



# The Functional Research on the Legal Framework of Copyright Securitization SPV

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**Abstract.** In order to promote copyright securitization as an important way of financing for the science and technology innovation industry, the legal framework of its SPV should not only have the general functions of asset securitization SPV legal framework, but also have special functions to prevent the unique risks of copyright securitization. The legal framework of copyright securitization SPV in developed countries is mainly based on SPT and SPC, with both similarities and differences in their functional content. The legal framework of China's copyright securitization SPV is mainly based on the "asset support special plan" and traditional corporate structure. The "asset support special plan" does not have the function of isolating the bankruptcy risk of the administrator. The traditional corporate structure has defects such as not being able to isolate its own bankruptcy risk, limited issuance of securities, and high tax burden. To this end, it is advisable to improve China's corresponding institutional arrangements by formulating the Asset Securitization Law and amending relevant old laws, and construct a legal framework for copyright securitization SPV with necessary functions to adapt to the rapid development of copyright securitization practice.

**Keywords:** Copyright securitization; Legal framework; Risk prevention and control

## 1 INTRODUCTION

Copyright securitization originates from asset securitization, and SPV (Special Purpose Vehicle) is the core element of asset securitization transactions.[1] The functional arrangement of the SPV legal framework for asset securitization in various countries determines the existence and development status of asset securitization in the country. Developed countries such as the United States have modified or established rules to provide an SPV legal framework that is suitable for the development of copyright securitization, making copyright securitization financing an important form of fundraising for the production of copyrights in film, music, animation, museums, cultural and creative industries. From 2005 to 2011, there were at least 35 film backed securities issuance transactions worldwide, with a total face value exceeding 14 billion US dollars.[2]

In order to promote the construction of an innovative country, China attaches great importance to the docking and integration of the copyright industry and financial capital.[3] A series of documents have been issued, including the Guiding Opinions on Supporting Hainan's Comprehensive Deepening of Reform and Opening up (2018), the Opinions on Supporting Shenzhen's Construction of a Pilot Demonstration Zone for Socialism with Chinese Characteristics (2019), and the National Intellectual Property Protection and Application Plan for the 13th Five Year Plan (2021), to encourage the pilot work of intellectual property securitization. Between 2018 and 2019, China has issued two copyright securitization products, the "First Entrepreneurship - Liberal Arts Leasing Phase I Asset Support Special Plan" and the "Qiyi Century Intellectual Property Financial Asset Support Securities", with a total face value of over 1 billion yuan. However, the institutional environment suitable for the development of copyright securitization in China has not yet been formed, and the modification and improvement of relevant rules have not kept up with the pace of practical development; The research on copyright securitization in the academic community is in the ascendant, and no results have been found specifically studying the functions and rules of the SPV legal framework for copyright securitization. This article will apply the principles of asset securitization and combine the characteristics of copyright securitization to derive the necessary functions of the legal framework of copyright securitization SPV, compare the functional differences of different legal frameworks of SPV, analyze the shortcomings of the existing legal framework of copyright securitization SPV in China, and propose improvement suggestions. This will provide institutional basis for leveraging the function of copyright securitization to promote innovation and reduce the potential risks it may cause.

## **2 THE DEFINITION OF COPYRIGHT SECURITIZATION AND ITS SPV LEGAL FRAMEWORK**

Copyright securitization is a further innovation of asset securitization. Asset securitization, a financing technology originating from the United States, refers to the transfer of assets (i.e. underlying assets) that can generate predictable and stable cash flows in the future by the initiator to SPV. Through certain structural arrangements, SPV separates and restructures assets and risks, enhances asset credit, and converts them into freely tradable securities guaranteed by assets and their generated cash flows, which are sold to investors, And use the proceeds to pay the consideration for purchasing assets in the securitization process.[4] Asset securitization began with the securitization of financial assets. In the early days, the basic "assets" that were securitized only included "financial assets" such as housing mortgages, other loans, and accounts receivable. With the continuous deepening of financial innovation, the scope of this basic "asset" expanded to "assets that can generate stable cash flow", and intellectual property assets such as copyrights were gradually included because they can generate stable cash flow. Copyright securitization is the process in which the initiator transfers copyrights (i.e. underlying assets) that can generate predictable and stable cash flows in the future to the SPV. The SPV separates, restructures, and enhances the credit of the copyrighted assets through

certain structural arrangements, converts them into securities backed by the cash flows generated by the copyrights, and sells them to investors. The proceeds are then used to pay the consideration for purchasing the copyrighted assets.[5]

The SPV of copyright securitization is an entity established specifically for the purpose of copyright securitization. It acquires specific copyright assets (or a combination of copyright assets) from the initiator, issues securities based on these copyright assets, sells them to investors, pays the proceeds to the initiator, and finally returns the cash flow generated from the acquisition of the copyright assets to the securities holder. Therefore, the SPV of copyright securitization has the dual identity of the transferee of the securitized assets and the issuer of the securities, and is an instrumental conduit between the original equity holder (initiator) and investors to receive investment and returns, with typical subjectivity and instrumental characteristics. The legal framework of copyright securitization SPV refers to the legal manifestation of the organizational form of copyright securitization SPV. The legal framework adopted for copyright securitization has a decisive impact on achieving true sales, bankruptcy isolation, and tax burden costs. It is an important factor that investors need to consider when making investment decisions.

Compared to financial asset securitization, copyright securitization has its unique characteristics. The debt transferred by securitization of financial assets (financial assets) refers to the debt that has already occurred and is used as collateral for the underlying asset - future cash flows, which includes both the principal of the transferred debt and the interest (or income) generated from the principal of the debt. However, the basic assets of copyright securitization include not only the copyright projects that have been obtained by the initiator (original equity holder) with profit prospects, but also the copyright creative or semi-finished projects that have not yet formed a copyright form, that is, the transferred debt, which includes both existing debt (projects that have already obtained copyright) and future debt (creative or semi-finished projects that have not yet obtained copyright); The property value of the underlying assets used as collateral is only the property income generated by the copyright, while the copyright itself has no property value; Scholars have therefore proposed that the object of copyright securitization is not the copyright itself, but the cash flows that copyright generates now or in the future.[6] The proceeds obtained by the initiator from issuing securities can be invested in the creation of other copyrights or used to complete the creation of the securitized copyrights.

### **3 THE NECESSARY FUNCTION OF THE SPV LEGAL FRAMEWORK FOR COPYRIGHT SECURITIZATION**

Due to the evolution of copyright securitization from asset securitization, the legal framework of copyright securitization SPV should have the general functions that the legal framework of asset securitization SPV should have. Meanwhile, due to the differences between copyright securitization and financial asset securitization, the legal framework of copyright securitization SPV should also have special functions that meet the needs of copyright securitization.

### 3.1 The General Functions of the SPV Legal Framework for Copyright Securitization

The legal essence of asset securitization is the transfer of debt secured by the securitized underlying assets, which determines that the property value and risk of the securitized underlying assets are the primary factors that investors need to consider when deciding whether to invest. Preserving the value of these specific underlying assets and minimizing their potential risks are the prerequisites for the success of asset securitization. The entire process of securitization, where the original equity holder uses the cash flow generated by the securitized assets as collateral to advance the redemption from the investor and ultimately obtain the investment principal and income, requires the use of its conduit SPV. A portion of the value of the specific underlying assets held by the SPV will be used to pay for the costs and taxes of securitization, and the remaining amount will become the investment principal and income of the securities holder. Only when the legal framework of SPV has the function of preserving the value of these specific assets can investors invest and lay the foundation for the success of securitization. Specifically, the essence of asset securitization determines that the legal framework of copyright securitization SPV should have the following three general functions.

#### 3.1.1 Complete the "real sale" of the assets to be securitized, and achieve isolation from the bankruptcy risks of various business participants in asset securitization.

To preserve the value of specific assets to be securitized, it is necessary to endow the legal framework of SPVs with the qualification and ability to hold all the rights and interests of these specific assets, in order to avoid improper reduction due to the bankruptcy of the original equity holders, managers, and other business participants. This requires the establishment of the founding institutions of SPVs and asset securitization. A complete Bankruptcy Remote mechanism for business participants such as administrators and avoiding confusion of funds.[7] "True sale" refers to the act of the originator (original equity holder) transferring all rights and risks of the proposed securitized assets to the assignee SPV.[8], The true sale is crucial for isolating the bankruptcy risk of the originating institution (original equity holder). Only by completing a "true sale" can the underlying assets held by the Special Purpose Vehicle (SPV) and the cash flows generated from them be legally independent from the original equity holder, thus isolating the risk of being pursued for repayment by other creditors in the event of the original equity holder's bankruptcy. The standard for determining whether a "true sale" has occurred in US legislation is that the originator must not retain any rights under common law or equity law in the assets being sold.[9] If the seller only transfers property rights without transferring equity rights under equity law, a true sale cannot be achieved.[10]

#### 3.1.2 Preventing SPV bankruptcy and achieving isolation from the bankruptcy risk of the SPV itself.

The legal structure of the SPV should not only be able to mitigate the disruptions caused by the bankruptcy of its members, [11] but also prevent the risk of its own bankruptcy during the operational process. This is to avoid these specific

assets becoming the bankruptcy estate of the SPV and being distributed among its entire creditors, ensuring the security of securitization transactions. The ability of the SPV's legal structure to prevent its own bankruptcy is determined by the instrumental characteristics it possesses in practice. The instrumental characteristics of the SPV make it fundamentally different from traditional commercial organizations, providing legitimacy for the establishment and bankruptcy of the legal structure of asset securitization SPVs through legislation.

**3.1.3 Reduce the cost expenditure of the SPV and safeguard its ability to pay returns to security holders.** To preserve the value of the specific assets intended for securitization, the SPV holding these assets should minimize cost expenditures as much as possible to avoid reducing its ability to pay returns to security holders due to excessive tax burdens and other costs. The tax burden of asset securitization SPVs involves stamp duty incurred from issuing securities, income tax from securities sales revenue and asset cash flow income, etc. The heavier the tax burden, the more cost expenditures the securitized underlying assets will have, and the lower the ability to pay returns to security holders. The tax burden borne by the legal structure of the SPV has a significant impact on the decisions of various entities in asset securitization. [12] The design of tax costs and tax system elements will affect the transaction mode and development of asset securitization.[13] The instrumental characteristics of the SPV in practice provide a basis for reducing the tax burden of its legal structure. The practice of various countries has proven that providing tax incentives through legislation for the legal structure of SPVs is a fundamental path to promote the development of asset securitization.

## **3.2 Special functions of the legal structure of copyright securitization SPVs**

To meet the special needs of copyright securitization, the legal structure of copyright securitization SPVs should have special functions to prevent the special risks of copyright securitization. The special risks of copyright securitization mainly arise from the uncertainty of the value of the copyright assets intended for securitization and the dispersion of rights ownership. To preserve the value of the copyright assets intended for securitization, the SPV should minimize improper reduction of cash flows generated by these special risks, thereby ensuring stable returns for copyright security holders and ensuring the success of copyright securitization. These special functions are manifested in the following two aspects.

**3.2.1 Effectively managing the asset pool composed of multiple copyright assets.** "The core issue of the success or failure of copyright securitization lies in the selection of underlying assets." [14] Flexibly selecting and assembling a pool of copyright assets is an effective way to mitigate the risks caused by the uncertainty of underlying asset value in copyright securitization. [15] The uncertainty of copyright asset value refers to the multitude of factors that affect the value of copyright assets, and the evaluation results have a high degree of elasticity. [16] As the underlying asset of securitization transactions, the value of copyright assets is related to the formation of underlying

credit and will have a significant impact on cash flow.[17] Securitizing based on a single copyright asset is prone to expose investors to higher risks, while constructing a pool of copyright assets allows for structural reorganization of risks and returns, achieving risk hedging and reducing overall risk levels.[18]

**3.2.2. Effective management of copyright underlying assets with different rights holders is a path to avoid the risks of copyright securitization caused by the decentralization of copyright ownership.** The "real sale" in copyright securitization not only needs to meet the general standards of asset securitization but also requires the initiator to have complete copyright over the works attached to the proposed securitized copyright license fees. [19] The decentralization of copyright ownership refers to the possibility that multiple entities may participate in the same work and form copyright rights, which are composed of multiple rights. This means that the copyright and its constituent rights of the same work may be owned by different entities. For example, in a film produced by a producer and invested in by multiple investors, the copyright is jointly owned by multiple entities, and no entity has complete copyright over the work, only partial rights. Since the work is an indivisible complete story, the realization of licensing income for each property right, such as distribution rights and online dissemination rights, needs to be based on the entire work and requires the consent of all copyright holders of the entire work. If the initiator, who holds partial copyright, transfers the partial copyright and its generated cash flow as the underlying asset for securitization to an SPV, this transfer may not achieve the legal effect of bankruptcy risk isolation because it does not meet the standards of a "real sale." This is because the underlying assets acquired by the SPV are only a part of the entire copyright, and if other copyright holders of the initiator do not go bankrupt, the cash flow generated by the copyright should be included in the scope of their bankruptcy estate and distributed to all their creditors.

## **4 COMPARISON OF THE FUNCTIONS OF DIFFERENT LEGAL STRUCTURES FOR COPYRIGHT SECURITIZATION SPVS**

In practice, copyright securitization SPVs in different countries adopt three types of legal structures: Special Purpose Company (SPC), Special Purpose Trust (SPT), and partnership[20]Due to the general joint liability of ordinary partners for partnership debts, the assets of an SPV cannot be completely isolated from the bankruptcy risk of its ordinary partners. Therefore, few countries have used partnerships as the legal structure for their SPVs in asset securitization practice. [21]SPC (Special Purpose Company) refers to an SPV with a company structure registered and established by the originator (original equity holder). It is legally an independent company and the nominal beneficiary of the securitized underlying assets. In practice, it is an empty shell company that only engages in securitization-related business and does not have dedicated employees, which differs significantly from traditional company structures.

SPT (Special Purpose Trust) refers to an SPV with a trust structure. The originator (originating equity holder) entrusts the assets to a trust institution (trustee, SPT) to establish a special purpose trust and obtain beneficial rights. The SPT issues beneficiary securities representing the beneficial rights in the name of the SPT according to the asset securitization plan. The purchasers (investors, beneficiaries) enjoy corresponding shares of the beneficial rights. At the same time, the SPT entrusts service agencies to manage and dispose of the securitized assets and use the proceeds to pay the principal and returns to the securities holders.

For the same copyright securitization practice, choosing SPC or SPT as the legal structure for the SPV will subject it to different legal rules and have different functions, thereby imposing different risks and costs, such as taxes, on the copyright securitization, which has a decisive impact on its existence and development.

(1) Both SPC and SPT have the function of preventing the bankruptcy of the SPV, but SPT is more effective in preventing its own bankruptcy, while SPC needs clear rules to fulfill its function of preventing its own bankruptcy. Taking US law as an example, SPT is classified as a non-business trust that does not have bankruptcy eligibility because its purpose is to generate income for the beneficiaries (securities holders) through management activities. It is considered the most thorough and effective legal structure for achieving bankruptcy isolation. According to the US Bankruptcy Code, trusts established for non-profit purposes are categorized as non-business trusts, which do not have bankruptcy eligibility. However, there is debate in judicial practice regarding whether SPC can fulfill its function of preventing its own bankruptcy due to the unclear legislative rules in the US.[22] Supporters argue that the Bankruptcy Law does not prohibit debtors from "abandoning bankruptcy," which lays the foundation for recognizing the effectiveness of SPC "bankruptcy abandonment agreements." It also does not prohibit the right to waive "automatic stay" when being filed for bankruptcy, making it possible for SPC to waive "automatic stay" with legal effect. From a legal perspective, the sole purpose of establishing an SPC as a shell company is not to maximize the shareholders' wealth but to protect the interests of investors as a separate conduit institution from the initiator. The independent directors of SPC owe fiduciary duties to the security holders rather than the shareholders, which means that in making decisions such as filing for bankruptcy, it is appropriate to allow SPC's independent directors to decide their position from the perspective of investors. Since SPC is just a conduit between the initiator and the investors, it is appropriate to limit the business and liabilities of SPC within the scope of the proposed securitization business in its articles of association. This debate suggests that in order to give SPC the function of guarding against bankruptcy risk, more specific and clear legislative rules are needed.

(2) Both SPC and SPT can reduce costs, but their paths are different. SPC needs specific rule content to reduce tax expenses. Since SPT is not a legal entity in tax law, it does not have tax obligations as an entity and can completely eliminate tax cost burden. As an independent entity company, SPC needs to pay income tax, and the security holders also need to pay income tax, which may result in double taxation. In order to reduce the tax burden of SPC, the US Congress enacted the Tax Reform Act of 1986 to provide tax-exempt treatment to CMO initiators of "real estate mortgage investment

conduits" (REMIC) that meet the requirements of the law;<sup>[23]</sup> France provides tax incentives for secured financing asset transfers.<sup>[24]</sup> The UK abolished stamp duty on mortgage asset transfers.<sup>[25]</sup> These special tax incentives for SPC greatly promote the development of domestic asset securitization.

(3) SPC is more effective than SPT in preventing the special risks of copyright securitization. SPC, because of its independent corporate status, is suitable for managing a pool of underlying assets composed of copyright assets belonging to different entities. It is more flexible in selecting securitized underlying assets and has substantial ownership over them. It can simultaneously securitize different underlying assets from different sponsors and can combine or separate the cash flows generated from them and issue securities of different tranches or payment sources. Additionally, by expanding the size of the asset pool, SPC can dilute the costs of securitization transactions. However, SPT, lacking independent corporate status, is only suitable for copyright securitization based on a single copyright asset.

It can be seen that both SPC and SPT have the functions required to become the legal structure of copyright securitization SPVs, but they have their own advantages in terms of function content and implementation. Among them, SPC is more effective in dealing with the special risks of copyright securitization due to its independent corporate status. However, its ability to prevent bankruptcy and reduce tax expenses depends on specialized legal arrangements.

## **5 ANALYSIS OF THE FUNCTIONS OF THE LEGAL FRAMEWORK FOR COPYRIGHT SECURITIZATION SPV IN CHINA**

Shaping a suitable legal framework for asset securitization through legal rules is a common experience of developed countries in promoting the development of domestic asset securitization. The current rules in China for shaping the legal framework of asset securitization SPV have their origins in various laws and regulations, including the Trust Law, Company Law, Bankruptcy Law, Trial Measures for Pilot Administration of Credit Asset Securitization (2005), Provisions on the Administration of Asset Securitization Business of Securities Companies and Fund Management Company Subsidiaries (2014), Interim Measures for the Administration of Asset Support Plan Business (2015), and relevant tax laws. Based on these regulations, different types of asset securitization in China should adopt different legal frameworks for their SPVs. By analyzing the existing rules of the legal framework for copyright securitization SPVs in China based on the required functions, it is found that although the existing legal framework has some necessary functions, there are many shortcomings that are not suitable for the development of copyright securitization.



## **5.1 Existing regulations restrict and hinder SPT from becoming the legal framework for copyright securitization SPVs**

**5.1.1 Existing regulations impose requirements on the qualifications of SPT establishment, limiting SPT from becoming the legal framework for copyright securitization SPVs.** SPT in China has the function of isolating the bankruptcy risk of the trust underlying assets and participants in asset securitization transactions, because the Enterprise Bankruptcy Law and the Provisional Regulations on Compulsory Liquidation of Companies only apply to corporate bankruptcy and do not apply to the specific purpose trust that is essentially a series of contractual arrangements. According to the Trust Law, the property transferred to the trust institution is not affected by the bankruptcy of the trustee, settlor, manager, or other service providers. Article 3 of the Measures for the Administration of Trust Companies clearly states that the trust property does not belong to the liquidation property of the trust company upon its termination. However, because copyright securitization does not fall within the scope of credit asset securitization, the use of SPT as the legal framework for its SPV is restricted. According to Article 11 and Article 16 of the Trial Measures for Pilot Administration of Credit Asset Securitization, "the credit asset securitization initiator refers to a financial institution that transfers credit assets through the establishment of a specific purpose trust" and "the trustee is a trust investment company established in accordance with the law or other institutions approved by the China Banking Regulatory Commission." In China, trusts are considered financial license businesses rather than capital organizations. Only credit asset securitization initiated by financial institutions can use SPT as the legal framework for their SPVs. Other commercial organizations do not have the qualifications to become SPTs. Therefore, when issuing copyright securitization products, non-"trust investment companies established in accordance with the law or other institutions approved by the China Banking Regulatory Commission" as initiators cannot adopt SPT as the legal framework for their SPVs.

**5.1.2 Existing regulations prohibit SPT from issuing securities, hindering SPT from becoming the legal framework for copyright securitization SPVs.** The purpose of establishing a copyright securitization SPV is to "securitize underlying assets and sell them to the public."<sup>[26]</sup> to realize financing, however, the 'Trust Investment Company Management Measures' and the 'Interim Measures for the Trust Investment Company's Fund Trust Management' in China prohibit trust investment companies (SPT) from issuing beneficiary certificates and issuing bonds.

**5.1.3 The uncertainty surrounding the functionality of effectively isolating the original equity holders from bankruptcy risks hinders SPT from becoming the legal framework for copyright securitization SPVs.** According to Article 35 of the Bankruptcy Law, any act of 'abnormal underpricing of property' within six months prior to the acceptance of a bankruptcy application by the People's Court is considered invalid. If the original equity holders transfer the underlying assets to SPT at a low price within six months prior to the acceptance of the bankruptcy application concerning the

original equity holders, it may be deemed as an 'abnormal underpricing sale' and there is no clear definition of what constitutes such a sale. According to Article 15 of the Trust Law, when the settlor, who is also a common beneficiary, is declared bankrupt after the establishment of the trust, the trust beneficial rights become part of their liquidation assets. Both of these provisions create uncertainty regarding the ability to isolate the underlying assets of the trust from the bankruptcy risks of the original equity holders, which is an indispensable function of the legal framework for copyright securitization SPVs.

## **5.2 The 'Asset Support Special Plan' does not align with the passivity required by the legal framework of copyright securitization SPVs and does not possess the function of isolating the bankruptcy risks of the manager.**

China's copyright securitization belongs to enterprise asset securitization. Departmental regulations such as the 'Regulations on the Business of Asset Securitization by Securities and Fund Management Company Subsidiaries' and the 'Interim Measures for Asset Support Plan Business Management' have uniquely created the legal framework of 'Asset Support Special Plan' for enterprise asset securitization (ABS) SPVs.

**5.2.1 The legal framework of using 'Asset Support Special Plan' as the legal framework for copyright securitization SPVs violates the passivity requirement of copyright securitization SPVs.** 'Asset Support Special Plan' originates from Article 11, Paragraph 3 of the 'Measures for the Management of Securities Companies' Customer Fund Management Business' (revised in 2013), which defines it as 'special management business for specific purposes for customers through a set of legal documents, multiple special accounts, and investment arrangements with clearly defined underlying assets, full control of underlying asset cash flow collection, closed operation, and independent accounting throughout the process.'

**5.2.2 The legal structure of the 'Asset Support Special Plan' as the copyright securitization SPV does not have a separate legal entity and therefore cannot isolate the risk of the bankruptcy of the manager.** The 'Asset Support Special Plan' itself does not have a separate legal entity, but is attached to the securities company (the manager of the plan) that initiated the plan; the legal nature of the 'Asset Support Special Plan' is 'a delegation and agency relationship constructed by a series of contracts or agreement texts'.<sup>[27]</sup> In this case, securities companies act as managers and play the role of agents, while future investors play the role of principals. The prospectus of two copyright securitization products issued in China ("First Entrepreneurship - Liberal Arts Leasing Phase I Asset Support Special Plan" and "iQiyi Century Intellectual Property Asset Support Securities") indicates that the contracting parties for various agreements such as the transfer of underlying assets and securities issuance are the managers of the plan, not the special purpose vehicle (SPV). This not only means that the SPV

legal structure of the "asset support special plan" is weakened due to the lack of independent legal status, but also determines that it fundamentally cannot have the inherent function of isolating the underlying assets from the bankruptcy risk of the manager.

Although the "Trial Measures for Securities Companies' Client Asset Management Business" stipulate that the "asset support special plan" must establish a separate account, and its property rights should be independent of the sponsor, manager, and entrusted management service institution, the fact that the manager (securities company) is the transferee of the underlying asset transfer agreement in legal theory means that the ownership and all rights and risks of the underlying assets are transferred to the manager. While opening a separate bank account for the special plan by the manager can avoid the direct control of funds by the original equity holders, the commingling of funds in the account with the manager's own funds occurs in legal theory because the manager objectively controls the funds. Therefore, once the manager goes bankrupt, the funds in the special plan should be included in the bankruptcy estate of the manager in legal theory and be claimed by all its creditors, resulting in the inability to protect the rights of investors (principals). It can be seen that under the existing rules and operational practices, the SPV legal structure of copyright securitization with the "asset support special plan" cannot achieve the function of isolating the bankruptcy risk of the manager.

### **5.3 Traditional corporate structures cannot isolate their own bankruptcy risk, and securities issuance is restricted, and the tax burden is high.**

Traditional corporate law gives traditional corporate structures distinctive characteristics. As an "SPC" serving as the conduit for copyright securitization, it certainly has subjectivity, but it has more prominent instrumental characteristics. This difference determines that the legal structure of traditional corporate structures regulated by current Chinese corporate law, bankruptcy law, securities law, etc., is not suitable for the legal structure of the SPV for copyright securitization.

**5.3.2 Traditional companies cannot become the legal structure of copyright securitization SPVs due to the restrictions of the Securities Law.** The Company Law (2019) stipulates that shareholders can contribute intellectual property as capital (Article 27), without limiting the proportion of monetary contributions in registered capital or the minimum amount of registered capital. This provides legal space for the legal structure of copyright securitization SPVs based on traditional company structures. However, Article 16 of the Securities Law stipulates that for a limited liability company to publicly issue corporate bonds, its net assets must not be less than RMB 30 million or RMB 60 million, and the cumulative bond balance must not exceed 40% of the company's net assets. This high threshold for securities issuance makes it impossible for the legal structure of copyright securitization SPVs based on traditional companies. Copyright securitization SPVs, with securitized copyright assets as their core assets, generally have low net asset values, making it difficult to meet the minimum requirements of RMB 30 million or RMB 60 million. Even if their net asset value meets the minimum

requirements for publicly issuing corporate bonds under the Securities Law, they cannot achieve the goal of securitizing all underlying assets due to the restriction that the cumulative bond balance must not exceed 40% of the company's net assets.

**5.3.3 Traditional companies cannot reduce their tax burden due to the principles of fairness in current tax laws and fiscal policies.** Although it has become a common practice in foreign asset securitization to reduce or exempt the tax burden of special purpose companies through special legislation, China does not have specific tax preferential rules for asset securitization SPVs, and the tax burden on traditional companies is based on fairness. The forms of China's asset securitization tax rules are mainly derived from fiscal and tax policies for special industries and behaviors, such as the "Notice of the Ministry of Finance and the State Administration of Taxation on Continuing to Exempt Stamp Duty on Closed-End Securities Investment Funds" (Cai Shui [2004] No. 173), "Notice of the Ministry of Finance and the State Administration of Taxation on Taxation Issues Related to Credit Asset Securitization" (Cai Shui Zi [2006] No. 5), "Accounting Treatment Regulations for Credit Asset Securitization Pilot" (Cai Kuai [2005] No. 12), "Notice on Clarifying the Value-Added Tax Pilot for Financial Real Estate Development, Education, and Auxiliary Services" (Cai Shui [2016] No. 140), "Notice on Issues Related to Value-Added Tax for Asset Management Products" (Cai Shui [2017] No. 56), and "Notice on Continuing to Support the Implementation of Several Tax Policies to Support the Development of Cultural Enterprises" (Cai Shui [2019] No. 17), etc. According to these fiscal and tax policies, China temporarily exempts all stamp duties, partial business taxes, and partial income taxes for asset securitization, and applies a 3% value-added tax rate to asset management products. [28] the value-added tax (VAT) rate of 3% currently applies to asset management products, as stated in the "Notice on VAT Issues of Asset Management Products"[29] However, tax incentives such as this are only applicable to "credit asset securitization"[30] and not to copyright securitization. Sales revenue from selling film copies (including digital copies), income from transferring film rights, income from film distribution, and sales revenue from film copies obtained in rural areas are exempt from VAT in China [31] Although this tax incentive rule can be applied to copyright securitization, it is limited to "film copyright securitization"[32] and does not automatically apply to non-film copyright securitization. The central and local governments in China have issued special tax incentives for high-tech enterprises. According to the State Council's "Several Opinions on Accelerating the Development of the Science and Technology Service Industry," technology service enterprises recognized as high-tech enterprises are subject to a reduced corporate income tax rate of 15%. Newly established high-tech enterprises are exempt from income tax for the first two years starting from the year of production. The legal structure of a traditional company as the SPV for copyright asset securitization has similarities with high-tech enterprises because it is based on copyright assets. However, the SPV structure of a traditional company for copyright asset securitization cannot meet the entity criteria for recognizing high-tech enterprises as specified in Article 10 of the "Administrative Measures for the Recognition of High-Tech Enterprises." Therefore, it cannot enjoy tax incentives for high-tech enterprises. It can be

seen that there is currently no institutional arrangement in China's regulations to provide tax incentives for copyright securitization SPVs. Choosing a traditional company as the legal structure for copyright securitization SPVs will incur high tax costs.

## **6 HOW TO IMPROVE THE FUNCTION OF THE LEGAL FRAMEWORK FOR SECURITIZATION OF COPYRIGHT SPVS IN CHINA**

The legal framework and functions of copyright securitization SPV are shaped through the arrangement of legal systems. There are mainly two legislative models for asset securitization (including copyright securitization). One is the decentralized legislative model represented by the United States, which was the earliest to practice asset securitization. It regulates asset securitization by amending or supplementing different laws such as commercial law, bankruptcy law, state property law, accounting standards, etc; [33] The second is the concentrated legislative model represented by Japan, which leads the development of securitization of intellectual property assets. It regulates securitization of assets by enacting a unified "Asset Securitization Law" (also known as the "Securitization Law"). Some scholars have proposed that China should learn from Japan's experience and adopt a unified legislative model, issuing an "Asset Securitization Law" that includes intellectual property asset securitization.[34] However, simply enacting the Asset Securitization Law is not enough to establish the legal framework for the Special Purpose Vehicle (SPV) that provides all the necessary functions for copyright securitization in China. This is because the rules and regulations for the legal framework of copyright securitization SPVs involve multiple areas of law, such as trust law, company law, bankruptcy law, and tax law. China's relevant institutional origins include not only laws and administrative regulations but also departmental rules and policy documents. In addition to enacting the Asset Securitization Law, it is necessary to modify and supplement these existing institutional origins in order to achieve a systematic legal framework for copyright securitization SPVs. Therefore, it is necessary not only to reconstruct the rules and regulations of the legal framework for copyright securitization SPVs through the future enactment of the Asset Securitization Law but also to modify and supplement the content of existing relevant rules in order to accomplish the legislative task of equipping the legal framework for copyright securitization SPVs with the necessary functions. The specific content mainly includes the following four aspects.

First, the "Asset Securitization Law" grants SPT and SPC the function of becoming the legal framework for copyright securitization SPVs. In the unified "Asset Securitization Law" based on sector regulations such as credit asset securitization and corporate asset securitization, it directly stipulates that "when a knowledge property securitization institution established in accordance with the law issues knowledge property securitization products, it has the right to establish SPT as the legal framework for its SPV." This changes the limitation in the "Pilot Measures for Credit Asset Securitization" that trusts belong to "financial license businesses" and removes the provision that fixes the

legal framework for corporate asset securitization SPVs as "asset support special plans."

Second, the "Asset Securitization Law" establishes specific rules for SPC in areas such as establishment, operation, bankruptcy, issuance of securities, and tax incentives, giving it the inherent function of becoming the legal framework for copyright securitization SPVs. To adapt to the instrumental characteristics of asset securitization SPVs as a "conduit," SPC should be legally regarded as a new type of company distinct from traditional corporations. In order to give SPC the function of guarding against bankruptcy risks, the "Asset Securitization Law" should allow the founders of SPC to explicitly waive the right to voluntarily file for bankruptcy in the company's articles of association. It should also grant SPC the right to waive automatic termination of debt repayment and guarantee enforcement actions when bankruptcy is filed, limit its business within the scope determined by law or securitization plans, allow the establishment of independent directors representing the interests of investors, and restrict its business scope and liabilities to guard against involuntary bankruptcy. To reduce the tax burden of copyright securitization SPVs, the "Asset Securitization Law" should also provide special tax incentives for asset securitization SPVs.

Third, it limits the scope of application of existing relevant regulations. In order to ensure that SPT and SPC have the qualifications to issue securities, the scope of application of the "Regulations on the Management of Trust and Investment Companies" and the "Interim Measures for the Management of Funds Trust of Trust and Investment Companies" that prohibit trust and investment companies from issuing beneficial certificates and issuing bonds should be limited. This allows SPT for knowledge property asset securitization to raise funds by issuing beneficial certificates or bonds and selling them to the public. The application of Article 16 of the "Securities Law" regarding capital, profit, and continuity requirements for the public issuance of corporate bonds by traditional companies should be excluded from the behavior of public issuance of corporate bonds by asset securitization SPCs.

Fourth, it clarifies the specific content of existing relevant rules. To eliminate the uncertainty of bankruptcy risks for SPT isolating the original equity holders, it is appropriate to clarify the specific criteria for invalidating the act of "abnormally underpriced sale of property" in Article 35 of the "Bankruptcy Law" through judicial interpretation. A cautious attitude should be taken towards determining the low-priced transfer of underlying assets by the original equity holders to SPT as an "abnormally underpriced sale of property" to maintain the effectiveness of copyright securitization as a "genuine sale." By limiting the application of Article 15 of the "Trust Law" through judicial interpretation, it excludes the case where the original equity holder (settlor) of knowledge property asset securitization, when declared bankrupt, has their trust beneficiary rights included as part of their liquidation assets. This ensures the isolation of the underlying assets being entrusted and the bankruptcy risks of the original equity holders.

## 7 SUMMARY

Precise and integrated financial innovation is the key to breaking the constraints of intellectual property financing,[35] confirms that institutional reforms that promote innovation and mitigate risks are essential for the success of intellectual property securitization financing. From a functional perspective, SPT and SPC are suitable legal frameworks for copyright securitization special purpose vehicles (SPVs) under different underlying asset scenarios. To meet the rapid development needs of China's pilot practice of intellectual property securitization, it is advisable to legislate to clarify the legal framework of asset securitization SPVs and empower them with appropriate functions. Authorized intellectual property securitization institutions may choose SPT as the legal framework for their SPVs when conducting copyright securitization. SPC can be established as a special type of company with specific provisions for its establishment, articles of association, bankruptcy, and tax benefits. It is also advisable to revise and supplement relevant provisions of China's trust law, bankruptcy law, and limit the scope of application of securities laws and other related regulations to ensure the consistency and logical coherence of the rules governing the legal framework of copyright securitization SPVs, thereby ensuring systematicity and meeting the practical needs of rapid development in copyright securitization.

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