

Container securitisation thriving in Bermuda

Over the last decade, leased container

securitisation transactions have increasingly enabled container lessors to raise capital and leverage growth opportunities based on strong performance and outlook in the container leasing sector. Bermuda has played an integral role for market-leading lessors such as Textainer and Triton, and has a trusted reputation among lessors as the leading offshore jurisdiction offering flexible and innovative structures for container securitisation transactions.

STRUCTURING A BERMUDA CONTAINER SECURITISATION TRANSACTION

A typical container securitisation transaction involves the incorporation of a special purpose vehicle (SPV), normally a Bermuda exempted company, although exempted limited liability companies (LLCs) can also be used. The SPV can either be directly owned by the parent or

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use an orphan structure (held by a Bermuda purpose trust) which removes the asset from the parent’s balance sheet. The SPV will purchase the container leases (or other specified assets) with some form of regular cash flow and issue loan notes or preference shares in the capital markets to finance the purchase. The repayment of principal and interest on such notes is then secured by the purchased assets and the accompanying cash flow.

Key features of Bermuda SPV structures are that they accommodate bankruptcy remoteness, true-sale, non-consolidation, off-balance sheet ownership, credit enhancement and certainty of security interest priority.

Bermuda law provides comfort in leased container transactions, as unlike other jurisdictions with laws which empower liquidators or their equivalent to unilaterally disclaim onerous property (such as a lease),

Bermuda law only allows such a disclaimer with the leave of the Bermuda Supreme Court. The benefit of this is that it allows any interested party leasing the containers the ability to be heard before such a step is taken.

Bermuda also has a statutory charge registration regime which ensures certainty of security interest priority. Registration of the security document in the public Register of Charges maintained by the Registrar of Companies ensures that under Bermuda law to the extent that Bermuda law governs the priority of the charge, the secured party’s security interest in the charged assets will have priority over subsequently registered charges and unregistered charges.

WHY BERMUDA IS THE JURISDICTION OF CHOICE

Bermuda is among the largest and most developed offshore jurisdictions for asset-backed securitisation (ABS) transactions. In addition to leased container transactions, Bermuda plays a significant role in ABS transactions in the aircraft and aircraft engines sector, the insurance industry (notably through catastrophe bonds and other insurance-linked securities) and other asset classes.

Bermuda boasts a well-respected and adaptable corporate law regime, which is largely based upon English company law, but recognises certain US legal concepts and principles. This yields an added degree of familiarity for investors, lenders, rating agencies and other service providers who utilise and participate in Bermuda structures. In addition, as a tax neutral jurisdiction, Bermuda is particularly attractive for establishing tax-efficient business structures at all levels from the ultimate parent holding company through to operating subsidiaries and SPVs. Notably, more than 700 Bermuda companies are listed on various stock exchanges around the world, including the NYSE, Nasdaq, Hong Kong Stock Exchange, Toronto Stock Exchange, and London Stock Exchange.

For container lessors seeking to establish a corporate presence or re-domicile, Bermuda is a convenient location, being a short direct flight from US East Coast hub cities, and with regular direct flights to Canada and the UK. Factoring in the robust communications infrastructure, availability of top-notch professional and financial services firms, the innovative and collaborative regulatory environment and Bermuda’s reputation for quality, it is easy to see why Bermuda is the domicile of choice for lessor group holding and operating companies.

For more information, please contact:



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