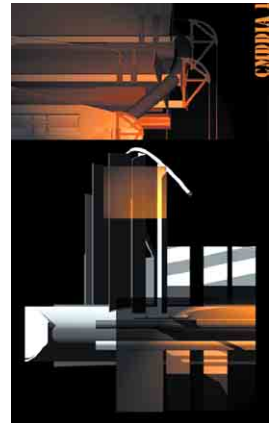




### MARKET STATEMENT

Established in 1994 and operating in the Structured Finance arena, **BSEC - Bemo Securitisation SAL** 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 BSEC - Bemo Securitisation SAL focusing on securitisation news and analysis in Lebanon and the MENA/GCC 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

The economic difficulties and the poor performance of the Lebanese government did not stand on the way of commercial banks rise in profits, the English-spoken Lebanese Daily Star reported. However, the expectations to achieve such results in 2004 are down, since the government failed in taking reform measures in order to reduce its budget deficit. Banks benefited from the high return on

Certificates of Deposits and Treasury Bills that were issued by the government to finance the \$32billion public debt. According to analysts, banks will have to diversify their income and avoid buying more T-Bills in the future. In that sense, many of them have shifted to retail and private banking activities to ease their dependence on interest rate revenues. Local banks are sitting on 70% of the government's

public debt, which makes them vulnerable to any default in paying these loans. Central Bank of Lebanon expects public debt to reach \$35bn in 2004 if reforms were not adopted immediately. The draft budget projects a 32% deficit by 2005. The long-discussed privatization and securitisation deals remain uncertain for this year-end■

#### MENA AND GCC COUNTRIES

A \$50 million Islamic bonds (or sukuk) deal is to be arranged by the Bahrain-based Liquidity Management Center (LMC) for Emaar Properties of Dubai. The transaction is yet to be closed; it will be structured as an Ijara Sukuk (refer to our Special Focus section for a description of the Ijara structure) and will be the first-ever Islamic Ijara facility launched by Emaar to fund its expanding portfolio of new commercial and residential projects in and around Dubai, and the first Islamic sukuk as

well to be arranged for a corporate regionally. The notes will have an average maturity of 4.9 years and the LMC Emaar Sukuk Co will be the SPV, acting as issuer for Emaar's first tranche of the Ijara Sukuk. The notes will be issued on the Bahrain Stock Exchange and will have a variable rate of return. LMC, which was set-up to create short- and medium-term investment opportunities and promote an active secondary market for these instruments, indicated that various institutions have

expressed strong interest in underwriting large tranches of the issue. This deal reflects the growing demand for rewarding Islamic investment opportunities in the MENA/GCC region, and Bahrain looks like the ideal center for growing companies in this growing market (*source: bahraintribune.com*)■

## B-SECURITISATION ANALYSIS

### FINANCIAL: ABCP STATISTICS



Interesting figures were exposed in a recent report written by Goldman Sachs and Morgan Stanley designed to address European ABCP investors concerns. Apparently, the largest group of ABCP investors is money market funds with a stake of 34% and 37% of ABCP investors have between \$1bn and \$5bn under management while 30% have over \$10bn. 28% of these investors are based in Ireland, while 21% and 12% are respectively in the UK and the

US, and they all seem to favor euro-denominated paper. However, 37% ran funds that are only rated by Moody's whereas 33% ran unrated funds. 35% buy long-dated paper (12 months) and 31% buy 6-month dated one. It's interesting to note that 42% of current portfolios have an average maturity of 60 days; 75% of the investors admitted that they're motivated by high yielding paper. As for the programmes, 85% approved multi-seller ones, 78% SIVs,

59% securities arbitrage and 52% hybrid. The domicile of the programme seems not to be a relevant incentive for investors, since 75% of them stated that it does not affect their decision to buy. Regarding the pricing, 28% of investors always bid dealers back as they find paper overpriced, while 44% assert that most paper is usually priced appropriately. (Source: *ISR, Issue 82, November 03, p.11*)■

### TAX AND ACCOUNTING: TRADE RECEIVABLES DEALS



Trade Receivables transactions are exposed to four major tax issues: (i) The transfer tax: while transferring trade receivables from the seller to the SPV, a stamp duty tax is applied and a reserve may be required; (ii) Permanent establishment issues: in cases where the jurisdictions of the SPV and the seller are different, measures should be taken to ensure that the SPV is not granted a permanent

establishment for tax use under the seller's jurisdiction; (iii) Value Added Tax (VAT) which is shown on the face of the invoice in cases where the trade receivables attract a sales tax. The SPV will buy in this case the whole face value of the invoice including the VAT, and investors receive the benefit of the VAT cashflow; and (iv) Withholding Tax: it is applied when the receivable has an interest

component i.e. when the receivable is charged a certain interest in case of late payment, the risk of a withholding tax on the transfer of assets is considered■

### LEGAL: FIDUCIARY AND TRUSTS: THE WAY FORWARD



The Lebanese statute N° 520 "pertaining to the development of the financial market and the fiduciary contracts" and enacted on June 6, 1996, has been presented as being inspired, at least in its main features, from the Luxembourg *Règlement "pertaining to the fiduciary contracts and the credit establishments"* dated July 19, 1983. Professor Claude Witz, the French specialist in fiduciary law stated, in the closing evaluation report of the Seminar organized in Beirut by Central Bank of Lebanon on this subject in 1997

that "the Lebanese legislator has adopted a modern conception of the fiduciary structure, which is now prevailing in Europe". Thus, it is worth noting that the Luxembourg *Règlement* of 1983 was abrogated by virtue of the law of July 21<sup>st</sup>, 2003, which: (i) approved the Hague Convention of July 1<sup>st</sup>, 1985, pertaining to the law applicable to the trust and its recognition, (ii) enacted new regulation for the fiduciary contracts, and (iii) amended the law of September 25, 1905, on the transcription of real-estate rights. This law of 2003 is of

interest for two reasons: First, it shows the way to Lebanese legislator for the ratification of the Hague Convention of 1985 on trusts, and second, it sets new rules on fiduciary contracts which could be taken into consideration to evaluate the Lebanese law of 1996 now that seven years have elapsed since its enactment. (To be continued in NewsWire issue N.9, December 2003)■

## C-SECURITISATION COMMENTARY

### SPECIAL FOCUS

#### ISLAMIC SECURITISATION: IJARA STRUCTURE



Ijara contract has the same design as a leasing agreement. It represents a type of financing in which a known benefit arising from a specified asset is made available in return for a payment, but where ownership of the asset itself is not transferred. In conformity with the Shariah, the owner of the assets must be paid fixed or variable rent (as per the terms of the leasing agreement) and must exercise the rights and obligations associated to ownership such as maintaining, insuring and repairing the assets. The lessee

on the other hand obtains the use of the asset for the period of the lease subject to paying the rent, and he may assume the aforementioned obligations in return for a reduced rent. Since fixed assets are the subject of the lease, equipment securitisation (using leases or leased back underlying assets) is possible under the scheme of Ijara. Shariah compliant structures provide for both Ijara (operating lease) and Ijara wa Iqtina (financial lease). Unlike conventional operating lease, Ijara does not restrict the lessee's right to purchase the assets at anytime during or after the lease

term; Also, there are no restrictions as to the term of the Ijara agreement. An Ijara agreement can range from hours to years. The Ijara wa Iqtina has certain advantages over other forms of direct participation (Musharaka) mainly because of the adequate protection of the investment and of the tax advantages attached. It is yet unclear whether a mismatching between the term of the Ijara and the amortizing life of the leased assets would lead to requalifying the Ijara or the Ijara wa Iqtina. ■

### READINGS OF THE MONTH

**“CREDIT RATINGS FOR STRUCTURED PRODUCTS”, NERA Economic Consulting, Executive Summary, November 6, 2003.**



The National Economic Research Associates (NERA) published on the 6<sup>th</sup> of November 2003, a comparative study on the different performances in structured securities of the three major rating agencies: Fitch Ratings, Moody's and Standard and Poors. The “Credit Ratings for Structured Products” report was conducted on behalf of Moody's Investors Service. It aimed at assessing the differences in the ratings process for structured finance products, covering: residential mortgage backed securities (RMBS), commercial mortgage backed securities (CMBS), asset backed securities (ABS) and

collateralized debt obligations (CDO). According to the data provided by each agency individually, the main observations were the following: Moody's and S&P had similar numbers of ratings while Fitch had the fewest numbers and the highest percentage rate for growth; at year-end 2001 Moody's had more ratings in the ABS and CDO deals than the other two agencies, while in RMBS the numbers were roughly equal; in initiating rating downgrades in RMBS, S&P was more likely to do so than Fitch or Moody's, while Moody's and S&P initiated CDO downgrades. Jointly rated transactions showed

that: Fitch and Moody's agreed on 60.5% of the ratings while Fitch and S&P agreed on 82.2%, Moody's and S&P on 67.2%. Historical data indicated that downgrades were most likely among speculative grade ABS rated by Fitch or Moody's, speculative grade CDO's rated by Moody's and speculative grade CMBS and RMBS rated by S&P. In case of downgrades, the number of notches downgraded was larger for single-rated securities than multi-rated ones by Fitch and Moody's, while S&P downgraded fewer notches on average for single-rated than for multi-rated securities. ■

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