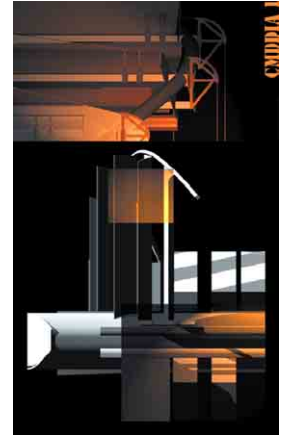




### MARKET STATEMENT

Established in 1994 and operating in the Structured Finance arena, **Bemo Securitisation SAL (BSEC)** was the first MENA financial institution to introduce locally structured securitisation, credit derivatives and cross-border structured finance.

NewsWire is a monthly private newsletter of Bemo Securitisation SAL focusing on securitisation news and analysis in Lebanon and the MENA countries; It puts into perspective the different issues pertaining to securitisation in the legal, financial, tax and accounting fields.



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### A-SECURITISATION NEWS

#### LEBANON

Hector Farina, a partner in the international French-based law firm Denton Sales Vincent and Thomas, visited Beirut to propose a new legislation that would regulate the energy sector, in a bid to prepare it for privatization. Farina presented to the Energy and Water Ministry a proposal on introducing a regulatory framework to the energy sector one that would

cover energy policies, institutional organizations, legislation, tax regimes and contract practices. Bringing in new laws would introduce competition in the sector between private companies, and therefore lessen the cost of production because the sector would be managed in a more efficient way; consequently, industrialists and households

would have access to lower costs. Liberalization and privatization in the sectors of water, electricity, oil and gas were affiliated with the principle of regulations, which the government appeared to support. Setting the required rules and regulations would boost the whole economy as large companies would be interested in investing in the sector■

#### MENA AND GCC COUNTRIES

ABC Islamic Bank signed the first stage Modaraba syndication of an \$80 million commercial master Murabaha structured for Vitol of Switzerland. Murabaha is a contract of sale in which the seller declares his cost and profit. This has been adopted as a mode of financing by a number of Islamic banks. As a financing technique, it involves a request by the client to the bank to purchase a certain item for him. The bank does that for a definite profit over the cost, which is settled in advance. The facility's mandated lead arranger is ABCIB Islamic Asset

Management (IAM), London. Vitol IAM signed an agreement that forms the basis of a Modaraba for participating Middle Eastern banks. The Murabaha transactions envisaged under the arrangement involve IAM in the individual purchases of physical Refined Oil Products such as Jet Fuel from a refinery supplier at the tap of their storage tanks, and their sales to Vitol on deferred payment terms. The facility is the first Islamic financing to be arranged for Vitol, one of the world's largest physical oil traders and has an innovative structure that focuses

upon the real underlying physical trade that is the basis for Shariah-compliant financing. The initial group of banks acts in the capacity as Co-Mudaribs for the first drawings, allowing other banks to join at a later stage when the facility can be increased to include further purchases of refined products. Among the participating Co-Mudaribs are ABC Islamic Bank, Arab Bank London, Qatar National Bank and International Islamic Arab Bank■

## B-SECURITISATION ANALYSIS

### FINANCIAL



Project finance has been an attractive corporate finance option, especially in many industries like transportation, mining, pipelines, etc. Hence, the demand to apply project finance to provide the necessary debt capital has increased. The distinctive features of project financing include the size, the complexity, the socially necessary purposes that they serve and the public and political issues that they raise. Infrastructure and energy projects can be very large and

complex transactions due to long lead times, new technologies, licensing requirements and tax efficient financing. The securitisation of project loans can be achieved in two ways: (i) the holder of such loan can sell the loan to a SPE which will obtain the funds for the purchase by issuing long term debt or equity securities; (ii) the long term investor can make a new loan in order to refinance the origination loan made to finance related projects. As for the risks that must be faced in securitizing

project loans, they comprise the following: (i) estimating the risk of loss: which is difficult because of uncertainties concerning the credit quality of the borrower; (ii) completion of construction and performance of project facility, which can prevent the transaction from being investment grade rated; (iii) rating agency criteria for power projects and other income producing project financing: the rating agency should examine each project for relevant economic and legal issues■

### TAX AND ACCOUNTING



Certain US taxes are imposed on project loan securitisation which can increase the transaction's costs and thus make it unprofitable. The most prominent taxes imposed on infrastructure finance deals comprise federal, state and local income taxes, transfer taxes and intangible taxes. However, the federal tax is the most significant one to be applied to such deals. It is imposed in general on SPEs

that are established as corporations on their net income, while it does not subject any trusts and partnerships. Consequently, if a sponsor structures the SPE as a corporation, the SPE should minimize its net income from the securitisation. In order to do so, the rate of return on the assets held by the issuer must be equal to the rate of interest paid on the commercial paper issued. Hence,

the issuer cannot absorb late or default payments, and credit enhancement and liquidity facilities are very costly. Therefore, utilizing medium term notes together with commercial paper can be workable for project loan securitisation since the amount of the issued commercial paper can be matched as closely as possible with the income from the assets held by the issuer■

### LEGAL



In the absence of a specific statute on securitization in Lebanon, and in case the structurer chooses to set up a Lebanese special purpose vehicle (SPV) and not to use an off-shore SPV (for the trust, see: NewsWire – Issue 4, July 2003), various legal structures can be used, either involving companies or non-incorporated structures such as communal estate or joint ownership regulated in Article 824 *et seq.* of the Code of Obligations and Contracts. Needless to say, that these

provisions of the Code should be carefully adapted to the securitization structure. However, this raises a fundamental issue relating to the form of the securities (or “Notes” as they are known in the securitization business) to be issued by the Lebanese SPV for the financing of its acquisition of the underlying assets from the originator. In countries where securitization is regulated in a specific statute, which is the case for France with the initial Statute No. 88-1201 of December 23,

1988 today incorporated in the *Code Monétaire et Financier*, the issuing of securities by the SPV is covered by the legal provisions along with the setting up of the SPV. In France, the Notes issued by the *Fond Commun de Créances* are defined as parts representing the receivables sold by the originator, and are qualified, in paragraph 2 of Article L.211-2 of the Code, as being transferable securities (*valeurs mobilières*).

**(to be continued in NewsWire – Issue 6, September 2003)■**

## C-SECURITISATION COMMENTARY

### SPECIAL FOCUS “BANKRUPTCY REMOTENESS”



We analyzed in the last issue of this NewsWire the legal structure in a securitisation transaction, which should ensure a **bankruptcy remote feature** and a **bankruptcy proof feature**. While the bankruptcy remote feature is satisfied by an irrevocable legal transfer of the assets from the originator to the SPV, if any action in bankruptcy is initiated, the entire purpose of the structure may be foiled. The fear is that after transferring the assets, the originator himself may play games and initiate a voluntary bankruptcy action if the SPV

is essentially under the control of the originator. In the case of a corporate SPV, where the SPV is owned by the originator of the securitized assets, rating agencies require that an SPV have at least one, and sometimes more than one, independent director on its board, that is, someone who is not also on the board of the parent company. The SPV's organizational documents would then require the vote of greater than a simple majority of the directors, including that vote the independent directors, for the board to approve a voluntary bankruptcy filing. An involuntary bankruptcy case can be

commenced by any person who has an amount to receive from the SPV. Normally, the SPV will not be allowed to engage any employee, but it might have to incur expenses for fees, accounting services, etc. To reduce the risk of an involuntary filing against an SPV, third-party creditors of the entity (typically, professionals, including attorneys and accountants, and financial institutions providing funding or services) are asked to execute an agreement that they will not file an involuntary petition against the SPV until more than one year has passed after the asset-backed securities have been repaid■

### READINGS OF THE MONTH “TRUE SALE V/S WHOLE BUSINESS SECURITISATION”



True sale is at the core of legal issues in securitisation. The borrowing company, by selling the pool of assets to the SPV, removes those assets from its balance sheet; the SPV is structured in such a way as to make it bankruptcy remote and therefore ensure that the pool of assets is not placed at risk by any insolvency of the SPV or of the borrowing company. The investors will get a legal right over the receivables and won't be affected by the performance or bankruptcy of the originator. The kind of receivables that can be subject to a true sale refers to

local law; normally they should be existing and identifiable, cause the sale of future flows could be considered as a promise to sell in the future and the unidentifiable receivables could only create an interest in a pool of receivables, not in a transfer of receivables. In a whole business securitisation, the transaction takes the form of a secured loan structure and there is no sale of assets to the SPV; instead of purchasing the pool, the SPV makes a loan to the borrowing company and takes security for that loan over the pool of assets retained by the borrowing

company. The SPV funds the loan to the borrowing company by issuing fixed or variable rate interest-bearing bonds to investors through the capital markets. If adequate enhancements to the securitized debt structure are put in place, securitisation can achieve a higher rating and longer term of the securitized debt than a company's secured or unsecured corporate debt■

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