, the Securitisation Cell Company, thereby allowing for the launch of multiple securitisation transactions without incurring any risk of cross-contamination between the different sets of creditors and investors.

The Securitisation Cell Companies framework can also be adopted for the structuring of reinsurance special purpose vehicles in order to tap into the cross-border opportunities of insurance linked securities since the coming into force of the Solvency II Regime.

How important is it that Malta operates within an English-speaking medium as it looks to continue to enhance its reputation as one of Europe's leading financial centers?

English is the language of business and all legislation is officially published in English and Maltese, with the interpretation of the English text prevailing for all financial services legislation. Malta also has a hybrid legislative framework rooted in both Anglo Saxon common law principles and the Napoleonic code and relies on tried and tested benchmarks in commerce. This essentially means that Malta provides an extremely functional and efficient medium for doing business both in and out of the EU.

Do you feel that the MFSA and the Maltese Government have the necessary legal structuring tools in place to support a vibrant securitisation market?

Yes. The Securitisation Act is both non-intrusive and flexible, and at the same time secures the required level of investor protection. Should the securitisation company become insolvent, the Securitisation Act provides for rules aimed at protecting the rights of the investors, the originator and other securitisation creditors over securitisation assets.

Furthermore, the bankruptcy remoteness principle isolates the securitisation assets from any insolvency risks of the securitisation vehicle, the originator or any service providers. Securitisation creditors, including bondholders in a securitisation vehicle enjoy a privilege over the assets of the securitisation vehicle, and therefore rank prior to other claims at law. The Securitisation Cell Company framework has brought in an additional structuring option, which increases economies of scale and enhances investor protection while enabling the structuring of multiple transactions though a single securitisation vehicle.

What would the typical structuring options be for those wishing to establish a securitisation vehicle?

In accordance with article 3 of the Securitisation Act, a securitisation vehicle may be established as:

(a) a company, including an INVCO or SICAV;
(b) a commercial partnership;
(c) a trust created by a written instrument; or
(d) any other legal structure approved by the MFSA for a securitisation transaction.

A company is the predominant legal structure for securitisation vehicles established in Malta. The Securitisation Cell Companies Regulations have recently introduced the possibility of a securitisation vehicle structured as a cell company. A securitisation cell company is a single legal entity made up of a non-cellular part (the core) and an unlimited number of cells. Assets and liabilities of a securitisation cell company are segregated into cells and treated as separate patrimonies from each other and from the core of the securitisation cell company.

Another important development for Malta could be the loan market, especially as the EU looks to introduce a level playing field with the Capital Markets Union. What are your thoughts on this?

The Action Plan on Building a Capital Markets Union seeks to explore ways to build a pan-European approach to better connect SMEs with a range of funding sources and to strengthen alternative funding channels for these types of enterprises. The recent increase in the structuring of securitisation arrangements under the Securitisation Act also connects well with the European approach, which aims to revitalise the cross-border securitisation market and introduce a framework for simple, transparent and standardised securitisations.

This comes at the same time as the launch of the Maltese loan funds framework, which is built on the AIFMD and further reinforced by a number of risk mitigation conditions. These developments will continue sustain the momentum that is driving Maltese financial services going forward.

To date, the Authority has licensed 5 loan funds and 30 securitisation vehicles have been notified to the Authority, together with one licensed reinsurance vehicle. The Authority is confident that both the securitisation and the loan fund market will increase the relevance of the financial sector to the real economy and SMEs, thereby contributing to the deepening of the financial markets.

Finally, could you briefly outline what conditions need to be met by fund promoters wishing to use a Maltese AIF or PIF for the purpose of loan origination?

The approval and licensing of loan funds, whether established as Maltese AIFs or PIFs, is regulated by the Act together with the Standard Licence Conditions applicable to Collective Investment Schemes authorised to invest through Loans. These Rules apply specifically to loan funds in addition to any laws, regulations or standard license conditions that are already applicable to AIFs or PIFs. Indeed, the scheme, established as a PIF or AIF, will be structured as an unleveraged, closed-ended scheme, and will be able to invest through loans solely and exclusively to unlisted companies, SMEs and other entities approved by the MFSA.

With regards to service providers, the Scheme shall appoint a fund manager, a custodian, an auditor, an external valuer, a compliance officer and a money laundering reporting officer. In particular, the fund manager is expected to have sufficient financial resources and liquidity at its disposal to enable it to conduct its business, and the systems, experience and expertise deemed necessary by the Authority for it to provide management services to these funds. The custodian shall be in possession of a license as prescribed in terms of the applicable legislation.

The fund manager is required to comply with the investment objectives, policies and restrictions of the Scheme as outlined in the Offering Document, particularly with regards to eligible investments, the risk profile of the fund and other terms of the offer.

The use of leverage and the reuse of collateral by the Scheme are not permitted. Finally, it is required to establish and implement a credit risk strategy, as well as a liquidity management policy to monitor the Scheme's liquidity risk. ■