

# Securitisisation: Unlocking the Potential

## Issues & Challenges in Securitisisation in Sri Lanka

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# Background

- SECSL – FIRST Initiative Securitisation Project
- Summary of Key Principles of Drafting Instructions – FOR DISCUSSION PURPOSES
- Next steps
- Objectives of the Project
- Recognising practicalities

# Overview of Proposal

1. Securitisation Act will be “Opt In” – Will not preclude other forms of “securitisation”
2. Not a comprehensive code
  - draws on existing laws
  - provides an enabling framework
  - provides tailored disclosure – initial - continuing
  - removes ambiguities
  - provides some “safe harbours”
  - taxation clarity if under the Act



Based on Assumption  
Proposals are acceptable

# Overview of Proposal

3. Legislation adopts and ambit or omnibus approach – Securitisation Act amends other legislation where required

# Overview of Proposal

## 4. Basic Principles

- SPV can be either trust or company
- Initial focus on Traditional Securitisations but scope to expand to Other Securitisations
- Includes a wide definition of ABS which is flexible
- Involves the Transfer of assets or origination into a Securitisation SPV
- To Opt In - Must lodge an Activation Notice that complies with Registration of Documents Ordinance
- Transaction must comply with Securitisation Act

# Overview of Proposal

5. A Securitisation Regulator will be appointed
    - Will focus on disclosure & issuer / investor aspects
    - Will not take over traditional role of Central Bank in relation to financial institutions
    - Central bank will need to issue Prudential Guideline on reserving, balance sheet treatment, roles of financial institutions in securitisation transactions – Avoid a duplicated regime
    - Insurance Regulator will retain traditional role
    - Companies Act will continue but with some modifications for securitisation – SECSL Act similarly – Stock Exchange
    - Inland Revenue , etc but with amendments to achieve tax neutrality
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# Overview of Proposal

6. Will provide for 3 classes of offering
    - Private Placements
    - Qualified Private Placements
    - General Public Placements
    - Introduce a new concept of a “Qualified Investor”, in lieu of “to the public”
    - Apply different disclosure & approval requirements
  7. Securitisation SPV can issue debt or if trust can also issue beneficial interests
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# Overview of Proposal

## 8. Securitisation Act & amendments to other legislation will

- Deal with offers of securitisation
- Provide minimum criteria for SPV – BUT not license or provide minimum capitalisation
- Will provide for Qualified Arrangers & Trustees
- Provide a procedure for transfer of assets which will be recognised for solvency remoteness
- Provide clarification of enforcement rights
- Amend other legislation to remove ambiguities, conflicts and so that securitisation is not disadvantaged relative to other funding.



**Let's come back  
To this**

# Becoming a “Qualified Securitisation Transaction”

This is the lynch pin for the Act – Opt In – Comply – Receive Benefits

- Must be an ABS transaction
  - Offering Documents must comply
  - Detailed ongoing disclosure
  - Generally authorised Arranger, Trustee, Servicer
  - If debt issued out of company SPV must be secured & Authorised Trustee appointed
  - Imposes obligations on Securitiser
  - Utilises Civil & criminal offences & economic penalties
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# Opt In Via an “Activation Notice”

- Declares a trust or company to be a Securitisation SPV
  - Identifies assets transferred –
    - is filed with Securitisation Regulator & RDO Registry
    - builds on current legal framework – does not replace
    - provides comfort of the “true sale” result if procedures complied with
  - Includes Securitiser’s undertakings
  - “Securitised Assets” – any property right or entitlement originated into or transferred to a securitisation SPV and identified by an Activation Notice
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# “Asset Backed Securities”

- Any security or investment instrument, debt or equity that
  - Entitle the holder to a fixed principal amount & any interest calculated on the principal or nominal principal
  - Where payment is serviced primarily from the assets transferred & creditor enhancements from the collections or realisations of the assets
  - Or clarification purposes, not limitation, assets may include receivables, mortgages, leases etc

# Traditional & Other Securitisation Transactions

- Strength of securitisation has been its ability to adapt to new asset classes & structures
  - Need to allow flexibility but recognise market
    - Issues ABS
    - Uses proceeds of ABS sale to acquire or originate assets
    - Makes payments to investors primarily from assets transferred
  - Other Securitisation Transactions – provided to from time to time via Rules or Regulations
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# 3 Classes of Offers & “Qualified Investors”

- Private Placements – Non tradeable – Place with Qis only but not pension or insurance companies
- Qualified Private Placements – to QIs can trade to QIs
- General Public Placements
- Qualified Investors – Essentially Professional & Sophisticated Investors

# Securitisation Act – New Disclosure Scheme for ABS

- Will apply irrespective of form of SPV or whether debt or beneficial interest issued – substitute for current
- Will be tailored to providing relevant disclosure
- Obligation to disclose & not mislead– Higher standard of disclosure
- Continuing disclosure – Greatest benefit of securitisation is ongoing periodic disclosure of performance of assets & Servicer & Trustee
- Independent audit required of compliance & reporting

# Transfer of Assets & Access to Enforcement Rights – Contentious Issue

- 2 ways to address – legislate to recognise a Qualified Securitisation Transaction & **look through for enforcement purposes – amend taxation & stamp duty**
  - Issue depends on what is being transferred – nature of the Asset – see Table – Page 12.
  - Structure around – often second best compromises investors interests & reduces benefit to economy
  - Safe harbour provided if RDO complied with for affected assets
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# Taxation, VAT, Stamp Duty, etc

- A taxation neutral regime is - What is necessary for securitisation to be
  - Economically viable
  - Optimally structured
- Without this either no securitisation or usually greater risk through transactions being structured around taxation laws with sub-optimal risk resulting – less securitisation – higher costs

Not About Tax Avoidance or Preference  
Recognises ABS is different as are  
e.g. leases or trusts BUT ABS is new

# Amendment of Other Legislation Proposed Includes

- Permitting proper due diligence
    - Banking Act , Credit Bureau of Sri Lanka Act
  - Reducing Barriers to investment
    - Insurance Industry Act, Employers Provident Fund, Banking Act????
  - Expanding the range of securitiseable assets & possible limits
    - Trust Receipts Acts, Money Lending Ordinance,
  - Reduce risks & ambiguities
    - Consumer Credit Act, Bills of Exchange Ordinance,
    - Motor Traffic Act
  - Others.....
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# Conclusion

- The real challenge is at the political & policy level
  - Enacting a Securitisation Act
  - Addressing the 2 real issues as fully as possible
    - Taxation aspects
    - Providing “look through” enforcement rights
  - Resourcing the Securitisation Regulator
  - Not having multiple layers of approval process but focus on key issues by each regulator
  - Providing clarity of process & a timely outcome