



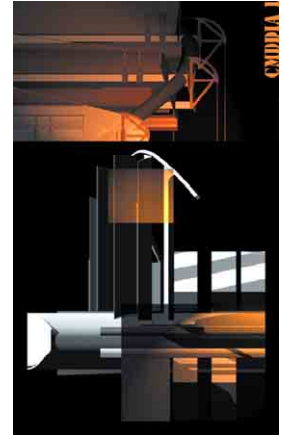
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MARKET STATEMENT

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.



A-SECURITISATION NEWS

LEBANON

On Monday the 23rd of June 2003, the Lebanese daily An-Nahar published an article about process of Privatization and Securitisation. The article negatively portrayed Securitisation without mentioning any of its benefits. In comparing the two, the reporter pointed out the importance of privatization in transferring the

targeted institution to the private sector, thereby improving its performance and directing its activities for the benefit of the government and private sectors. In contrast, the reporter stated that Securitisation is very dangerous in the way that it "steals the future flows to cover the present's gaps, disregarding by that all ethics and principles".

Furthermore, Securitisation the article implied, will capture the next generations' income for the interest of the current one, with no improvement in productivity. This raises the issue of the overall benefits of Securitisation and its subsequent impact on the economy. We will focus on this issue in future NewsWires■

MENA AND GCC COUNTRIES

The National Investor (NI) has forged a strategic alliance with Credit Suisse Asset Management (CSAM) to develop the asset management business in the UAE and the region. Also, demand for local investment products is increasing following the return of Arab funds into the region and the recovery of equity markets, said CSAM officials. The initiative will be operational under the umbrella of NI and later evolve into a separate identity. A number of local and regional products will be developed to suit the demands of

the markets. "We will jointly develop all aspects of asset management including equity funds, real estate funds, hedge funds, and private equity. There is also a strong demand for Islamic structured products," said Robert Parker, CSAM's deputy chairman in London. CSAM is part of the Credit Suisse Group. "Ours is a broad agreement; we will provide resources and assets to NI to develop capital markets here. We will also help NI evolve a strategy and know how other capital markets developed," he added. Noting that capital

markets are now more liquid and developed than they were two decades ago, Parker said the initiative will lead to developing the local investor base and local liquidity through the launch of a range of domestic products. "We will transfer know-how through best practices and first class world standards." Although the last three years saw a significant decline in equity markets globally, the last two to three months have seen a recovery with investors taking increased risks (*Gulf News*)■

B-SECURITISATION ANALYSIS

FINANCIAL



In a measure to help small and medium enterprises (SME) to obtain funding, the Bank of Japan (BOJ) is planning to buy asset backed securities (ABS) and asset backed commercial paper (ABCP) backed by SME loans. The BOJ is the first central bank to have had this initiative, and it has been accepting ABS and ABCP as collateral since 1999. To be acceptable, the securitizations must be issued as

domestic bonds or promissory notes governed by Japanese law, and the bonds must be public placements filed with the financial bureau. According to BOJ, SMEs are corporations that have paid-in capital of no more than \$8.6m and most SME CLOs are backed by a pool of corporate obligors including large corporations, local governments and small businesses. Deutsche Bank suggested that BOJ should

relax its eligibility criteria if it plans to buy ABS and ABCP in substantial amounts that are meaningful as monetary policy; It should buy BB rated pieces and provide super senior protection to large synthetic CLOs to stimulate issuance. This can be a very useful premiere to apply and explore in Emerging Markets that are eager to help SMEs accessing cheaper source of funds■

TAX AND ACCOUNTING



Taxing SPVs in a securitisation transaction is applied differently and relatively to common and civil law countries: where common law looks at substance, civil law looks at legal form. If the vehicle is a simple conduit, the investor will see an increase on his capital which is considered as financial revenue. If the vehicle is a representative entity for the investors, it will be the sole holder of tax. These

distinctions are not considered by the Lebanese legislator who taxes the instrument according to its legal form and the nature of the note held by the investor. If the issued note is a “share” type, it will be imposed to a double taxation: one of 5% on dividends and another of 10% on the capital gain. Article 19 of Law N. 282 of December 30, 1999 exempts only private investors from the tax on the capital gain.

If the issued note is representative of debt, the articles 1 and 2 of Decree N. 5439 of 1982 exempt the investors from the stamp duty and the capital gain taxes. The certificates issued by the fiduciary vehicle are fiscally assigned to the companies' obligations and are imposed to Decree N. 5439 of 1982 according to article 18 of Law N. 520/1996■

LEGAL



The Trust is a major feature in the securitisation transactions, either to play the role of the Special Purpose Vehicle (SPV) *per se* or to hold all the shares of the SPV which was set up under another legal form. Lebanon has no statute on trust, which remains a pure common law institution unknown to, or not directly integrated in, the Lebanese (and French) civil law system. The closest the Lebanese legal system gets to the Trust is in Statute No.520 of June 6, 1996, on “developing the financial markets and the fiduciary contracts”. Like the trust, the fiduciary structure is based on what the civil law

system has always refused to admit: An autonomous estate (“*patrimoine d'affectation*”) belonging to the settlor (“*fiduciant*”) but extracted from its principal estate, and transferred to the trustee (“*fiduciaire*”) but not included in the latter's estate; Thus, the assets deposited in fiduciary constitute thus an autonomous estate, bankruptcy remote for securitisation purpose. However, if Lebanon has not directly integrated the trust in its legal system, its conflict of laws mechanism is liberal enough to validate the trust set up abroad, and to admit all its effects. The first noted judicial decision

validating the trust was rendered by the Sunnite Shari' Tribunal of Beirut (in Lebanon, the personal status is governed by confessional statutes and tribunals) in a judgment No.121/1985 rendered on May 22, 1985, and upheld by the Sunnite Shari' Court of Appeal of Beirut in its decision of October 22, 1986. It is widely admitted that were the civil tribunals and courts of Lebanon to rule on the validity of a foreign trust, they will also adopt a favorable position since the civil statutes they have jurisdiction to rule there under are not as threatened as the confessional ones by this common law institution■

C-SECURITISATION COMMENTARY

SPECIAL FOCUS “BANKRUPTCY REMOTENESS”



In a securitisation transaction, the legal structure should ensure that a bankruptcy of the originator does not lead to any impact on the assets of the SPV, (**bankruptcy remote feature**) and that the SPV does not file for voluntary bankruptcy (**bankruptcy proof feature**).

I-Bankruptcy remoteness feature: One of the basic aims in securitisation is to ensure that the assets transferred to the SPV are not affected by any claims against the originator. In other words, the assets transferred to the SPV are paramount property of the

SPV with no claims of any other creditors. From this viewpoint, there are 4 basic steps to be taken: (1) Perfection of legal interest in the SPV i.e. the creation of legal rights in the assets in favor of the SPV; (2) No prior claims of any person: that means the supreme legal rights of the SPV on the assigned/sold assets. There are two inherent thoughts here: (a) there should not be any existing claims against the assigned/sold assets, and (b) there should not be any subsequent claims of any third party (3) No consolidation of the SPV with the originator: this refers to the right of judicial or

other authorities in disregarding the veil of separate legal entities that dissociates the originator from the SPV, and treating the two as one; (4) No claw back: Claw back refers to the legal provisions which entitle an authority, normally in case dealing with bankruptcy, to treat any transfer of assets, even though legally made, as void, and therefore, claw back or reclaim the assets already transferred. Such claw-back provisions are normally applicable to a company that goes into bankruptcy. The **bankruptcy proof feature** will be analyzed in the next NewsWire issue■

READINGS OF THE MONTH “STRUCTURED INVESTMENT VEHICLES (SIV)”



SIVs are securitisation vehicles set to benefit from certain “mismatching” on currency, interest rates, commodities, etc, whether on the same or on different markets. These instruments are a class of structured notes that represent a specific linkage to foreign exchange values or currency rates. The linkage entails relating the value of coupon payments or principal repayments to an identified currency. SIVs are a sub-class of the Asset-Backed Commercial Paper (ABCP) asset

class. The main economic objective of these programs is to earn a credit spread and liquidity premium while managing or eliminating the following collateral risks: (i) credit migration and default, (ii) interest rate volatility, (iii) currency volatility, (iv) credit spreads (v) liquidity, (vi) contagion risk. The structure strategy is to hedge away as much as possible all forms of currency and interest rate risk. A number of costs is associated with running a

structured investment vehicle that are balanced by economic incentives: the creation of net-spread to pay subordinated Noteholder returns and the creation of management fee income. Vehicles sponsored by financial institutions have the incentive to create off balance sheet funds management structures with products that can be supplied to existing and new clients by way of investment in the capital notes of the vehicle■

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