Liquidation of securitisation special purpose vehicles provided through TSI Services GmbH

Liquidation process

(1) Special purpose vehicles (SPVs) are companies that are established for a specific business purpose and for a limited period. When the purpose of the company has been fulfilled, i.e. the underlying securitisation transactions mature, its business activities are wound up. TSI Services GmbH is instructed to liquidate the SPV and appoints the liquidators.

(2) The shares in TSI SPVs are held by three publicly supervised charitable foundations. They are governed by the basic principle that the initial capital may not be touched and is transferred to the foundations when the liquidation has been completed.

(3) In connection with the maturing of the transaction, the paying agent, auditor or fiduciary agent must provide a written statement, in accordance with the foundation documents, to the effect that all liabilities of the SPV vis-à-vis the investors have been fulfilled.

(4) Prior to the liquidation decision, the SPV’s management must ensure that all expenses falling due up to the date of the company’s liquidation (e.g. cost of CSP, auditors, fiduciary agents, etc) as well as all company expenditure occurring during the liquidation period (e.g. Chamber of Industry and Commerce subscriptions, notary and court charges, announcement costs, tax advisory and book-keeping costs) – which must be dealt with in a waterfall procedure in advance of investor claims – have been entered in advance under provisions in the final balance sheet and in the waterfall or are alternatively borne by a third party (e.g. transaction mandator). The management must draw up a final balance sheet covering the period up to the date on which the company is liquidated. This final balance sheet must be certified if the transaction effected via the SPV is concluded only in the current year.
(5) The liquidators’ remuneration is included in the service charge made by TSI Services GmbH.

(6) The decision to liquidate the company can be taken by the shareholders and registered in the Commercial Register only when the aforementioned entry conditions have been fulfilled. The current management is removed from office and the liquidators are appointed.

(7) At the start of the liquidation process, the liquidators draw up an opening balance sheet for liquidation and a report explaining that balance sheet. These documents do not need to be certified by an auditor.

(8) The liquidation is to be announced by the liquidators in the electronic public gazette. The one-year waiting period pursuant to section 73 of the German Law Pertaining to Companies with Limited Liability (GmbHG) begins with the date on which the announcement is published.

(9) The liquidators must prepare an annual financial statement and an explanatory report for the end of each business year.

(10) At the earliest at the end of the one-year waiting period and the completion of the activities required as part of the liquidation process, the liquidators prepare the final statement and the company’s tax statement, which is based thereon.

(11) On receipt of the final tax decision and compliance with it, the company’s assets are distributed in accordance with the final statement (final liquidation balance sheet).

(12) The conclusion of liquidation is to be reported for entry in the Commercial Register.

The securitisation special purpose vehicle has been wound up completely when the company is removed from the Commercial Register. The company therefore ceases to exist.

Article 20 of the Articles of Association of the SPV stipulates that, in the event of the company being liquidated, the liquidators must decide on the administrator which, on completion of the liquidation, is to take the
company’s books and documents into safekeeping for a legally required period of ten years (pursuant to section 74 II of the German Law Pertaining to Companies with Limited Liability (GmbHG)).

As a general rule, the mandator assumes this safekeeping task without giving rise to third-party costs. Alternatively, this service may be provided by TSI Services GmbH if there is a corresponding safekeeping agreement between the contracting parties (mandator and TSI Services GmbH).