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Comparative Analysis of the Legal and Regulatory Frameworks for Asset-Backed Securities in South Africa, Malaysia, and Nigeria

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Abstract

This paper provides a comparative analysis of the legal and regulatory frameworks governing asset-backed securities (ABS) in South Africa, Malaysia, and Nigeria. The objective is to examine how legal structures influence the development, stability, and investor confidence in securitization markets across these jurisdictions. The study evaluates the historical evolution of ABS, existing regulations, operational challenges, and the impact of these legal frameworks on financial markets. The paper utilized the doctrinal research methodology to review legislative instruments, regulatory policies, and market performance indicators across the three jurisdictions. The study draws insights from financial laws, government regulations, and scholarly literature to highlight key similarities and differences in securitization practices. The paper found that South Africa and Malaysia have well-developed ABS markets due to structured regulations, strong financial institutions, and high investor confidence. South Africa's securitization framework benefits from clear government policies and regulatory oversight, while Malaysia has successfully integrated Islamic finance principles into ABS markets. Conversely, Nigeria's ABS market remains underdeveloped, primarily due to the absence of a dedicated legal framework, regulatory gaps, and low investor participation. The paper recommends legal reforms in Nigeria, including enacting a specific securitization law, enhancing regulatory oversight, and promoting market transparency. It also recommends adopting international best practices and strengthening credit rating systems to improve investor confidence. By implementing these measures, Nigeria can foster a more robust securitization market, contributing to financial stability and economic growth.

Keywords: Asset-Backed Securities (ABS), Securitization, Special Purpose Vehicle (SPV) Regulatory Frameworks, Credit Rating Agencies

1. Introduction

The legal and regulatory frameworks for asset-backed securities[1] vary significantly across jurisdictions, shaping the development and efficiency of capital markets. Asset-backed securities serve as a critical financial instrument, enabling businesses and financial institutions to access liquidity by converting underlying asset pools into tradable securities. However, the success and stability of ABS markets largely depend on the legal and regulatory structures governing their issuance, trading, and risk management.

This paper presents a comparative analysis of the legal and regulatory frameworks for asset-backed securities in South Africa, Malaysia, and Nigeria. South Africa has witnessed considerable growth in its ABS market since the late 1980s, driven by structured finance mechanisms, securitization-specific regulations, and a stable financial system. Similarly, Malaysia has embraced securitization as a strategic financial tool, leveraging regulatory guidelines and institutional frameworks to foster ABS transactions. In contrast, Nigeria's ABS market remains underdeveloped due to legal constraints, regulatory gaps, and limited investor confidence.

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[1] Hereinafter referred to as 'ABS'.

The paper examines the evolution, similarities, and differences in the securitization practices of these three jurisdictions. By analyzing the historical developments, regulatory frameworks, and operational challenges in each jurisdiction, this paper aims to provide insights into the effectiveness of existing policies and their impact on financial markets. The paper further explores how legal structures influence investor participation, credit rating practices, and financial stability, ultimately contributing to the broader discourse on structured finance and capital market growth in emerging economies.

2. Asset-backed Securities in South Africa

ABS in South Africa originated as a means for financial institutions to diversify their funding sources and manage risk in the late 1980s and early 1999s. Today, ABS is a major source of funding for businesses in South Africa, and it plays an important role in the country's financial system.[2]

2.1. Historical Development of Asset-backed Securities in South Africa

The historical development of securitization in South Africa can be traced to its first conduct by the United Building Society Ltd., now known as the Amalgamated Banks of South Africa (ABSA) in 1989. This marked the initial foray of securitization into the South African market.[3] This involves the securitization pool of mortgages to the tune of R250. After that, the second securitization was conducted by Sasfin (Pty) Ltd. in 1991, with installment rental loans forming the underlying asset for the ABS packaged by a special purpose vehicle, which was subsequently used by Sasfin (Pty) to issue new ABS regularly.

There was no activity in the securitization market in South Africa between 1991 and 1999. This is attributable to the various economic against South Africa during this period.[4] By the beginning of 1999, there was a renewed interest in the securitization market in South Africa, leading to several transactions being completed. Notable transactions included Retail Apparel Group's (RAG) securitization of its debtor's book to R 600 million, and Unibank in October 1999 securitized R 430 of its term loan book.[5] Subsequent transactions were initiated by the Kiwane fund, established in May 2000 by Gensec, JP Morgan, and Real Africa Durolink, is a collateralized debt obligation fund that uses corporate bonds and debt for security purposes. Its initial issuance was R500 million, with the first issuance expected to reach R2 billion.[6] In June 2000, Rand Merchant Bank (RMB) successfully conducted South Africa's first international securitization transaction, involving the securitization of $250 million worth of Visa, MasterCard, and Cirrus voucher receivables from international sources. Non-South Africans utilized credit and debit cards within South African establishments to generate outstanding amounts owed. RMB subsequently executed a collateralized debt obligation (CDO), utilizing 540 million high-yielding corporate bonds as the underlying collateral.[7]

In November 2001, SA Home Loans collaborated with Standard Bank and JP Morgan to issue mortgage-backed securities (MBS) valued at R1.25 billion. These securities were subsequently listed on the Bond Exchange of South Africa.[8] In 2002, there was a further rise in securitization, with the addition of eight new listings. In June 2002, Procul Limited Released Class A notes valued at R1.282 billion and Class B to Class G notes worth R710 million. These notes were secured by Wesbank's automobile installment receivables book.

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[2] F Allen, I Otchere and L W Senbet, 'African Financial Systems: A Review' (2011) 1 Review of Development Finance 79 <10.1016/j.rdf.2011.03.003> accessed 13 February 2024.

[3] A Saayman and P Styger, 'Securitisation in South Africa: Historic Deficiencies and Future Outlook' (2003) 6 *South African Journal of Economic and Management Sciences* 744.

[4] P K Ngamby, 'The Impact of Securitization on the Effectiveness of the Bank Lending Channel in South Africa MCOM Financial Economics Department of Economics and Econometrics of University of Johannesburg 2013.

[5] F Ashenafi, M Graham, and D Asante-Amponsah, "Structured Finance in Africa" in 'The Economics of Banking and Finance in Africa: Developments in Africa's Financial Systems' (Cham: Springer International Publishing, 2022) pp. 373-404.

[6] A Saayman and P Styger, 'Securitisation in South Africa: Historic Deficiencies and Future Outlook' (2003) 6 *South African Journal of Economic and Management Sciences* 744.

[7] A Saayman and P Styger, 'Securitisation in South Africa: Historic Deficiencies and Future Outlook' (2003) 6 *South African Journal of Economic and Management Sciences* 744.

[8] Ibid.

The second issue, Fresco 1, included R188 million worth of Class A fixed-rate notes, R183 million worth of Class B fixed-rate notes, and R711 million worth of Class C to F notes. Additionally, R1.082 billion worth of R194 bonds were used as collateral. In July, Edgars Consolidated Stores Limited, as the originator, issued R1.73 billion worth of Class A floating rate notes and R200 million worth of Class B floating rate notes on behalf of OntheCards Investments.[9]
In July 2002, Infrastructure Finance Corporation Limited (INCA) established a collateralized debt obligation (CDO) program valued at a maximum of R10 billion for South African local councils. The program's security was provided by municipal loans. Fintech Receivables issued Class A notes valued at R619 million and Class B notes valued at R34 million in November. These notes are secured by office equipment lease contracts. SA Home Loans issued an additional R1 billion worth of Class A notes, R55,194 million worth of Class B notes, and R27.056 million worth of Class C notes in November.

ABSA Corporate and Merchant Bank established Asset Backed Arbitraged Securities (Pty) Ltd. in December 2002.[10] This is a domestic scheme for issuing asset-backed notes, with a maximum value of R15 billion. Private Mortgages 1 (Pty) Ltd has issued Class A notes for R923 million and Class B notes worth R77 million, making it the fourth mortgage-backed securities (MBS) transaction in South Africa. The underlying collateral for these notes is Investec's amortizing house loans.[11]

The securitization market in South Africa witnessed exponential growth in the 2000s, immediately after some years of inactivity due to economic sanctions. The rapid growth is attributed to the 10 percent rise in the regulatory requirements for South African banks imposed by the Bank of International Settlement (BIS).[12] However, this growth was short-lived as a result of the misunderstanding of the new concept of securitization, and banks lacked proper appreciation. Certain restrictions were imposed by regulatory bodies to slow the rapid growth of securitization in South Africa.

The market regained its vibrancy in 2001, following the amendment of the 2001 Securitization Regulation.[13] Before the introduction of the 2001 Regulation in South Africa, securitization was regulated by two separate Government Notices.[14] The provisions of these Notices created uncertainty among originators and especially amongst banking originators. According to these Notices, it is a contravention of the Bank Act to operate the business of a bank without registration as a bank or as a branch of a foreign bank.

Nevertheless, by the 2001 regulation, the operation of a securitization scheme is not considered "the business of a bank," provided that it adheres to the limitations outlined in the government notices, commonly referred to as "securitization exemption" or "securitization regulations."[15] Another important aspect of the legislative change was to grant banks the ability to assume various roles in a securitization transaction. The new regulations permit both corporations and banks to utilize securitization. By expanding the definition of a securitization transaction, the sector, which is currently small, is rapidly growing to accommodate various participants.[16] This level of development took the United States and European countries many years to achieve. Implementing the new legislation in South Africa has supported the growth of the asset securitization industry. This has been done in line with market requirements, established international securitization principles, and the preliminary capital adequacy proposals of the Bank for International Settlement (BIS).[17]

[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] Ngamby, (n4).
[13] L V Nikolova, D G Rodionov and A B Mottaeva, 'Securitization of Bank Assets as a Source of Financing the Innovation Activity' (2016) 6 *International Journal of Economics and Financial Issues* 246 <https://www.econjournals.com/index.php/ijefi/article/view/2559> accessed 8 October 2023.
[14] No. 153 of No. 13723, 3 January, 1992 and No. 2172 of 16167, 14 December, 1994
[15] Saayman and Styger, (n 6).
[16] Ibid.
[17] Ibid.

Notwithstanding that South Africa was the earliest country with historical development in asset securitization, it faced obstacles. The main obstacles to growth in asset securitization in South Africa are the time and cost associated with the process, which takes over a year for first-time asset securitization and is too expensive for small amounts of assets. Major costs in South Africa include legal mortgages, new technology, and credit enhancement.[18] The high price required by investors makes it difficult to securitize profitably, as the novelty of the concept and lack of liquidity increase the premium.

Also, the lack of default and delinquency data adds to the difficulty of rating and structuring transactions. Large banks in South Africa are asset-driven and have a critical mass in terms of assets, so they have not embraced asset securitization. Asset securitization offers no capital arbitrage opportunity, and large banks in South Africa do not face any liquidity constraints, making it unsuitable for them to securitize.[19] Capital could not be taken out of the country before 1994, making it cheaper than debt. Large corporates in South Africa have easy access to funds via banks, so there is no need to securitize for funding purposes.

2.2. Similarities between Asset-backed Securities in Nigeria and South Africa

In South Africa, like Nigeria, transactions in ABS take place through special purpose vehicles or special purpose entities (SPV/SPE) incorporated in the form of partnerships, corporations, public limited liability companies, or trusts created under a written instrument for the acquisition, management, and collection or pooling of assets.[20] In a typical asset securitization process, special purpose vehicles or special purpose entities (SPVs/SPEs) isolate or assume risks attached to a particular pool of assets, enabling the easy transfer of assets completely from the SPV/SPE to the originating entity.[21] The isolation of risks helps to protect investors by ring-fencing the securitized assets and ensuring that they are not subject to the claims of the originator's creditors in the event of bankruptcy. By incorporating the SPV/SPE as a distinct legal entity, the risks and obligations of the securitization transaction are contained within the SPV/SPE, providing clarity and security to investors.[22]

ABS an end product of securitization in South Africa is governed by a myriad of legal frameworks. They include the Banks Act 94 of 1990; Financial Markets Act 19 of 2012; South African Reserve Bank Directives; Credit Rating Services Act 24 of 2012; Deeds Registries Act 47 of 1937 and Securitization Regulations 2001.[23] In Nigeria, ABS is governed by the Companies and Allied Matters Act, 2020, Investment and Securities Act, 2007, Secured Transaction in Moveable Assets Act, 2017, Asset Management of Nigeria (Amendment) Act, 2021, Pension Reform (Repeal and Re-enactment) Act, 2014, Collateral Registry Regulations, 2014, Regulation on Investment of Pension Fund Assets, 2019 and Securities and Exchange Commission (SEC) Rules of 2015.

Asset securitization in Nigeria and South Africa has a sole regulator bestowed with the responsibility of enforcing the provisions of the laws establishing the agencies, and setting minimum standards and practices for investors in the capital market. In South Africa, the regulation of securitization falls under the South African Non-Banking Financial Services Board.[24] The FSB oversees the South African Non-Banking Financial Services Industry and sets the regulatory framework, minimum standards, and practices for market participants in the public interest.[25] Additionally, the FSB plays a crucial role in regulating various aspects of the financial markets to ensure transparency and stability.[26] In Nigeria, the Securities and Exchange Commission is the chief regulator of asset securitization. Established by the

[18]Ngamby, (n 4).

[19]Ibid.

[20]E A Olivier, 'Corporate Capacity, 'Special Purpose Vehicles and Traditional Securitisation in South Africa Company Law (Faculty of Law University of the Western Cape, 2019)

[21] Ibid.

[22]D Vink and A E Thibeault, 'An Empirical Analysis of Asset-Backed Securitization' (2008) SSRN *Electronic Journal* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1014071> accessed 7 May 2024.

[23] M V Staden, 'The Securitisation of Mortgage of Loans in South African Law (Faculty of Law University of Pretoria, 2018)

[24] Financial Services Board Act 1990 (Act No. 97 of 1990)

[25]K C Chanetsa, 'Securities and Capital Markets Regulation in South Africa' (2019) 3 *Brill Research Perspectives in International Banking and Securities Law,* 1.

[26] Ibid.

Investment and Securities Act, of 2007, SEC is responsible for the preparation of adequate guidelines for the regulation of investment and securities of businesses in Nigeria.

The major responsibility of the SEC is to ensure compliance with the provisions of the securitization rules during the registration of securities. The Commission registers all securities of public companies, investment trusts, and collective investment schemes. The SEC regulates the incorporation of Special Purpose Vehicles or Special Purpose Entities (SPVs/SPEs) through the rules on securitization. By the provisions of the Rules, SPVs/SPEs have powers to accept the sale or transfer of assets from the originator, issue ABS to the noteholders, enter into an agreement with any person for the securitization, invest/seek benefits from the transferred assets by the approval of the Commission, and undertake all activities necessary to carry out other activities. [27]

ABS in both South Africa and Nigeria is typically backed by a pool of underlying assets, such as mortgages, auto loans, and credit card receivables, which generate cash flows that are used to make payments to investors. ABS is diverse and includes credit card receivables, equipment leases, trade receivables, vehicle loans and leases, and any other consumer loan.[28] Auto loans and credit card receivables, on the other hand, are loans securitized by automobiles and are called auto loan-backed securities and asset securities backed by a pool of receivables owed to the credit card provider.[29] Auto loans are issued by commercial banks, auto manufacturers, and other financial companies with maturity between 36 and 60 months. Credit card receivables structured as master trust allow the issuer to sell more than one series from the same pool of receivables. The result is that each time a new series is issued, more receivables are added to the master trust. The cash flow of a pool of credit card receivables consists of interest charges, fees, and principal repayments. The interest to security holders will be paid monthly or quarterly and can either be floating or fixed.[30]

2.3. Difference between Asset-Backed Securities in Nigeria and South Africa

The securitization and ABS market in South Africa is larger and more developed than that in Nigeria. Since the introduction of securitization in 1991 to the South African market, the market has grown tremendously, notwithstanding the global financial crisis of 2008. The South African market was not adversely affected, which was attributed to strong national financial compliance and securitization regulations that were lacking in those countries adversely affected by the financial crisis. Additionally, banks in South Africa that are engaged in securitization are diversified and highly capitalized.[31] The securitization market in South Africa is the largest in both financial and non-financial originators in the whole of Africa. This is due to the more established financial markets and greater investor confidence in South Africa.[32]

Also, the growth and development of securitization in South Africa have been attributed to several factors which include but are not limited to the existence of securitization-specific legislation and security structures, a stable economy, developed legal and banking system, and a strong demand for rand-denominated debt securities.[33] Unlike in Nigeria, the utilization of securitization as an innovative financial option is slow, notwithstanding the rebasing of the economy in 2013, estimated at 80.3 trillion

[27] Securities and Exchange Commission Rules on Securitization, 2015, Rules D

[28] W White, 'The Role of Securitisation Credit Default Swaps in the Credit Crisis: A South African Perspective', (School of Economics, Risk Management and International Trade, North-West University, 2011)

[29] M Mwinga, 'Development of Asset Securitization Market in Namibia Legal and Policy Challenges' (2021) <https://firstcapitalnam.com/wp-content/uploads/2022/10/Development-of-Asset-Securitization-in-Namibia.pdf> accessed 15 May 2024.

[30] A Oliver, 'A Guide to Asset Securitization In South Africa (Post Graduate School of Business, University of Stellenbosch, 2002)

[31] D Oyetade, A A Obalade and P Muzindutsi, 'Impact of the Basel IV Framework on Securitization and Performance of Commercial Banks in South Africa' (2020) 15 Banks and Bank Systems 95 <doi:10.21511/bbs.15(3).2020.09> accessed 20 May 2024.

[32] Ibid.

[33] H Prinsloo, 'Real Estate Securitisation: Viable Method of Finance in South Africa?' (*RePEc - Econpapers*1 January 2009) <https://econpapers.repec.org/RePEc:arz:wpaper:eres2009_337> accessed 16 May 2024.

Naira, making Nigeria the largest economy in Africa and 26th in the world. This can be attributed to several issues, the chief of which is the lack of a securitization-specific legal framework.[34]

Mortgage loans and consumer loans dominate Nigeria's ABS market. The dominance of mortgages and consumer loans in the Nigerian capital market may not be surprising, given the country's growing population, which is predominantly urban and experiencing a housing crisis.[35] Also, long-term financing for large-scale real estate development is a significant obstacle, particularly for urban dwellers with low and middle incomes. Developers seek other financing options to meet the housing deficit rather than approaching banks or other financial institutions.[36]

Unlike in South Africa where a single class of asset does not cover the ABS market. ABS in South Africa covers a wider range of asset classes, including mortgages, auto loans, student loans, and credit card receivables.[37] South African commercial banks engage in the securitization of a wide range of loans, including both mortgage and non-mortgage loans. The securitized non-mortgage loans encompass many types of loans such as auto loans, credit card receivables, equipment leases, and trade receivables. On the other hand, securitized mortgage loans consist of residential home loans, commercial properties, and real estate.[38]

The ABS market in South Africa has higher credit ratings than those in Nigeria. This is linked to stronger legal frameworks, regulatory oversight, and risk management practices in South Africa. Credit rating in South Africa began at the beginning of the century contributing to the growth of the ABS. Investors, bond issuers, and regulators worldwide use credit ratings to measure the likelihood of default. Others rely on credit ratings to make sensitive financial decisions, assess risks, or satisfy regulatory requirements.[39] Notwithstanding the activities of the three credit rating agencies dominating the credit rating market globally, the Nigerian ABS market has yet to boast the robust activities of credit rating agencies. This is because there is a lack of securitization -specialized legislation, regulatory oversight, and risk management. Also, the ABS market is yet to witness robust activities to further accelerate the involvement of credit rating agencies and credit ratings in the capital market.

Investors in South Africa are more confident in the ABS market due to the country's stable economic and political environment, as well as the transparency and accountability of financial institutions. Investor confidence in Nigeria is poor as a result of concerns about currency volatility, political instability, and governance. Currently, there is a lack of securitization-specialized legislation governing securitization in Nigeria. This further lowers investors' confidence in the ABS market. Also, there is a lack of effective communication and disclosure regarding the quality and performance of underlying assets in the market.

South Africa has a more mature securitization market compared to Nigeria, with a longer history of issuing ABS and a greater variety of issuers and investors. Also, the maturity of the securitization of the South African market is attributable to the stability of the South African Banking sector.[40] The instability of the banking sector will pose a danger to the securitization market, which will truncate the market's growth and hinder financial innovation. Furthermore, the maturity of the securitization market witnessed in South Africa is attributable to the existence of effective securities and capital market regulatory

[34]B A Oshodi, 'Energy Economics and Project Financing Options in Nigeria' (2014) SSRN *Electronic Journal* <https://dx.doi.org/10.2139/ssrn.2434220> accessed 16 May 2024.

[35]L I Nebo, C C Egolum and F I Emoh, 'Real Estate Investment Capitalization Issues in Emerging Markets: Reflection on Capital Market Instruments' (2023) 6 *Journal of Economics, Finance and Management Studies.* <https://doi.org/10.47191/jefms/v6-i1-33> accessed 20 May 2024.

[36] Ibid.

[37]P de Jager, G Holman and E Nel, 'Securitisation in South Africa; the Case of the Missing Conduits' (2010) SSRN *Electronic Journal* <https://doi.org/10.2139/SSRN.1624786> accessed 20 May 2024

[38]Oyetade, Obalade and Muzindutsi, (n 31).

[39]M Leib, 'The Efficacy of the Regulations Aimed at the Credit Rating Agencies (University of Tartu Faculty of Economics and Business Administration, 2013)

[40] K S C Annick, 'Securitisation of Mortgage Loans, Regulatory Arbitrage and Bank Stability in South Africa: Econometric and Theoretic Analyses' (University of Cape Town Graduate School of Business, 2017).

authorities. The regulatory authorities in South Africa adjudged to be the best regulators of securities in the world as of 2015, are not unfamiliar with the competitive pressure globally for inward investment and have endeavoured to implement a conducive environment in compliance with international standards.[41] This maturity allows for more sophisticated structures and greater liquidity in the market.

3. Asset-backed Securities in Malaysia

The introduction of asset securitization in Malaysia as an innovative finance option has benefited the economy. Although this innovative financial option has been available for a relatively short period, it has continuously resolved and managed risk problems such as leases, auto loans, credit card receivables, and commercial mortgages.[42]

3.1. Historical Development of Asset-backed Securities in Malaysia

The development of ABS in Malaysia has been significant, with the government playing a key role in promoting and supporting the growth of this market. ABS were first introduced in Malaysia in the 1980s, following the model of the United States, where they were initially used for housing loan funding programs.[43] One crucial entity in the development of ABS in Malaysia is Cagamas Bhd, established in 1986. Cagamas Bhd operates as a national mortgage corporation, similar to Fannie Mae and Freddie Mac in the US, acting as an originator for mortgage-backed securities (MBS). Through its subsidiary Cagamas MBS, which functions as a Special Purpose Vehicle (SPV), Cagamas facilitates the issuance of financial instruments to connect long-term investors with mortgage lenders in the capital market.[44]

The structured finance market in Malaysia witnessed significant growth in early 2000 when the Securities Commission Malaysia introduced guidelines to facilitate ABS transactions. The introduction of these guidelines has been characterized by regulatory support, market acceptance, asset diversification, and collaborative efforts to promote innovation and growth in the ABS market.[45] Since then, ABS has gradually gained traction in the Malaysian capital market, with several key milestones marking its development. The structured finance market in Malaysia has also seen growth in other instruments like Sukuk, which are Islamic bonds structured to comply with Islamic law. Malaysia has been a significant player in the global Sukuk market, with substantial growth in Sukuk issuance from 2001 to date.[46]

The Securities Commission (SC) of Malaysia to further develop the capital market and securitization introduced mandatory guidelines on asset securitization on April 10, 2001. The guidelines permit only companies incorporated in Malaysia to offer ABS either Public Limited Liability or Private Companies. The introduction of the SC guidelines slowly improved the Malaysian capital market. The issued two ABS transactions valued at the sum of RM 920 Million while in 2002, the Malaysian capital market issued four more transactions worth the sum of RM 1.93 Million.[47]

However, the volume of ABS traded by the Malaysian capital market dropped in 2003 to three issues worth slightly higher at RM 2.52 Billion. In 2004 there was an increase in the volume of issues by the capital market due to the introduction of Guidelines on the Offering of ABS, 2004. The total number of issues witnessed by the market was six worth RM 3.84 billion. The year 2005 marked the turning point of the Malaysian ABS with an increase of 140%. There were in total eight issues worth RM 9.33 billion.

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[41] K C Chanetsa, 'Securities and Capital Markets Regulation in South Africa' (2019) 3 *Brill Research Perspectives in International Banking and Securities Law,* 1 <https://doi.org/10.1163/24056936-12340007> accessed 29 May 2024.

[42] S Ismail and others, 'Developing a Framework of Islamic Student Loan-Backed Securitization' (2024) 129 Procedia - Social and Behavioral Sciences 380 <10.1016/j.sbspro.2014.03.691> accessed 1 February 2020.

[43] M H Bakri and others, 'Determinant of Securitization Spread in Malaysia' (2018) 19 *International Journal of Business and Society* 904 <https://www.ijbs.unimas.my/images/repository/pdf/Vol19-no3-paper21.pdf> accessed 2 June 2024.

[44] Ibid.

[45] M H Bakri and others, 'Factors Influencing Spread in Malaysia Securitization Market' (2020) 6 Accounting 433 <http://dx.doi.org/10.5267/j.ac.2020.4.0016> accessed 4 June 2024

[46] Ibid.

[47] T K Wei and R Said, 'Non-Performing Property Loans and Its Origination in the Real Estate Finance System: Case Study of Malaysia' (2021) 11 *International Journal of Property Sciences* 35 <10.22452/ijps.vol11no1.3> accessed 7 June 2024.

Notwithstanding the increase of the market in 2005, the year 2006 witnessed a triple jump of 2005. The capital market witnessed in total of 19 issues valued at RM 26.44 billion.[48]

The primary driver of Malaysian commercial banks' securitization activity is liquidity. As the demand for loans grows, banks must engage in securitization activities to meet their liquidity requirements. This suggests that the increasing demand for loans prompts banks to engage in securitization to meet their liquidity requirements. Effective regulation in Malaysia may also play a role in limiting the use of securitization for capital arbitrage and risk transfer activities, focusing more on liquidity needs.[49]

3.2. Similarities between Asset-backed Securities in Nigeria and Malaysia

In Malaysia, ABS and securitization transactions which form an integral part of the Malaysian capital market, are regulated by the Securities Commission Malaysia, established by the Securities Commission Malaysia (Amendment) Act, 2017.[50] The Securities Commission Malaysia is saddled with the core mandate of regulating and ensuring market growth and protecting investors through initiatives to increase financial and investment literacy. The Investment and Securities Act of 2007 governs the Nigerian capital market and its activities in Nigeria. The legislation establishes the Securities and Exchange Commission (SEC) as the apex regulatory agency for the Nigerian capital market, with the responsibility of enforcing the act's provisions and developing the market.[51]

In Malaysia, ABS is regulated by Guidelines on Offering ABS. The guidelines set out clear requirements for securitization transactions under section 32 of the Securities Commission Malaysia (Amendment) Act, 2017.[52] The issuance, offer for subscription or purchase, or an invitation to subscribe or purchase of ABS must be sought and obtain the approval of the Securities Commission as well as fulfilling the requirements set out in the present guideline and other guidelines such as Guidelines on the Offering of Private Debt Securities (PDS Guidelines) or the Guidelines on the Offering of Islamic Securities (IS Guidelines) were applicable.[53] In Nigeria, the SEC, exercising its power under the ISA, introduced the Rules on Securitization of April 2015 to regulate securitization. The Rules on Securitization regulate the incorporation of SPV/SPE and securities registration among other things.

In Nigeria and Malaysia, SPVs/SPEs are not required to have any employee(s) or incur any fiduciary responsibilities to third parties other than those involved in the securitization process or transactions.[54] SPVs/SPEs are allowed to have employees but must subcontract all services to third parties to maintain the SPV/SPE and its assets. The SPV/SPE is required to keep separate records, and books of accounts.[55] According to the Rules, not more than 30% of the SPV/SPE directors are to be nominees of a sponsor or associated with the sponsor and no persons with a history of dishonestly or suspension for the capital market activities can be a director of an SPV/SPE.[56]

3.3. Differences between Asset-backed Securities in Nigeria and South Africa

In Malaysia, ABS includes private debt securities or Islamic securities issued according to a securitization transaction. It excludes all debt securities or Islamic securities that can be converted into

[48]Wei and Said,(n 47).

[49]O N Abideen, A Adewale and M A, Omar, 'What Drives Malaysian Securitization Activities?' (2013) <https://www.researchgate.net/publication/290428094_WHAT_DRIVES_MALAYSIAN_BANKS%27_SECURITIZATION_ACTIVITIES?enrichId=rgreq-9d266470b1a1bf5720d4c77677180aef-XXX&enrichSource=Y292ZXJQYWdlOzI5MDQyODA5NDtBUzozMTc3MTM5NDIwMjQxOTJAMTQ1Mjc2MDMxNDk4Ng%3D%3D&el=1_x_2&_esc=publicationCoverPdf> accessed 4 June 2024

[50] Securities Commission Malaysia (Amendment) Act, 2017, s 15 (1) (b). See D Tan, 'Securitisation 2024 - Malaysia | Global Practice Guides | Chambers and Partners' (*practiceguides.chambers.com*16 January 2024) <https://practiceguides.chambers.com/practice-guides/securitisation-2024/malaysia/trends-and-developments> accessed 6 June 2024.

[51] Investment and Securities Act, 2007, s. 1(1)

[52] Guidelines on the Offering of Asset-Backed Securities, 2004, guideline 1.01

[53] Ibid. guideline 2.01

[54] Ibid. guideline 7.03 (b) & (c)

[55] Securities and Exchange Commission Rules on Securitization, 2015, Rules c (5)

[56] Securities and Exchange Commission Rules on Securitization, 2015, Rules C

equity redeemable or irredeemable.[57] In Nigeria, ABS includes certificates whether written or electronic, issued by an SPV/SPE, the repayment of which is derived from the cash flow of the pool of assets according to the terms and conditions of the transaction.[58]

In Nigeria, an SPV/SPE can be incorporated as a public limited liability company as well as a trust created by a written instrument or any other legal entity that may be permitted by the Securities and Exchange Commission by regulation for securitization. The SPV/SPE duly incorporated in Nigeria must bear in its incorporated name the acronym 'SPV.'[59] In Malaysia, an SPV/SPE is incorporated for tax purposes only without any other requirements. Going by the provisions of the guidelines, an SPV/SPE can only be incorporated as a trust corporation with independent and professional directors or trustees.[60] Upon incorporation, the activities of SPV/SPE in Nigeria shall be limited to its objectives contained in its memorandum and articles of association or constitution which include but are not limited to the acquisition, management, and collection of assets, the assumption of risk, the issue of ABS to noteholders and the engagement of servicers to administer the pool of assets.[61] The Malaysian Guidelines on the Offering of ABS, 2004 is silent on the objectives of an incorporated SPV/SPE.

In Malaysia, credit rating agencies play a crucial role in providing investors with valuable information as to the creditworthiness of issuers of ABS. This information or independent opinion provided by the rating agencies is on the objectives and perspective of the risk of financing the investor to make an informed decision. These rating agencies exercising due diligence based their ratings on the ability of the underlying asset to generate adequate cash flow to finance the SPV obligations.[62] The rating agencies have benefited the ABS market in Malaysia by assisting firms to access market information at low cost; assisting in the allocation of capital efficiency across sectors; increasing market transparency and aiding issuers access the financial market; and growing investors' confidence.

Furthermore, ratings protect investors' interest, directing savings into capital markets, and serve as indicators to the investors. Also, ratings facilitate capital market penetration by investors and assist in the creation of credibility among investors. The Malaysian market has two prominent credit rating agencies. RAM Rating Services Berhad (RAM) and Malaysian Corporation Berhad (MARC) assess and assign credit ratings to various financial instruments including ABS.[63] These credit rating agencies have further expanded the ABS market in Malaysia unlike in Nigeria where the credit rating agencies are almost non-existent as a result of little or no ABS transactions.

The success of the Malaysian securities market is driven by the investors' confidence in the market. Three mental reasons have been enunciated for the development of lack of investors' confidence in the securities in Malaysia. These mental reasons include firstly, the lack of apposite financial information concerning the activities of the domestic security market and firmed listed there on; secondly, the incapacity of the regulatory agencies to properly monitor and supervise the market, in this manner protect the investors' against market manipulation or other forms of excesses; thirdly, the insufficiency of accounting and auditing financial reports.[64]

The high investors' confidence witnessed by the Malaysian securities market is evidenced in the maturity of the market and the conception of other innovative financial options available to potential investors in the market notwithstanding that Malaysia has not enacted legislation to regulate

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[57] Ibid. guideline 3.01
[58] Securities and Exchange Commission Rules on Securitization, 2015, Rule a (ii)
[59] Securities and Exchange Commission Rules of Securitization, 2015, Rules c (1) (a), (b) & (2)
[60] Guidelines on the Offering of Asset-Backed Securities, 2004, guideline 7.01 & 7.02
[61] Securities and Exchange Commission Rules of Securitization, 2015, rules c (3)
[62] S Mseddi and N Naifar, 'Rating Methodology and Evaluating the Issuer of Sukuk <http://www.tandfonline.com/action/showCitFormats?doi=10.1080/17509653.2013.829629>
[63] N A Borhan and N Ahmad, 'Identifying the Determinants of Malaysian Corporate Sukuk Rating' (2018) 11 *International Journal of Islamic and Middle Eastern Finance and Management* 432 <https://doi.org/10.1108/IMEFM-02-2017-0045> accessed 12 June 2024.
[64] L A Ley, F H and Z Embong, 'Board Characteristics, Investors' Confidence and Firm Value: Malaysian Evidence' (2019) 12 *Asian Journal of Accounting and Governance* 169 <10.17576/ajag-2019-12-14> accessed 19 June 2024.

securitization. The lack of legislation on securitization has not dwindled investors' confidence rather the market has continued to expand. Unlike in Nigeria, where investors' confidence has been poor as a result of little activities in the market as a result of lack of legislation, volatility of the market, and lack of information about the securities traded in the market.

4. Conclusion
The analysis of ABS markets in South Africa, Malaysia, and Nigeria reveals that robust legal frameworks and regulatory structures are essential for the success and stability of securitization markets. South Africa and Malaysia have developed mature ABS markets due to well-defined regulations, strong financial institutions, and active investor participation. In contrast, Nigeria's ABS market remains underdeveloped due to legal uncertainties, lack of regulatory clarity, and limited investor confidence.
To improve Nigeria's securitization market, it is crucial to enact targeted legal reforms, enhance regulatory oversight, and encourage market participation through financial incentives. By adopting international best practices and fostering a transparent and well-regulated environment, Nigeria can unlock the full potential of ABS as a financing mechanism, driving economic growth and financial stability.

5. Recommendations
To improve Nigeria's securitization market, this paper proposes the following recommendations:

i. Strengthening the Legal Framework for ABS in Nigeria
The National Assembly should enact a dedicated securitization law to provide a clear legal foundation for ABS transactions. Also, an amendment and harmonization of existing laws, such as the Investment and Securities Act and the Companies and Allied Matters Act, is necessary to eliminate regulatory overlaps and inconsistencies.

ii. Enhancing Regulatory Oversight and Investor Protection
Regulatory bodies such as the Securities and Exchange Commission (SEC) in Nigeria should establish stricter monitoring mechanisms to ensure transparency and compliance in ABS transactions. Also, credit rating agencies should be mandated to assess ABS transactions to improve investor confidence and risk management.

iii. Encouraging Market Development and Financial Innovation
South Africa and Malaysia have successfully diversified their ABS markets; Nigeria should follow suit by incentivizing financial institutions to securitize a broader range of asset classes beyond mortgage loans. Also, establishing incentives such as tax breaks for institutions engaging in securitization would encourage participation and growth.

iv. Adopting International Best Practices in ABS Regulation
Nigeria can benefit from adopting best practices from South Africa and Malaysia, such as clear guidelines on the roles and responsibilities of Special Purpose Vehicles (SPVs). Also, regulatory authorities in Nigeria should collaborate with international financial institutions to develop training programs for legal and financial professionals involved in ABS transactions.

v. Improving Investor Confidence and Market Transparency
Banks and other financial institutions should conduct public awareness campaigns to educate potential investors on the benefits and risks of ABS investments. Also, mandatory disclosures of underlying asset quality and risk factors should be required to ensure transparency.

vi. Expanding Credit Rating and Risk Management Frameworks
Nigeria should promote the establishment of independent credit rating agencies to assess ABS transactions, ensuring that investors receive reliable risk assessments. Also, regulatory reforms should encourage banks to engage in securitization as a risk management strategy rather than just a financing tool.