Hon. Sir Chukwudi Jones V. Onyereri, KSP
NKWERRE/ISU/NWANGELE/NJABA FEDERAL CONSTITUENCY, IMO STATE
CHAIRMAN COMMITTEE ON BANKING AND CURRENCY
House of Representatives
Federal Republic of Nigeria

LEGISLATIVE BRIEF

LONGTITLE: A BILL FOR AN ACT TO MAKE PROVISIONS FOR SECURITSATION AND THE ISSUANCE OF ASSET-BACKED SECURITIES AND FOR RELATED MATTERS

SHORT TITLE: SECURITISATION BILL, 2018

SPONSOR: HON. SIR JONES CHUKWUDI ONYERERI, KSP.

1. **BACKGROUND:** The essence of securitization Bill, 2018 is to make provisions for securitization transactions and the

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1. issuance of asset-backed securities and to promote the availability of capital and credit at more affordable rates by opening up the market for long term fund, thereby facilitating its development and wide spread utilization as a source of raising capital.

2. **OBJECTIVES:** The objects of this Bill is amongst others-

[i] To provide an effective and efficient structure for asset securitization transactions by entrenching a modern and comprehensive legislative framework for the development of securitization as a financing option.
[ii] To make provisions of capital and credit at more affordable rates by diversifying the market for long term funds, thereby facilitating its development and wide spread use.
[iii] The Bill will when operative enable a legislative guide governing transactions and investment in intangible financial assets.
[iv] The Bill when it comes into operation as an Act of parliament will create certainty and predictability in asset securitization transactions.
[v] It will further institutionalize international best practices in risk management of asset securitization.

3. SYNOPSIS: The Bill is divided into 9 parts, an explanatory memorandum and consists of 51 sessions.

Part One, comprising sections 1 and 2, provides for the objects of the Bill and the scope of its application.
Part 2, consisted of sections 3-16, makes provisions for matters related to special purpose vehicle [modes of business transaction through which securitization transactions may be operated] It equally provides in section 4 on how the special purpose vehicle objects and purpose shall be operated.

Section 5 of the Bill makes provisions on the limitation of the operations of the special purpose vehicle. The powers of the special purpose vehicle [SPV] are itemized in section 6 of the Bill. The special purpose vehicle created for the purpose of realizing securitization transactions are forbidden from employing staff or entering into contract of employment as envisaged in section 7 of the Bill.

Section 8 makes provisions subject to CAMA that interest of holders of asset backed securities shall rank priority over securitization assets and above all other contractual rights and claims except for existing prior right holders of asset backed securities.

By the special provision of section 9 of the Bill, Special Purpose Vehicles are ranked above and separated from their originators.

Section 10 of the Bill confers the powers of approval of the scheme on the commission ie. Securities and Exchange Commission [SEC]

By the apt provision of this Bill, a special purpose vehicle that does no business within six months of the approval of the scheme, automatically ceases to exist except extend by the commission. Sections 16[b] and [e], also provides a situation where 2/3 shareholders of the asset backed securities could resolve to bring the scheme to an end, as well as when the commission orders dissolution as provided in section 32 of the Bill.

Part iii, which deals with transfer of assets covers sections 17-27. Section 17 itemizes situation that could give rise to true sale when an originator transfers assets to a special purpose vehicle. Section 18 deals with how assets could be transferred, whilst section 19 stipulates how assignments are permitted in situations by which existing assets could be assigned. Under section 21 of the Bill, future receivables are assignable.

Sections 22-23 deals with situations when an assignment is effective as well as transfer of security rights.

Section 24 stipulates that the originator must make true and accurate representation to the special purpose vehicle [SPV] as at the time of the conclusion of the transfer. Section 25, makes provision that it is mandatory for the originator to notify the obligor that it has transferred his rights to the special purpose vehicle and thereafter cease to transact with obligor as the right falls squarely on the special purpose vehicle.

Section 27 of the Bill puts assets transferred for the purpose of securitization transaction outside the purview of the provisions of CAMA in terms of registration of charges.

Part iv of the Bill running through sections 28-32, deals with appointment of interim representative by the commission. Section 28, empowers the commission to appoint a representative on behalf of the special purpose vehicle when it finds out that there is none appointed or that the one appointed lacks the requisite knowledge to function.

Section 29, provides that when the commission appoints an interim representative on behalf of the special purpose vehicle, they should publicize same in two wildly circulated national newspapers.

Section 30, provides for the powers of an interim representative which is a wide range of powers.

Part vi, section 41[1]-[4], makes provision for securitization registry whose main function is to register securitization transaction. There is provisions for filing, inspection as well as registration deemed as notice to third parties with respect to receivables assigned to it by the originator.

Part vii, as provided in section 42, stipulates that the provisions of FAS 140 shall apply to all transaction under this Bill.

Part viii, section 43[1]-[3], provides for penalties under the Bill, which ranges from N100, 000-N500, 000 or imprisonment of two years or both fine and imprisonment.

Part ix, which is the miscellaneous provision, consists of sections 44-50. Section 44 makes provision for independent audit of special purpose vehicle asset backed securities issued to the public. The auditors are to be appointed by the sponsor from the list approved by the commission.

Section 45, confers the power to inspect the books of the special purpose vehicle on the Nigerian Exchange Commission.

Section 46, forecloses the duty of confidentiality in securitization transaction assets backed securities amongst the specialized players in securitization transactions.

Section 47, provides for a 60 days period for persons aggrieved with the decisions of the commission to appeal same and the commission shall thereafter within 21 days apply to the court for directions.

Sections 48 provides that the rules and regulations guiding the securitization transactions as provided by this Bill shall from time to time be upgraded by the CBN and NSE.

Section 49 is to the provision that the following existing Acts – Investment and securities Act, CAMA, BOFIA, CBN Act, Money laundering provision Act, Companies Income Act, Stamp Duty Act, Capital Gain Fax Act and VAT Act, shall be read with such modification to bring them into conformity with the provision of this Bill. Where the provisions of the foregoing Acts are inconsistent with the instant provision of this Bill, the provisions of this Bill shall prevail.

Section 50 is the interpretation section, whilst section 51 is the explanatory memorandum.

4.0 JUSTIFICATION: Non-existent legal and regulatory framework in securitization transactions necessitated this Bill. There is the dire need to put in place the required legislative framework for the takeoff asset backed securitization transaction in Nigeria. With the passage of this Bill into law, the availability of capital and credit at more affordable rates will be guaranteed, further opening up the Nigerian market for long term funds as well as leveraging its development and spread as a source of capital raising.

5.0 CONCLUSION: Mr. Speaker, my dear colleagues, I strongly urge you to support this Bill as its coming into being, will promote the availability of capital and credit at more affordable rates.

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