



SECURITY TRUSTEE - AN ACTIVE PROTECTOR OF INVESTOR RIGHTS

The security trustee represents the interests of the holders of notes (investors) and shall take over defined issuer's obligations, such as the all-important agreement to pay, on behalf of the noteholders. In essence the security trustee acts as an intermediary between the noteholders and the issuer. The security trustee is protecting the rights of the noteholders as set out in the trust deed and agreements.

In financial transactions such as securitisation it is essential that the security trustee is both an experienced professional and an independent party, having the right of access to appropriate and relevant information with regard to the assets so that the trustee can monitor the note issuers compliance to its obligations as set forth in the trust deed. The trustee's role is to reduce complications, as well as add value and comfort to the participants.

Mandaris offers the possibility of tapping into the benefits of using a security trustee in commercial structures via its professional trustee company, Mandaris Trustees (Malta) Ltd, a fully licenced trustee company recognised under the Trusts and Trustees Act.

How does it work?

In its simplest form a security trustee is the person or entity holding the various security interests created on trust for the secured creditors, such as banks or bondholders in a financial transaction, which can be a securitisation transaction or direct investment. The security trustee defends investor rights as well as enforcing security upon default. The trustee may accelerate the notes and take enforcement on behalf of the beneficiaries. Equally the nature of the trust structure means that acceleration by a single noteholder is prevented, protecting the entire transaction and preventing an individual noteholder bringing down the structure.

Theoretically the trustee may consult the noteholders prior to taking any action however should this otherwise not be possible or should the trustee choose not to, then the trustee may exercise his discretionary powers to take the necessary steps in order to protect the interests of the noteholders collectively.

Where a trust is created, security may be granted and held by the trustee in his own name (with an indication that it is acting in its capacity as security trustee) irrespective of the number of noteholders (or lenders as the case may be) and irrespective of any transfers or assignments made by the noteholders of their interest in the facility.

Certain conditions must be met where notes are listed and where the trustee is an intermediary role between the issuer and the bond holder, such information must be included in the listing prospectus, for example:



- a. brief description of the trustee;
- b. rights and obligations of the trustee with respect to the issuer and to the noteholders it represents;
- c. conditions in which the trustee may be replaced;
- d. applicable law and place of jurisdiction of the trustee agreement, together with mention of where the agreement in question may be inspected.

The security trustee can assist in a number of different scenarios, whether it be a simple debenture transaction or structures set up to raise capital. Assuming the transaction goes to plan, the debtor discharges the debt, the trust is dissolved and the title of the assets is transferred back to the debtor. In case of a default, the Maltese Civil Code provides that the security trustee shall be legally entitled to liquidate the assets held on trust and distribute the proceeds to the creditors. The trustee is obliged to act reasonably and fairly in the enforcements of the rights of the security and he still owes a fiduciary duty to the beneficiaries of the security trust.

Promotion of the Security Trustee in Malta

Maltese law provides for a number of security-related solutions in commercial and private situations through both the Civil Code and the Trust and Trustees Act (Chapter 331 of the Laws of Malta). The developments at law allow for greater flexibility in security arrangements including instances where the trustee is also creditor as in the case of structured finance or syndicated transactions where the assets are pooled under a trust and security is taken over the whole pool rather than multiple assets. Investment instruments may also be pooled and security taken in a similar manner.

Article 2095E introduced into the Civil Code provides for the possibility of creating "security in favour of a trustee for the benefit of any creditor or creditors, present or future, or in favour of a class or classes of creditors". The Maltese law recognises that the security trustee shall hold on trust the security in the interest of all creditors securing both present and future indebtedness, which is and may be due to them.

Under Maltese legislation, a security trust also allows for a change in lenders at a later stage. This is particularly relevant in cases where there is a syndicate of lenders who may want to sell its loan participation without affecting the security taken during the initial set up.

What is the advantage?

The most obvious advantage of involving a security trustee is that it protects the rights of the noteholders. Essentially the security trustee can prevent any uncoordinated actions which may prejudice the performance of the financial transaction. Further, it can enable capital to be raised through investment from various creditors without having to grant separate security to each individual creditor, reducing costs and complexity as well as saving time. Each creditor has a financial interest in the trust rather than in the individual assets.

The flexibility of the provisions which can be drafted into the trust deed, amongst other things, allows for changes in the trustee of the trust without affecting the validity of the trust or its continuity, and the trustee is empowered to enforce the



security even if other creditors directly sue the debtor. Importantly, security trustees are not liable for the obligations of other creditors unless a specific agreement is reached between the parties.

How can we help?

Mandaris understands the complexity of structured finance transactions, having been involved in a number of securitisation transactions through its affiliated securitisation platform. Our team has the experience and technical know-how to perform this type of niche financing and to offer step-by-step guidance to our clients.

Mandaris Trustees (Malta) Ltd is an independent trust company fully authorised to act as security trustee under the Trust and Trustees Act in Malta, able to act impartially as a security trustee.

We can advise the note issuer on the appointment of arrangers, offer guidance on the structured payment, explanation on legal and statutory aspects of the issuance of the notes/bonds, as well as support throughout the process ensuring all legal and compliance obligations are met.

Our trust and escrow team provides support to our clients at every stage to ensure that businesses are at ease and that commercial transactions operate smoothly.

Please do not hesitate to contact the author if you have any questions or queries.

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