Corporate Finance and Capital Markets

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True-Sale Securitisation in the Legal Context

1. Introduction

Due to certain accounting and legal reasons, companies seeking to maintain liquidity and therefore keep business afloat, may choose to take only financial measures incurring of limited financial liability.[2] True-sale securitisation is one of such financial measures through which a company may transform its assets-producing income in the long-term, into readily available cash. The income-producing assets are its account receivables like: interest and principal sum payments on loans or bonds, book debts, etc. Towards transforming these account receivables into readily available cash, the company (the "Originator") incorporates a Special Purpose Vehicle (the "SPV"), transfers select account receivables to the SPV for cash consideration, which is to be raised by the SPV from trading its own securities (which are backed by the account receivables) in the capital markets.[3] At the end, the Originator would have liquidated its account receivables through the cash paid to it by the SPV, thereby sourcing finance in a way that incurs limited financial liability. In other words, the end goal of the Originator is to avoid incurring any financial liability (i.e., an obligation to repay investors), asides expenses incurred while carrying out the true-sale securitisation (e.g. payment of professionals that will assist in the process, servicing fee, and insuring the account receivables, etc.). Achieving this end goal of a true-sale securitisation

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2 Andreas Jobst, "What is True Sale Securitisation" (*International Monetary Fund*, September 2008) available at <https://www.Imf.org/external/pubs/ft/fandd/2008/09/pdf/basics.pdf> accessed 30th November 2025.

3 *Ibid.*

involves a great deal of exchange of legal rights, legal contracting, and legal activities, which are discussed below.

2. The Process of True-Sale Securitisation

The process of true-sale securitisation is usually commenced by the Originator engaging a "Sponsor" (usually a financial institution), to structure the true-sale securitisation.[4] The structuring of the true-sale securitisation will include selecting suitable account receivables of the Originator to pool and transfer to an SPV. The SPV, as "Issuer", issues its securities (usually bonds) in the capital markets to "Investors". The SPV will then advance proceeds of the said issuance to the Originator as consideration for the Originator's transfer of its account receivables to the SPV.[5] The Investors in the SPV's securities are repaid from the income produced by the account receivables, a process usually spearheaded by an appointed "Servicer". In most cases the Servicer is the Sponsor, but in other cases, it could be the Originator. Irrespective of which role they take, both the Originator and the Sponsor will usually seek legal assistance on the following matters:

2.1. The Special Purpose Vehicle

A Special Purpose Vehicle ("SPV") is an entity set up for a particular purpose, after the achievement of which it will be dissolved. In most cases, the entity is one with legal personality like Limited Liability Companies, Limited Liability Partnerships and Statutory Corporations.[6] Under the shield of the legal personality of an SPV, the persons or entities who incorporated the SPV carry out businesses which they would not have been able to undertake (e.g., prohibited businesses or ones frustrated by facts).[7] The foregoing general objective of the persons or entities who incorporate SPVs is not a stretch from the reasons why an Originator seeking to undertake a true-sale securitisation process will do same. In addition, Originators undertaking a true-sale securitisation may incorporate SPVs for a wide range of legal reasons which will be explained after the process of incorporating these SPVs in Nigeria is delineated.

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4 Prof. Ian Giddy, "The Securitisation Process" (*Stern School of Business New York University*) available at <https://pages.stern.nyu.edu/~igiddy/ABS/absprocess.pdf> accessed 30th November 2025.

5 *Ibid*.

6 Thomas J. Riggs "The Special Purpose Vehicle – Facilitating Business and Investment Across the Globe" (PKF O'Connor Davies, February 2021) <https://pkfod.com/wp-content/uploads/2021/02/The-Special-Purpose-Vehicle-%E2%80%93-Facilitating-Business-and-Investment-Across-the-Globe.pdf > last accessed 30th November 2025.

7 *Ibid.*

2.1.1. Legal Restrictions to Note When Incorporating the SPV in Nigeria

In Nigeria, SPVs employed in a true-sale securitisation are required to register with the Corporate Affairs Commission and the Securities and Exchange Commission.[8] For seamless approval of the registrations, the SPV must be a Public Limited Liability Company or a trust, and shall have the acronym "SPV" placed beside its name on its corporate documents (i.e. Memorandum of Association and Articles of Association).[9] Also, the corporate documents of an SPV incorporated as a company would include usual contents of plain vanilla companies' corporate documents. However, the objects of the SPV contained in its corporate documents must be limited to the purpose for which its incorporation was conceived.[10] In the context of a true-sale securitisation, the objectives in the corporate documents of the SPV will include the acquisition of Originator's account receivables, management of the said account receivables by a Servicer, and the issuance of securities (usually bonds) backed by the account receivables to investors in the capital markets.

Furthermore, SPVs employed in a true-sale securitisation must also comply with other provisions of the Companies and Allied Matters Act, 2020 that applies to plain vanilla companies, like keeping statutory books and records.[11] However, unlike plain vanilla companies, certain restrictions apply to SPVs employed in a true sale securitisation process, to ensure that the SPV isn't exactly a replica of the Originator. For instance, only 30% of the directors of the SPV shall be nominees of the Originator or associated in any manner with the Originator or any of the Originator's subsidiaries.[12] Furthermore, SPVs employed in a true sale securitisation process are also prohibited from having employees and may only contract out its services to third parties.[13] The third parties are to assist the SPV in carrying out its role in the true-sale securitisation process.

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8 Section C (1) *SEC Rules on Securitisation*, 2015 (SEC Rules 2015), available at <https://home.sec.gov.ng/documents/25/RULES_ON_SECURITIZATION_17415.pdf> accessed 30th November 2025.

9 *Ibid.* See also, section C (2) SEC Rules 2015.

10 Section C (3) SEC Rules 2015.

11 Section C (5).

12 Section C (6).

13 Section C (5).

2.1.2. **The Role of the SPV in a True-Sale Securitisation Process**

As was earlier explained, an SPV generally enables companies or persons to carry out businesses which they would not have been able to undertake. Similarly, in the true-sale securitisation process, the SPV serves a primary role by enabling the Originator to market account receivables which do not ordinarily enjoy a vibrant/receptive market.[14] With no easily accessible market for the trading of account receivables like the capital market (which is reserved for only securities), the Originator transfers its account receivables to an SPV for consideration to be raised by the SPV by the repackaging of the account receivables as securities and trading them in the capital market. Without this primary role played by the SPV, trading the account receivables on the capital markets will be impossible.

Secondarily, Originators may employ SPVs in a true-sale securitisation process for a plethora of legal reasons. For instance, a banking regulation setting a limit to the credit exposure of commercial banks (i.e., the amount of debt owed to them), may be circumvented by true-sale securitisation. A bank, as the Originator, may do so by transferring certain account receivables to a SPV so as to liquidate them through cash raised by the SPV from the capital markets. In effect, the bank (i.e., the Originator) would have liquidated its account receivables, enabling it to lend more, in a circumvention of the limit on credit exposure set by the banking regulation.[15] However, it must be noted that commercial banks in Nigeria are restricted from including capital raised from securitisation in their Common Equity Tier 1, towards computation of capital base requirements prescribed by the regulator of commercial banks in Nigeria, the Central Bank of Nigeria.[16] In a similar manner, future banking regulations may forestall circumventions by commercial banks in Nigeria.

Asides banking regulations, other regulations may also be circumvented by an SPV as part of a true-sale securitisation. An example is a securities regulation permitting companies with only investment grade ratings to trade their securities in the capital markets. A company below investment grade, as the Originator, may select and transfer its account receivables of investment grade rating to an SPV. This results in the SPV qualifying as a company with

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[14] Andreas Jobst, (n2).

[15] *Ibid*.

[16] Section 4.5.4, CBN Revised Guidelines on Regulatory Capital, 2021, available at <https://www.cbn.gov.ng/Out/2021/BSD/1.%20GUIDELINES%20ON%20REGULATORY%20CAPITAL.pdf> accessed 30th November 2025.

investment grade rating, that can therefore trade securities in the capital markets.[17] Lastly, similar to the above legal reasons, the utlilisation of an SPV in a true-sale securitisation process shields the Originator from legal liabilities arising from the account receivables transferred to the SPV.[18]

2.2 The Account Receivables:

Account receivables refer to those monetary claims due and payable to a company.[19] They include principal and interest payments on loans, tax credits, insurance payments, and book debts (i.e., debts which arose in the ordinary cause of business).[20] By their nature, account receivables are intangible. Predicated on this, they have been termed *choses in action*, as rights to them can only be claimed or enforced by legal action, rather than physical possession.[21] In a true-sale securitisation process, claim (rights) over the account receivables are transferred to the SPV through legal contracting.

2.2.1. Transferring the Account Receivables to the SPV

Usually, the account receivables, that is, choses in action, are transferred for valuable consideration to the SPV through an assignment, and rarely by a novation. Unlike a novation which transfers both the benefits and burdens of the account receivables to the SPV, an assignment only transfers the benefits necessary (i.e., cashflow from the account receivables) for the true-sale securitisation process to the SPV.[22] However, it must be noted that in Nigeria, assignment of account receivables is only permitted if it does not change the burden and benefits of the debtor liable to pay the account receivables.[23]

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[17] Angelos Delivories "Understanding Securitisation: Background-Benefits-Risks" (*European Parliamentary Research* Services, October 2025) available at <https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/569017/EPRS_IDA(2015)569017_EN.pdf> accessed 30th November 2025.

[18] Section 21(1) a *Companies and Allied Matters Act*, 2020 (Act No. 3 of 2020).

[19] See, *Spectrum Plus Ltd* [2005] 2 AC 680.

[20] See, "What Are Receivables in Accounting: Types, Examples, and More" (*Highradius*, July 18, 2025) <https://www.highradius.com/glossary/accounts-receivable-meaning-and-definition/#:~:text=Accounts %20 receivable%20is%20a%20credit,be%20received%20in%20the%20future> accessed 30th November 2025.

[21] See, *Julius Berger (Nig.) Plc v. T.R.C.B. Ltd.* (SC) (2019) 5 NWLR (Pt. 1665) pp. 240-241, paras. G-A.

[22] See, *Heritage Bank Ltd. v. Ajugwo* (SC) (2024) 12 NWLR (Pt. 1953) p. 499, paras. C-D. See also, *Julius Berger (Nig.) Plc v. T.R.C.B. Ltd*. (SC) (2019) 5 NWLR (Pt. 1665) pp. 240-241, paras. G-A.

[23] See, *Julius Berger (Nig) Plc v. T.R.C. Bank Ltd*. (CA) (2010) 9 NWLR (Pt. 1198) p. 106, paras. D-F.

Along with this, the assignment of the account receivable as part of a true-sale securitisation in Nigeria, must be an absolute assignment. To qualify as an absolute assignment, the following conditions must be met:[24]

a. only the benefit of the account receivables is assigned;

b. the assignment of the account receivables must be absolute;[25]

c. the benefit to be assigned must be wholly ascertainable;

d. the assignment must be in writing and signed by the assignor; and

e. notice of the assignment must be given to the other party or parties of the account receivables.

In adherence to the above provisions, Originators in Nigeria usually absolutely assign the account receivables to the SPV for valuable consideration via a "Sale Agreement". The Sale Agreement must meet the above stated conditions, in a clearly drafted manner. A failure to meet these conditions will result in a defective Sale Agreement, transferring only equitable interest over the account receivables to the SPV.[26] Nevertheless, the equitable assignment of the account receivables has the same effect in law as the assignment which has met the above conditions (i.e., a statutory assignment).[27]

2.2.2. What Account Receivables are Usually Transferred?

In the advent of true-sale securitisation, payments of principal sums and interests on mortgage loans of Originators usually backed the securities of the SPVs. Such securities secured by the mortgage loans were referred to as Mortgage-Backed-Securities ("MBSs").[28] Informed by heightened commercial needs, Originators diversified the underlying assets of a true-sale securitisation to other account receivables like principal sums and interest payment on normal loans and bonds, giving rise to what is now known as Asset-Backed-Securities ("ABSs").[29]

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24 See, *Julius Berger (Nig) Plc v. T.R.C. Bank Ltd* (*ibid*).

25 An assignment of a chose action is absolute "as soon as the assignor has finally and unequivocally indicated that it is henceforth to belong to the assignee". See, *Saraki v. Societe Gen. Bank* (CA) (1995) 1 NWLR (Pt. 371) 325, p. 352, para. F.

26 See, *Julius Berger (Nig.) Plc v. T.R.C.B. Ltd*. (SC) (2019) 5 NWLR (Pt. 1665) pp. 240-241, paras. G-A.

27 *Ibid.*

28 Andreas Jobst, (n2).

29 Angelos Delivories, (n18).

In recent refinement, Collateralized-Debt-Obligation ("CDO") was conceptualized and popularized globally to capture identical objectives. It entails a situation where a wider range of the Originator's income generating assets are transferred to the SPV towards a true-sale securitisation.[30] In Nigeria, originators can use any of the above assets (MBS, ABS and CDO). However, restriction is placed on securitising credit card receivables, encumbered assets, assets already exposed to securitisation, and loans with bullet repayment of both the principal sum and interests.[31] The above restricted assets are highly risky assets. Nevertheless, certain highly risky assets are not prohibited from backing the SPV's securities (as part of a true-sale securitisation), but must be derisked to ensure successful issuance in the capital markets.

2.3 Issuance of the SPV's Securities in the Capital Markets

A critical point in the true-sale securitisation process, is the issuance of the SPV's securities (usually bonds). This process will require legal due diligence, drafting of the transaction documents (i.e. prospectus and other contracts like trust deeds), and credit rating of the Originator's account receivables transferred to the SPV (as part of a true-sale securitisation) by a credit rating agency. Those Originator's account receivables must be of good risk rating, and if not so, enhanced to achieve such rating (through credit enhancement). This is because investors' interest in the SPV's securities (usually bonds) and performance of the SPV's securities in the capital markets is rooted in the quality of the account receivables that underpins them.[32]

Accordingly, risky account receivables may be structured through various techniques to enhance their attractiveness to the SPV's securities' potential investors. One of such techniques is subordination. An SPV, as the Issuer, enhances an Originator's account receivable by subordination through creating a payment waterfall for the repayment of the SPV's securities' potential investors.[33] The order of repayment in the said payment waterfall starts with the senior investors, then the *mezzanine* investors, before the junior investors.[34] The effect of such payment waterfall is that the SPV's securities (usually bonds) backed by the account receivables so enhanced by the subordination will be made more attractive to investors according to their risk appetite.

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30 Andreas Jobst, (n2).
31 Section G, SEC Rules 2015.
32 Angelos Delivories, (n18).
33 Prof. Ian Giddy (n4).
34 *Ibid*.

Other ways the SPV can enhance the account receivables of the Originator in pursuit of enhancing the SPV's securities include:[35]

a. using cash as collateral for the SPV's securities (i.e., cash collateral);

b. the SPV issuing securities of a value less than the value of the account receivables that backs SPV's securities (i.e., over collateralisation); or

c. insuring or guaranteeing the account receivables (i.e., credit insurance).

If the account receivables are not of good risk ratings, or not enhanced by any of the above means, the SPV's securities would not be attractive to investors in the capital markets. This may result in a failure of the SPV to raise the cash it ought to pay to the Originator as valuable consideration for the Originator's transfer of its account receivables to the SPV.

3. Conclusion

A true-sale securitisation process essentially gives the Originator necessary legal and financial cover to liquidate "long-term income generating assets, lacking a vibrant market", in the capital markets usually reserved for securities. The Originator achieves the above through a legal process commencing with a transfer of choses in action (i.e., account receivables) for valuable consideration to a different legal personality (i.e., the SPV) incorporated by the Originator, with the sole aim to enable the Originator to access the capital markets through that different legal personality's listing of its own securities on the capital markets.

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[35] Section A, SEC Rules 2015. See also, Prof. Ian Giddy (n4).