

A BILL

FOR

AN ACT TO MAKE PROVISIONS FOR SECURITISATION TRANSACTIONS AND THE ISSUANCE OF ASSET-BACKED SECURITIES AND FOR RELATED MATTERS

Sponsored by Hon. Jones Chukwudi Onyereri

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1 PART I - OBJECT, PURPOSE AND SCOPE OF APPLICATION

2 1. The objects of this Bill are to: Object

3 (i) provide an effective structure for asset securitization
4 transactions by putting in place a modern and comprehensive legislative
5 framework for the development of securitization as a financing technique;

6 (ii) promote the availability of capital and credit at more affordable
7 rates by diversifying, the market for long term funds, thus facilitate its
8 development and widespread use;

9 (iii) create a legislative framework governing transactions and
10 investments in intangible financial assets;

11 (iv) create certainty and predictability in asset securitization
12 transactions; and

13 (v) institutionalize international best practices in risk
14 managements of asset securitization transactions.

15 2. This Bill applies to: Scope of Application

16 (a) Assignment of assets and receivables; and

17 (b) Subsequent assignment of assets and receivables provided that
18 any prior assignment of the assets and receivables was governed by this law.

	1	PART II - CREATION, PURPOSE, POWERS, ETC, OF SPECIAL PURPOSE
	2	VEHICLES
Creation of Special Purpose Vehicles	3	3. Special Purpose Vehicles may be created under this Act using
	4	anyone of the following forms of business association:
	5	(a) a limited liability company;
	6	(b) a partnership;
	7	(c) a trust created by a written instrument; or
	8	(d) by any other legal entity established under the laws of Nigeria, as
	9	the Commission may by regulation, permit to be used for a securitization
	10	transaction under this Act.
Objects and purposes of Special Purpose Vehicles	11	4.-(1) The objects and purposes of a Special Purpose Vehicle
	12	established pursuant to the provision of section 3 of this Act shall be:
	13	(a) limited to matters which are necessary to carry out all or any
	14	transactions intended or required to implement or participate in a securitization
	15	transaction; and
	16	(b) related and ancillary to all acts including, without limitation, the
	17	acquisition, management and collection of assets, the assumption of risks, the
	18	issue of securities or the borrowing of funds to finance the acquisition of assets
	19	or assumption of risks and the engagement of servicers to administer or support
	20	its activities.
	21	(2) The constitutive documents of a Special Purpose Vehicle created
	22	pursuant to the provision of section 3 of this Act shall:
	23	(a) state expressly that it is a Special Purpose Vehicle created under
	24	and subject to the provisions of this Act; and
	25	(b) include in its name the acronym 'SPV'.
Limitation on operation	26	5.-(1) A Special Purpose Vehicle established under this Act:
	27	(a) shall not carry on any trade or business other than securitization
	28	transactions or ancillary transactions;
	29	(b) are not collective investment schemes as defined under the
	30	Investment and Securities Act, 2007.

1 (2) A Special Purpose Vehicle shall:
2 (a) carry out such activities as are specified in the approved
3 Scheme; and
4 (b) be entitled to offer for sale securities which are issued pursuant
5 to the approved scheme.

6 **6.** A Special Purpose Vehicle established under this Act shall have
7 power to:

Powers of
Special Purpose
Vehicles

8 (a) accept the sale or transfer of assets;
9 (b) issue asset-backed securities for sale to investors;
10 (c) enter into agreements with persons for the purpose of
11 implementing the Scheme;
12 (d) create any indebtedness or encumbrances to defray
13 administrative or other expenses as may be specified in the Scheme;
14 (e) invest or seek benefits from the transferred assets as may be
15 approved by the Commission; and
16 (f) undertake all such activities that are necessary and appropriate
17 to carry out any of the powers contained under the provision of this section,
18 provided such activities are not contrary to the provisions of this Act.

19 **7.-(1)** Subject to the provisions of sub-section (2) of this section a
20 Special Purpose Vehicle established under this Act shall not engage
21 employees or enter into any contract of employment for the purpose of
22 carrying out its operations under this Act.

Restriction on
employment of
staff, etc.

23 (2) A Special Purpose Vehicle may engage the services of such
24 consultants or contractors as are required for the purpose of its operations
25 under this Act which services may, where necessary or considered
26 appropriate, be rendered by the Originator.

27 **8.-(1)** Subject to the provisions of the Companies and Allied
28 Matters Act Cap C20, Laws of the Federation of Nigeria, as they relate to the
29 provisions of this Act, and unless as otherwise provided under the Scheme:

Prioritization of
interests

30 (a) the interests of holders of asset backed securities shall rank in

1 priority over the securitization assets and over all other contractual rights and
2 claims, except for other holders of asset backed securities who enjoy a prior
3 ranking granted to them with the consent or knowledge of the holders of asset
4 backed securities; and

5 (b) the privilege accorded to the holders of asset backed securities
6 referred to in paragraph (a) of this sub-section extends to the proceeds derived
7 from the assets to any funds received in payment for and to the assets, if any, in
8 which they are invested.

9 (2) Without any other or further assurances than the provision of this
10 section, the privilege granted to holders of asset backed securities, referred to
11 in sub-section (1) of this section arises by virtue of this Act without any other
12 requirement for registration in any register.

13 (3) The rights of holders of asset backed securities or any creditor of a
14 Special Purpose Vehicle are determined under the provision of this Act.

Special Purpose
Vehicle separate
and independent
of originator

15 **9.** Subject to the provisions of the Companies and Allied Matters Act,
16 proceedings taken concerning the Originator under the Companies and Allied
17 Matters Act, or under any other law, including the dissolution and winding-up
18 proceedings, companies recovery procedure, companies reconstruction or
19 proceedings affecting creditors' rights generally shall not have any effect on:

20 (i) the Special Purpose Vehicle;

21 (ii) any asset acquired or risk assumed by a Special Purpose Vehicle
22 for the purpose of securitization, or on any cash flow or other asset of the
23 Special Purpose Vehicle; or

24 (iii) on any payments due by the obligors in connection with the
25 securitized assets.

Commission to
approve Scheme

26 **10.**-(1) Notwithstanding anything contained in this Act or any other
27 Act, no person shall issue or purport to issue asset-backed securities to the
28 public without the prior review and approval of the Commission.

29 (2) The Commission shall after the submission of the Scheme and all
30 other relevant information required by it or required under any rule or

1 regulations made under this Act, grant or refuse authorization for the
2 Scheme.

3 (3) Where the Commission refuses authorization for the Scheme, it
4 shall within 14 working days of its submission give reasons in writing for the
5 refusal.

6 (3) The Commission shall publish the appointment of the interim
7 administrator made under this section in at least 2 widely circulated national
8 newspapers.

9 **16.** A Special Purpose Vehicle shall terminate when:

Termination of
the Special
Purpose Vehicle

10 (a) it has not received the transfer of assets nor issued asset-backed
11 securities for sale to investors under the Scheme within 6 months from the
12 date on which the Scheme was approved unless extended by the
13 Commission;

14 (b) holders of at least two-thirds of the total amount of its asset-
15 backed securities still outstanding have resolved to dissolve the Special
16 Purpose Vehicle and the requisite notice has been received by the
17 Commission, and the Central Bank in case the Originator, Sponsor or seller
18 is a bank or any other financial institution which under the Banks and Other
19 Financial Institutions Act or any other law, is subject to the supervision of
20 the Central Bank;

21 (c) it has paid in full the debts owed to investors who have invested
22 in the asset backed securities issued by the Special Purpose Vehicle;

23 (d) conditions for dissolution that are specified in the Scheme
24 occur; or

25 (e) the Commission orders dissolution in accordance with the
26 provision of section 32 of this Act.

27 **PART III - TRANSFER OF ASSETS**

28 **17.-(1)** For the purposes of this Act, the transfer of the assets from
29 the Originator to the Special Purpose Vehicle shall be deemed to be a "true
30 sale" when it results in the following:

True Sale

1 (a) the transferred assets are legally isolated and beyond the reach of
2 the Originator or seller and its creditors;

3 (b) the Special Purpose Vehicle has the right to pledge, mortgage or
4 exchange the transferred assets;

5 (c) the Originator relinquishes effective control over the transferred
6 assets;

7 (d) the Special Purpose Vehicle has the right to the profits and
8 disposition with respect to the assets;

9 (e) the transferor does not have the right to recover the assets and the
10 transferee does not have the right to reimbursements of the price or other
11 consideration paid for the assets; and

12 (f) the transferee undertakes the risks associated with the transferred
13 assets.

14 (2) The Commission may by regulations specify any other condition
15 or characteristics, on a transaction to transaction basis what a true sale may be
16 nothing contained in sub-sections (1) and (2) of this section shall prevent the
17 Originator from:

18 (a) providing the usual warranties or representations with respect to
19 the quality of assets, in addition to assuming the obligation to repurchase or
20 replace assets which fail to meet quality standards;

21 (b) providing a guarantee of liquidity not amounting to a guarantee of
22 payment;

23 (c) serving as an asset servicer;

24 (d) holding asset-backed securities subordinated to the rights of other
25 asset-backed securities holders.

Transfer of
Assets

26 **18.**-(1) The Originator or seller and a Special Purpose Vehicle are at
27 liberty to select any method of transferring the assets, including without
28 limitation, novation, sale, assignment or declaration of trust.

29 (2) Subject to the provisions of section 19 of this Act, the method of
30 transfer of assets from an Originator or seller to a Special Purpose Vehicle shall

1 be valid and enforceable in accordance with its terms and the provisions of
2 this Act and shall not be subject to re-characterization for any reason
3 whatsoever.

4 **19.** -(1) Subject to the provisions of the Companies and Allied Assignments
5 Matters Act, Cap 20, Laws of the Federation of Nigeria 2004 as they pertain
6 to the provisions of this Act where an asset is assigned to a Special Purpose
7 Vehicle in accordance with the provisions of this Act, such assignment shall
8 be treated as final, absolute and binding on the Originator, the Special
9 Purpose Vehicle and on all third parties and such assignment shall not be
10 subjected to:

11 (i) annulment, rescission, revocation or termination, variation or
12 abatement by any person for any reason whatsoever;

13 (ii) any rights of the creditors of the Originator for any reason
14 whatsoever;

15 (iii) any rights of a liquidator, receiver or of the Originator or other
16 similar officer of the Originator for any reason whatsoever.

17 (2) The provisions of subsection (1) of this section shall apply
18 notwithstanding any underlying contractual, statutory or common law
19 prohibition or restriction on the Originator to assign in whole or in part the
20 asset to any third party.

21 (3) The provisions of subsections (1) and (2) of this section shall
22 not apply:

23 (a) where there is fraud on the part of the Special Purpose Vehicle;

24 (b) in respect of an assignment entered into at a time at which the
25 Special Purpose Vehicle knew or ought to have known that an application
26 for the dissolution and winding up of the Originator by reason of insolvency
27 was pending, or that the Originator had taken formal steps under any
28 applicable law to bring about its dissolution and winding up by reason of
29 insolvency.

30 (4) Where the Special Purpose Vehicle had no actual knowledge of

1 the matter referred to in paragraph (b) of subsection (3) of this section, it shall
2 be deemed that the Special Purpose Vehicle could not have known that an
3 application for the dissolution and winding up of the Originator by reason of
4 insolvency was pending, or that the Originator had taken formal steps under
5 any applicable law to bring about its dissolution and winding up by reason of
6 insolvency, if no document or other record was registered to this effect with the
7 Corporate Affairs Commission and publicly accessible.

8 (5) Unless the terms of a transfer to the Special Purpose Vehicle
9 provides otherwise, or the Special Purpose Vehicle expressly assumes any
10 obligation, the obligor, has no right or claim against the Special Purpose
11 Vehicle in connection with any obligation relating to the assets and the obligor
12 shall continue to enjoy all rights under the assigned contract against the
13 Originator who shall remain solely responsible for the performance of all
14 obligations under the contract.

15 (6) An assignment in favour of a Special Purpose Vehicle:

16 (a) shall be evidenced in writing; and

17 (b) is complete and ownership of the assets is ipso jure acquired by the
18 Special Purpose Vehicle upon the assignment being reduced into written form
19 in accordance with the provisions of this Act.

Assignment of
existing assets

20 **20.**-(1) The assignment of an asset to a Special Purpose Vehicle shall
21 be valid and effective where any two of the features listed below exists in
22 relation to the class of receivables being subject to the assignment:

23 (a) the type of debt or asset or contract giving rise to the debt is known;

24 (b) the class or type of obligors are stated; and

25 (c) the repayment period when the debts fall due is supplied, so as to
26 enable any interested party to reasonably determine which receivables are
27 included in the assignment.

28 (2) In making the determination referred to in subsection (1) of this
29 section, it shall not be necessary to specify:

30 (i) the name of the debtor or debtors; or

1 (ii) the date or the amount of any particular debt.

2 (3) Where the parties to an assignment claim that a debt is not
3 included in the assignment, the matter shall be resolved as provided for in
4 the assignment, and the aggregate price, if any, for the transfer shall be
5 adjusted, if the claim is justified, by the value of the disputed debt being
6 reduced therefrom, and such adjustment shall not in any way affect the
7 validity or effects of the assignment of other receivables.

8 **21.**-(1) It shall be lawful for future receivables of an Originator,
9 including future claims against future obligors, to be the subject matter of an
10 assignment in favour of a Special Purpose Vehicle.

Assignment of
future receivables

11 (2) The assignment of future receivable referred to in subsection (i)
12 shall be valid and effective if it identifies at least one of the features of the
13 class of receivables being subject to the assignment from each of the
14 Features 'A' and Features 'B', listed in subsection (3) of this section to enable
15 an interested party to reasonably determine which receivables are included
16 in the asset pool and the date or the amount of any particular receivable.

17 (3) There shall be indicated as:

18 (i) Features A:

19 (a) the type of receivables or assets or contract giving rise to the
20 debt;

21 (b) the class or type of obligors;

22 (c) the assets including future assets which give rise to the
23 receivables; and

24 (ii) Features B:

25 (a) the time period during which the debt may arise;

26 (b) the repayment period when the debts may fall due.

27 (4) An assignment of one or more future receivables is deemed to
28 be effective at the time of the conclusion of the original contract of
29 assignment between the assignor and the assignee, without a new act of

1 transfer being required to assign each such receivable on its coming into
2 existence.

3 (5) A notice of assignment duly given in accordance with the
4 provisions of this Act at the time of the securitization transaction shall be valid
5 and effective in relation to the future receivables and need not be repeated once
6 the receivables come into existence.

Effectiveness of
Assignments

7 **22.**-(1) An assignment is not ineffective as between the Originator and
8 the Special Purpose Vehicle or as against the obligor, and the right of the
9 Special Purpose Vehicle may not be denied priority, on the ground that it is an
10 assignment of more than one receivable, future receivables or parts of or
11 undivided interests in receivables, provided that the receivables are described:

12 (a) individually as receivables to which the assignment relates; or

13 (b) in any other manner, provided that they can, at the time of the
14 assignment or, in the case of future receivables, at the time of conclusion of the
15 original contract, be identified as receivables to which the assignment relates.

16 (2) Unless otherwise agreed, an assignment of one or more future
17 receivables is effective without a new act of transfer being required to assign
18 each receivable.

Transfer of
Security Rights

19 **23.**-(1) A personal or property right securing payment of the assigned
20 receivable shall be transferable to the Special Purpose Vehicle without a new
21 act of transfer.

22 (2) Where such a right is transferable only with a new act of transfer,
23 the Originator shall hold such personal or property right as a bare trustee, in
24 trust for and for the sole benefit of the Special Purpose Vehicle.

25 (3) The Originator shall at the sole direction of the Special Purpose
26 Vehicle realize or otherwise deal with such right as may be directed by the
27 Special Purpose Vehicle and shall turn over all proceeds received from such
28 realization or dealing to the Special Purpose Vehicle.

29 (4) Where the right contains a power of attorney in favour of the
30 Originator, as an attorney, the Originator shall act at the sole direction of the

1 Special Purpose Vehicle and in so acting as attorney shall, if so instructed by
2 the Special Purpose Vehicle, appoint it as receiver or receiver-manager over
3 the personal or property right, and such appointment, whether by deed or
4 otherwise, shall, notwithstanding anything in the personal and property
5 right or any other law, be deemed to be valid and effectual.

6 (5) Nothing in this section shall affect the Originator's obligation or
7 liability for breach of any agreement under subsection 1 of this section and
8 the obligor shall not avoid the original contract of the assignment on the sole
9 ground of that breach. (Contractual obligations on the part of the originator
10 remain intact notwithstanding transfer of the collateral)

11 (6) The transfer of possessory property right under subsection 1 of
12 this section shall not affect the Originator's obligation to the obligor or the
13 third party granting the property right with respect to the property
14 transferred under this section this needs further explanation

15 **24.** Unless otherwise agreed between the Originator and the
16 Special Purpose Vehicle, the Originator shall represent at the time of
17 conclusion of the transfer that:

Representations
of the Originator

18 (i) it has the right to assign the receivables;

19 (ii) it has not previously assigned the receivables to a third party;

20 and

21 (iii) the debtor shall not and will not have any defences or rights of
22 set-off.

23 **25.-(1)** Unless otherwise agreed between the Originator and the
24 Special Purpose Vehicle, the Originator may send the obligor a notification
25 of the transfer and a payment instruction, provided that after the notification
26 has been sent, only the Special Purpose Vehicle shall have sole
27 responsibility for sending the payment instructions.

Right to notify
the Obligor

28 **26.** Unless otherwise agreed between the originator and the
29 special purpose vehicle and whether or not notification of the transfer has
30 been sent:

Other conditions
on notification

1 (1) If payment in respect of the assigned receivable is made to the
2 Special Purpose Vehicle, the Special Purpose Vehicle shall be entitled to retain
3 the proceeds and goods returned in respect of the assigned receivable;

4 (2) If payment in respect of the assigned receivable is made to the
5 Originator, the Special Purpose Vehicle shall be entitled to payment of the
6 proceeds and also to goods returned to the Originator in respect of the assigned
7 receivable; and

8 (3) If payment in respect of the assigned receivable is made to a third
9 party over whom the Special Purpose Vehicle has priority, the Special Purpose
10 Vehicle shall be entitled to payments of the proceeds and also to the goods
11 returned to such person in respect of the assigned receivable.

Exclusion of
provisions on
registration of
charges under the
Companies and
Allied Matters
Act, Cap. C20,
LFN

12 **27.** The provisions of the Companies and Allied Matters Act on
13 registration of charges created by companies shall not be applicable to the
14 assets transferred for the purpose of securitization in accordance with the
15 provisions of this Act.

16 **PART IV - INTERIM REPRESENTATIVE**

Appointment
of Interim
Representative
by Commission

17 **28.**-(1) Where the Commission finds that:

18 (a) a Special Purpose Vehicle has no authorized representative to act
19 on its behalf; or

20 (b) the person authorized to act on behalf of the Special Purpose
21 Vehicle lacks requisite capacity for any reason whatsoever, resulting in the
22 interruption of the activities of the Special Purpose Vehicle in the
23 implementation of the approved Scheme, the Commission shall:

24 (i) in the event of the occurrence of the event specified in paragraph

25 (a) of this section, appoint for the Special Purpose Vehicle an interim
26 representative; or

27 (ii) in the event of the occurrence of the event specified in paragraph

28 (b) of this section, remove the interim representative and appoint another
29 interim representative for the Special Purpose Vehicle.

30 (2) The interim representative appointed pursuant to the provisions of

1 subsection (2) of this section shall have full and exclusive authority to
2 implement the approved Scheme.

3 **29.** Upon the appointment of an interim representative in
4 accordance with the provisions of section 28 of this Act, the Commission
5 shall publish the appointment order in at least two widely circulated national
6 newspapers.

Notification of
appointment

7 **30.** An interim representative shall:

Power of the
interim
representatives

8 (1) have power to take possession and control of the assets for the
9 benefit of holders of the asset-backed securities;

10 (2) have power to replace directors and officers of the Special
11 Purpose Vehicle;

12 (3) with the consent of the Commission, terminate servicer
13 agreements or other contracts for services;

14 (4) with the consent of the Commission, appoint a Servicer or other
15 provider of services;

16 (5) with the consent of the Commission, liquidate the Special
17 Purpose Vehicle in accordance with the procedures of liquidation of a legal
18 vehicle

19 **31.** Where an interim representative has been appointed in
20 accordance with the provisions of section 28 of this Act:

Delivery of
property and
records to Interim
Representative

21 (i) the directors and service providers of the Special Purpose
22 Vehicle shall take all appropriate steps to safeguard the assets for the benefit
23 of the holders of the asset-backed securities, and shall deliver the assets,
24 accounts, documents, and corporate seals of the Special Purpose Vehicle to
25 the interim representative, and cooperate fully and effectively in every
26 possible way to ensure the efficient exercise of the rights and powers and the
27 due administration by the interim representative of the remedies required to
28 be meted out in connection with the exercise of the duties and
29 responsibilities of the interim administrator; and

30 (ii) any property or documents of the Special Purpose Vehicle in

1 the custody of any body or person shall be delivered to interim representative of
2 the Special Purpose Vehicle.

Dissolution of
Special Purpose
Vehicle
Commission

3 **32.** The Commission shall order the dissolution of a Special Purpose
4 Vehicle where the Commission finds that the Special Purpose Vehicle is unable
5 to continue to undertake its business, and shall proceed to liquidate the Special
6 Purpose Vehicle in accordance with the applicable provisions of the
7 Companies and Allied Matters Act or any other law on the establishment or
8 liquidation of the legal entity concerned.

9 PART V - THE SERVICER

Relationship
between the
Servicer and
the Issuer

10 **33.**-(1) The Servicer shall be independent of the issuer.

11 (2) Nothing in this section or under any other provisions of this Act,
12 rule or law shall preclude the Originator from being the Servicer in so far as it
13 possesses the requisite skills and renders services on an arm's length basis
14 subject to market terms and conditions.

15 (3) The Servicer shall perform its duties pursuant to the terms and
16 conditions of the servicing agreement and such other written instructions as the
17 Special Purpose Vehicle or its agents may issue. Collections made by the
18 Servicer shall be remitted promptly to the Special Purpose Vehicle or as may be
19 agreed upon by the parties in the servicing agreement.

20 (4) The Servicer shall operate separate accounts for the Special
21 Purpose Vehicle and for the purposes of any law; such accounts may not be
22 regarded as forming part of the assets of the Servicer.

23 (5) The Servicer shall keep such books of account, records and
24 statements in the name of the issuer as may be necessary to give a complete
25 record of:

- 26 (a) all receipts and payments in respect to the asset backed securities;
27 (b) the portfolio of eligible assets; and
28 (c) every transaction carried out by the issuer.

Reports

29 **34.** The Servicer shall prepare periodic reports as may be required by
30 the Special Purpose Vehicle or its agents, including reports on any borrower or

1 obligor which fails to pay its debt or obligation at maturity date or any
 2 adverse development that may affect the collectability of any loan account
 3 or receivables comprising the asset pool.

4 **35.** The Servicer shall have such authority as is expressly stated in
 5 the servicing agreement and unless otherwise specifically provided therein,
 6 such authority shall extend to the general powers of administration,
 7 provided that the Servicer shall not have authority to waive penalties and
 8 charges except with a written authority from the Special Purpose Vehicle or
 9 the interim representative, where one is appointed.

Extent of
 authority

10 **36.** The qualification and standards of conduct of the Servicer
 11 shall be determined by the Commission by rules and regulations made by the
 12 Commission, provided that the Sponsor or Originator may act as the
 13 Servicer as may be approved by the Commission and the Central Bank of
 14 Nigeria, as the case may be.

Qualification

15 **37.-(i)** The Servicer shall act with utmost good faith and shall
 16 perform its obligations under the servicing agreement with due diligence
 17 and efficiency and in conformity with sound accounting and financial
 18 practices;

Standard of
 conduct

19 (ii) The Servicer shall be liable to the holders of asset-backed
 20 securities for willful or negligent failure to perform its duties resulting in
 21 loss or damages.

22 **38.** Breach by the Servicer of its obligations arising from the
 23 failure to abide by any standards imposed by the Commission under section
 24 37 of this Act shall result in the revocation of the registration of the Servicer.

Penalties

25 PART VIII - RATING

26 **39.** All securitization transactions shall be rated by an independent
 27 credit rating agency registered with the Commission.

Rating

28 PART IX - CREDIT ENHANCEMENT

29 **40.-(1)** The Special Purpose Vehicle may seek credit enhancement
 30 of the issue, which enhancement may be in any of the following forms:

Credit
 Enhancement

- 1 (a) over-collateralization;
- 2 (b) a standby letter of credit or line of credit issued by a bank or
3 financial institution that is licensed by the Central Bank;
- 4 (c) a guarantee by a bank or financial institution that is licensed as
5 such by the Central Bank of Nigeria;
- 6 (d) surety bond issued by an insurance company licensed by the
7 Commissioner of Insurance other than the Originator or its subsidiary, its
8 parent company or the parent company;
- 9 (e) issue of subordinated tranches;
- 10 (f) an instrument issued by the Federal Government of Nigeria; or
11 (g) any other instrument or mechanism from such other entity as may
12 be approved by the Commission.

13 (2) Where the credit enhancement is to be provided by a bank,
14 financial institution or insurance company licensed in Nigeria, the credit
15 enhancement shall only be provided with the prior written consent of the
16 Central Bank of Nigeria in the case of a bank or financial institution or the
17 National Insurance Commission, in the case of an insurance company

18 PART X - SECURITISATION REGISTRY

Securitization
Registry

19 **41.**-(1) There shall be established a registry with its own seal for the
20 purpose of registering securitization transactions.

21 (2) The particulars of any securitization transaction shall be filed by
22 the Special Purpose Vehicle with the registry in the manner and in such form as
23 may be prescribed within fifteen business days after the date of the transaction.

24 (3) The particulars of any securitization transaction filed as provided
25 in sub-section 2 shall be open for inspection during business hours by any
26 person upon payment of prescribed fees.

27 (4) The registration of a securitization transaction hereunder shall be
28 deemed as a perfection of the interest of the Special Purpose Vehicle and a
29 notice to third parties with respect to the receivables assigned to it by the
30 Originator.

1 PART X - ACCOUNTING

2 42. The provisions of FAS 140 shall apply to all transactions under Accounting
3 this Act.

4 PART XI - PENAL PROVISIONS

5 43.-(1) A person who: Penal Provisions

6 (i) violates any of the provisions of this Act, or rules and
7 regulations made by the Commission pursuant to this Act; or

8 (ii) in a registration, statement, notice or Scheme filed under this
9 Act, makes any untrue statement of material facts or omits to state any
10 material fact required to be stated therein or necessary to make the
11 statements therein not misleading, shall, upon conviction, be liable to a fine
12 of not less than 500,000.00 Naira or to imprisonment for a term of not less
13 than 2 years, or to both fine and imprisonment.

14 (2) Where the offender is a corporation, partnership or other
15 juridical entity, the penalty referred in subsection (1) of this section may, at
16 the discretion of the court, be imposed upon such juridical entity and upon
17 every officer or officers of the corporation, partnership or entity responsible
18 for the violation.

19 (3) Where an officer or agent of the Special Purpose Vehicle whose
20 affairs are being investigated or inspected by virtue of the provision of
21 section 44 'of this Act refuses to produce to the Commission any record
22 which is the duty of the officer or agent to produce or where the officer or
23 agent refuses to answer any question, which is put to him by the Commission
24 with respect to the Scheme, the officer or agent commits an offence and is
25 liable on conviction to a fine not less than 100,000.00 Naira.

26 PART XII - MISCELLANEOUS

27 44. Where the asset backed securities are issued to the public: Auditors

28 (a) the books and records of the Special Purpose Vehicle, including
29 the register of assets, shall be subject to independent audit;

30 (b) auditors shall be appointed by the Sponsor from a list of

1 approved auditors issued by the Commission;

2 (c) auditors can only be removed for good cause, with the consent of
3 the Commission; and

4 (d) the form and frequency of audit, other responsibilities of auditors,
5 the qualifications of auditors and the procedures for their appointment, shall be
6 determined by regulations made by the Commission from time to time.

Power of
inspection

7 **45.**-(1) The Commission may at any time inspect or order the
8 production of the records of the Special Purpose Vehicle.

9 (2) The Commission may investigate and report on the administration
10 of a Scheme, if it appears to it that is in the interest of holders of the asset-
11 backed securities under the Scheme or it is in the public interest to do so.

Confidentiality

12 **46.**-(1) Any disclosure of customer information or data between
13 Sponsor, Originator, seller, Special Purpose Vehicle, Servicer, their officers,
14 directors, employees, agents and persons or entities providing services to them
15 in a securitization, arising naturally out of the course of securitization, shall not
16 be regarded as a breach of a duty of confidentiality towards such customer,
17 although such data or information shall retain its confidential status for other
18 effects and purposes.

19 (2) The restrictions imposed on banks and other financial institutions
20 under section 7 of the Money Laundering Prohibitions Act do not apply to
21 securitization transactions.

Notice of
grievance

22 **47.** Any person aggrieved by any decision or action of the
23 Commission pursuant to the provisions of this Act may, within 60 days of such
24 decision or action give notice to the Commission requiring it to apply to the
25 court for directions and the Commission shall within 21 days of the receipt of
26 such notice apply to the court for directions.

Rules and
regulations

27 **48.** The Central Bank and the Commission may from time to time,
28 make rules and regulations for the purpose of giving effect to the provisions of
29 this Act.

- 1 **49.-(1)** The provisions of all existing enactments, including the *Relevance of*
2 following: *other laws*
- 3 (i) the Investment and Securities Act;
- 4 (ii) the Companies and Allied Matters Act;
- 5 (iii) the Banks and Other Financial Institutions Act;
- 6 (iv) the Central Bank of Nigeria Act;
- 7 (v) the Money Laundering Prohibitions Act;
- 8 (vi) the Companies Income Tax Act;
- 9 (vii) the Stamp Duties Act;
- 10 (viii) the Capital Gains Tax Act; and
- 11 (ix) the Value Added Tax Act, shall be read with such modifications
12 to bring them into conformity with the provisions of this Act.
- 13 (2) Where the provisions of any other law, including the
14 enactments specified in subsection (1) of this section are inconsistent with
15 the provisions of this Act, the provisions of this Act shall prevail.
- 16 **50.** In this Act, unless the context otherwise requires: *Interpretation*
- 17 (a) "assets", whether used alone or in the term "asset-backed
18 securities", refer to credits, loans, receivables or similar financial assets,
19 presently existing or to be created in the future, with an expected cash
20 payment stream and the word "assets" includes, but not be limited to
21 receivables, mortgage loans and other debt instruments;
- 22 (b) "asset pool" means the group of identified, homogeneous assets
23 underlying the asset-backed securities;
- 24 (c) "asset-backed securities" means the certificates, notes or other
25 securities backed by financial assets and issued by a Special Purpose Vehicle
26 to any person pursuant to a prospectus/ offer document/scheme, evidencing
27 an undivided right, tide or interest of the holder in the financial asset.
- 28 (d) "bank" has the meaning ascribed to it in the Banks and Other
29 Financial Institutions Act;
- 30 (e) "Central Bank" means the Central Bank of Nigeria established

1 under the Central Bank Act, CAPC20 LFN, 2004;

2 (f) "Commission" means to the Securities and Exchange Commission
3 established under the Investment and Securities Act, 2007;

4 (g) "Credit Enhancement" means any legally enforceable
5 arrangement intended to improve the marketability of the asset-backed
6 securities and increase the probability of holders of the asset-backed securities
7 to receive payment of amounts due to them under the asset-backed securities in
8 accordance with the provisions of the Scheme;

9 (h) "FAS 140" referred to under Part X of this Act means Statement of
10 Financial Accounting Standards No. 140;

11 (i) "Obligor" means a person liable to the Originator, whether under a
12 contract or otherwise, to pay for an asset or to discharge any obligation in
13 respect of an asset, whether existing, future, conditional or contingent;

14 (j) "Originator" means the owner or seller of the receivables
15 transferred and assigned to a Special Purpose Vehicle for the purpose of a
16 securitisation transaction;

17 (k) "Other Financial Institution" has the meaning ascribed to it in the
18 Banks and Other Financial Institutions Act, CAPB3, LFN, 2004;

19 (l) "Scheme" means a scheme inviting subscription to securities
20 proposed to be issued by a Special Purpose Vehicle in a securitisation
21 transaction approved by the Commission or the Central Bank as the case may
22 be;

23 (m) "securitization" means an arrangement involving the transfer of
24 assets to a Special Purpose Vehicle where such transfer is funded by the
25 issuance of securities to investors and payments to investors in respect of such
26 debt securities are principally derived, directly from the cash flows of the
27 transferred assets;

28 (n) "Servicer" means the entity designated by the Special Purpose
29 Vehicle to collect and record payments received on the assets, to remit such
30 collections to the Special Purpose Vehicle, and perform such other services as

1 may be specifically required by the Special Purpose Vehicle, excluding asset
2 management or administration.

3 (o) "Special Purpose Vehicle" means any entity which issues asset-
4 backed securities and which satisfies all criteria stipulated under this Act;

5 (p) "Sponsor" means any person holding not less than ten per cent
6 of the paid-up equity capital of a Special Purpose Vehicle.

7 **51.** This Bill may be cited as the Securitization Bill, 2018.

Short title

EXPLANATORY MEMORANDUM

This Bill seeks to make provisions for Securitisation transactions and the issuance of asset-backed securities and promote the availability of capital and credit at more affordable rates by diversifying, the market for long term funds, thus facilitate its development and widespread use.