

Securitisation & Structured Finance - Malta

Trust acts back-to-back as issuer in private placement

Contributed by **Camilleri Preziosi**

August 28 2012

Facts
Comment

Author

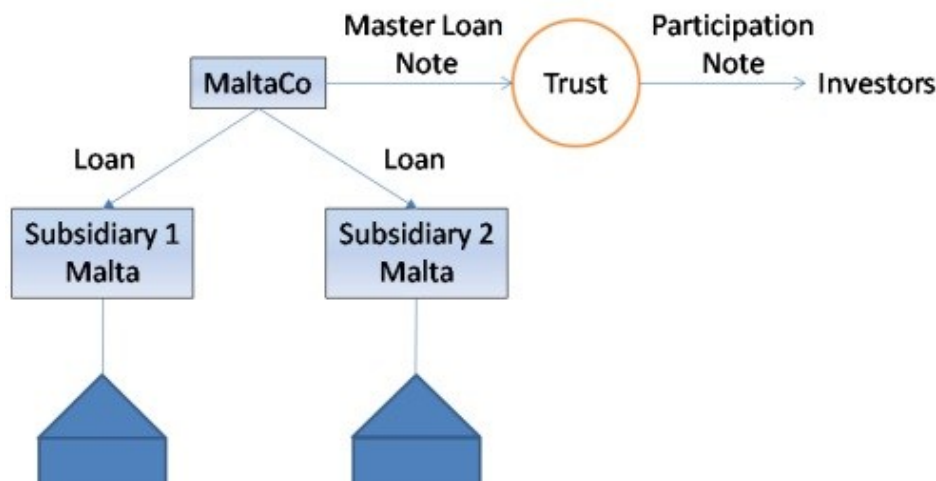
Sarah Khan



Facts

Structure

In order to finance the real estate developments of a Maltese corporate group, 7% secured notes were issued in a private placement. A Maltese public limited company (MaltaCo) issued a master loan note to a trust, which in turn placed notes representing a participation in the trust property with private investors. The interest of 7% a year on both notes is payable annually until maturity in 2016. MaltaCo on-lent the raised funds at a margin to two Maltese subsidiaries, which acquired the respective property and plan to develop it.



Redemption

The non-transferable participation notes are redeemable by the trustee on (early) redemption of the master loan note and at the request of the investor at the discretion of the trustee. If redeemed at the request of the investor, the participation notes will be cancelled and the trustee will be deemed to have a corresponding interest in the trust property. In this case, new investors could apply for the issuance of new participation notes.

Security

The master loan note is secured by a general hypothec granted by MaltaCo and by each of its subsidiaries as guarantors in favour of the trustee on behalf of its beneficiaries. Furthermore, the subsidiaries granted a special hypothec over the acquired property. A special privilege granted by the subsidiaries to MaltaCo in relation to the loans granted to them for acquisition and construction was also delegated to the trustee. A special privilege arising by law in favour of the contractors was contractually waived. Following the sale of units of the developed properties, the security will be partly released against a cash payment, which will be held by the trustee in a reserve cash account.

Comment

The interposition of the trust serves several functions. First, the trustee rather than MaltaCo approaches investors for subscription, leaving MaltaCo with one creditor only. The master loan note is issued conditional to the successful funding of the trustee via

participation notes within a predetermined subscription period, and thereby provides for a deferred payment mechanism.

Second, the trustee collects interest under the master loan note for the benefit of the investors and fulfils various monitoring obligations, including the inspection of the accounts of MaltaCo and of the construction sites. On the occurrence of an event of default, the trustee may at its discretion, or on request of 75% of the investors, declare the master loan note immediately payable.

The trustee is also in charge of the administration of payments due to the investors, including interest payments and payments made at redemption of participation notes. As a direct transfer of participation notes is prohibited under their terms and conditions, no capital gain or duty on documents should arise on redemption of such notes.

Finally, the trustee bundles the security and facilitates the release of hypothecs against cash payments to the reserve cash account. For the purpose of the security release, the trustee must appear on each deed of sale of the developed property units.

As the master loan note and the participation note are part of a back-to-back transaction, their respective terms and conditions must intertwine in terms of payment obligations, as well as default and redemption scenarios. In addition, the loans granted by MaltaCo to its subsidiaries shall to a certain extent match the terms of the master loan note.

The prospectus of this public offer by way of private placement is registered with the Registry of Companies.

For further information on this topic please contact [Sarah Khan](#) at Camilleri Preziosi by telephone (+356 21 23 89 89), fax (+356 21 22 30 48) or email (sarah.khan@camilleripreziosi.com).

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Online Media Partners



© Copyright 1997-2012 Globe Business Publishing Ltd