True Sale Initiative
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True Sale Initiative

- An initiative of the banking industry to promote the German securitisation market
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Situation in early 2003

- Increasingly restrictive lending policies by the banks for SME loans as a result of optimized resource allocation (equity capital, liquidity, risk profile)
- German banks have only limited access so far to "True Sale" transactions
- In February 2003 Finance Minister Eichel announced a change in the trade tax to accommodate true sale securitisations in Germany (until that time the main tax obstacle)
- Banks (as a quasi reply) announced the "True Sale Initiative" in spring 2003
Milestones of the True Sale Initiative

- Spring 2003: Signature of the “Memorandum of Understanding”: 5 banks and KfW Bankengruppe (KfW banking group)
- Summer 2003: Signature of the “Letter of Intent”: 12 banks from all areas of the lending industry and KfW Bankengruppe
- August 2003: Publication in the Federal Law Gazette: change in the trade tax for SPVs in order to securitise bank loans
Milestones of the True Sale Initiative

- **December 2003**  Decision on the detailed design of the securitisation infrastructure (after extensive consultations with the banking community and the supervisory authorities)

- **April 2004**  Conclusion of the consultations with the authorities
  
  Signature of the founding documents

- **Afterwards**  Creation of the TSI-GmbH and Charitable Trusts
  
  Preparation of the groundwork for issuing securities
Participants in the True Sale Initiative

- Bayerische Landesbank
- Commerzbank
- Deutsche Bank
- DZ BANK
- Helaba Landesbank Hessen-Thüringen
- HVB Group
- WestLB
- Citigroup
- DekaBank
- Dresdner Bank Die Beraterbank
- EUROHypo
- HSH Nordbank
- KfW Bankengruppe
Required coordination: German SPV

Banking supervisory authorities

Trust supervisory body

Investors

Originators

Rating agencies

Tax authorities

Anti-trust authorities

Auditors
Required coordination: German SPV

- Banking supervision: Is the SPV or will it become a "credit institution"? How can „artificial large loans" be avoided?...
- Anti-trust authorities: Are the "big players" joining ranks and can they coordinate their activities to influence the market?...
- Rating agencies: How can the SPV criteria be fulfilled reliably in the German legal system?
- Investors: Is it possible to achieve comparability with other international SPV structures and a recognition effect?...
- Originators: Can a German SPV be created at similar cost and with similar effort as in other countries?
- Trust supervisory body: What statutes are appropriate for charitable trusts that are to become shareholders of ABS-SPVs?...
- Tax authorities: Neverending task ...
- Auditors: balance sheet treatment in accordance with HGB, IAS, US-GAAP
Role of KfW Bankengruppe

- as a competitively neutral mediator to
  - moderate the process and to
  - take charge of the entire coordination

- as a shareholder of TSI GmbH it
  - holds an equal share of the capital
  - has the same voting right
  - assumes the same liability

- It does not offer any additional guarantees etc. for ABS SPVs or for the charitable trusts
Objectives of the True Sale Initiative

Creation and buildup of a true sale market in Germany

- Buildup of a neutral and "open" securitisation infrastructure in order to found a "German SPV" and to lay the groundwork for German ABS transactions that can also be used "freely" by third parties

- Overall improvement in credit supply by giving the banks more scope and flexibility to grant loans

- Assistance with improving the overall conditions for securitisations
The True Sale Initiative

True Sale Initiative has two components

- Securitisation forum
  (assistance with establishing appropriate framework conditions)

- Establishment of Securitisation infrastructure

- True Sale International GmbH

- Securitisation platform
Main tasks of TSI

- Design and establishment of the securitisation infrastructure (securitisation platform and TSI GmbH) in consideration of requirements put forward by originators, rating agencies, investors and also authorities
- Examination of consolidation issues together with auditing firms
- Clarification of supervisory law issues in a constructive dialogue with the authorities
- Extensive lobbying for securitisations (comprehensive inputs targeted at policymakers and associations)
The securitisation infrastructure is comprised of two main components:

**Securitisation platform**
- German SPV (insolvency-remote ABS issuer with the legal form of a GmbH)
- Charitable trusts act as standard shareholders of German SPVs

**True Sale International GmbH (TSI GmbH)**
- Functions: standardization, branding, securitisation forum
Securitisation via the TSI infrastructure - German SPV

- Legal form: 'Gesellschaft mit beschränkter Haftung' (GmbH), or company with limited liability
  - Shelf companies, or ready-made companies, can be used
- Share capital amounts to at least € 25,050
- Share capital should not be used up
- Other costs are standard start-up costs for GmbHs
- The originator uses the SPV only for "clear-cut" ABS transactions
- The originator/arranger principally creates an SPV that is insolvency remote
Securitisation via the TSI infrastructure - German SPV

Probable costs of a "German SPV"

- Acquisition of a GmbH (start-up costs, taxes; lawyers' fees)
  - are not borne by the SPV
- Share capital: € 25,050
- Liquidation costs: are deducted from the share capital
- Otherwise: running expenses for company management, corporate services, auditors
Securitisation via the TSI infrastructure - German SPV

TSI banks "freely" provide:

- Agreed standard statutes freely available for use
- Agreement with the German Financial Supervisory Authority BaFin on which activities the SPV may perform without becoming a credit institution
- Agreement on fundamentals with rating agencies
Securitisation via the TSI infrastructure - German SPV

TSI banks "freely" provide:

- Trusts as shareholders (always available as standard shareholders) that must ensure that they are legally independent from the originator and their own remoteness from insolvency
- Efficiently organized procedures for the participation of the charitable trusts in the SPVs in order to ensure their fast establishment
Securitisation via the TSI infrastructure - Shareholders

Several charitable trusts become shareholders with equal shares in the German SPVs
Securitisation via the TSI infrastructure - Shareholders

- German trusts are subject to legal provisions (state laws). They are frequently tied to a special, non-profit purpose and must first and foremost pursue and actually be able to accomplish this purpose.
- The trust supervisory body (Regierungspräsidium – Regional Council) monitors the receipt of the trust assets and proper operation. The activities of charitable trusts are closely tied to the statutes.
- To accomplish their purpose the trusts may enter into participations.
- The trusts assume the obligations imposed by company law (preparation annual report, liquidation decision) for the German SPV but may not intervene in the SPV’s day-to-day business.
Securitisation via the TSI infrastructure - Shareholders

- Several charitable trusts as shareholders of the SPVs
- State supervision: trust supervisory body, tax office
- Capital basis sufficient to guarantee the non-profit purpose of the trust on a permanent basis
- Lean organisational structure, limited to organs required by law and needed for operations (two Board members)
- Appointment of the trust Board members by the trust supervisory body
- Annual audit by auditing firm
Securitisation via the TSI infrastructure - Shareholders

- Once the donation has been transferred the donator no longer has any influence on the trust.

- All essential provisions are included in the trust statutes and it is difficult to amend them (i.e. only with the consent of the trust supervisory body).

→ In general: charitable trusts are hardly at risk of becoming insolvent.

→ N.B.: at least 3 trusts are needed to prevent the formation of (artificial) groups of large-scale borrowers.
Securitisation via the TSI securitisation infrastructure

The creation of the required SPV and the capital donation can take place with or without the involvement of TSI GmbH:
Securitisation via the TSI securitisation infrastructure

- Once the charitable trusts are established every originator (not only TSI banks) can use them as shareholders in its SPV in Germany.

- Originators can also call upon TSI GmbH for assistance with arranging transactions.

- The trusts may be used freely as infrastructure for
  - ABS transactions with a TSI label
  - ABS transactions without a TSI label
Securitisation via the TSI securitisation infrastructure

Service Company

Creation / Donation SPV

Trusts (shareholders in the SPV)

Originator (each)

Originator 1

Originator 2

Originator ...

SPV “TSI ABS ... GmbH”

SPV “... GmbH“

Investors

Payment of selling price proceeds

Sale of portfolio

Payment of selling price
Securitisation via the TSI securitisation infrastructure

- (each) Originator
- Service Company
- Creation / Donation SPV
- Trusts (shareholders in SPV)
- Originator 1
  - Sale of portfolio
  - Payment of selling price
- Originator 2
  - Sale of portfolio
  - Payment of selling price
- Originator ...
  - Sale of portfolio
  - Payment of selling price

SPV “TSI ABS …GmbH”

SPV “…GmbH”

Investors

Payment of selling price proceeds

ABS papers proceeds

True Sale Initiative
Securitisation via the TSI securitisation infrastructure

Procedure:

- Originator buys GmbH, selects the management and prepares the creation of the SPVs.
- The goal is to have the trusts acquire the shares in the GmbH via a donation.
- Originator provides the trusts with documents, incl.
  - Extract from Commercial Register
  - Certificate of donation
- This certificate may be issued by any "qualified credit institution" (primarily credit institutions in the EU with investment grade rating or better). Also, any "qualified credit institution" can serve as a donator in this sense.
Securitisation via the TSI securitisation infrastructure

Main content of the certificate of donation

- The SPV has its seat in Germany, its share capital is paid in and it can start operating free from any financial burdens
- According to its statutes the SPV serves as a special purpose vehicle for ABS transactions
- The management may not conduct any business requiring consent under the German Banking Act (KWG)
- The share capital is safely invested
- The ABS transaction has certain characteristics, e.g.
  - placement with a rating or only with institutional investors
  - at least one qualified credit institution is among the key parties (arranger, lead manager)
  - appointment of an internationally renowned auditing firm
"True Sale International GmbH"
Shareholders: all TSI banks as initiators
Legal form: GmbH (limited liability company)
Seat: Frankfurt am Main
Share capital: € 1,950,000
Organs:
- Management
- Company General Meeting
- Council
TSI GmbH

'The purpose of the company is to promote the true sale securitisation market in Germany in every form, especially by establishing discussion forums on securitisation issues and by creating, developing and licensing a true sale brand.'

TSI GmbH offers institutional backing by carrying on with key tasks of the True Sale Initiative.
Its main functions are:

- Establishment of a securitisation forum (working group of the shareholders' council) that deals with important issues for the German securitisation market and addresses these issues with policymakers and associations
  - Objective: further adjustments to the overall framework conditions

- Joint discussion and recommendation of standards to be applied to ABS transactions so that the German market can catch up with international competition and to enable liquid transactions

- Joint creation of a TSI brand defined by quality standards (market making, reporting etc.) which the originators can use under a licensing agreement with TSI GmbH in exchange for a fee
High-ranking representatives from the public arena are also appointed to the shareholders' council of the TSI banks to achieve a "broad" consensus on ABS issues.

At the shareholders' meeting mainly decisions on economic matters affecting TSI GmbH are taken together with the management.

TSI GmbH is principally open to additional shareholders.

TSI GmbH undertakes to make its activities - especially those related to political issues - transparent and accessible for all market participants.

On its Web site TSI GmbH will offer information (reports, transaction data etc.) in as much detail as possible on all TSI transactions for investors and other interested parties.