International Journal of Innovative Research and Advanced Studies (IJIRAS)
Volume 3 Issue 12, November 2016

ISSN: 2394-4404

Securitization In Nigeria: A Legal Perspective

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Abstract: This paper seeks to discuss securitisation as a viable, and an alternative way of raising additional capital for business organisations. Business organisations and other corporate entities require substantial capital to grow and expand their ventures. When the financial resources of a business entity are stretched to the limit, equity capital is scarce and therefore expansion is stalled. Therefore, in order to improve their financial liquidity, the shareholders may not be ready to relinquish their holdings by issuing stocks to the public. Hence, they have resorted to innovative ways of raising additional capital with minimal cost. Securitisation has been found to be a convenient way of raising funds by transforming unmarketable assets/receivables into tradable securities through the instrumentality of Special Purpose Vehicles (SPVs). For this reason, the securitisation market has continued to grow. Securitisation has witnessed exponential growth from a non-existent industry in 1970 to $6.6 trillion as of the second quarter of 2003. As it has been revealed in numerous instances, SPVs have been put to various use by leveraging on the corporate personality principle to attain diverse economic ends. Sadly, the vistas of opportunities available through the process of securitisation has not been fully utilised in Nigeria. This is largely because of the dearth of legal frameworks to regulate securitisation process. This paper proposes a legal frame work in Nigeria that will create adequate and effective monitoring that will ensure maximum realisation of the benefit of securitisation process.

I. INTRODUCTION

The need to access more capital has created the appetite for companies to adopt innovative and creative ways of raising funds with minimal liability, one novel means of generating fund is by pooling illiquid assets together and transforming it into security which is then issued to investors. This process of turning illiquid asset into tradable assets is called securitisation. According to Nwogugu (2014) it has been observed that a lot of troubled companies and low income generating companies have securitised. However, the securitisation process cannot be optimally realised without the transforming machinery which is a Special Purpose Vehicle. As the name implies, it is created for a particular purpose and structured in a way to lack the capacity to engage in any other activity apart from that which it is created for. This singular feature distinguishes SPVs from the traditional corporate entity which has the ability to engage in a wider range of activities. The motivation for investing in SPVs is also derived from its restricted activity. While other developed nations of the world have immensely benefited from the use of SPVs to securitize, Nigeria cannot be said to have enjoyed same. Therefore, for a nation to occupy a pride of place in the global economy, it needs to create and adopt financial systems that would enhance accessibility to funds in other to grow the economy. This paper considers the following questions, what makes this method of financing unique? what is it about?. It is for this reason that this paper attempt to examine securitisation process as practised in other jurisdictions with a view to project its benefits and to consider potential setbacks to securitisation process in Nigeria.

WHAT IS SECURITISATION?

Securitisation has been described by the Oxford Dictionary of Accounting (2010) as:

The process of turning assets into securities [which] … involves an arrangement in which one party (the originator) sells a portfolio of assets, such as house mortgages or bank loans, to a special purpose vehicle (the issuer), who finances the purchase by packaging the cash flows from these assets as tradable financial instruments, which are sold to investors.

ISSN: 2394-4404

A simpler definition of securitisation has been given by Natania, (2008) as:

… the pooling of a homogeneous group of income – producing assets, the sale of these assets by the original holder (originator) to an insolvency remote third party (a special purpose vehicle or SPV) and the issue by the SPV of marketable securities (typically debt instruments such as debentures) to finance the purchase of the assets. The transferred assets serve as security for securities issued.

From the above, it is clear that securitisation involves the separation of income producing assets from the sponsor to the SPV and the issuance of security based on those assets. In the process of securitisation, the originator and the SPV plays a major role. It can be deduced that the transfer of assets from the originator to the SPV forms a core of the process. Jobst, (2008) states that the assets transferred by the originator to the SPV must be income generating, sufficient to successfully service the principal and interest on the securities issued, which must be passed to the purchaser of the securities and other incidental expenses. To achieve this, the originator usually over-collaterise, that is, it transfers more than enough income generating asset to cover the principal and the interest with remainder adequate to cater for the running cost of the SPV. It is also important that the SPV is insulated from the risk exposures of the originator. One of the means through which this is achieved is to structure the transfer of asset as true sale.

II. THE PRINCIPLE OF TRUE SALE

It is important for a transfer of asset to qualify as true sale before such assets can be legally separated from the originator. True sale ensures the transfer of both the reward and risk associated with the asset is passed on to the SPV. It extinguishes existing claims of the previous holder (originator) of the asset and transfers all the benefits and disadvantages unto the new holder (SPV). When a transfer is not true sale, it puts the investor in the position of unsecured creditors. True sale has been described by Shtatnov, A. (2012) as the foundation of securitisation without which the whole structure of securitisation crumbles. The courts have considered varying factors in determining true sale.

IN RE LTV STEEL CO.

It was argued by Abbey National (a financial institution) which obtained security interest in the receivables from Sales Finance for $ 270 million that the transaction between LTV Steel Co. (Originator) and Sales Finance Co. (SPV) was true sale, and that LTV Steel Co. did not retain any interest in the transferred assets therefore LTV Steel could not be part of the bankruptcy estate. Despite the fact that it agreed it was true sale, the court's decision to permit LTV to use the cash flow from the receivables despite the adverse effect on innocent investors. The court reached the decision with regard to the negative consequences that the bankruptcy of LTV would have on its employees and regional economics. The decision in this case could send wrong signal to investors.

Also, in re Pacific Lumber Co. The U.S Court of Appeals noted that the SPV structure was designed to reduce the likelihood of the Originators insolvency affecting the SPV. The court further stated that substantive consolidation of SPVs with the originator will have negative effect on the confidence of investors in securitisation.

It must be stated that the court considers the totality of circumstances before arriving at the decision. In re Jersey Tractor Trailer Training Inc. The court stated the following factors to be considered.

- ✓ The language in the documents and the conduct of the parties.
- ✓ The recourse of the seller.
- ✓ The seller's retention of service and comingling of proceeds.
- ✓ The purchaser's failure to investigate the credit of the account debtor.
- ✓ The sellers right to excess collections.
- ✓ The purchaser's right to alter pricing terms.
- ✓ Seller's retention right to alter or compromise unilaterally the terms of the transferred assets.
- ✓ Seller's retention of right of repurchase asset.

III. SECURITISATION AND SIMILAR METHODS OF CORPORATE FINANCING

While it can be argued that securitisation is akin to some other systems of corporate financing such as factoring, book debts, sale and lease back arrangements, debentures and charges it is important to state that securitisation is different in that it ensures that the originator remove the transferred assets off its balance sheet therefore the originator does not continue to reflect the liability in its record book as it is the case with charges, book debt and debentures. Also, the use of special purpose vehicles (SPV) further distinguishes securitisation from other similar model of corporate financing. Additionally, the investors/ creditors in securitisation are insulated from bankruptcy proceedings or priority of interest on the asset of the originating company.

IV. THE PARTIES AND PARTICIPANTS IN SECURITISATION PROCESS

Some of the essential participant in a securitisation process includes the following:

✓ ORIGINATOR/ SPONSOR

It is usually an incorporated company who creates the SPV, and can also be regarded as the promoter of the SPV. It also determines the assets from its portfolio to be transferred to the SPV. The originator is a separate legal entity from the SPV. They are usually financial institution such as banks, insurance companies and other businesses.

- ✓ THE SPV

It is the issuer and the entity which would buy assets from the Originator. SPV is the entity created by the Originator for a specified purpose. The agreement is structured to restrict the SPV from engaging in other business enterprise. The SPV receives payments, structures them and passes it on to investors. They act as cash flow conduit.

- ✓ INVESTORS

The investors buy the credit portfolio in form securities, it entitles the investor to receive interest payments and repayment as part of the terms of the agreement. The investor is liable only as a result of the payment claims he has acquired. They do not have any direct access to the assets. Investors could be individuals or other corporate bodies.

- ✓ SERVICER

The servicer is responsible for the administration and collection of principal and interest payments on the assets. In most cases, the originator doubles as the servicer, it is also possible to have multiple servicer for a single SPV. There could be the master servicer, a primary servicer, a sub-servicer and a default or special servicer for a single transaction, each with their peculiar role.

- ✓ TRUSTEE

The trustee is responsible for overseeing the proper administration of the securities and proper processing of all payment flows to the investors. Trustees are basically appointed to look after the interest of the investors. They hold the securities in trust for the investors.

- ✓ RATING AGENCIES

The rating agencies analyse the quality of the assets and the transaction structure, it also awards rating for all the securities issued. The rating agency also monitors the issue and the underlying credit portfolio. The rating agencies play a significant role in securitisation as investor's decision to invest or not are greatly influenced by the award of the rating institutions. Rating agencies usually consider the quality of the assets to be transferred to the SPV and the risk associated to it i.e. the chances of default by the debtors. Also, they analyse the risk associated with the structure that is bankruptcy remoteness of the SPV. These are essential in order to arrive at a fair evaluation of the SPV.

- ✓ ACCOUNTANTS

The accountant is important in securitisation process because they provide audit report and financial statements of the SPV.

- ✓ LAWYERS

The lawyer plays a significant role in securitisation; it ranges from giving advice on the regulatory and legal matters, creating the structure, preparation of legal documents, ensuring compliance with regulatory requirements etc.

V. THE SECURITISATION PROCESS

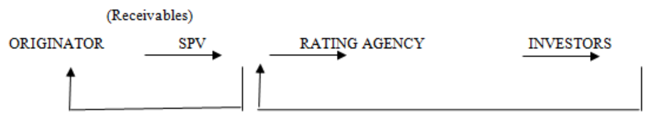
Gorton and Souleles (2005) simplified the process of securitisation into the following steps:

- ✓ A sponsor/originator of the assets/ receivables set up a bankruptcy remote SPV, pools the receivables, and transfer them to the SPV as a true sale.
- ✓ The cash flow arising from the assets are tranched into asset-backed securities, the most senior are rated and issued to the market, the proceeds generated is applied to purchase receivables from the sponsor.
- ✓ The pool revolves in that over a period of time the principal received on the underlying receivables is used to purchase new receivables.
- ✓ There is a final amortisation period, during which all payments received from the receivables are used to pay down tranche principal amount.

A simple process of securitisation can be summarised below;

For example, if a Credit society called ASFEPIL Ltd. provides loans for a variety of undertaking ranging from the purchase of industrial equipment, private automobile and small business start-ups. The growth of the ASFEPIL would drive its financial liquidity to its limits even though it has a reliable stream of income from loans granted. Despite the reduction in its liquid capital, the company owners might not be willing to concede control by issuing additional shares to the public nor obtain loan from a bank because of its high cost.

A company in this type of situation would be most suitable for securitisation. In order to attract investors, the company may have rating agencies evaluate its selected assets in order to enhance its market value. It may further require specialised financial institutions usually an insurance company to provide a guarantee. Upon compliance with the relevant regulations the ASFEPIL creates a new company (the SPV) who will buy the assets from ASFEPIL (the originator) and issue asset backed securities to investors. In some cases, the originator doubles as the servicer, as the servicer, the originator receives the cash flow (principal and interest payments), transmit same to the SPV less servicing fee, then the SPV remits the payment to the investors.



Source: by Akin Abibu and Balogun S.B

Figure 1

The above is an example is of a simple form of securitisation, other forms may sometimes involve complex and intricate network of structures that may be sometimes difficult to follow. This research work will not elaborate on the complicated forms of securitisation.

VI. ASSETS IN SECURITISATION

Generally, assets transferable to the SPV by the originator includes but not limited to the following:

- ✓ Mortgage backed securities
- ✓ Asset backed securities
- ✓ Credit risk.

VII. SUITABILITY OF ASSETS FOR SECURITISATION

The most important thing in asset securitisation is not suitability of the assets, but the quality of data available to show that such an asset is self-liquidating. Consequently, Ian, (2000) states there are no limits to the possibilities of assets that can be securitised, any income producing asset can be securitised as long as there is adequate performance record and credit risk diversification. The securities issued are flexible and tailored to meet the requirements of both the originator and investors. The interest rates could be fixed or floating, short or long term. It is important to state at this point that what sets apart securitisation from other forms of financing is the fact that investors are able to invest in specific and identifiable asset of the originator through the instrumentality of a SPV.

VIII. THE BENEFITS OF SECURITISATION

Some of the benefits of securitisation are:

- ✓ Improved liquidity, securitisation ensures fast capital liquidation by originating companies so that they can engage in other business as opposed to tying down capital for a long period. The motivation for securitisation is hinged on the fact that a fraction of a company's asset which forms part of its capital is not readily available at the immediate; therefore, securitisation helps to transform illiquid capital into liquid capital. This help the originator to meet immediate business needs.
- ✓ It ensures diversification of source of fund, apart from the fact that securitisation is attractive; it also stimulates the growth of the economy, through the provision of additional ways of raising funds for business activities.
- ✓ Risk management, it provides a platform whereby the originator is able to transfer risk without actually selling off its assets.
- ✓ It offers protection for investors against the credit risk exposures of the originating company.
- ✓ It provides off balance sheet financing as opposed to on balances funding as in the case of book debt.

IX. POTENTIAL PROBLEMS OF SECURITISATION IN NIGERIA

Despite the advantages of securitisation there are challenges with the concept, some of which are:

- ✓ The interest rate and the cost of securitisation might be high compared to other ways of raising capital. This may arise as a result of assigning less than investment grade asset to the SPV, bearing in mind the fact that the sponsor/ originator is a business entity with a motive to make profit, its discretion to identify and select good quality pool of assets to be securitised might be impaired by selfish motivations.
- ✓ The SPV structure can be used to achieve off balance sheet treatment in order to achieve desired financial ratios. The main goal here is to avoid tax or to manipulate financial statements. Financial engineering entails the deliberate activation of complex web of legal and accounting manoeuvring mechanism involving organisational commitment to earning management and skewed by depleted desire for transparency.
- ✓ Nature of the relationship between a sponsor and the SPV. The question whether a parent/ subsidiary relationship exit between the Sponsor and the SPV would go a long way to determine if a sponsor can be held responsible for the obligations of the SPV vice versa. What determines the relationship between a sponsor and a SPV is a consequence of the relevant domestic laws in each jurisdiction.

X. ABUSE OF SECURITISATION PROCESS BY ENRON

A look at Enron's use of SPVs would give an insight to the possible misuse of SPVs as a tool of financial engineering. According to Gary and Souleles (2007), after the fall on Enron, it was discovered that Enron had over 3000 SPVs off its accounting record. As observed by Schwarcz, (2002) peculiar to most of Enron transactions was the transfer of Enron's stock to an SPV in exchange for cash or a note, coupled with this was a guarantee on the SPV. Hence the investors in Enron's SPVs were paid from the cash flow generated from Enron's stock. The impetus for transferring its own stock to a SPV was derived from the fact that Enron's stock had consistently increased in value over the years. The downward drive of Enron's stock value necessarily produced a corresponding drop in the value of the underlying asset of the SPV. This activated Enron's guarantees; the payment of the guarantees to investors further stressed the value of Enron's stocks which in turn triggered more guarantees. Enron used a chain of off balance sheet SPVs controlled by its senior executives, to facilitate transactions in order to cover losses and to achieve favourable accounting record. In order to cover its losses, Enron created SPVs and transferred assets to it, booking a gain on its accounting records without actually exchanging money.

Enron pushed the securitisation to the limits by using its own stock as a guarantee; this practice was unique to Enron. It was further revealed that Enron's assumption was based on the premise that its stock would continue to appreciate and such cover up its hedges in the merchant investments. The unanticipated crash of Enron's stock triggered a corresponding plunge the value of assets held by the SPVs. Because the cash flow from the underlying assets had depreciated the SPVs could not cover Enron's losses. The eventual disclosure of $ 1.2 billion reductions in the shareholders' equity due to accounting error revealed that Enron had engaged in a deliberate and systemic manipulation of its financial statement. The intended result for establishing the Raptors was that the future gains from the stock and the losses from the merchant investment would be kept in the SPV as such, effectively preventing Enron from reflecting the loss. Enron had reflected unrealised gains in it books, this was done by creating earnings from 'sale' of assets to its SPVs, with no pecuniary consideration for the transaction. The misuse of SPVs by ENRON is one example of excessive use of SPVs with far reaching negative consequences.

XI. REGULATING SECURITISATION IN NIGERIA

The provision of the Investment and Securities Act 2007 is also key to securitisation process, in particular as it relates to the issuance and trading of securities. Section 54 is instructive as it makes it imperative for the registration of securities before it can be traded at the stock exchange market. The compliance with the provisions of the Act is fundamental because it seek to ensure the protection of investors, maintain fair, efficient and transparent market. The provision of section 105 prohibits false trading and market rigging transactions. Sections 106,107,108 amongst others ensure to maintain fair trading.

The principal legislation on corporate law in Nigeria is Companies and Allied Matters Act cap. C20 Laws of the Federation of Nigeria 2004 (hereafter referred to as CAMA), therefore the relationship between a SPV and the originator in Nigeria would be determined by the Act. In Nigeria, Sections 336(1) and 338 of CAMA are relevant to the determination of the relationship between corporate bodies as it relates to group accounting, holding and subsidiary respectively. The examination of the Section would give an insight to the meaning of a subsidiary in the context of the Act. Section 338(1) of CAMA provides that a company shall be deemed to be a subsidiary of another, if that other company (parent company) is a member of it and controls the composition of its board of directors or it holds more than half of its nominal value of its equity capital.

From the above, the relationship between a Sponsor and a SPV under this section would be inferred if the sponsor held more than half of its equity share holdings. The implication of this is that a holder of 50% shareholding with additional powers conferred on it through contract or other transactional documents would not be recognised as having control under the Nigerian law, as it would not amount to more than half of the equity share holding of the company. Therefore, equity ownership would go a long way to determine the relationship between a SPV and Sponsor. Additionally, the power of a company to controls the board of directors, would most likely be exercisable through the ownership of majority shareholding.

XII. RELATIONSHIP BETWEEN ORIGINATOR AND SPVS IN OTHER JURISDICTIONS

In other climes, the relationship between a sponsor and SPV are determined by various legal models available in those countries.

In the United States for example, each state has its own laws that governs corporations set up within its jurisdiction. Federal legislation is however available to control the operations of corporations. The Regulations S-X of the Investment Company Act, 1940 defined a parent company as "an affiliate controlling such person directly or indirectly through one or more intermediaries." A subsidiary on the other hand is defined as "an affiliate controlled by such person directly or indirectly through one or more intermediaries". Control is defined as "possession, direct or indirect, of power to direct or cause the direction of the management and policies of a person whether through the ownership of voting shares, by contract or otherwise". From the above, it is evident as observed by Adebayo, (2014) that a parent/subsidiary relationship in the US is not solely determined by shareholding participation. The U.S. law recognises and accommodate other forms through which control could be exercised over a company without necessarily holding the controlling shares of a company.

Under German law, the test for a parent/subsidiary relationship is control. Section 15 German Stock Corporation Act 1965 (Aktiengesetz) refers to enterprises. By virtue of Section 17 of that Act, a group relationship is inferred if there are connected enterprises. Within connected enterprises there are controlling and controlled enterprises. An enterprise would be deemed to be in control of another in the following situations:

- ✓ Where legally separate enterprises over which another enterprise (controlling enterprise) is able to exert, directly or indirectly, a controlling influence, shall constitute control enterprise
- ✓ A majority owned enterprise shall be presumed to be control by the enterprise with the majority shareholding in it.

Again Sections 291 and 292 of the Act extend control to the existence of an enterprise agreement, that is where a company agrees to surrender the management of its business affairs to another company that is also referred to as a control agreement, or agrees to transfer its profits through profit transfer agreement. The German law treats parties to such agreements as affiliates. It is also clear that control under the German law is not restricted to ownership of majority share holdings. The law offers a wider range of circumstances through which control or relationship between a sponsor and a SPV could be inferred. Therefore, under the German law as rightly observed by Adebayo (2014) a parent/ subsidiary relationship could be inferred without shareholdings.

Bala, (2002) revealed that Sponsoring companies have adopted several ways through which they have maintained control over their SPV, without acquiring controlling share through recourse agreements, and in extreme cases as it has been seen in Enron, creating SPVs through their senior executives and having them run the affairs of the SPV. The strong connection that exist between SPVs and sponsoring companies cannot be discountenanced simply because the SPV is a legal entity. Even though it is elementary knowledge that contract is a consensual agreement between parties binding by law. It is also widely recognised and acknowledged that parties to a contract do not always have equal bargaining power, therefore the need to protect the interest of the weaker party. In a sponsor/SPV contract, it is obvious that the SPV is the weaker party. Therefore, countries like Germany and the US have as seen above has raised the bar by inferring connection between two entities as a result of obligations arising out of contract.

Flowing from the consideration of various laws from different jurisdictions considered above, it can be seen that different criteria exit in all jurisdiction for determining the relationship between a sponsor and SPV. One thing that has been noted earlier in this chapter is that SPVs operate on contractual documents. As it has been observed by Adebayo, (2014), control contract are usually confidential in nature. The private nature of such contract could make it difficult to ascertain the extent of control or relationship between a Sponsor and a SPV.

XIII. SPECIAL PURPOSE VEHICLE

A Special Purpose Vehicles plays a fundamental role in a securitization process; it is also referred to as Special Purpose Entities in US and some other jurisdictions. SPVs are structured to be free from the bankruptcy of its originator. This key feature set it apart from other methods of corporate financing. As it is common with many concepts, attempts have been made to define a SPV but it has been difficult to arrive at an all-encompassing definition. The reason for this is because this aspect of company law is relatively new, evolving and developing. The problem of having a generally acceptable definition of SPV was further compounded by the fact that different jurisdictions interpreted the concept in various ways. To this extent, scholars grapple to catch up and understand the idea and workings of a SPV. Scholars in their various text have expressed different views on SPVs. Bala, (2002) is of the opinion that the motivation for creating SPVs is because of its uniquely identifiable nature of risk and that it has motivated its use for several decades. The above view sees SPVs from an investors perspective which does not capture other reasons for setting up SPVs. Schwarcz (2011) is of the view that the goal for creating an SPV is to separate identified assets from the risk generally associated with the sponsor and that it enables sponsors raise funds from the capital market. This perspective, reflects SPV in terms of project finance. Gorton and Souleles (2007) in their write up argued that SPVs exist essentially to reduce bankruptcy cost. This view also reflects a narrow perception of SPVs as a bankrupt remote entity. Also, Aina (2015) described SPV as a transforming device in the process of securitisation through the conversion of non–tradable asset into tradable assets.

The above views point to the fact there is no consensus on what SPV is. To others SPV is simply a subsidiary of the Originating Company. Some of the attempt by scholars to give meaning to the concept would be considered below.

Gorton and Souleles (2007) gave a description of SPV in terms of:

a legal entity created by a firm (known as the sponsor or originator) by transferring assets to the SPV, to carry out some specific or circumscribed activity, or series of such transactions. SPVs have no purpose other than the transaction(s) for which they were created, and they can make no substantive decisions; the rules governing them are set down in advance and carefully circumscribed their activities. Indeed, no one works at an SPV and it has physical location.

The above definition addressed the fact that SPVs are designed to engage in a specified activity while also recognising other essential attributes. However, to suggest that SPV does not have a physical location or employees is arguable because it might not true in all circumstances. SPVs may have employees and physical location as suggested by The IMF Balance of Payments Technical Expert Group: Issues Paper (BOPTEG) #9: Special Purpose Entities and Holding Companies report (2004).

Bratton and Levitin (2012) in their attempt to define a SPV described it as: "...legally distinct entities that companies use to facilitate transactions that yield regulatory and accounting benefits". The Oxford Dictionary of Accounting fourth edition (2010) also defines SPV as: 'a legal entity established for the sake of a single transaction, for example in the credit enhancement of a securitisation'.

It is important to state that when a sponsor hives asset off its balance sheet to a SPV it is important that such transfer is made a true sale, anything short of this might have the court reclassify it and claw the assets back into the sponsors' book in a bankruptcy proceeding.

XIV. THE DISTINCT NATURE OF SPV

SPV's are unique because they are not in the traditional mould of corporations as it breaks the frontiers of corporate law as regards the traditional model of control. It operates on a pre-determined set of instructions arising from an intricate transactional document. All the activities of the SPV is guided and controlled through the documents, leaving it with no substantive decision to make. The traditional standard of determining the connection between companies is through its shareholdings. The holder of the majority shareholdings of a company has been hitherto ascribed with the controlling powers of a company. Sponsoring companies have found a way to retain control over a SPV even when they do not hold the majority shareholdings. According to Bratton and Levitin (2012) by adopting a pre-programmed set of instructions encoded in contracts, sponsors are able to retain control over their SPV without acquiring the majority shareholdings thereby avoiding consolidation. Unlike conventional companies, control of a SPV is not attributable to its shareholders. Investors also find it attractive to invest in SPVs because they are free from any pre-exiting obligations and debt, and as such act as a conduit for the transmission of the cash flow to the investors.

XV. CONCLUSIONS AND RECOMMENDATIONS

In the course of this research we have been able to establish that securitisation is process through which funds can be created for companies from assets that hitherto cannot be easily converted to cash. The benefits and problems associated with securitisation were also discussed. From the discussions it is evident that the benefits of securitisation outweigh its problems.

The nature and characteristics of SPVs was also considered in the course of this research work and it was discovered that their operations is pre-determined through contracts. SPV has been described as the key component of securitisation as they serve as a transforming device for converting non tradable assets into tradable assets. The jurisdiction where the SPV is established determines the legal nature and form of the vehicle; they are usually incorporated in tax friendly jurisdictions. It has also been revealed that in as much as there are no law prohibiting the creation of SPVs in Nigeria, the current laws are not attractive enough to motivate the creation of SPV by corporate bodies.

The research further reveals that there is a vacuum in the Nigerian Law as it relates to securitisation. The gap created by the lack of law on securitisation, has denied corporate bodies potentials and opportunities offered by securitisation which has remained untapped. The parties and participants to securitisation transaction are quite considerable to the extent that if there is legislation on securitisation it will in effect create and increase the current job opportunities available in the country. However, in as much as it is desirable to have a law on securitisation, lessons from other jurisdictions must not be easily forgotten especially the Enron's abuse in the use of SPVs. Therefore, in the drafting process of securitisation law wide consultations should be made among experts in the field in an attempt to arrive at a law that address most of the problems associated with securitisation in order to prevent a potential repeat of Enron scandal in Nigeria.

There are huge varieties of opportunities available in Nigeria for harnessing the benefits of securitisation only if the enabling laws are provided to consolidate the abundance of potential begging for utilisation. If there was Securitisation Law in Nigeria, the Power Holding Company of Nigeria Generation and Distribution Companies (GENCOs/DISCOs) are practical instances where huge chunk of capital can be pooled together through the process of securitisation. Since the income stream from the monthly payment of Electricity bills would turn out to be a good underlying asset the GENCOs / DISCOs raise capital to finance the capital intensive power sector.

There is an urgent need for legislation on securitisation transactions which will encourage and regulate the activities of Special Purpose Vehicles in Nigeria. There should be a legal limit in the number of SPVs a single corporate entity can create in order to ensure effective monitoring and prevent a possible repeat of the ENRON scandal.

There is a need to create tax friendly legislations that would be structured to give tax exemption and discounts in deserving circumstances to encourage corporate entities

AMENDMENT TO CAMA

In other to provide a standard in tandem with the international best practice for determining relationships between corporate bodies, Section 338 of the Act should be amended by inserting a new paragraph (c) to subsection (1) to capture control exercised through contract where the parties agree as follows:

New paragraph c: "agrees by contract to surrender the management of its business affairs to another company, or agrees to transfer its profits through profit transfer agreement"

It is hoped that the above recommendations contribute to the necessary reforms in our corporate law and to ensure that the benefits of securitisation is fully realised in Nigeria. The above suggested reforms is hoped to assist the Nation's financial regulatory bodies improve their standard in the area of supervision, as it is only then that the emergence of the securitisation would be a resounding success.

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