

FinanceMalta Annual Conference 2016

Workshop B

Europe's Fastest Growing Securitisation Market – Opportunities and Structuring Considerations

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Why Am I In Malta?

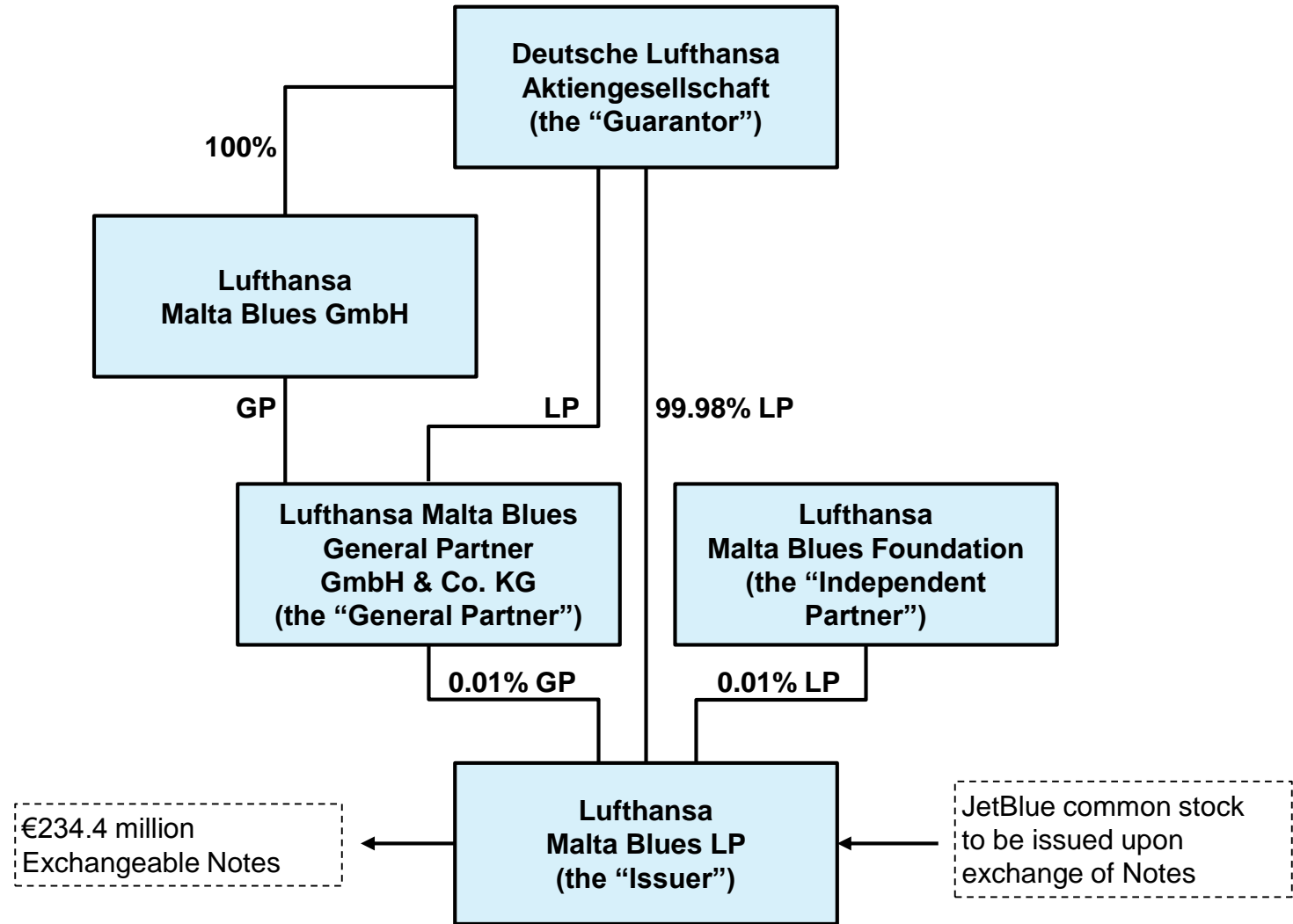


Frankfurt



Valletta

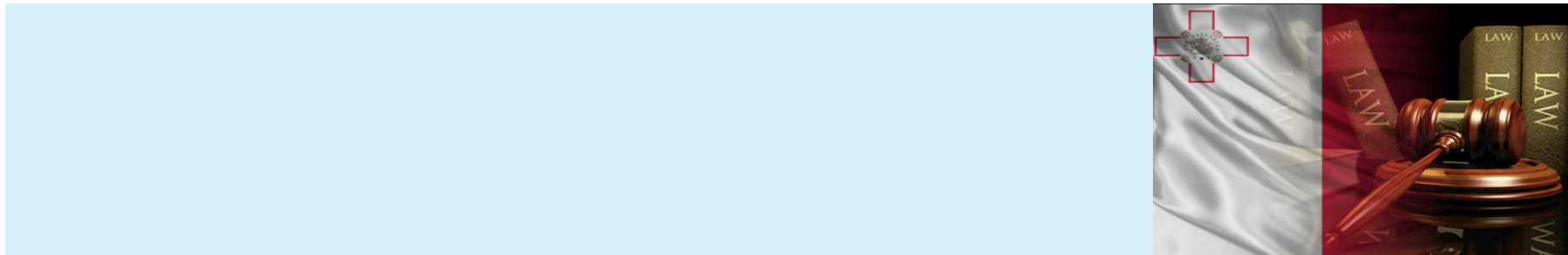
Why Else Am I In Malta?



Why Else Am I In Malta?

Maltese Securitisation Act (Chapter 484, the Laws of Malta)

- Recent statute sets up a very broad scope for securitisations
- Quite flexible on forms of SPVs
- Governance arrangements can be tailored to the transaction
- “Privilege” over securitisation assets for the investors – helped with Lufthansa’s negative pledge issue
- Bankruptcy remoteness



The Lufthansa Exchangeable Bond



- Lufthansa wanted to monetize its JetBlue holding
- Outright sale not immediately practical or desirable
- Potential future upside in JetBlue stock:
Desire to retain and decide later

Issues Leading Lufthansa to Malta

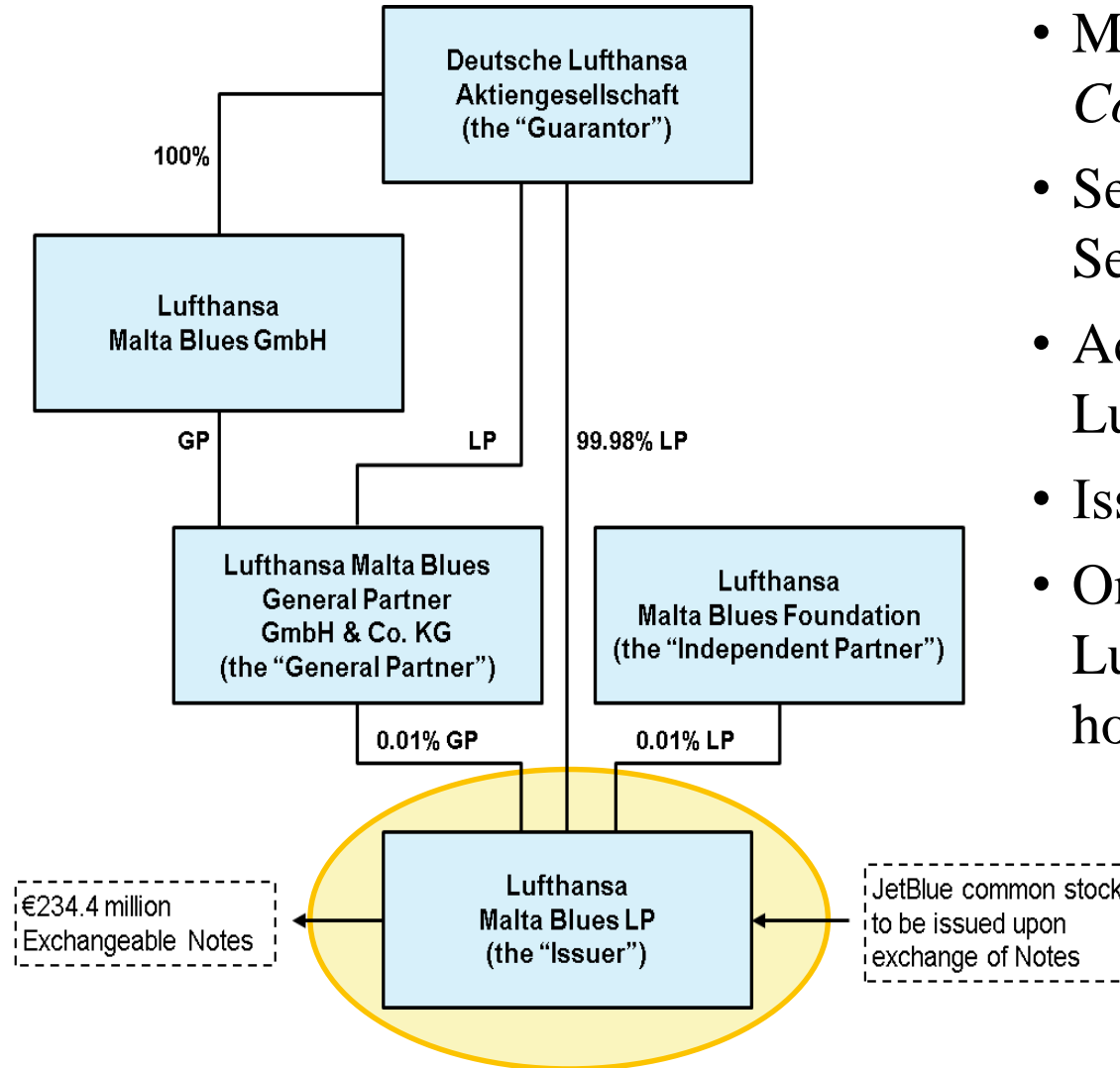
- The usual structure for issuing exchangeable bonds was not available
 - Negative pledge clauses in Lufthansa corporate debt deals precluding security interest
 - Permanent disposal not desired right away
- Tax considerations special to Lufthansa



Goals of the Structure

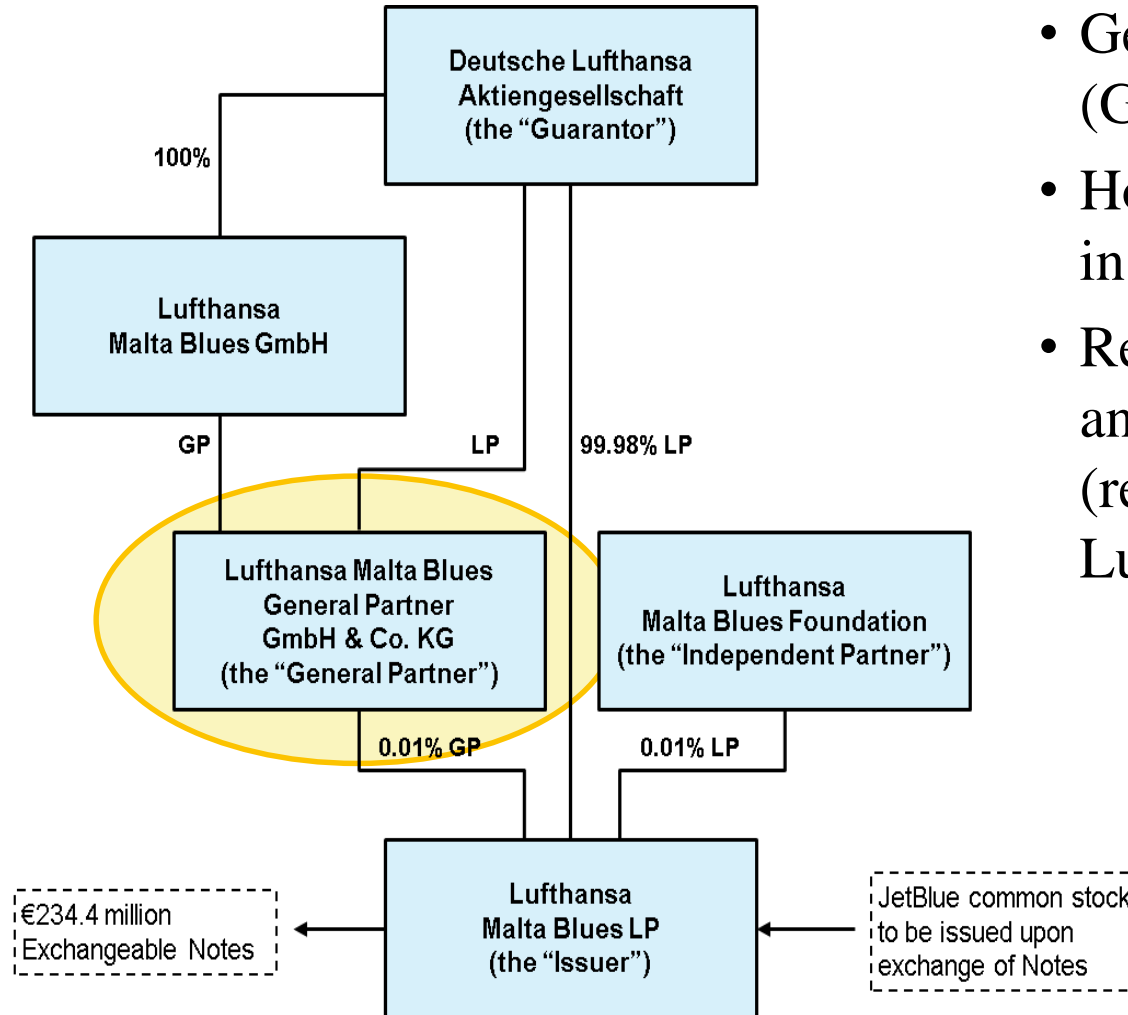
- Come as close to the effects of a security arrangement as possible
- Make it possible through agreements to prevent Lufthansa (or its creditors) from “getting to” the JetBlue shares
- But without looking so unusual that potential investors in the Notes would have too many structural questions during the marketing

The Issuer



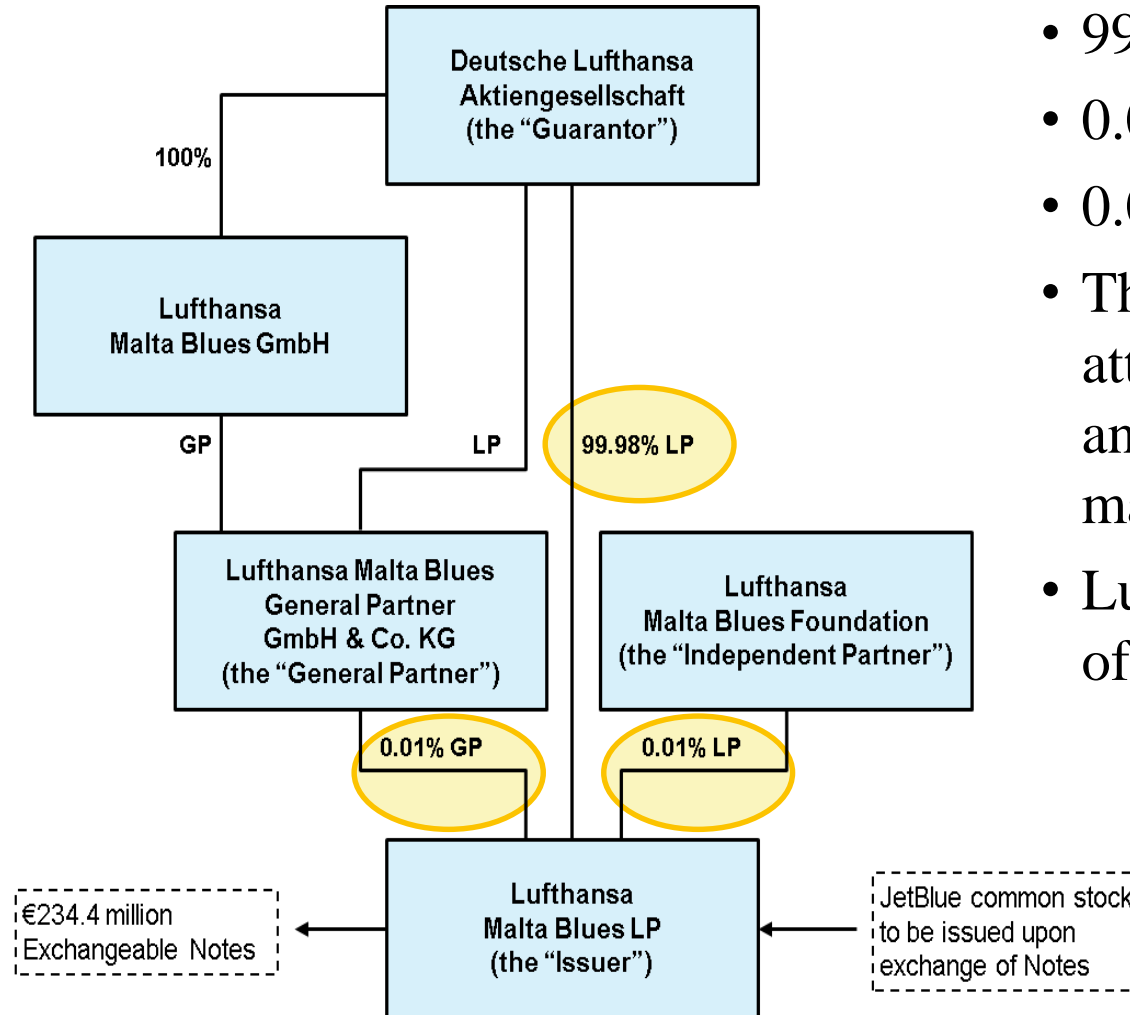
- Maltese limited partnership (*En Commandite*)
- Securitisation vehicle under the Securitisation Act
- Acquired JetBlue shares from Lufthansa (true sale)
- Issued €234.4 million of Notes
- On-lent a portion of proceeds to Lufthansa; interest passed on to holders

The General Partner



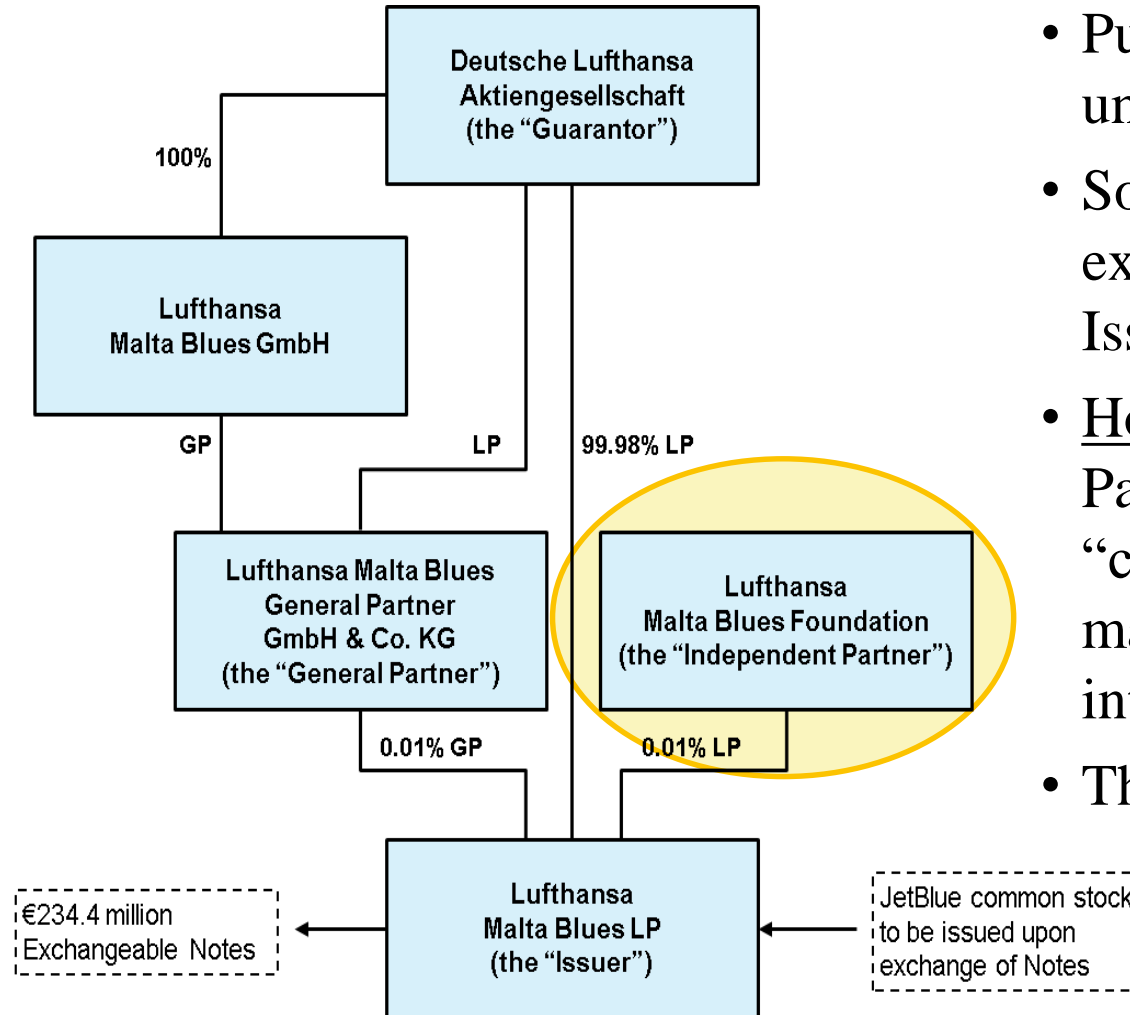
- German limited partnership (GmbH & Co. KG)
- Holds 0.01% of the LP Interests in the Issuer
- Responsible for the management and administration of the Issuer (responsibility delegated to Lufthansa)

The LP Interests In the Issuer



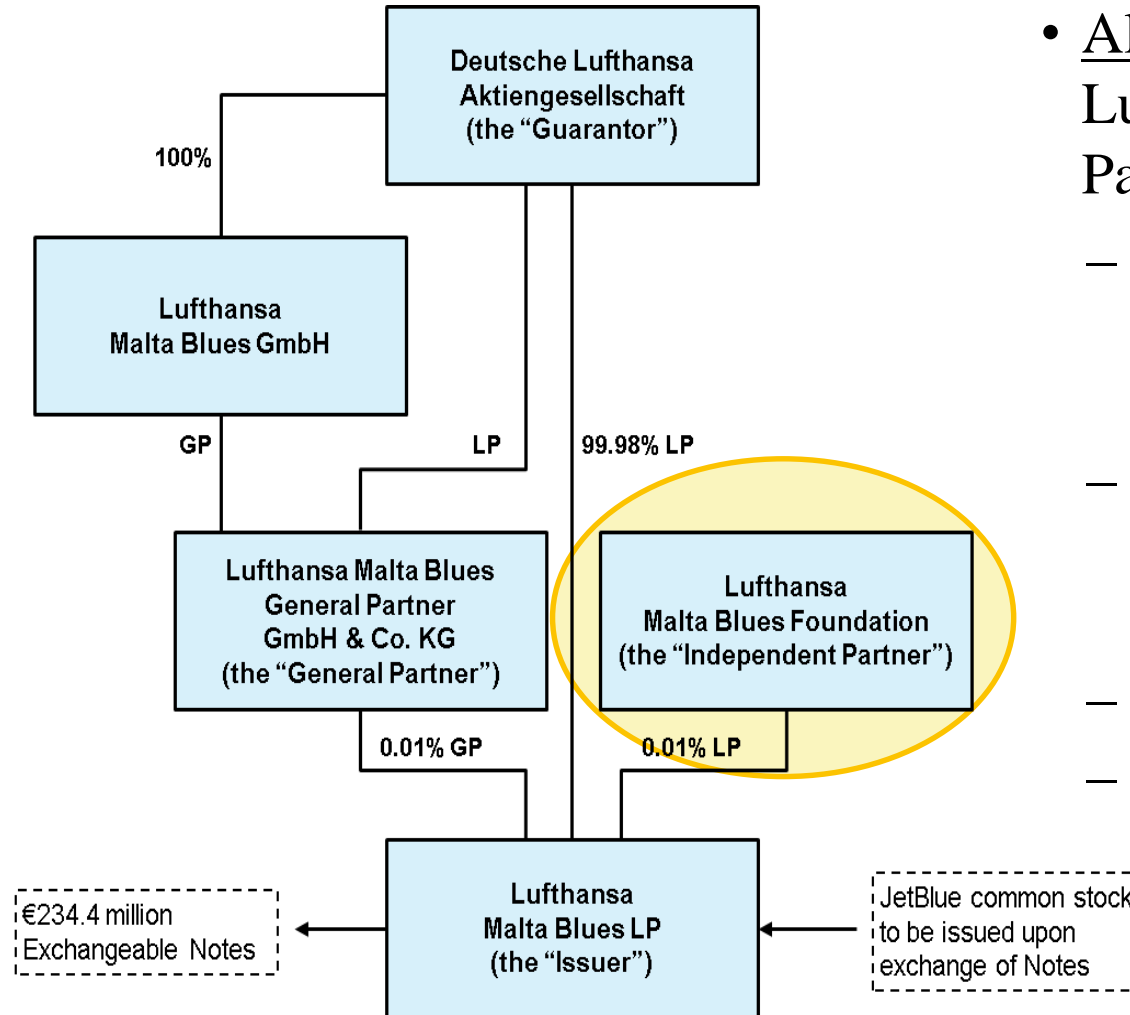
- 99.98% – Lufthansa
- 0.01% – General Partner
- 0.01% – Independent Partner
- The holders of the Interests attend meetings of the Issuer and resolve on partnership matters
- Lufthansa participates in 100% of any profits

The Independent Partner



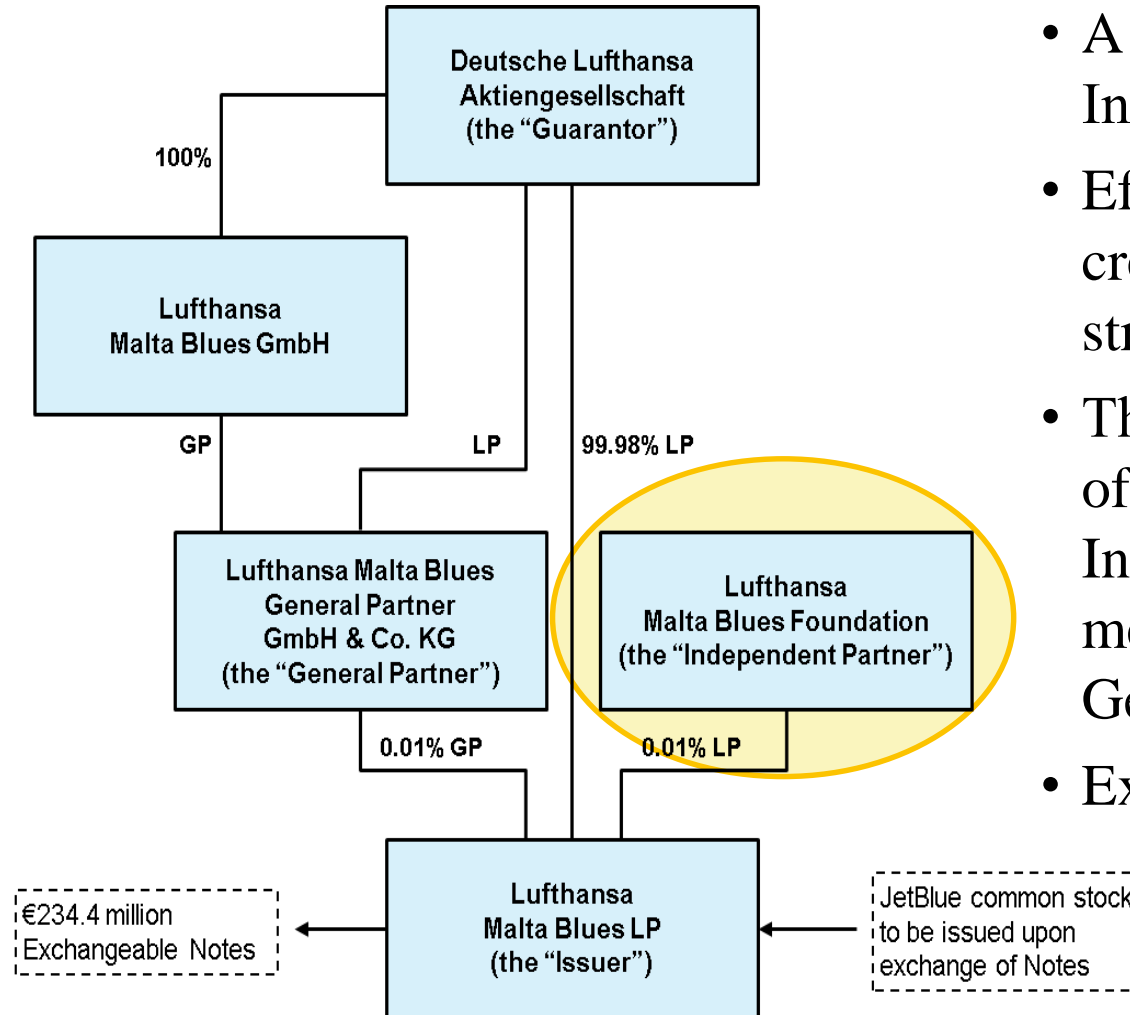
- Purpose foundation established under Maltese law
- Sole purpose: Holding and exercising its LP interest in the Issuer
- However, the Independent Partner is structured to be the “check” on the structure that makes it look like a security interest
- The Independent Partner effectively has a “veto” over any actions that would break the “security”

The Independent Partner, cont'd



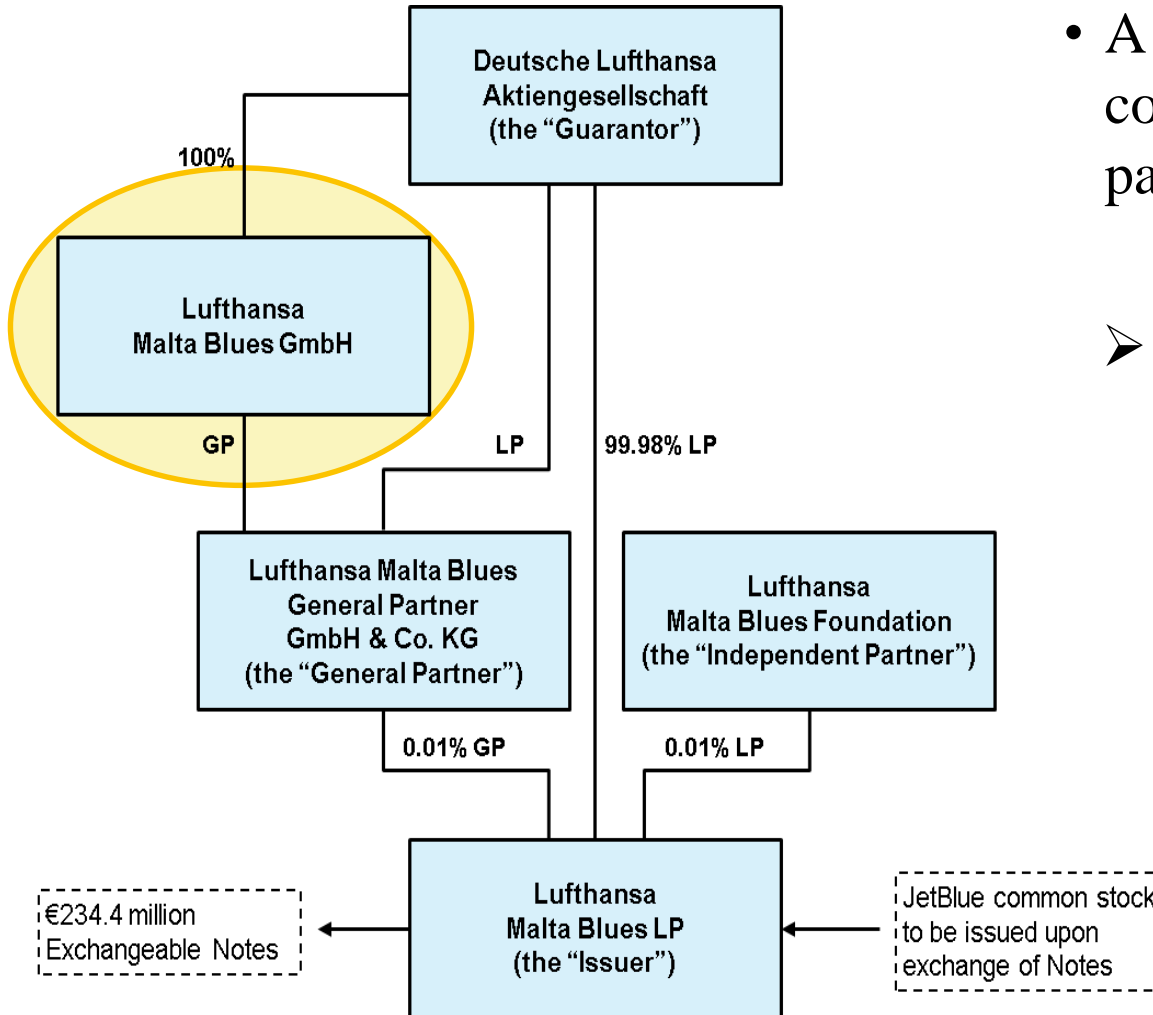
- All of the Independent Partner, Lufthansa and the General Partner must consent to any
 - amendment of the Issuer's deed of partnership or any of the agreements
 - disposal or encumbrance of the JetBlue shares or other Issuer assets
 - issuances of any indebtedness
 - dissolution, distributions, etc.

The Independent Partner, cont'd



- A trust was appointed under the Independent Partner's charter
- Effect is to prevent Lufthansa or creditors from breaking into the structure
- The Independent Partner's deed of partnership protects the Independent Partner from any meddling by Lufthansa or the General Partner
- Express recognition that the Independent Partner only considers the interest of the noteholders

The General Partner's General Partner



- A German limited liability company (GmbH) is the general partner of the General Partner

➤ This was for German tax purposes

With Hindsight, What Did Malta Offer Us?

- A new, well designed securitisation law
- Flexibility to design the structure we needed
- Local top-flight legal and tax expertise sufficient to lawyer up on both the Lufthansa and managers sides
- In an EU member state rather than a “tax haven”

Some Specifics

“Special Privilege”

- Concept serves as a replacement for a security interest
- Holders of the Notes had a privilege over the securitisation assets that ranks prior to other claims
- Arises by operation of law
- Cannot be disapplied from within the structure
- Opinions could be given that this was not a security interest

Some Specifics

Bankruptcy Remoteness

- Legally separated from the originator by operation of Maltese law under the Securitisation Act
- Statutory Basis for “true sale” conclusion
- Assets unreachable other than by Issuer’s creditors only in the case of fraud

What's Next for Securitisation in Malta?

- Flexibility of structuring should be attractive for special situations
- Proven structure for orphan SPVs and for avoidance of traditional secured transactions
- Support for the sector in the economy, and a targeted, specific legal framework are pluses
- Path to prominence may be in special situations given market reluctance to return to the securitisation environment of pre-crisis

Our Panel



Moderator:

Andreas Wölfl – Argentarius Group

Panellists:

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